
HOUSE BILL 2354

State of Washington 60th Legislature 2007 Regular Session

By Representatives Williams, Conway, Hasegawa and Appleton

Read first time 02/23/2007. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to making the governor the public employer of adult
2 family home caregivers; amending RCW 74.39A.240 and 74.39A.270; adding
3 a new section to chapter 74.39A RCW; and creating a new section.

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

5 **Sec. 1.** RCW 74.39A.240 and 2002 c 3 s 3 are each amended to read
6 as follows:

7 The definitions in this section apply throughout RCW 74.39A.030 and
8 74.39A.095 and 74.39A.220 through 74.39A.300, 41.56.026, 70.127.041,
9 (~~and~~) 74.09.740, and section 3 of this act unless the context clearly
10 requires otherwise.

11 (1) "Authority" means the home care quality authority.

12 (2) "Board" means the board created under RCW 74.39A.230.

13 (3) "Caregiver" means the same as in RCW 70.128.230.

14 ~~(4)~~ "Consumer" means a person to whom an individual provider
15 provides any such services.

16 ~~((+4))~~ (5) "Direct care worker" means any caregiver, except the
17 provider and the resident manager, working in an adult family home.

18 (6) "Individual provider" means a person, including a personal
19 aide, who has contracted with the department to provide personal care

1 or respite care services to functionally disabled persons under the
2 medicaid personal care, community options program entry system, chore
3 services program, or respite care program, or to provide respite care
4 or residential services and support to persons with developmental
5 disabilities under chapter 71A.12 RCW, or to provide respite care as
6 defined in RCW 74.13.270, or to provide care as direct care workers in
7 adult family homes.

8 (7) "Individual provider direct care worker" means any caregiver
9 reclassified as an individual provider under section 3 of this act.

10 (8) "Provider" means the same as in RCW 70.128.010.

11 **Sec. 2.** RCW 74.39A.270 and 2006 c 106 s 1 are each amended to read
12 as follows:

13 (1) Solely for the purposes of collective bargaining and as
14 expressly limited under subsections (2) and (3) of this section, the
15 governor is the public employer, as defined in chapter 41.56 RCW, of
16 individual providers, who, solely for the purposes of collective
17 bargaining, are public employees as defined in chapter 41.56 RCW. To
18 accommodate the role of the state as payor for the community-based
19 services provided under this chapter and to ensure coordination with
20 state employee collective bargaining under chapter 41.80 RCW and the
21 coordination necessary to implement RCW 74.39A.300, the public employer
22 shall be represented for bargaining purposes by the governor or the
23 governor's designee appointed under chapter 41.80 RCW. The governor or
24 governor's designee shall periodically consult with the authority
25 during the collective bargaining process to allow the authority to
26 communicate issues relating to the long-term in-home care services
27 received by consumers. The governor or the governor's designee shall
28 consult the authority on all issues for which the exclusive bargaining
29 representative requests to engage in collective bargaining under
30 subsection (6) of this section. The authority shall work with the
31 developmental disabilities council, the governor's committee on
32 disability issues and employment, the state council on aging, and other
33 consumer advocacy organizations to obtain informed input from consumers
34 on their interests, including impacts on consumer choice, for all
35 issues proposed for collective bargaining under subsection (6) of this
36 section.

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

4 (a) The only unit appropriate for the purpose of collective
5 bargaining under RCW 41.56.060 is a statewide unit of all individual
6 providers;

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

10 (ii) For purposes of an election to become part of the unit, the
11 showing of interest required to request an election under RCW 41.56.060
12 is ten percent of direct care workers in adult family homes, and any
13 intervener seeking to appear on the ballot must make the same showing
14 of interest. To determine the total number of direct care workers in
15 adult family homes, the commission shall require providers to provide
16 lists of direct care workers in adult family homes to the commission
17 including home addresses, by October 1, 2007;

18 (c) The mediation and interest arbitration provisions of RCW
19 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

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

24 (ii) With respect to factors to be taken into consideration by an
25 interest arbitration panel, the panel shall consider the financial
26 ability of the state to pay for the compensation and fringe benefit
27 provisions of a collective bargaining agreement; and

28 (iii) The decision of the arbitration panel is not binding on the
29 legislature and, if the legislature does not approve the request for
30 funds necessary to implement the compensation and fringe benefit
31 provisions of the arbitrated collective bargaining agreement, is not
32 binding on the authority or the state;

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

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

37 (3) Individual providers who are public employees solely for the
38 purposes of collective bargaining under subsection (1) of this section

1 are not, for that reason, employees of the state, its political
2 subdivisions, or an area agency on aging for any purpose. Chapter
3 41.56 RCW applies only to the governance of the collective bargaining
4 relationship between the employer and individual providers as provided
5 in subsections (1) and (2) of this section.

6 (4)(a) Consumers and prospective consumers retain the right to
7 select, hire, supervise the work of, and terminate any individual
8 provider providing services to them. Consumers may elect to receive
9 long-term in-home care services from individual providers who are not
10 referred to them by the authority.

11 (b) Adult family home providers retain the right to select, hire,
12 supervise the work of, and terminate any individual provider direct
13 care worker.

14 (5) In implementing and administering this chapter, neither the
15 authority nor any of its contractors may reduce or increase the hours
16 of service for any consumer below or above the amount determined to be
17 necessary under any assessment prepared by the department or an area
18 agency on aging.

19 (6) Except as expressly limited in this section (~~and~~), RCW
20 74.39A.300, and section 3 of this act, the wages, hours, and working
21 conditions of individual providers are determined solely through
22 collective bargaining as provided in this chapter. No agency or
23 department of the state may establish policies or rules governing the
24 wages or hours of individual providers. However, this subsection does
25 not modify:

26 (a) The department's authority to establish a plan of care for each
27 consumer or its core responsibility to manage long-term in-home care
28 services under this chapter, including determination of the level of
29 care that each consumer is eligible to receive. However, at the
30 request of the exclusive bargaining representative, the governor or the
31 governor's designee appointed under chapter 41.80 RCW shall engage in
32 collective bargaining, as defined in RCW 41.56.030(4), with the
33 exclusive bargaining representative over how the department's core
34 responsibility affects hours of work for individual providers. This
35 subsection shall not be interpreted to require collective bargaining
36 over an individual consumer's plan of care;

37 (b) The department's authority to terminate its contracts with

1 individual providers who are not adequately meeting the needs of a
2 particular consumer, or to deny a contract under RCW 74.39A.095(8);

3 (c) The consumer's right to assign hours to one or more individual
4 providers selected by the consumer within the maximum hours determined
5 by his or her plan of care;

6 (d) The consumer's right to select, hire, terminate, supervise the
7 work of, and determine the conditions of employment for each individual
8 provider providing services to the consumer under this chapter;

9 (e) The adult family home provider's right to select, hire,
10 terminate, supervise the work of, and determine the conditions of
11 employment for each individual provider direct care worker;

12 (f) The department's obligation to comply with the federal medicaid
13 statute and regulations and the terms of any community-based waiver
14 granted by the federal department of health and human services and to
15 ensure federal financial participation in the provision of the
16 services; and

17 ~~((f))~~ (g) The legislature's right to make programmatic
18 modifications to the delivery of state services under this title,
19 including standards of eligibility of consumers and individual
20 providers participating in the programs under this title, and the
21 nature of services provided. The governor shall not enter into,
22 extend, or renew any agreement under this chapter that does not
23 expressly reserve the legislative rights described in this subsection
24 ~~(6)~~~~((f))~~ (g).

25 (7)(a) The state, the department, the authority, the area agencies
26 on aging, or their contractors under this chapter may not be held
27 vicariously or jointly liable for the action or inaction of any
28 individual provider or prospective individual provider, whether or not
29 that individual provider or prospective individual provider was
30 included on the authority's referral registry or referred to a consumer
31 or prospective consumer. The existence of a collective bargaining
32 agreement, the placement of an individual provider on the referral
33 registry, or the development or approval of a plan of care for a
34 consumer who chooses to use the services of an individual provider and
35 the provision of case management services to that consumer, by the
36 department or an area agency on aging, does not constitute a special
37 relationship with the consumer.

1 (b) The members of the board are immune from any liability
2 resulting from implementation of this chapter.

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

7 NEW SECTION. **Sec. 3.** A new section is added to chapter 74.39A RCW
8 to read as follows:

9 The department shall establish a program to improve quality care
10 and recruitment and retention of direct care workers in adult family
11 homes by integrating adult family home caregivers into the individual
12 provider program, consistent with the following:

13 (1) For all hours of care provided to medicaid-funded clients, all
14 direct care workers in adult family homes statewide shall be
15 reclassified as individual providers.

16 (2) The department of social and health services shall determine
17 the number of hours authorized for medicaid clients in adult family
18 homes, taking into consideration acuity levels as needed. The
19 department may establish authorized hours according to the ratio of the
20 number of hours spent caring for medicaid clients verses nonmedicaid
21 clients in adult family homes.

22 (3) Direct care workers in adult family homes shall not be
23 reclassified as individual providers for hours of care provided to
24 nonmedicaid clients.

25 (4) Individual provider direct care workers in adult family homes
26 shall be afforded all the benefits of and be subject to the terms and
27 conditions of any collective bargaining agreement for individual
28 providers established under this chapter.

29 NEW SECTION. **Sec. 4.** If any part of this act is found to be in
30 conflict with federal requirements that are a prescribed condition to
31 the allocation of federal funds to the state, the conflicting part of
32 this act is inoperative solely to the extent of the conflict and with
33 respect to the agencies directly affected, and this finding does not
34 affect the operation of the remainder of this act in its application to
35 the agencies concerned. Rules adopted under this act must meet federal

1 requirements that are a necessary condition to the receipt of federal
2 funds by the state.

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