
Labor Committee

HB 1725

Brief Description: Concerning a consumer's right to assign hours to individual providers and the department of social and health services' authority to establish criteria regarding the payment of individual providers.

Sponsors: Representatives Cody and Tharinger; by request of Department of Social and Health Services.

Brief Summary of Bill

- Provides that the Department of Social and Health Services (Department) may adopt rules establishing criteria for the number of hours per week the Department may pay an individual provider.
- Provides that the consumer's right to assign hours to individual providers must be consistent with the Department's rules and criteria, rather than based on the maximum hours determined by the consumer's care plan.

Hearing Date: 2/9/15

Staff: Trudes Tango (786-7384).

Background:

In-home care services are available to Medicaid eligible persons who are aging and people with developmental disabilities. Eligible persons (consumers) are assessed by the Department of Social and Health Services (Department) to determine the level of their in-home care needs. The consumers may choose to receive services either from an individual provider (IP) or agency providers. Consumers have the right to select, hire, supervise the work of, and terminate any IP providing services to them. The state is the employer only for the purposes of collective bargaining.

Wages, hours, and working conditions of IPs are determined through the collective bargaining process. The statute specifically provides that no state agency or department may establish

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policies or rules governing the wages or hours of IPs. The consumer has the right to assign hours to one or more IPs selected by the consumer, within the maximum hours determined by the consumer's care plan.

The Fair Labor Standards Act (FLSA) specifically exempts from federal overtime laws domestic service workers who provide "companionship services" to the elderly and people with illnesses, injuries, or disabilities. In 2014, the United States Department of Labor (DOL) adopted rules to amend the definition of "companionship services" so that direct care workers, such as IPs, would be provided overtime pay. Those rules were set to go into effect January 1, 2015; however, a federal court held that DOL's rules were inconsistent with the language in the FLSA and Congress' intent. The court vacated the rules, and the case has been appealed.

The most recent collective bargaining agreement governing IPs in Washington provides for overtime pay, but only if the statute authorizing the consumer to assign hours to IPs is amended to allow the state to manage the hours of IPs on a weekly basis.

Summary of Bill:

The statute is amended to give the Department authority to adopt rules establishing criteria regarding the number of hours per week the Department may pay any single IP. In addition, the consumer's right to assign hours to IPs of the consumer's choice must be consistent with the rules and criteria adopted by the Department.

Appropriation: None.

Fiscal Note: Requested on February 4, 2015.

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