

FINAL BILL REPORT

ESSB 6199

C 278 L 18
Synopsis as Enacted

Brief Description: Concerning the consumer directed employer program.

Sponsors: Senate Committee on Health & Long Term Care (originally sponsored by Senators Cleveland, Conway, Miloscia, Keiser and Fortunato; by request of Department of Social and Health Services).

Senate Committee on Health & Long Term Care
Senate Committee on Ways & Means
House Committee on Health Care & Wellness
House Committee on Appropriations

Background: In-home care services are available to Medicaid eligible older adults and people with developmental disabilities. Eligible persons (consumers) are assessed by the Department of Social and Health Services (DSHS) to determine the level of the consumer's in-home care needs. Consumers may choose to receive services from either an individual provider (IP) or agency providers.

DSHS contracts with an IP to provide in-home care for consumers and with the Area Agencies on Aging (AAA) to provide case management services. Case management services include: establishing the consumer's plan of care, verifying the IP has met the training requirements, conducting or verifying an IP's criminal background check, monitoring the consumer's needs and the IP's performance, and reassessing and reauthorizing services. Consumers have the right to select, hire, supervise, and terminate any IP providing services to them. DSHS and the AAA may suspend or terminate IPs if they find or suspect that the IP's performance is jeopardizing the health, safety, or well-being of a consumer.

The state is the IP 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. The consumer has the right to select their IPs and to assign hours to one or more IPs, within the maximum hours determined by the consumer's care plan.

The U.S. Supreme Court ruled in 2014, that Medicaid home care workers in Illinois are not required to pay union dues. The court declared that IPs are not full-fledged public employees because they are hired and fired by the consumer. Washington IPs are represented and can elect to not pay union dues.

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.

The Legislature passed a law in 2016, that established overtime pay requirements for IPs. Unless approved, IPs must not work more than 40 hours per work week, not including paid travel time and paid training time. Expenditures for hours worked beyond 40 hours per week must not exceed 8.75 percent of the total average authorized personal care hours as projected by the Caseload Forecast Council. DSHS submits quarterly overtime expenditure reports to the Legislative fiscal committees and the Joint Legislative-Executive Overtime Oversight Task Force.

Summary: Consumer Directed Employer (CDE) Program. DSHS is authorized to establish a CDE program to provide personal care, respite care, and similar services to individuals with functional impairments under the medicaid program.

The CDE is the IP's legal employer for administrative purposes which includes:

- verifying IPs have met the training requirements;
- conducting or verifying background checks;
- implementing an electronic visit verification system or monitoring a statistically valid sample of IP claims to the receipt of services by the consumer;
- monitoring IP compliance with employment requirements;
- as authorized, providing a copy of the consumer's care plan to the IP;
- verifying the IP is able and willing to carry out the plan of care;
- taking into account information provided by the consumer or the consumer's case manager;
- discontinuing the IP's assignment to a consumer when the CDE has reason to believe, or DSHS or AAA has reported, that the health, safety or well-being of a consumer is in imminent jeopardy due to the performance of the IP;
- rejecting a consumer's request if the CDE has reason to believe that the IP will be unable to meet the care needs of the consumer;
- establishing a dispute resolution process for consumers who wish to dispute the CDE's IP assignment decisions;
- operating the IP referral registry; and
- withholding, filing and paying income and employment taxes for IPs.

The consumer is the managing employer and has the primary right to select, dismiss, assign hours and supervise the work of one or more IPs. Consumers must authorize the distribution of their plan of care.

Nothing in the act deems IPs as becoming state employees or vesting in the state's PERS pension system.

The AAA develop a plan of care; monitor the consumer's plan of care and verify it meets the client's needs; reassess and reauthorize services; and notify the CDE if they have concerns about the IP's ability to meet the plan of care.

A stakeholder work group must make recommendations to the Legislature by October 1, 2018, about establishing a separate license or certification for CDEs. DSHS is permitted to contract with a maximum of two CDEs. CDE selection will be based on a strong commitment to consumer choice; commitment to recruiting and retaining a high quality and

diverse workforce; the ability to deliver high quality training; and the ability to build and adapt technology tools to enhance efficiency of services. By July 1, 2021, DSHS must contract and initiate the transition of IPs to the CDE. DSHS will conduct a readiness review to determine when they will terminate their contracts with IPs and fully transition to the CDE.

Once DSHS determines that the transition to the CDE is complete, biennial funding in the next ensuing biennium for case management and social work must be reduced by no more than:

- \$2,908,000 for AAA;
- \$1,361,000 for Home and Community Services; and
- \$1,289,000 for Developmental Disabilities

DSHS will continue to establish the plan of care for each consumer and determine the number of service hours per consumer; manage long-term, in-home care services and determine the level of care for each consumer; and maintain the obligation to comply with federal requirements.

Rates. The rates paid to the CDE must include a labor rate and an administrative rate. The labor rate is the portion of the payment that is used to compensate the IPs, which includes wages, benefits, and any associated taxes. The administrative rate is the portion of the payment that is used to compensate the CDE for administrative duties. Until labor rates are established, the initial labor rate will be based on the most recent collective bargaining agreement between the Governor and the Service Employees International Union 775, plus hourly roll-up costs of any additional legally required benefits and labor costs.

A 14-person rate-setting board is established to evaluate and propose changes to the rates paid to the CDE. The rate setting board is comprised of four voting members: one representative from the Governor's Office; one representative from DSHS; one representative from the CDE; and one designee from the exclusive bargaining representative of IPs. At the first board meeting, the voting members must select a fifth voting member to act as the board chair and cast any tie-breaking votes. The remaining nine non-voting members are: four legislators, one member from each caucus of the House of Representatives and the Senate; one representative from the State Council on Aging; one representative of an organization representing people with intellectual or developmental disabilities; one representative of an organization representing people with physical disabilities; one representative from licensed home care agency; and one home care worker.

The rate-setting board must consider current factors used in public employee collective bargaining related to individual providers, such as a comparison of wages; the financial ability of the state to pay for the compensation and fringe benefits; the state's interest in a stable long-term care workforce; the state's interest in assuring access to affordable, quality health care; and the state's fiscal interest in reducing reliance upon public benefit programs.

By October 1 of every year, the rate-setting board must submit their rate request to the Office of Financial Management (OFM). If the OFM director considers the request financially feasible, the Governor will include the request in the Governor's budget. The Legislature

then has the option to approve or reject the request as a whole. If the Legislature rejects the request, the rate stays at the current level.

Overtime. DSHS must adopt rules describing the criteria under which a consumer is permitted to use a single IP for more than 40 hours per week. Expenditures for hours worked beyond 40 hours per week may not exceed 8.25 percent of the total average authorized personal care hours as projected by the Caseload Forecast Council.

Beginning September 1, 2018, and every year after, DSHS must submit overtime expenditure reports to the Legislative fiscal committees and the Joint Legislative-Executive Overtime Oversight Task Force. The task force is required to meet when they are projected or anticipate they will exceed their expenditure limits.

Votes on Final Passage:

Senate	26	21
House	50	0

Effective: June 7, 2018