

HOUSE BILL REPORT

HB 1725

As Reported by House Committee On:

Labor
Appropriations

Title: An act relating to the consumer's right to assign hours to individual providers and the department of social and health services' authority to adopt rules related to payment of individual providers.

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 History:

Committee Activity:

Labor: 2/9/15, 2/12/15 [DP];

Appropriations: 2/25/15, 2/27/15 [DPS].

Brief Summary of Substitute 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.

HOUSE COMMITTEE ON LABOR

Majority Report: Do pass. Signed by 4 members: Representatives Sells, Chair; Gregerson, Vice Chair; Moeller and Ormsby.

Minority Report: Do not pass. Signed by 3 members: Representatives Manweller, Ranking Minority Member; G. Hunt, Assistant Ranking Minority Member; McCabe.

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.

Staff: Trudes Tango (786-7384).

Background:

Aging persons on Medicaid and people with developmental disabilities are eligible to receive in-home care services. The Department of Social and Health Services (Department) assesses these eligible persons (consumers) 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 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 the 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: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Staff Summary of Public Testimony:

(In support) There are approximately 35,000 independent providers in the state. Originally, independent providers were exempt from overtime requirements, but the federal rule was revised and then vacated by the federal court. That decision is on appeal. There would be a significant fiscal impact to have overtime apply to independent providers. The Department of Social and Health Services (DSHS) needs authority to manage the use of overtime.

(With concerns) Additional workers would have to be brought in to meet consumers' needs. It's up to the consumer to find a caregiver and direct their own care. Recruitment and retention are issues. Consumers need flexibility when using providers. If a consumer has high needs that require many hours of care, restricting overtime will lead to situations where the consumer will not be able to find a provider. The bill should ensure that the DSHS has flexibility for high need consumers.

(Opposed) Allowing the DSHS to manage the hours of small businesses is hamstringing. It will create a headache for management.

Persons Testifying: (In support) Representative Cody, prime sponsor; and Bill Moss, Department of Social and Health Services.

(With concerns) Nathan Loose; and David Lord, Disability Rights Washington.

(Opposed) Loren Freeman, Freeman and Associates.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 30 members: Representatives Hunter, Chair; Ormsby, Vice Chair; Chandler, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Carlyle, Cody, Condotta, Dent, Dunshee, Fagan, Haler, Hansen, Hudgins, S. Hunt, Jinkins, Kagi, Lytton, Magendanz, Pettigrew, Sawyer, Schmick, Senn, Springer, Stokesbary, Sullivan, Tharinger, Van Werven and Walkinshaw.

Minority Report: Do not pass. Signed by 2 members: Representatives G. Hunt and Taylor.

Minority Report: Without recommendation. Signed by 1 member: Representative MacEwen.

Staff: James Kettel (786-7123).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Labor:

The Appropriations Committee recommends an effective date that is contingent upon the United States Department of Labor publishing a final rule that removes the exemption of third-party employers from minimum wage and overtime rules.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect if and only if the United States Department of Labor publishes a final rule that removes the exemption of third party employers from minimum wage and overtime rules.

Staff Summary of Public Testimony:

(In support) There are approximately 35,000 individual providers in Washington. Individual providers contribute a great deal to the nationally recognized system of long-term services and supports (LTSS) in Washington. The American Association of Retired Persons recently ranked the system of LTSS in Washington second in the nation for overall quality, access, and affordability. At the same time, the system of LTSS in Washington ranks thirty-fourth in terms of cost. The Department of Labor (DOL) asked for an expedited review from the court of appeals on the judge's decision to evaluate the rule requiring overtime for individual providers. The DOL expects a decision either in June or July. If the appellate court overturns the lower court ruling, then the Department of Social and Health Services (DSHS) could be in a situation where the utilization of overtime cannot be managed. This bill is fairly simple and straightforward. This bill really just gives the DSHS the authority to create rules to manage the utilization of overtime should the DOL prevail in its appeal. Clients retain the right to assign their hours. The DSHS is willing to work on stakeholder concerns about the impact on consumers.

(With concerns) It is important to retain a system of care where people can remain in their own homes for as long as possible. Sometimes people with very significant disabilities are able to remain in their own homes, instead of moving to a nursing home. Some people need to receive care from several individual providers. It can be difficult to organize a schedule that meets all the needs of a client. If 24-hour care is needed, then service providers are essential for a client to remain in his or her own home. The DSHS should ensure that the criteria for granting overtime has enough flexibility to ensure that people can continue to live in their own homes. A man who requires 24-hour support presented testimony to the policy committee. He described situations where it is very difficult to find a part-time provider, especially when there is a disruption in service provision. In his case, there needs to be some flexibility in the approval of overtime for him to be able to remain in his own home.

(Opposed) None.

Persons Testifying: (In support) Bill Moss, Department of Social and Health Services.

(With concerns) David Lord, Disability Rights Washington.

Persons Signed In To Testify But Not Testifying: None.