

HOUSE BILL REPORT

SHB 1942

As Passed Legislature

Title: An act relating to clarifying employment standards for long-term care individual providers.

Brief Description: Clarifying employment standards for long-term care individual providers.

Sponsors: House Committee on Labor & Workplace Standards (originally sponsored by Representatives Fosse, Schmidt, Reed, Simmons, Ormsby, Rule, Macri and Ortiz-Self; by request of Department of Social and Health Services).

Brief History:

Committee Activity:

Labor & Workplace Standards: 1/12/24, 1/19/24 [DPS];
Appropriations: 2/1/24, 2/3/24 [DPS(LAWS)].

Floor Activity:

Passed House: 2/12/24, 97-0.
Passed Senate: 3/1/24, 49-0.
Passed Legislature.

Brief Summary of Substitute Bill

- Provides that, for purposes of the state's publicly funded long-term in-home care program, the hours worked by an individual provider in excess of the number of hours authorized in the client's plan of care are not compensable if: (1) the individual provider is the client's family or household member; and (2) the client's plan of care is reasonable.

HOUSE COMMITTEE ON LABOR & WORKPLACE STANDARDS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Berry, Chair; Fosse, Vice Chair; Schmidt, Ranking Minority Member; Bronoske, Doglio, Ormsby, Ortiz-Self, Rude and Ybarra.

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.

Staff: Trudes Tango (786-7384).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Labor & Workplace Standards be substituted therefor and the substitute bill do pass. Signed by 29 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Corry, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Connors, Assistant Ranking Minority Member; Couture, Assistant Ranking Minority Member; Berg, Callan, Chopp, Davis, Dye, Fitzgibbon, Harris, Lekanoff, Pollet, Riccelli, Rude, Ryu, Schmick, Senn, Simmons, Slatter, Springer, Stokesbary, Stonier, Tharinger and Wilcox.

Minority Report: Without recommendation. Signed by 1 member: Representative Sandlin.

Staff: Bryan Way (786-7311).

Background:

Individuals with long-term care needs or developmental disabilities who meet financial and functional eligibility criteria are eligible for in-home personal care services through Medicaid-funded programs administered by the Department of Social and Health Services (DSHS). Personal care services include assistance with tasks such as toileting, bathing, dressing, meal preparation, and household chores. These services may be provided by an employee of a home care agency or by an "individual provider." Individual providers provide these personal care or respite care services under contract with the DSHS or as an employee of a consumer-directed employer.

An individual provider can be a family or household member of the person receiving care (client). The number of paid hours the individual provider is authorized to work is determined in the client's plan of care, which is developed by the client and the DSHS after assessing the client's acuity.

Consumer-directed employers are private entities that contract with the DSHS to be the legal employer of individual providers for the purpose of administrative functions. The client retains the authority to select, schedule, supervise the work of, and dismiss an individual provider. Individual providers are employees, and the Minimum Wage Act, including overtime provisions, apply to their work.

Under a prior DSHS policy, if the client and the individual provider who is a family or household member both benefited from the individual provider's personal care tasks, such as shopping or household chores, there would be a reduction in the number of paid in-home personal care hours for the individual provider. This "shared benefit" policy was discontinued after plaintiffs brought a class action suit and a settlement agreement was

reached.

Summary of Substitute Bill:

The hours worked by an individual provider in excess of the number of hours authorized in the client's plan of care are not compensable if: (1) the individual provider is a family or household member of the client; and (2) the client's plan of care is reasonable. Except for the aforementioned circumstances, the DSHS and the consumer-directed employer may not claim any exemptions from the Minimum Wage Act or any overtime exemption. Hours worked to address temporary emergencies or unexpected health or safety events that cannot be postponed are not exempt from the Minimum Wage Act and overtime provisions.

The client's plan of care is reasonable if all the following are met:

- The plan of care includes the same number of paid hours it would have if the individual provider were not the client's family member or household member.
- The DSHS does not otherwise require an increase in the hours of unpaid services performed by an individual provider who is a family or household member in order to reduce the number of hours of paid services.
- The plan of care does not reflect unequal treatment of an individual provider or their client because of their familial or household relationship. Unequal treatment includes the plan of care including fewer paid hours than it would have if the client's individual provider were not a family or household member or because: (1) the individual provider shares in the benefit of the personal care service; or (2) the client lives in a multiclient household and two or more clients share in the benefit of the personal care service; or (3) the client receives paid or unpaid assistance by the client's paid provider.

A determination that a plan of care is reasonable does not mean that the amount or type of services or paid hours are or are not appropriate for the client. The DSHS retains its core responsibility to manage long-term in-home care services and its authority to set the client's benefit level.

These provisions are curative and remedial and apply retroactively and prospectively to all actions, regardless of when they were filed, except for actions pertaining to the settlement agreement.

The Minimum Wage Act is amended to make explicit that a consumer-directed employer contracting with the state is an employer of individual providers. The long-term care statutes are amended to specify that a consumer-directed employer is the legal employer for individual providers, and the qualifying phrase "for purposes of performing administrative functions" is removed.

Definitions for various terms, including "family member" and "household member" are provided.

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 (Labor & Workplace Standards):

(In support) This bill clarifies the employment relationship between individual providers (IP) and their clients when the IP is a family or household member. Seventy percent of IPs are providing care to a family member. This bill aligns state law with federal guidance. It does not remove the requirement for IPs to get paid overtime. It clarifies what hours are not compensable. This bill protects the long-term care solvency fund because paying for all hours when the IP and client are living together is not feasible.

(Opposed) This bill allows IPs to continue to provide care without getting paid. This bill allows the DSHS to continue to violate the law. This bill is invasive and not in compliance with collective bargaining agreements and is an unfair labor practice.

Staff Summary of Public Testimony (Appropriations):

(In support) The bill clarifies overtime pay, ensuring equal treatment for family and nonfamily caregivers. It aligns with federal law, aiding in consistent hours planning and operations. Family caregivers deserve compensation, supporting the preference for home care over institutional care.

(Opposed) The bill unfairly divides employees, offering protections to some and not others, possibly breaching the Fourteenth Amendment's equal protection clause.

Persons Testifying (Labor & Workplace Standards): (In support) Representative Mary Fosse, prime sponsor; Bea Rector, Department of Social and Health Services; Lynn Kimball, Washington Association of Area Agencies on Aging; and Ben Bledsoe, Consumer Direct Care Network.

(Opposed) Loren Freeman.

Persons Testifying (Appropriations): (In support) Cathy Knight, Washington Association of Area Agencies on Aging; Alexa Silver, Consumer Direct of Washington; and Bea Rector, Department of Social and Health Services.

(Opposed) Loren Freeman.

Persons Signed In To Testify But Not Testifying (Labor & Workplace Standards):
None.

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