

HOUSE BILL REPORT

HB 1753

As Reported by House Committee On:
Government Operations & Elections

Title: An act relating to interpreter services.

Brief Description: Regulating interpreter services.

Sponsors: Representatives Jinkins, Hunt, Cody, Goodman, Freeman, Stanford, Fitzgibbon, Bergquist, Sawyer, Green, Ryu, Hope, Moscoso, Lias, Haler, Hudgins, Sullivan, Appleton and Pollet.

Brief History:

Committee Activity:

Government Operations & Elections: 2/20/13, 2/21/13 [DPS].

Brief Summary of Substitute Bill

- Authorizes the Department of Labor and Industries to purchase spoken language interpreter services.
- Requires the departments of Social and Health Services and Labor and Industries and the Health Care Authority to integrate the purchase of interpreter services through one centralized system by July 1, 2016.
- Requires language access providers to be certified or authorized by the state.
- Establishes the Spoken Language Interpreter Advisory Group.
- Requires the Department of Enterprise Services to develop and implement a model for providing interpreter services by July 1, 2014.
- Allows for statewide collective bargaining units for language access providers who provide spoken language interpreter services for the Department of Labor and Industries and for other state agencies through the Department of Enterprise Services.

HOUSE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

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

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Hunt, Chair; Bergquist, Vice Chair; Carlyle, Fitzgibbon, Orwall and Van De Wege.

Minority Report: Do not pass. Signed by 5 members: Representatives Buys, Ranking Minority Member; Taylor, Assistant Ranking Minority Member; Alexander, Kristiansen and Manweller.

Staff: Marsha Reilly (786-7135).

Background:

Interpreter Services.

Federal laws prohibit discrimination based on an individual's race, color, national origin, handicap, religion, or sex by any entity that receives federal financial assistance. Pursuant to these and other laws, the Department of Social and Health Services (DSHS) provides equal access to social service and medical programs for all persons, including persons who have limited English proficiency.

State law also requires the DSHS to ensure that bilingual services are provided to non-English speaking applicants for, and recipients of, public assistance. In community service offices, depending on the circumstances, the DSHS may be required to employ bilingual personnel or contract with interpreters, local agencies, or other community resources.

The DSHS and the Health Care Authority (HCA) provide spoken language interpreter services through contracts with brokers who schedule and link clients and service providers with interpreters. Spoken language interpreters are certified by the DSHS with the use of standardized tests. These tests measure language proficiency and interpreting skills, and evaluate interpreters providing oral interpretation services to social service programs and in medical settings. Interpreters also may become authorized or qualified by the DSHS to provide such services.

Public Employee Collective Bargaining.

Employees of cities, counties, and other political subdivisions of the state bargain their wages and working conditions under the Public Employees' Collective Bargaining Act (PECBA) administered by the Public Employment Relations Commission. Individual providers (home care workers), family child care providers, adult family home providers, and certain language access providers also have collective bargaining rights under the PECBA.

Under the PECBA, the employer and exclusive bargaining representative have a mutual obligation to negotiate in good faith over specified mandatory subjects of bargaining (grievance procedures and personnel matters, including wages, hours, and working conditions). For uniformed personnel, the PECBA recognizes the public policy against strikes as a means of settling labor disputes. To resolve impasses over contract negotiations involving these uniformed personnel, the PECBA requires binding arbitration if negotiations for a contract reach impasse and cannot be resolved through mediation. Language access providers are subject to mediation and binding interest arbitration if an impasse occurs in negotiations.

In 2010 Engrossed Substitute Senate Bill 6726 granted collective bargaining rights under the PECBA to language access providers. "Language access providers" are defined as independent contractors who provide spoken language interpreter services for DSHS appointments or Medicaid enrollee appointments, but not owners, managers, or employees of brokers or language access agencies. Mandatory subjects of bargaining are limited to: (1) economic compensation, such as the manner and rate of payments; (2) professional development and training; (3) labor-management committees; and (4) grievance procedures. Retirement benefits are not subject to collective bargaining.

Summary of Substitute Bill:

Interpreter Services.

The Department of Labor and Industries (L&I) is authorized to purchase spoken language interpreter services for medical and vocational providers authorized to provide services to limited-English speaking or sensory-impaired injured workers or crime victims. By July 1, 2014, the L&I must purchase interpreter services directly from language access providers through the use of scheduling and billing software, or through contracts with scheduling and coordinating delivery organizations, or both. At least one contract must be with a scheduling and coordinating entity that provides interpreter services through telephonic and video remote technologies.

By July 1, 2016, the DSHS, the HCA, and the L&I must integrate the purchase of interpreter services through one centralized system. All spoken language access providers procured through these agencies must be certified or authorized by the state.

The Director of the Department of Enterprise Services (DES) must develop and implement a model for providing interpreter services by purchasing the services of spoken language access providers through the use of scheduling and billing software, or through contracts with scheduling and coordinating delivery organizations, or both, by July 1, 2014. At least one contract must be with a scheduling and coordinating entity that provides interpreter services through telephonic and video remote technologies.

Advisory Group.

The DSHS must establish the Spoken Language Interpreter Advisory Group (Advisory Group) to advise the DSHS, the L&I, the DES, and the HCA on the policies, rules, and regulations governing certification and authorization of spoken language interpreters. The Director of the DSHS, in consultation with the directors of the other departments, must make appointments to the Advisory Group. The duties of the Advisory Group include developing and recommending policies to enhance the quality of interpreters and evaluating and making recommendations to the certification standards, including the code of ethics, used by the DSHS.

Public Employee Collective Bargaining.

Collective bargaining rights under the PECBA are granted to language access providers who provide spoken language interpreter services for L&I appointments and for state agencies

through the DES, or who provided these services on or after January 1, 2012, and before the bill's effective date.

If a single employee organization is the exclusive bargaining representative for two or more language access provider units, upon petition by the employee organization, the units may be consolidated into a single larger unit as the exclusive bargaining representative of the new unit if the Public Employment Relations Commission considers the consolidation to be appropriate.

The L&I and the DES are obligated to comply with the federal statute and regulations. The Legislature has the right to make programmatic modifications to the workers' compensation laws.

Substitute Bill Compared to Original Bill:

The substitute bill makes the following changes to the underlying bill:

- changes "interpreter services" to "spoken language interpreter services;"
- clarifies that spoken language interpreter services provided by the L&I are to assist medical and vocational providers;
- clarifies that procurement of spoken language interpreter services does not include interpreters for: the sensory-impaired through the L&I; court proceedings; or the Medicaid Administrative Match Program;
- requires language access providers to be certified or authorized by the state, rather than the DSHS;
- requires that at least one scheduling and coordinating entity procured by the L&I and the DES must subcontract with language access providers to provide interpreter services through telephonic and video remote technologies;
- changes membership on the Advisory Group to "designated representatives" of the DSHS, the L&I, and the DES, rather than language access officers, and changes the "medical provider" to a "physician licensed by the state;"
- requires the Advisory Group to include the code of ethics in its evaluation of certification standards used by the state; and
- allows, under mutual agreement, the Governor to negotiate a single collective bargaining agreement with two or more units if a single employee organization is the exclusive bargaining representative.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available. New fiscal note requested on February 21, 2013.

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

Staff Summary of Public Testimony:

(In support) Several years ago a bill was passed that changed the process for procurement of interpreters within the DSHS. Before the bill was passed, nearly half the money for interpreter services was spent on the brokers and the schedulers and less than half on the actual interpreters. After the bill passed, 75 percent of the money was spent compensating the interpreters. The purpose of the bill is to extend this model to the rest of state government. The L&I is allowed to ease into this model over the next year. After a time, the L&I will centralize with the HCA and the DSHS. The substitute bill allows the use of technology which will save money for travel and time spent traveling. It also insures that interpreters are certified and able to provide the services needed. In 2010 a bill passed to change interpreter services for Medicaid appointments, which has saved the state \$13 million by cutting out the schedulers. The L&I currently spends \$13 million on interpreter services and middlemen take 47 percent plus the payments for mileage. If questioned about the travel money, an interpreter will not receive future appointments. This bill insures high quality interpreter services. Interpreters are independent contractors hired by the state to help people with limited-English proficiency. The current procurement method is wasteful. The costs for interpreter services have decreased under the Medicaid program from \$23 million to \$10 million in a biennium. Wages for interpreters went from \$21 to \$32 per hour. This bill extends the reforms to the rest of state government. The bill is flexible and gives the departments flexibility. The substitute bill incorporates input from stakeholders. The advisory committee is very important. Medicaid is expanding in Washington and doctors need processes that are simple and reliable. The bill streamlines the process. The creation of an advisory group is needed to advise the DSHS regarding the certification of spoken language interpreters. The DSHS has provided interpreters that have failed the written test, but are still being certified. This practice endangers people. This model for providing interpreter services has already saved millions of dollars.

(With concerns) This bill is more expansive from the bill introduced last year. It may have unintended consequences, such as how court interpreters are organized. It is not clear how telephonic and video interpreters will work and if they will be included in collective bargaining. Video and telephonic interpreters are needed, particularly in emergency situations. The needs for different types of interpreters are different for each agency.

(Opposed) The bill should be amended to specifically state that it applies to spoken language interpreters only and not to American Sign Language (ASL) interpreters. Taking the negotiation and coordination of ASL interpreters out of the hands of the Office of the Deaf and Hard-of-Hearing (ODHH) for Medicaid related medical appointments has caused serious harm to deaf, hard-of-hearing and deaf-blind people by effectively denying communication access and thereby threatening their health. Deaf, hard-of-hearing and deaf-blind people need qualified interpreters. The HCA has failed to serve deaf people. Since the implementation of the new contract in September, the fill-rate has only worsened. Management of these services requires subject matter expertise and the ability to serve the entire state. Video interpreters are not late, and there is no travel. Video interpreters are invaluable in emergency cases because there is no scheduling requirement, and they are available 24 hours a day. Consideration should be given to technology as opposed to on-site visits. Middlemen do a lot of work to find the right person for the job. For example, some instances require a female interpreter rather than a male. It can be difficult to fill positions. The 2010 program that reformed interpreter services for Medicaid also extended collective bargaining to interpreters in the Medicaid Administrative Match Program, even though the

supporters of that legislation indicated that it would not apply. But because the funds are pass-through, it does apply. Hospitals use a mix of interpreters. The Medicaid Administrative Match Program needs to be exempted from the bill, and the substitute bill does take it out. The bill, as written, would require in-person interpreting. In-person interpreting requires 48 hours advance notice for appointments, which does not work for emergency situations. Video interpreters are on time, and there is no risk of transmitting disease as there is for in-person interpreting. Video interpreters are also useful in situations for providing interpretation in prison populations. Video interpreting must be allowed to be used in state agencies. It costs 60 percent less than in-person interpreting.

Persons Testifying: (In support) Representative Jinkins, prime sponsor; Cesar Garcia, Interpreters United; Dennis Eagle, Washington Federation of State Employees; Katie Kolan, Washington State Medical Association; and Milena Calderan Waldron, Washington Interpreters Society.

(With concerns) Julie Murray, Office of Financial Management.

(Opposed) Theresa Smith, Medical Interpreting Task Force; Jose De La Torre; Shawn Broderick; Glen McComb, Washington State Hospital Association; Gary Smith, Independent Business Association; and Andrew Drake, InDemand Interpreting.

Persons Signed In To Testify But Not Testifying: None.