

HOUSE BILL REPORT

HB 2617

As Reported by House Committee On:
Government Operations & Elections
Appropriations

Title: An act relating to interpreter services.

Brief Description: Regulating interpreter services.

Sponsors: Representatives Jinkins, S. Hunt, Haler, Appleton, Hope, Moscoso, Harris, Fitzgibbon, Morrell, Sawyer, Bergquist, Pollet, Green, Riccelli, Fey, MacEwen, Freeman, Tarleton, Gregerson and Santos.

Brief History:

Committee Activity:

Government Operations & Elections: 2/4/14, 2/5/14 [DP];

Appropriations: 2/10/14 [DP].

Brief Summary of Bill

- Authorizes the Department of Labor and Industries (L&I) to purchase spoken language interpreter services for medical and vocational providers.
- Requires the Department of Social and Health Services, the Health Care Authority, the L&I, and the Department of Enterprise Services (DES) to purchase certain spoken language interpreter services directly from language access providers, through scheduling and coordinating entities.
- Requires the DES to develop and implement a model that all state agencies must use to procure spoken language interpreter services, either by direct purchase from language access providers or through contracts with scheduling and coordinating entities, or both.
- Establishes the Spoken Language Interpreter Advisory Group to make recommendations about state certification requirements, among other duties.
- Extends collective bargaining rights to the L&I interpreters.
- Excludes from the collective bargaining law those who provide interpreter services under the Medicaid administrative match program and those appointed or required under certain court proceedings.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

- Restricts procurement of language access providers to those certified or authorized by the state, unless such a provider is not available.

HOUSE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

Majority Report: Do pass. Signed by 6 members: Representatives S. Hunt, Chair; Bergquist, Vice Chair; Carlyle, Orwall, Robinson and Van De Wege.

Minority Report: Do not pass. Signed by 5 members: Representatives Taylor, Ranking Minority Member; Young, Assistant Ranking Minority Member; Christian, Kretz and Manweller.

Staff: Jasmine Vasavada (786-7301).

Background:

Interpreter Services.

Federal laws prohibit discrimination based on an individual's race, color, national origin, handicap, religion, or sex by any entity that receives federal financial assistance. Pursuant to these and other laws, the Department of Social and Health Services (DSHS) provides equal access to social service and medical programs for all persons, including persons who have limited English proficiency. State law also requires the DSHS to ensure that bilingual services are provided to non-English speaking applicants for, and recipients of, public assistance. In community service offices, depending on the circumstances, the DSHS may be required to employ bilingual personnel or to contract with interpreters, local agencies, or other community resources.

The DSHS and the Health Care Authority (HCA) provide spoken language interpreter services to clients in medical settings and social service programs through contracts with brokers. These brokers schedule and connect clients and service providers with interpreters. Before an interpreter can work under such a contract, the interpreter must pass a standardized test to obtain language certification or authorization by the DSHS.

Role of Department of Enterprise Services.

The DES, with limited exceptions, is authorized to establish overall state policies and procedures regarding state agency procurement of goods and services. However, one exception to this, provided in RCW 39.26.100(7), is that the Legislature has conferred primary authority to DSHS and HCA for the purchase of interpreter services and interpreter brokerage services on behalf of limited-English speaking or sensory-impaired applicants and recipients of public assistance.

Public Employee Collective Bargaining.

Employees of cities, counties, and other political subdivisions of the state, with limited exception, bargain their wages and working conditions under the Public Employees' Collective Bargaining Act (PECBA), administered by the Public Employment Relations Commission. Individual providers (home care workers), family child care providers, adult

family home providers, and certain language access providers also have collective bargaining rights under the PECBA. The public employer and the exclusive bargaining representative of the employees have a mutual obligation to negotiate in good faith over specified mandatory subjects of bargaining (grievance procedures and personnel matters, including wages, hours, and working conditions).

In 2010 Engrossed Substitute Senate Bill 6726 granted collective bargaining rights under the PECBA to language access providers. "Language access providers" are defined as independent contractors who provide spoken language interpreter services for the DSHS appointments or Medicaid enrollee appointments, but not owners, managers, or employees of brokers or language access agencies. For collective bargaining purposes, the public employer of language access providers is the Governor, and a single statewide unit exists, consisting of all language access providers.

Court Interpreters.

Washington law (RCW 2.43.030) makes provision for the appointment of interpreters in court proceedings for both non-English-speaking parties and hearing impaired persons. Interpreters must be appointed in all legal proceedings in which a non-English-speaking person is a party or is compelled to appear. The cost of providing the interpreter is borne by the governmental body that initiated the legal proceeding. In all other legal proceedings, the cost of providing an interpreter is borne by the non-English-speaking person unless the person is indigent, in which case the cost is borne by the governmental body conducting the legal proceeding.

Summary of Bill:

Interpreter Services.

The Department of Labor and Industries (L&I) is authorized to purchase spoken language interpreter services provided by certain authorized medical and vocational providers on behalf of injured workers and crime victims who speak limited English.

No later than September 1, 2015, L&I, the DSHS, the Department of Enterprise Services (DES), and the HCA must purchase spoken language interpreter services directly from language access providers through contracts with scheduling and coordinating entities, and each agency must have at least one contract with an entity that provides interpreter services through telephonic and video-remote technologies.

By September 1, 2015, the DES must develop and implement a model that all state agencies must use to procure spoken language interpreter services by purchasing directly from language access providers or through contracts with scheduling and coordinating entities, or both. The DSHS, the HCA, and L&I may procure interpreters through the DES if they cannot meet the demand for spoken language interpreters through their respective contracts.

All language access providers procured under these contracts must be certified or authorized by the state. However, if a state-certified or state-authorized provider is not available, a state agency may contract with a spoken language interpreter with other certifications or

qualifications deemed to meet state standards. "State agency" means any state office or activity of the executive branch of government.

Advisory Group.

The DSHS must establish the Spoken Language Interpreter Advisory Group (Advisory Group) to advise the DSHS, L&I, the DES, and the HCA on the policies, rules, and regulations governing certification and authorization of spoken language interpreters. The Director of the DSHS, in consultation with the directors of the other departments, must make appointments to the Advisory Group of 14 representatives, designated by statute to represent various departments, interpreters, labor, physicians, and others. The duties of the Advisory Group include developing and recommending policies to enhance the quality of interpreters and evaluating and making recommendations related to state certification standards, including the code of ethics, and other duties as requested.

Public Employee Collective Bargaining.

The statute authorizing collective bargaining by a unit representing language access providers is changed in a number of ways. The definition of a "language access provider" for the purposes of coverage under the collective bargaining statutes is broadened to include independent contractors who provide spoken language interpreter services for L&I authorized medical and vocational providers, or those who provided these services on or after January 1, 2012, and before the effective date of this section, as well as any independent contractors who provide spoken language interpreter services for state agencies.

Language access providers are considered independent contractors eligible for collective bargaining, whether paid by a language access agency, broker, or the respective department. The former exclusion from the "language access provider" definition is broadened to specify that this definition excludes interpreters: (1) under the Medicaid administrative match program; or (2) appointed or required in a court proceeding pursuant to RCW 2.43.030, or when required by a federal consent decree or settlement agreement.

Three separate collective bargaining units are created for language access providers, one each for those who provide services for: (1) the DSHS or Medicaid enrollee appointments; (2) injured workers or crime victims receiving benefits from L&I; and (3) any other state agency or purpose, through the DES. However, a single employee organization that becomes the exclusive bargaining representative for two or more units may petition to the Public Employment Relations Commission (PERC) to be consolidated into a single larger unit. If the PERC deems such consolidation to be appropriate, it shall certify the employee organization as the exclusive bargaining representative of the new, larger unit. The Governor and the employee organization may agree to negotiate a single collective bargaining agreement for all of the units that the employee organization represents.

A state agency is authorized to contract with any spoken language interpreter provider, if a language access provider cannot be procured through a bargaining unit.

Appropriation: None.

Fiscal Note: Requested January 31, 2014.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill builds on previously successful efforts to streamline interpreter services. Before legislation enacted in 2010, we were finding that nearly half the money the state invested was going toward brokers and schedulers. After the reforms, 80 percent of the money was going to the services themselves. It seemed a good idea to expand this model to other places. The L&I is also a health care area. The bill contains an advisory committee to help ensure that the standard of services provided is high quality. We have definitely had another year to watch this, and we have seen the average cost of interpreter services go down, while at the same time we have been able to provide more services than before.

Every agency needs foreign language interpreters at some time or another, independent contractors brought in when their services are required. Medicaid can need as many as 900 a day; previously, brokers subcontracted with nonprofits who subcontracted with interpreters, and administrative costs grew while pay to interpreters went down. Legislation was passed giving collective bargaining rights to independent contractor language access providers, allowing them to negotiate their rates with the state and reforming how the process was conducted. The state has dramatically brought down costs under this new model. Interpreters are receiving up to 50 percent more in hourly pay, and the state is paying less. Administrative costs have dropped from \$23 million to \$18 million today. This bill takes the Medicaid model and expands it to the rest of state government. It is a win-win bill, for interpreters, taxpayers, and providers.

Interpreters need your help to change how the state procures interpreter services for L&I and other state agencies. Currently L&I spends almost \$12 million and 40 percent goes to middlemen. The Legislature fixed this in 2010, stopping the middleman system, streamlining appointments, and saving the state money. Now it is time to do this at L&I and other state agencies. Middlemen can be corrupt schedulers, wielding a big stick, and if an interpreter questions them, the interpreter will not get any more appointments. There is an urgent need for quality interpreters for medical appointments. The DSHS currently does not require certification training and not all interpreters are qualified to take these appointments. This bill creates an advisory group to develop standards and ensure quality service.

(Opposed) For the third year in a row, this legislation has been dropped without recognition of fundamental changes that technology is bringing to the world of interpreter services. This bill has taken a step backwards. We have made gains that are not reflected in the legislation before the committee today. My interpreting company is one of the fastest growing small businesses and we can meet demand immediately, without a need to schedule in advance. When the the patient arrives and the provider is ready, with a push of a button the interpreter is available on the other end, on the internet. This bill reflects a twentieth century approach that does not adequately acknowledge twenty-first century technology. There are two very different modes of providing interpreter services. In the past, we tried to separate out the video and remote interpreting, but proponents have fought this change. Also, national

certifications must be recognized. There are 200 languages and not all are certified by the state—you are not necessarily going to get a Washington state-certified interpreter to meet every need. This is a national industry now. Our business has call centers in Tukwila and Wenatchee, but also in Chicago. No fiscal note has shown any savings from expanding these requirements. Instead, the bill's provisions could become very expensive and no agency has stepped forward to say it will save them money. Reducing middlemen and increasing interpreter pay may be good for interpreters, but it does not save the state money. Independent businesses have seen that video and remote interpreting work can be highly efficient, avoiding delays inherent in the in-person system. This legislation is counter to that and thus we oppose it.

Persons Testifying: (In support) Representative Jinkins, prime sponsor; Dennis Eagle and Paul Natkin, Washington Federation of State Employees.

(Opposed) Jim King, InDemand Interpreting; and Gary Smith, Independent Business Association.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass. Signed by 21 members: Representatives Hunter, Chair; Ormsby, Vice Chair; Carlyle, Cody, Dunshee, Green, Haigh, Haler, Harris, Hudgins, S. Hunt, Jinkins, Kagi, Lytton, Morrell, Parker, Pettigrew, Seaquist, Springer, Sullivan and Tharinger.

Minority Report: Do not pass. Signed by 9 members: Representatives Chandler, Ranking Minority Member; Ross, Assistant Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Christian, Fagan, G. Hunt, Schmick and Taylor.

Staff: Erik Cornellier (786-7116).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Government Operations & Elections:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The current system used by the Department of Labor and Industries (L&I) wastes money, hurts interpreters, and reduces the quality of service. Last year the L&I spent \$12 million for interpreter services, and middlemen took 40 percent of it.

Medicaid appointments had the same high overhead. Legislative reforms in 2010 reduced Medicaid overhead to 15 percent. For an appointment lasting three hours for the Health Care Authority (HCA), the overhead would be \$7. It would be \$67 in the L&I for the same appointment. The Legislature found a solution in the HCA and it should be used statewide. The reforms in Medicaid are saving the state money. Before the reforms, the average cost for an appointment was \$53 and now it is \$40. Now that we know the model works this bill would apply it to the rest of state government.

There should be a transparent competitive bidding process that would award a contract for a one-stop shopping solution for in-person, telephonic, and video remote interpreting.

The new model would have two major components. First, it would have a process of scheduling using web-based modern technology at a much lower cost. Second, additional interpreters would be given the ability to bargain to recoup some of the savings for themselves and bolster their own sagging wages.

The state has no quality control and requirements for certification. Manicurists have stricter requirements. Providers complain about the quality of available interpreter services. This bill creates a group to set standards that will increase quality. The Court Interpreter Commission does this for less than indicated in the fiscal note from the Department of Social and Health Services. Based on the Court Interpreter Commission's experience, it should cost \$15,000 per year instead of \$39,000 for advisory group meetings.

(Opposed) This bill does not help taxpayers, patients, or providers. It expands a program that is not working for Washington. Many health care institutions do not participate. Interpreter services are going unbilled at alarming rates. Standards are below national standards. Hospitals and clinics have no say about the quality of interpreters. Interpreters are not required to be certified, risking infections. The system is inefficient at \$40 per appointment, which is double or triple what it should be. This locks in the most costly and inefficient methods. The HCA has yet to get telephone and video working as expected. The bill restricts unscheduled telephone and video remote interpreting that hospitals are already using. Advanced scheduling requirements in the current system do not work for patients and injured workers.

The bill does not provide for implementation of the most modern technology. You do not need to schedule video remote interpreting. You push the button and the interpreter is at the other end. The bill does not recognize that. Video remote interpreting needs to be separate to let the new technology advance.

The new system is not working fiscally. You heard a year ago that it saved \$13 million and now it is saving \$1 million. The fiscal note only identifies increases in costs and it does not show savings. The bill is expensive. The fiscal note is full of assumptions that everything goes perfectly. If it does not go perfectly it will increase costs for industrial insurance.

The bill should be amended to exclude video remote interpreting and to allow the use of national certification standards and independent contractors from other states. It is good that the bill excludes interpreter services for sensory impaired individuals.

Persons Testifying: (In support) Louise Morehead, Washington Federation of State Employees; Milena Caldari-Waldron, Northwest Translators and Interpreter Services; and Dennis Eagle, Washington Federation of State Employees.

(Opposed) Gary Smith, Independent Business Association; and Andrew Drake and Jim King, In Demand Interpreting.

Persons Signed In To Testify But Not Testifying: None.