

# SENATE BILL REPORT

## SB 5898

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As of January 29, 2024

**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:** Senators Van De Wege, Keiser and Nobles; by request of Department of Social and Health Services.

**Brief History:**

**Committee Activity:** Labor & Commerce: 1/30/24.

**Brief Summary of Bill**

- Provides that 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 the individual provider is the client's family or household member and the client's plan of care is reasonable.

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### SENATE COMMITTEE ON LABOR & COMMERCE

**Staff:** Jarrett Sacks (786-7448)

**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 DSHS or as an employee of a consumer-directed employer.

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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.*

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 DSHS.

Consumer-directed employers are private entities that contract with 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 policy ended after class action suit and a settlement agreement was reached with the plaintiffs.

**Summary of 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:

- the individual provider is a family or household member of the client; and
- the client's plan of care is reasonable.

DSHS and the consumer-directed employer may not claim any exemptions from the Minimum Wage Act or any overtime exemption, except for the one established by the bill. 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.

A client's plan of care is reasonable if:

- 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;
- 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; and
- 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:

- the individual provider shares in the benefit of the personal care service;
- the client lives in a multiclient household and two or more clients share in the benefit of the personal care service; or
- 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 the amount or type of services or paid hours are or are not appropriate for the client under the long-term care

statutes. DSHS retains its core responsibility to manage long-term in-home care services and its authority to set a client's benefit level.

The bill is curative and remedial and applies 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.

**Appropriation:** None.

**Fiscal Note:** Available.

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

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