

# HOUSE BILL REPORT

## SSB 5258

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**As Passed House:**

April 7, 2021

**Title:** An act relating to consumer directed employers.

**Brief Description:** Concerning consumer directed employers.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Cleveland, Robinson, Das, Nguyen, Saldaña and Wilson, C.; by request of Department of Social and Health Services).

**Brief History:**

**Committee Activity:**

Health Care & Wellness: 3/18/21, 3/24/21 [DP];

Appropriations: 3/31/21, 4/1/21 [DP].

**Floor Activity:**

Passed House: 4/7/21, 58-39.

**Brief Summary of Substitute Bill**

- Modifies the composition and voting standards for the consumer directed employer (CDE) rate-setting board in the event that the Department of Social and Health Services (Department) selects more than one CDE.
- Directs the Department to make a one-time transfer of funds to the CDE totaling the amount of previously unclaimed paid leave.
- Authorizes the Department to modify labor and administrative rates between the rate-setting board's activities under certain conditions.
- Extends the deadline for initiating the transition of individual providers to the CDE from July 1, 2021, to December 31, 2021.

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**HOUSE COMMITTEE ON HEALTH CARE & WELLNESS**

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

**Majority Report:** Do pass. Signed by 12 members: Representatives Cody, Chair; Bateman, Vice Chair; Bronoske, Davis, Harris, Macri, Maycumber, Riccelli, Rude, Simmons, Stonier and Tharinger.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Schmick, Ranking Minority Member; Ybarra.

**Minority Report:** Without recommendation. Signed by 1 member: Representative Caldier, Assistant Ranking Minority Member.

**Staff:** Christopher Blake (786-7392).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** Do pass. Signed by 25 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Chambers, Assistant Ranking Minority Member; Chopp, Cody, Dolan, Fitzgibbon, Frame, Hansen, Harris, Hoff, Jacobsen, Johnson, J., Lekanoff, Pollet, Rude, Ryu, Senn, Springer, Steele, Stonier, Sullivan and Tharinger.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Stokesbary, Ranking Minority Member; Corry, Assistant Ranking Minority Member; Caldier and Dye.

**Minority Report:** Without recommendation. Signed by 4 members: Representatives MacEwen, Assistant Ranking Minority Member; Boehnke, Chandler and Schmick.

**Staff:** Mary Mulholland (786-7391).

### **Background:**

The Department of Social and Health Services (Department) provides publicly funded personal care services to eligible clients who live in their own homes and are elderly or have developmental disabilities. Personal care services include assistance with various tasks such as toileting, bathing, dressing, ambulating, meal preparation, and household chores. Personal care services may be provided in the client's home by either an individual provider or by an employee of a home care agency.

Individual providers are persons who have contracted with the Department to provide personal care or respite care services to clients. Clients have the right to select, hire, supervise the work of, and terminate any individual provider providing services to them. Individual providers are paid through a direct contract with the Department. Individual providers are considered public employees solely for the purpose of collective bargaining which determines their wages, hours, and working conditions, but they are not otherwise considered employees of the state.

In 2018 legislation was enacted to authorize the Department to establish a consumer directed employer (CDE) program. A CDE is a private entity that contracts with the Department to be the legal employer of individual providers for the purpose of administrative functions related to providing personal care, respite care, and similar services to clients under Medicaid programs. A CDE's responsibilities generally include coordination with the consumer, establishment of wages and benefits for individual providers, tax activities on behalf of individual providers, verification of individual provider qualifications, and other administrative and employment-related supports. The Department may contract with up to two vendors to serve as a CDE. The Department must initiate the transition of individual providers to the CDE no later than July 1, 2021.

Initial labor rates for individual providers employed through a CDE are established as the rates paid under the most recent collective bargaining agreement between the Governor and the Service Employees International Union 775. Subsequent labor and administrative rates for the CDE must be established by a rate-setting board. The rate-setting board consists of 14 members, four of whom are voting members. The four voting members select a person to chair the rate-setting board and to cast the fifth vote in the event of a tie.

#### **Summary of Bill:**

The composition of the voting membership of the rate-setting board for consumer directed employers (CDEs) is changed from having a single representative of a CDE to having a representative from each CDE. Voting procedures for the rate-setting board are adjusted so that if there is only one CDE in operation in Washington, each of the four voting members of the rate-setting board has one vote, but if there are two CDEs, each CDE representative has one vote and the other three members have two votes. Voting members are prohibited from splitting votes and a majority of voting members constitutes a quorum for transacting business and taking action.

The rate-setting board is authorized to take testimony and make a recommendation for the administrative rate for home care agencies that serve Medicaid clients.

The Department of Social and Health Services (Department) may modify the labor and administrative rates between the rate-setting board's activities without convening the rate setting board or following the rate-setting process on condition that:

1. the Department finds the changes are necessary to: (a) recognize changes to expenditures or costs associated with changes to tax rates, required employer contributions, mileage rate allowances, and utilization of overtime; or (b) comply with significant changes in state or federal law that would impact the CDEs ability to operate;
2. changes to the rates may not exceed 2 percent of the combined labor and administrative rates; and
3. increases to the rates are contingent on appropriation of adequate funds by the Legislature.

The definition of "administrative rate" is clarified to expressly include losses for bad debt, compensation for business and occupation taxes, and all other costs associated with operating as the CDE.

The Department must make a one-time transfer of funds to the CDE totaling the amount of previously unclaimed paid leave. The liability for payment of unclaimed paid time off is also transferred to the CDE.

The stakeholder group responsible for adopting recommendations related to whether or not a separate credentialing category should be established for CDEs is eliminated and it is stated that a CDE does not require a separate credentialing category.

The deadline for initiating the transition of individual providers to the CDE is extended from July 1, 2021 to December 31, 2021.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony (Health Care & Wellness):**

(In support) This bill will provide flexibility to the Department of Social and Health Services as well as the private entities administering the program. This bill opens up the opportunity for competition in the program. This bill will support the transfer of funding for paid time off for individual providers, which is part of the benefit that will need to be paid by the consumer directed employer.

(Opposed) None.

**Staff Summary of Public Testimony (Appropriations):**

(In support) It is important to support implementation of the consumer directed employer (CDE) program since the CDE vendor will become the co-employer of 46,000 individual providers in fiscal year 2022. The individual provider workforce provides essential care to clients receiving personal care and respite in their own homes. The one-time transfer of funds to the CDE is an obligation of the Department of Social and Health Services based on the accrual of paid leave that has been earned but not yet claimed by individual providers. Paid leave is part of the individual providers' benefits and it will need to be paid by the CDE as they take on the co-employer role.

(Opposed) None.

**Persons Testifying (Health Care & Wellness):** Bea Rector, Department of Social and Health Services, Aging and Long-Term Support Administration; and Ben Bledsoe, Consumer Direct Care Network.

**Persons Testifying (Appropriations):** Bea Rector, Department of Social and Health Services, Aging and Long-Term Support Administration.

**Persons Signed In To Testify But Not Testifying (Health Care & Wellness):** None.

**Persons Signed In To Testify But Not Testifying (Appropriations):** None.