

2SHB 1725 - S COMM AMD

By Committee on Ways & Means

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 74.39A.270 and 2011 1st sp.s. c 21 s 10 are each
4 amended to read as follows:

5 (1) Solely for the purposes of collective bargaining and as
6 expressly limited under subsections (2) and (3) of this section, the
7 governor is the public employer, as defined in chapter 41.56 RCW, of
8 individual providers, who, solely for the purposes of collective
9 bargaining, are public employees as defined in chapter 41.56 RCW. To
10 accommodate the role of the state as payor for the community-based
11 services provided under this chapter and to ensure coordination with
12 state employee collective bargaining under chapter 41.80 RCW and the
13 coordination necessary to implement RCW 74.39A.300, the public
14 employer shall be represented for bargaining purposes by the governor
15 or the governor's designee appointed under chapter 41.80 RCW. The
16 governor or governor's designee shall periodically consult with the
17 authority during the collective bargaining process to allow the
18 authority to communicate issues relating to the long-term in-home
19 care services received by consumers. The department shall solicit
20 input from the developmental disabilities council, the governor's
21 committee on disability issues and employment, the state council on
22 aging, and other consumer advocacy organizations to obtain informed
23 input from consumers on their interests, including impacts on
24 consumer choice, for all issues proposed for collective bargaining
25 under subsections (5) and (6) of this section.

26 (2) Chapter 41.56 RCW governs the collective bargaining
27 relationship between the governor and individual providers, except as
28 otherwise expressly provided in this chapter and except as follows:

29 (a) The only unit appropriate for the purpose of collective
30 bargaining under RCW 41.56.060 is a statewide unit of all individual
31 providers;

1 (b) The showing of interest required to request an election under
2 RCW 41.56.060 is ten percent of the unit, and any intervener seeking
3 to appear on the ballot must make the same showing of interest;

4 (c) The mediation and interest arbitration provisions of RCW
5 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

6 (i) With respect to commencement of negotiations between the
7 governor and the bargaining representative of individual providers,
8 negotiations shall be commenced by May 1st of any year prior to the
9 year in which an existing collective bargaining agreement expires;
10 and

11 (ii) The decision of the arbitration panel is not binding on the
12 legislature and, if the legislature does not approve the request for
13 funds necessary to implement the compensation and fringe benefit
14 provisions of the arbitrated collective bargaining agreement, is not
15 binding on the authority or the state;

16 (d) Individual providers do not have the right to strike; and

17 (e) Individual providers who are related to, or family members
18 of, consumers or prospective consumers are not, for that reason,
19 exempt from this chapter or chapter 41.56 RCW.

20 (3) Individual providers who are public employees solely for the
21 purposes of collective bargaining under subsection (1) of this
22 section are not, for that reason, employees of the state, its
23 political subdivisions, or an area agency on aging for any purpose.
24 Chapter 41.56 RCW applies only to the governance of the collective
25 bargaining relationship between the employer and individual providers
26 as provided in subsections (1) and (2) of this section.

27 (4) Consumers and prospective consumers retain the right to
28 select, hire, supervise the work of, and terminate any individual
29 provider providing services to them. Consumers may elect to receive
30 long-term in-home care services from individual providers who are not
31 referred to them by the authority.

32 (5) Except as expressly limited in this section and RCW
33 74.39A.300, the wages, hours, and working conditions of individual
34 providers are determined solely through collective bargaining as
35 provided in this chapter. Except as described in this subsection, no
36 agency or department of the state may establish policies or rules
37 governing the wages or hours of individual providers. ((However,))
38 This subsection does not modify:

39 (a) The department's authority to establish a plan of care for
40 each consumer or its core responsibility to manage long-term in-home

1 care services under this chapter, including determination of the
2 level of care that each consumer is eligible to receive. However, at
3 the request of the exclusive bargaining representative, the governor
4 or the governor's designee appointed under chapter 41.80 RCW shall
5 engage in collective bargaining, as defined in RCW 41.56.030(4), with
6 the exclusive bargaining representative over how the department's
7 core responsibility affects hours of work for individual providers.
8 This subsection shall not be interpreted to require collective
9 bargaining over an individual consumer's plan of care;

10 (b) The requirement that the number of hours the department may
11 pay any single individual provider is limited to forty hours each
12 work week and the department's authority to adopt rules under
13 subsection (9) of this section to establish criteria to authorize
14 additional hours;

15 (c) The department's authority to terminate its contracts with
16 individual providers who are not adequately meeting the needs of a
17 particular consumer, or to deny a contract under RCW 74.39A.095(8);

18 ~~((e))~~ (d) The consumer's right to assign hours to one or more
19 individual providers ~~((selected by the consumer within the maximum~~
20 ~~hours determined by))~~ consistent with the rules adopted under this
21 chapter and his or her plan of care;

22 ~~((d))~~ (e) The consumer's right to select, hire, terminate,
23 supervise the work of, and determine the conditions of employment for
24 each individual provider providing services to the consumer under
25 this chapter;

26 ~~((e))~~ (f) The department's obligation to comply with the
27 federal medicaid statute and regulations and the terms of any
28 community-based waiver granted by the federal department of health
29 and human services and to ensure federal financial participation in
30 the provision of the services; and

31 ~~((f))~~ (g) The legislature's right to make programmatic
32 modifications to the delivery of state services under this title,
33 including standards of eligibility of consumers and individual
34 providers participating in the programs under this title, and the
35 nature of services provided. The governor shall not enter into,
36 extend, or renew any agreement under this chapter that does not
37 expressly reserve the legislative rights described in this subsection
38 (5)~~((f))~~ (g).

39 (6) At the request of the exclusive bargaining representative,
40 the governor or the governor's designee appointed under chapter 41.80

1 RCW shall engage in collective bargaining, as defined in RCW
2 41.56.030(4), with the exclusive bargaining representative over
3 employer contributions to the training partnership for the costs of:
4 (a) Meeting all training and peer mentoring required under this
5 chapter; and (b) other training intended to promote the career
6 development of individual providers.

7 (7) The state, the department, the area agencies on aging, or
8 their contractors under this chapter may not be held vicariously or
9 jointly liable for the action or inaction of any individual provider
10 or prospective individual provider, whether or not that individual
11 provider or prospective individual provider was included on the
12 referral registry or referred to a consumer or prospective consumer.
13 The existence of a collective bargaining agreement, the placement of
14 an individual provider on the referral registry, or the development
15 or approval of a plan of care for a consumer who chooses to use the
16 services of an individual provider and the provision of case
17 management services to that consumer, by the department or an area
18 agency on aging, does not constitute a special relationship with the
19 consumer.

20 (8) Nothing in this section affects the state's responsibility
21 with respect to unemployment insurance for individual providers.
22 However, individual providers are not to be considered, as a result
23 of the state assuming this responsibility, employees of the state.

24 (9) The department may not pay any single individual provider
25 more than forty hours each work week unless the department authorizes
26 additional hours under criteria established by rule. The criteria
27 must be limited in scope to reduce the state's exposure to payment of
28 overtime and address the following needs of consumers:

29 (a) Ensuring that consumers are not at increased risk for
30 institutionalization;

31 (b) When there is a limited number of providers within the
32 geographic region of the consumer;

33 (c) When there is a limited number of providers available to
34 support a consumer with complex medical and behavioral needs; and

35 (d) Emergencies that pose a health and safety risk for consumers.

36 NEW SECTION. Sec. 2. The department shall immediately adopt
37 emergency rules under RCW 34.05.350 to limit the number of hours per
38 work week that the department may pay any single provider to forty
39 hours and to establish criteria to authorize additional hours in

1 accordance with section 1 of this act. The emergency rules shall
2 remain in effect until permanent rules can be adopted.

3 NEW SECTION. **Sec. 3.** This act is necessary for the immediate
4 preservation of the public peace, health, or safety, or support of
5 the state government and its existing public institutions, and takes
6 effect immediately."

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7 On page 1, line 4 of the title, after "providers;" strike the
8 remainder of the title and insert "amending RCW 74.39A.270; creating
9 a new section; and declaring an emergency."

EFFECT: Limits the number of hours per work week that the
department may pay any single provider to forty hours and provides
legislative guidance on the criteria to be developed by rule to
authorize additional hours.

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