
Appropriations Committee

SHB 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: House Committee on Appropriations (originally sponsored by 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: 1/20/16

Staff: Mary Mulholland (786-7391).

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

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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) modified a "domestic service rule" that requires third-party employers, such as the state, to pay overtime (150% of the hourly wage) when home care workers such as IPs provide over 40 hours per week of authorized care. 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 was appealed. In August 2015, the U.S. Federal Court of Appeals upheld the DOL rules. The modified DOL rules went into effect January 1, 2016. The case is on appeal to the Supreme Court of the United States.

Summary of Bill:

The Department is given 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 January 13, 2016.

Effective Date: 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.