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HOUSE BILL 1836

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State of Washington

65th Legislature

2017 Regular Session

By Representatives Riccelli, Reeves, Tarleton, Farrell, Stanford, Doglio, Pollet, and Ortiz-Self

Read first time 01/31/17. Referred to Committee on Health Care & Wellness.

1 AN ACT Relating to overtime compensation for individual providers  
2 of home care services; and amending RCW 74.39A.270.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 74.39A.270 and 2016 sp.s. c 30 s 1 are each amended  
5 to read as follows:

6 (1) Solely for the purposes of collective bargaining and as  
7 expressly limited under subsections (2) and (3) of this section, the  
8 governor is the public employer, as defined in chapter 41.56 RCW, of  
9 individual providers, who, solely for the purposes of collective  
10 bargaining, are public employees as defined in chapter 41.56 RCW. To  
11 accommodate the role of the state as payor for the community-based  
12 services provided under this chapter and to ensure coordination with  
13 state employee collective bargaining under chapter 41.80 RCW and the  
14 coordination necessary to implement RCW 74.39A.300, the public  
15 employer shall be represented for bargaining purposes by the governor  
16 or the governor's designee appointed under chapter 41.80 RCW. The  
17 governor or governor's designee shall periodically consult with the  
18 authority during the collective bargaining process to allow the  
19 authority to communicate issues relating to the long-term in-home  
20 care services received by consumers. The department shall solicit  
21 input from the developmental disabilities council, the governor's

1 committee on disability issues and employment, the state council on  
2 aging, and other consumer advocacy organizations to obtain informed  
3 input from consumers on their interests, including impacts on  
4 consumer choice, for all issues proposed for collective bargaining  
5 under subsections (5) and (6) of this section.

6 (2) Chapter 41.56 RCW governs the collective bargaining  
7 relationship between the governor and individual providers, except as  
8 otherwise expressly provided in this chapter and except as follows:

9 (a) The only unit appropriate for the purpose of collective  
10 bargaining under RCW 41.56.060 is a statewide unit of all individual  
11 providers;

12 (b) The showing of interest required to request an election under  
13 RCW 41.56.060 is ten percent of the unit, and any intervener seeking  
14 to appear on the ballot must make the same showing of interest;

15 (c) The mediation and interest arbitration provisions of RCW  
16 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

17 (i) With respect to commencement of negotiations between the  
18 governor and the bargaining representative of individual providers,  
19 negotiations shall be commenced by May 1st of any year prior to the  
20 year in which an existing collective bargaining agreement expires;  
21 and

22 (ii) The decision of the arbitration panel is not binding on the  
23 legislature and, if the legislature does not approve the request for  
24 funds necessary to implement the compensation and fringe benefit  
25 provisions of the arbitrated collective bargaining agreement, is not  
26 binding on the authority or the state;

27 (d) Individual providers do not have the right to strike; and

28 (e) Individual providers who are related to, or family members  
29 of, consumers or prospective consumers are not, for that reason,  
30 exempt from this chapter or chapter 41.56 RCW.

31 (3) Individual providers who are public employees solely for the  
32 purposes of collective bargaining under subsection (1) of this  
33 section are not, for that reason, employees of the state, its  
34 political subdivisions, or an area agency on aging for any purpose.  
35 Chapter 41.56 RCW applies only to the governance of the collective  
36 bargaining relationship between the employer and individual providers  
37 as provided in subsections (1) and (2) of this section.

38 (4) Consumers and prospective consumers retain the right to  
39 select, hire, supervise the work of, and terminate any individual  
40 provider providing services to them. Consumers may elect to receive

1 long-term in-home care services from individual providers who are not  
2 referred to them by the authority.

3 (5) Except as expressly limited in this section and RCW  
4 74.39A.300, the wages, hours, and working conditions of individual  
5 providers are determined solely through collective bargaining as  
6 provided in this chapter. Except as described in subsection (9) of  
7 this section, no agency or department of the state may establish  
8 policies or rules governing the wages or hours of individual  
9 providers. This subsection does not modify:

10 (a) The department's authority to establish a plan of care for  
11 each consumer or its core responsibility to manage long-term in-home  
12 care services under this chapter, including determination of the  
13 level of care that each consumer is eligible to receive. However, at  
14 the request of the exclusive bargaining representative, the governor  
15 or the governor's designee appointed under chapter 41.80 RCW shall  
16 engage in collective bargaining, as defined in RCW 41.56.030(4), with  
17 the exclusive bargaining representative over how the department's  
18 core responsibility affects hours of work for individual providers.  
19 This subsection shall not be interpreted to require collective  
20 bargaining over an individual consumer's plan of care;

21 (b)(i) The requirement that the number of hours the department  
22 may pay any single individual provider is limited to:

23 (A) Sixty-five hours each workweek if the individual provider was  
24 working an average number of hours in excess of forty hours for the  
25 workweeks during January 2016(~~(, except for fiscal years 2016 and~~  
26 ~~2017, the limit is sixty-five hours each workweek)); or~~

27 (B) Forty hours each workweek if the individual provider was not  
28 working an average number of hours in excess of forty hours for the  
29 workweeks during January 2016, or had no reported hours for the month  
30 of January 2016.

31 (ii) The number of hours per workweek limits in this subsection  
32 may not be applied to an individual provider caring for his or her  
33 adult disabled child.

34 (iii) Additional hours may be authorized under criteria  
35 established by rules adopted by the department under subsection (9)  
36 of this section.

37 ~~((iii))~~ (iv) Additional hours may be authorized for required  
38 training under RCW 74.39A.074, 74.39A.076, and 74.39A.341.

39 ~~((iv))~~ (v) An individual provider may appeal to the department  
40 for qualification for the hour limitation in (b)(i)(A) of this

1 subsection if the average weekly hours the (~~individual~~)  
2 individual provider was working in January 2016 materially  
3 underrepresent the average weekly hours worked by the individual  
4 provider during the first three months of 2016.

5 (~~v~~) (vi) No individual provider is subject to the hour  
6 limitations in (b)(i)(A) of this subsection until the department has  
7 conducted a review of the plan of care for the consumers served by  
8 the (~~individual~~) individual provider. The department shall review  
9 plans of care expeditiously, starting with consumers connected with  
10 the most individual provider overtime;

11 (c) The requirement that the total number of additional hours in  
12 excess of forty hours authorized under (b) of this subsection and  
13 subsection (9) of this section are limited by the total hours as  
14 provided in subsection (10) of this section;

15 (d) The department's authority to terminate its contracts with  
16 individual providers who are not adequately meeting the needs of a  
17 particular consumer, or to deny a contract under RCW 74.39A.095(8);

18 (e) The consumer's right to assign hours to one or more  
19 individual providers consistent with the rules adopted under this  
20 chapter and his or her plan of care;

21 (f) The consumer's right to select, hire, terminate, supervise  
22 the work of, and determine the conditions of employment for each  
23 individual provider providing services to the consumer under this  
24 chapter;

25 (g) The department's obligation to comply with the federal  
26 medicaid statute and regulations and the terms of any community-based  
27 waiver granted by the federal department of health and human services  
28 and to ensure federal financial participation in the provision of the  
29 services; and

30 (h) The legislature's right to make programmatic modifications to  
31 the delivery of state services under this title, including standards  
32 of eligibility of consumers and individual providers participating in  
33 the programs under this title, and the nature of services provided.  
34 The governor shall not enter into, extend, or renew any agreement  
35 under this chapter that does not expressly reserve the legislative  
36 rights described in this subsection (5)(h).

37 (6) At the request of the exclusive bargaining representative,  
38 the governor or the governor's designee appointed under chapter 41.80  
39 RCW shall engage in collective bargaining, as defined in RCW  
40 41.56.030(4), with the exclusive bargaining representative over

1 employer contributions to the training partnership for the costs of:  
2 (a) Meeting all training and peer mentoring required under this  
3 chapter; and (b) other training intended to promote the career  
4 development of individual providers.

5 (7) The state, the department, the area agencies on aging, or  
6 their contractors under this chapter may not be held vicariously or  
7 jointly liable for the action or inaction of any individual provider  
8 or prospective individual provider, whether or not that individual  
9 provider or prospective individual provider was included on the  
10 referral registry or referred to a consumer or prospective consumer.  
11 The existence of a collective bargaining agreement, the placement of  
12 an individual provider on the referral registry, or the development  
13 or approval of a plan of care for a consumer who chooses to use the  
14 services of an individual provider and the provision of case  
15 management services to that consumer, by the department or an area  
16 agency on aging, does not constitute a special relationship with the  
17 consumer.

18 (8) Nothing in this section affects the state's responsibility  
19 with respect to unemployment insurance for individual providers.  
20 However, individual providers are not to be considered, as a result  
21 of the state assuming this responsibility, employees of the state.

22 (9) The department may not pay any single individual provider  
23 more than the hours listed in subsection (5)(b) of this section  
24 unless the department authorizes additional hours under criteria  
25 established by rule. The criteria must be limited in scope to reduce  
26 the state's exposure to payment of overtime, address travel time from  
27 worksite to worksite, and address the following needs of consumers:

28 (a) Ensuring that consumers are not at increased risk for  
29 institutionalization;

30 (b) When there is a limited number of (~~individual~~) individual  
31 providers within the geographic region of the consumer;

32 (c) When there is a limited number of (~~individual~~) individual  
33 providers available to support a consumer with complex medical and  
34 behavioral needs or specific language needs;

35 (d) Emergencies that could pose a health and safety risk for  
36 consumers; and

37 (e) Instances where the cost of the allowed hour is less than  
38 other alternatives to provide care to a consumer, distinct from any  
39 increased risk of institutionalization.

1 (10)(a) Each fiscal year, the department shall establish a  
2 spending plan and a system to monitor the authorization and cost of  
3 hours in excess of forty hours each workweek from subsections (5)(b)  
4 and (9) of this section beginning July 1, 2016, and each fiscal year  
5 thereafter. Expenditures for hours in excess of forty hours each  
6 workweek under subsections (5)(b) and (9) of this section, except  
7 those worked by an individual provider caring for his or her adult  
8 disabled child, shall not exceed 8.75 percent of the total average  
9 authorized personal care hours for the fiscal year as projected by  
10 the caseload forecast council. The caseload forecast council may  
11 adopt a temporary adjustment to the 8.75 percent of the total average  
12 hours projection for that fiscal year, up to a maximum of 10.0  
13 percent, if it finds a higher percentage of overtime hours is  
14 necessitated by a shortage of individual providers to provide  
15 adequate client care, taking into consideration factors including the  
16 criteria in subsection (9) of this section. If the council elects to  
17 temporarily increase the limit, it may do so only upon a majority  
18 vote of the council.

19 (b) The department also shall provide expenditure reports  
20 beginning September 1, 2016, and on a quarterly basis thereafter. If  
21 the department determines, based upon quarterly expenditure reports,  
22 that the annual expenditures will exceed the limitation established  
23 in (a) of this subsection, the department shall take those actions  
24 necessary to ensure compliance with the limitation.

25 (c) The spending plan and expenditure reports must be submitted  
26 to the legislative fiscal committees and the joint legislative-  
27 executive overtime oversight task force. The joint legislative-  
28 executive overtime oversight task force members are as follows:

29 (i) Two members from each of the two largest caucuses of the  
30 senate, appointed by the respective caucus leaders.

31 (ii) The speaker of the house of representatives shall appoint  
32 two members from each of the two largest caucuses of the house of  
33 representatives.

34 (iii) The governor shall appoint members representing the  
35 department of social and health services and the office of financial  
36 management.

37 (iv) The governor shall appoint two members representing  
38 individual providers and two members representing consumers receiving  
39 personal care or respite care services from an individual provider.

1           (d) The task force shall meet at least annually, but may meet  
2 more frequently as desired by the task force. The task force shall  
3 choose cochairs, one from among the legislative members and one from  
4 among the executive branch members.

5           (e) The department is authorized to adopt rules, including  
6 emergency rules under RCW 34.05.350, to implement this subsection.

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