
Appropriations Committee

HB 1836

Brief Description: Concerning overtime compensation for individual providers of home care services.

Sponsors: Representatives Riccelli, Reeves, Tarleton, Farrell, Stanford, Doglio, Pollet and Ortiz-Self.

Brief Summary of Bill

- Maintains the 65-hour work week limit for Individual Provider Home Care Workers (IPs) that were working more than 40 hours per week during January 2016, rather than reducing the work week limit to 60 hours effective fiscal year 2018.
- Eliminates work week limits for IPs caring for their disabled adult children, and excludes overtime worked by these IPs from the percentage cap on overtime hours.

Hearing Date: 2/23/17

Staff: David Pringle (786-7310).

Background:

Individual Providers.

Aging persons on Medicaid and people with developmental disabilities are eligible to receive in-home care services. The Department of Social and Health Services (DSHS) 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 provider. 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. No state agency or department may establish policies or rules governing the wages or hours of IPs, except as expressly provided in statute. The consumer has the right to assign hours

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to one or more IPs selected by the consumer within the maximum hours determined by the consumer's care plan.

In fiscal year (FY) 2015, IPs provided a total of approximately 46 million hours of paid care to DSHS consumers. Of that amount, approximately 4 million hours, or 8.75 percent, were hours worked by an IP above 40 in one week.

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 percent of the hourly wage) when home care workers such as IPs provide over 40 hours per week of authorized care. Those rules went into effect January 1, 2016.

2016 Legislation on Individual Provider Home Care Workers Overtime.

In 2016 the Legislature established limitations on the total weekly hours that may be worked by IPs in two categories:

- IPs who worked in excess of 40 hours total per week on average in January 2016 are limited to 65 hours total per week in FY 2016 and FY 2017 and 60 hours total per week in subsequent FYs; and
- IPs who worked zero to 40 hours total per week on average in January 2016 are limited to 40 total hours per week.

The DSHS can authorize additional hours above IP work week limits in several circumstances, including for required training, where there is increased risk of institutionalization of a care recipient, and where there are a limited number of IPs available in an area or with the skills to meet a recipient's complex behavioral or specific language needs.

Overtime hours may not exceed 8.75 percent of total IP hours. The Caseload Forecast Council (CFC) is charged with forecasting total IP hours. The CFC (which consists of two individuals appointed by the Governor and one appointee each from the two largest caucuses in the House of Representatives and in the Senate) may, upon a majority vote, adopt a temporary adjustment to the 8.75 percent cap, up to a maximum 10 percent cap, if it finds that a higher percentage of IP overtime hours is necessary to provide adequate consumer care.

Summary of Bill:

The 60-hour work week limit effective FY 2018 is eliminated for IPs who worked more than 40 hours per week during January 2016. The 65-hour work week limit for this population of IPs is maintained in FY 2018 and in subsequent years.

Work week limits do not apply for IPs caring for their disabled adult children. In addition, overtime hours worked by these IPs are excluded from the 8.75 percent cap on overtime hours as a share of total IP hours.

Appropriation: None.

Fiscal Note: Requested on February 20, 2017.

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