

SENATE BILL REPORT

SB 5258

As of January 27, 2021

Title: An act relating to consumer directed employers.

Brief Description: Concerning consumer directed employers.

Sponsors: Senators Cleveland, Robinson, Das, Nguyen, Saldaña and Wilson, C.; by request of Department of Social and Health Services.

Brief History:

Committee Activity: Health & Long Term Care: 1/27/21.

Brief Summary of Bill

- Modifies the Consumer Directed Employer (CDE) rate-setting board's voting and rate-setting procedures.
- Extends the CDE implementation date from July 1, 2021 to December 31, 2021.
- Clarifies the CDE does not need a separate a licensure or certification category.
- Requires a one-time transfer of funds between the Department of Social and Health Services (DSHS) and the CDE for unclaimed paid time off.
- Authorizes DSHS to make changes to the CDE rate in certain circumstances.

SENATE COMMITTEE ON HEALTH & LONG TERM CARE

Staff: LeighBeth Merrick (786-7445)

Background: In-home care services is a form of long-term care available to Medicaid

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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 the IP to provide in-home care for consumers and with the Area Agencies on Aging (AAA) to provide case management 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.

In 2018, the Legislature passed ESSB 6199 which directed DSHS to implement a Consumer Directed Employer (CDE) program. The CDE is required to act as the IP's legal employer for administrative purposes while the consumer remains as the managing employer. By July 1, 2021, DSHS must initiate the transition of IPs to the CDE. DSHS is authorized to contract with a maximum of two CDEs.

Under the CDE program, rates paid to the CDE must include a labor and administrative rate and a rate-setting board (board) is established to evaluate and propose changes to the rates paid to the CDE. The 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 to cast any tie-breaking votes. The remaining nine non-voting members are: four legislators; 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 a licensed home care agency; and one home care worker. The 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 1st 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.

ESSB 6199 also directed DSHS to convene a stakeholder work group to make recommendations to the Legislature about establishing a separate license or certification for

CDEs. DSHS released its report to the Legislature in October 2018, and recommended the CDE not be licensed or certified. According to the report, the group reached this recommendation with full consensus. The recommendation is based on several factors, including that licensure or certification would result in:

- interference with the fundamental and primary objective of retaining the consumers' ability to self-direct their care;
- an unnecessary layer of complexity that would lead to a delay in access to services and slow the implementation; and
- decreased flexibility and added complexity to the program.

Summary of Bill: DSHS must provide administrative support for the CDE rate-setting board (board). The board may have more than four voting members when there is more than one CDE. The voting members must include one representative from each CDE. When the board has four voting members, each voting member must have one vote. When there are five voting members, each voting member must have two votes except for the CDE representatives. In this case, each CDE representative must have one vote. Voting members are not allowed to split their votes. A majority of the board's voting members constitutes a quorum and is necessary for any action taken by the board. The board may take testimony and make a recommendation regarding the administrative vendor rate for home care agencies that serve Medicaid clients. When the voting members fail to select an additional voting member to cast a tie-breaking vote for rate-setting activities, the voting member representing the Governor's Office must request a list of five qualified arbitrators if there is one CDE, and six qualified arbitrators if there are two CDEs. If the majority of the voting members cannot agree on the selection of a neutral arbitrator from the list, the representative from the CDE who first contacted DSHS will strike a name from the list. The second CDE will strike a name from the list after the representatives from the first CDE, Governor's Office, and exclusive bargaining or CDE workforce have struck a name.

DSHS must make a one-time transfer of funds to the CDE for the amount of all of the IPs' unclaimed paid time off. When the funds are transferred, all associated liabilities for the payment of unclaimed paid time off are also transferred to the CDE. This amount must be accounted for as a labor rate payment. DSHS is authorized to modify the labor rate and administrative rate without convening the rate-setting board or following the rate-setting procedures. The administrative rate is amended to include losses for bad debt, compensation for business and occupation taxes on the labor and administrative rates, and all other costs associated with operating as a CDE. Any increase to the rates is contingent on appropriation of adequate funds by the Legislature and is subject to the following conditions:

- DSHS finds the changes are necessary to recognize changes to DSHS' allowed or required expenditures or the CDE's costs, or to comply with significant changes in state or federal rule or law that would impact the CDE's ability to operate; and
- changes to the rates do not exceed 2 percent of the combined labor and administrative rates.

The date DSHS is required to initiate the transition of individual providers to the CDE by is extended from July 1, 2021 to December 31, 2021. The CDE does not need a separate licensure or certification category.

Appropriation: None.

Fiscal Note: Requested on January 18, 2021.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill makes some necessary technical changes to the law that was passed in 2018. It will help implement the transition of the 40,000 IPs across the state to the CDE. Clients will retain their autonomy in deciding who will provide them their care and when their care will be provided. The Legislature maintains approval of rates. The one-time funding transfer for IPs' unclaimed paid time off is not a new cost but necessary to implement the transition. The IPs' transition to the CDE will begin with a pilot in July 2021 and the transition will be completed by April 1, 2022. These common-sense and technical changes will be helpful in facilitating a smooth transition. This bill will help move the program forward.

OTHER: The CDE may be acquiring certain liabilities regarding discrimination and uncompensated care which is concerning because the CDE might not be aware of this. IPs who live with their caregivers have received a reduction in compensated care hours.

Persons Testifying: PRO: Senator Annette Cleveland, Prime Sponsor; Bill Moss, Department of Social and Health Services, Aging and Long-Term Support Administration; Madeleine Foutch, SEIU 775 Long-Term Caregivers Union; Ben Bledsoe, Consumer Direct Care Network.

OTHER: Loren Freeman, Freeman & Associates.

Persons Signed In To Testify But Not Testifying: No one.