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**SUBSTITUTE HOUSE BILL 1942**

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**State of Washington**

**68th Legislature**

**2024 Regular Session**

**By** House 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)

READ FIRST TIME 01/23/24.

1 AN ACT Relating to clarifying employment standards for long-term  
2 care individual providers; amending RCW 49.46.800, 74.39A.009, and  
3 74.39A.500; and creating a new section.

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

5 **Sec. 1.** RCW 49.46.800 and 2017 c 2 s 6 are each amended to read  
6 as follows:

7 (1) (~~Beginning January 1, 2017, all~~) All existing rights and  
8 remedies available under state or local law for enforcement of the  
9 minimum wage shall be applicable to enforce all of the rights  
10 established under chapter 2, Laws of 2017.

11 (2) (~~The~~) (a) If the department of social and health services  
12 contracts with an individual provider for personal care services or  
13 respite care services, the state shall pay individual providers, as  
14 defined in RCW 74.39A.240, in accordance with the minimum wage,  
15 overtime, and paid sick leave requirements of this chapter, except as  
16 provided in subsection (4) of this section.

17 (b) A consumer directed employer contracting with the state is an  
18 employer of individual providers for the purposes of this chapter.  
19 Individual providers are employees of the consumer directed employer.

20 (c) Neither the department of social and health services nor the  
21 consumer directed employer may avail itself of any state law minimum

1 wage or overtime exemption, except as provided in subsection (4) of  
2 this section.

3 (3) The definitions in this subsection apply to this section:

4 (a) "Authorized hours" means the number of paid hours of care  
5 included in the client's plan of care as determined by the department  
6 of social and health services.

7 (b) "Client" has the same meaning as in RCW 74.39A.009.

8 (c) "Consumer directed employer" has the same meaning as in RCW  
9 74.39A.009.

10 (d) "Family member" includes, but is not limited to, a parent,  
11 child, sibling, aunt, uncle, niece, nephew, cousin, grandparent,  
12 grandchild, grandniece, grandnephew, or such relatives when related  
13 by marriage, adoption, or domestic partnership.

14 (e) "Household member" means an individual provider who lives  
15 with the client and did so before the employment relationship between  
16 the client and individual provider began.

17 (f) "Individual provider" has the same meaning as in RCW  
18 74.39A.240.

19 (g) "Personal care services" has the same meaning as in RCW  
20 74.39A.009.

21 (4)(a) Hours worked by an individual provider in excess of the  
22 number of authorized hours in the client's plan of care are not  
23 compensable if:

24 (i) The individual provider is a family member or household  
25 member of the client, as defined by this section; and

26 (ii) The client's plan of care is reasonable.

27 (b) This subsection (4) does not apply to hours worked to address  
28 temporary emergencies or an unexpected health or safety event of the  
29 client that cannot be postponed.

30 (c) A client's plan of care is reasonable under (a)(ii) of this  
31 subsection if all of the following are true:

32 (i) The plan of care includes the same number of paid hours it  
33 would have if the individual provider were not a family member or  
34 household member of the client;

35 (ii) The plan of care does not reflect unequal treatment of an  
36 individual provider or their client because of their familial or  
37 household relationship. Unequal treatment includes the plan of care  
38 including fewer paid hours than it would have if the client's  
39 individual provider were not a family or household member of the  
40 client; the plan of care including fewer paid hours because the

1 client's individual provider shares in the benefit of a personal care  
2 service or task provided to the client; the plan of care including  
3 fewer paid hours because the client lives in a multiclient household  
4 and two or more clients benefit from the same personal care service  
5 or task being performed; or the plan of care including fewer paid  
6 hours because of paid or unpaid assistance provided to a client by  
7 that client's paid provider; and

8 (iii) The department of social and health services does not  
9 otherwise require an increase in the hours of unpaid services  
10 performed by the family or household member individual provider in  
11 order to reduce the number of hours of paid services.

12 (d) A determination that a plan of care is reasonable for  
13 purposes of this section does not mean that the amount or type of  
14 services or paid hours to be provided are or are not appropriate for  
15 the client under chapter 74.39A RCW.

16 (5) The department of social and health services retains its core  
17 responsibility to manage long-term in-home care services under  
18 chapters 74.39A and 74.41 RCW and its authority to set a client's  
19 benefit level as required by RCW 74.09.520(3). However, to limit an  
20 individual provider's compensable hours as described in subsection  
21 (4)(a) of this section, a plan of care must satisfy the requirements  
22 of subsection (4)(a) and (c) of this section.

23 (6) The director of labor and industries may adopt rules to  
24 implement this section.

25 NEW SECTION. Sec. 2. (1) This act is curative and remedial. It  
26 applies retroactively and prospectively to all actions filed under  
27 RCW 49.46.800, regardless of when they were filed, except for the  
28 actions referenced in subsection (2) of this section.

29 (2) Subsection (1) of this section does not apply to the  
30 following actions: *Liang v. State of Washington*, No. 20-2-02506-34  
31 (Thurston Cnty. Superior Court); *SEIU 775 v. Washington State Dep't*  
32 *of Soc. And Health Servs.*, No. 97216-8 (Washington Supreme Court); or  
33 *SEIU 775 v. Washington State Dep't of Soc. And Health Servs.*, No.  
34 99659-8 (Washington Supreme Court).

35 **Sec. 3.** RCW 74.39A.009 and 2022 c 255 s 5 are each amended to  
36 read as follows:

37 The definitions in this section apply throughout this chapter  
38 unless the context clearly requires otherwise.

1 (1) "Adult family home" means a home licensed under chapter  
2 70.128 RCW.

3 (2) "Adult residential care" means services provided by an  
4 assisted living facility that is licensed under chapter 18.20 RCW and  
5 that has a contract with the department under RCW 74.39A.020 to  
6 provide personal care services.

7 (3) "Assisted living facility" means a facility licensed under  
8 chapter 18.20 RCW.

9 (4) "Assisted living services" means services provided by an  
10 assisted living facility that has a contract with the department  
11 under RCW 74.39A.010 to provide personal care services, intermittent  
12 nursing services, and medication administration services; and the  
13 facility provides these services to residents who are living in  
14 private apartment-like units.

15 (5) "Community residential service business" means a business  
16 that:

17 (a) Is certified by the department of social and health services  
18 to provide to individuals who have a developmental disability as  
19 defined in RCW 71A.10.020(~~(5)~~) (6):

20 (i) Group home services;

21 (ii) Group training home services;

22 (iii) Supported living services; or

23 (iv) Voluntary placement services provided in a licensed staff  
24 residential facility for children;

25 (b) Has a contract with the developmental disabilities  
26 administration to provide the services identified in (a) of this  
27 subsection; and

28 (c) All of the business's long-term care workers are subject to  
29 statutory or regulatory training requirements that are required to  
30 provide the services identified in (a) of this subsection.

31 (6) "Consumer" or "client" means a person who is receiving or has  
32 applied for services under this chapter, including a person who is  
33 receiving services from an individual provider.

34 (7) "Consumer directed employer" is a private entity that  
35 contracts with the department to be the legal employer of individual  
36 providers (~~(for purposes of performing administrative functions)~~).  
37 The consumer directed employer is patterned after the agency with  
38 choice model, recognized by the federal centers for medicare and  
39 medicaid services for financial management in consumer directed  
40 programs. The entity's responsibilities are described in RCW

1 74.39A.515 and throughout this chapter and include: (a) Coordination  
2 with the consumer, who is the individual provider's managing  
3 employer; (b) withholding, filing, and paying income and employment  
4 taxes, including workers' compensation premiums and unemployment  
5 taxes, for individual providers; (c) verifying an individual  
6 provider's qualifications; and (d) providing other administrative and  
7 employment-related supports. The consumer directed employer is a  
8 social service agency and its employees are mandated reporters as  
9 defined in RCW 74.34.020.

10 (8) "Core competencies" means basic training topics, including  
11 but not limited to, communication skills, worker self-care, problem  
12 solving, maintaining dignity, consumer directed care, cultural  
13 sensitivity, body mechanics, fall prevention, skin and body care,  
14 long-term care worker roles and boundaries, supporting activities of  
15 daily living, and food preparation and handling.

16 (9) "Cost-effective care" means care provided in a setting of an  
17 individual's choice that is necessary to promote the most appropriate  
18 level of physical, mental, and psychosocial well-being consistent  
19 with client choice, in an environment that is appropriate to the care  
20 and safety needs of the individual, and such care cannot be provided  
21 at a lower cost in any other setting. But this in no way precludes an  
22 individual from choosing a different residential setting to achieve  
23 his or her desired quality of life.

24 (10) "Department" means the department of social and health  
25 services.

26 (11) "Developmental disability" has the same meaning as defined  
27 in RCW 71A.10.020.

28 (12) "Direct care worker" means a paid caregiver who provides  
29 direct, hands-on personal care services to persons with disabilities  
30 or the elderly requiring long-term care.

31 (13) "Enhanced adult residential care" means services provided by  
32 an assisted living facility that is licensed under chapter 18.20 RCW  
33 and that has a contract with the department under RCW 74.39A.010 to  
34 provide personal care services, intermittent nursing services, and  
35 medication administration services.

36 (14) "Facility" means an adult family home, an assisted living  
37 facility, a nursing home, an enhanced services facility licensed  
38 under chapter 70.97 RCW, or a facility certified to provide medicare  
39 or medicaid services in nursing facilities or intermediate care

1 facilities for individuals with intellectual disabilities under 42  
2 C.F.R. Part 483.

3 (15) "Home and community-based services" means services provided  
4 in adult family homes, in-home services, and other services  
5 administered or provided by contract by the department directly or  
6 through contract with area agencies on aging or federally recognized  
7 Indian tribes, or similar services provided by facilities and  
8 agencies licensed or certified by the department.

9 (16) "Home care aide" means a long-term care worker who is  
10 certified as a home care aide by the department of health under  
11 chapter 18.88B RCW.

12 (17) "Individual provider" is defined according to RCW  
13 74.39A.240.

14 (18) "Legal employer" means the consumer directed employer, which  
15 along with the consumer, coemploys individual providers. The legal  
16 employer is responsible for setting wages and benefits for individual  
17 providers and must comply with applicable laws including, but not  
18 limited to, state minimum wage laws, workers compensation, and  
19 unemployment insurance laws.

20 (19) "Long-term care" means care and supports delivered  
21 indefinitely, intermittently, or over a sustained time to persons of  
22 any age who are functionally disabled due to chronic mental or  
23 physical illness, disease, chemical dependency, or a medical  
24 condition that is permanent, not curable, or is long-lasting and  
25 severely limits their mental or physical capacity for self-care. The  
26 use of this definition is not intended to expand the scope of  
27 services, care, or assistance provided by any individuals, groups,  
28 residential care settings, or professions unless otherwise required  
29 by law.

30 (20)(a) "Long-term care workers" include all persons who provide  
31 paid, hands-on personal care services for the elderly or persons with  
32 disabilities, including but not limited to individual providers of  
33 home care services, direct care workers employed by home care  
34 agencies or a consumer directed employer, providers of home care  
35 services to persons with developmental disabilities under Title 71A  
36 RCW, all direct care workers in state-licensed assisted living  
37 facilities, enhanced services facilities, and adult family homes,  
38 respite care providers, direct care workers employed by community  
39 residential service businesses, and any other direct care worker

1 providing home or community-based services to the elderly or persons  
2 with functional disabilities or developmental disabilities.

3 (b) "Long-term care workers" do not include: (i) Persons employed  
4 by the following facilities or agencies: Nursing homes licensed under  
5 chapter 18.51 RCW, hospitals or other acute care settings,  
6 residential habilitation centers under chapter 71A.20 RCW, facilities  
7 certified under 42 C.F.R., Part 483, hospice agencies subject to  
8 chapter 70.127 RCW, adult day care centers, and adult day health care  
9 centers; or (ii) persons who are not paid by the state or by a  
10 private agency or facility licensed or certified by the state to  
11 provide personal care services.

12 (21) "Managing employer" means a consumer who coemploys one or  
13 more individual providers and whose responsibilities include (a)  
14 choosing potential individual providers and referring them to the  
15 consumer directed employer; (b) overseeing the day-to-day management  
16 and scheduling of the individual provider's tasks consistent with the  
17 plan of care; and (c) dismissing the individual provider when  
18 desired.

19 (22) "Nursing home" or "nursing facility" means a facility  
20 licensed under chapter 18.51 RCW or certified as a medicaid nursing  
21 facility under 42 C.F.R. Part 483, or both.

22 (23) "Person who is functionally disabled" means a person who  
23 because of a recognized chronic physical or mental condition or  
24 disease, including chemical dependency or developmental disability,  
25 is dependent upon others for direct care, support, supervision, or  
26 monitoring to perform activities of daily living. "Activities of  
27 daily living," in this context, means self-care abilities related to  
28 personal care such as bathing, eating, using the toilet, dressing,  
29 and transfer. Instrumental activities of daily living such as  
30 cooking, shopping, house cleaning, doing laundry, working, and  
31 managing personal finances may also be considered when assessing a  
32 person's functional ability to perform activities in the home and the  
33 community.

34 (24) "Personal care services" means physical or verbal assistance  
35 with activities of daily living and instrumental activities of daily  
36 living provided because of a person's functional disability.

37 (25) "Population specific competencies" means basic training  
38 topics unique to the care needs of the population the long-term care  
39 worker is serving, including but not limited to, mental health,

1 dementia, developmental disabilities, young adults with physical  
2 disabilities, and older adults.

3 (26) "Qualified instructor" means a registered nurse or other  
4 person with specific knowledge, training, and work experience in the  
5 provision of direct, hands-on personal care and other assistance  
6 services to the elderly or persons with disabilities requiring  
7 long-term care.

8 (27) "Secretary" means the secretary of social and health  
9 services.

10 (28) "Training partnership" means a joint partnership or trust  
11 that includes the office of the governor and the exclusive bargaining  
12 representative of individual providers under RCW 74.39A.270 with the  
13 capacity to provide training, peer mentoring, and workforce  
14 development, or other services to individual providers.

15 (29) "Tribally licensed assisted living facility" means an  
16 assisted living facility licensed by a federally recognized Indian  
17 tribe in which a facility provides services similar to services  
18 provided by assisted living facilities licensed under chapter 18.20  
19 RCW.

20 **Sec. 4.** RCW 74.39A.500 and 2021 c 186 s 1 are each amended to  
21 read as follows:

22 (1) The department may establish and implement a consumer  
23 directed employer program to provide personal care, respite care, and  
24 similar services to individuals with functional impairments under  
25 programs authorized through the medicaid state plan or medicaid  
26 waiver authorities and similar state-funded in-home care programs.

27 (a) The consumer directed employer program is a consumer directed  
28 program and must be operated in a manner consistent with federal  
29 medicaid requirements. The consumer directed employer is the legal  
30 employer of individual providers (~~for administrative purposes~~).

31 (b) Under the consumer directed employer program, the consumer is  
32 the managing employer of individual providers and retains the primary  
33 right to select, dismiss, assign hours, and supervise the work of one  
34 or more individual providers, as long as the consumer's actions are  
35 consistent with the consumer's plan of care, this chapter, and state  
36 and federal law.

37 (2) The department shall endeavor to select and contract with one  
38 consumer directed employer to be a medicaid provider that will  
39 coemploy individual providers. The department shall make every effort

1 to select a single qualified vendor. In the event it is not possible  
2 to contract with a single vendor, the department is authorized to  
3 contract with up to two vendors. The department's activities to  
4 identify, select, and contract with a consumer directed employer are  
5 exempt from the requirements of chapter 39.26 RCW.

6 (a) When contracting with a consumer directed employer, the  
7 department should seek to contract with a vendor that demonstrates:

8 (i) A strong commitment to consumer choice, self-direction, and  
9 maximizing consumer autonomy and control over daily decisions; and

10 (ii) A commitment to recruiting and retaining a high quality and  
11 diverse workforce and working with a broad coalition of stakeholders  
12 in an effort to understand the changing needs of the workforce and  
13 consumer needs and preferences.

14 (b) Additional factors the department should consider in  
15 selecting a vendor include, but are not limited to, the vendor's:

16 (i) Ability to provide maximum support to consumers to focus on  
17 directing their own services through a model that recognizes that the  
18 provision of employer responsibility and human resource  
19 administration support is integral to successful self-directed home  
20 care programs;

21 (ii) Commitment to engage and work closely with consumers in  
22 design, implementation, and ongoing operations through an advisory  
23 board, focus group, or other methods as approved by the department;

24 (iii) Focus on workforce retention and creating incentives for  
25 qualified and trained providers to meet the growing needs of state  
26 long-term care consumers;

27 (iv) Ability to meet the state's interest in preventing or  
28 mitigating disruptions to consumer services;

29 (v) Ability to deliver high quality training, health care, and  
30 retirement, which may include participation in existing trusts that  
31 deliver those benefits;

32 (vi) Ability to comply with the terms and conditions of  
33 employment of individual providers at the time of the transition;

34 (vii) Commitment to involving its home care workforce in decision  
35 making;

36 (viii) Vision for including and enhancing home care workers as a  
37 valued member of the consumer's care team, as desired and authorized  
38 by the consumer and reflected in the consumer's plan of care; and

39 (ix) Ability to build and adapt technology tools that can enhance  
40 efficiency and provide better quality of services.

1 (c) In order to be qualified as a consumer directed employer, an  
2 entity must meet the requirements in: (i) Its contract with the  
3 department; (ii) the medicaid state plan; (iii) rules adopted under  
4 this chapter, if any; and (iv) this section.

5 (d) Any qualified and willing individual may apply to become an  
6 employee of a consumer directed employer and may work as an  
7 individual provider when selected by a consumer.

8 (e) A consumer directed employer that holds a contract with the  
9 department to provide medicaid services through the employment of  
10 individual providers is deemed to be a certified medicaid provider.

11 (f) A consumer directed employer is not a home care agency under  
12 chapter 70.127 RCW.

13 (g) A consumer directed employer does not need a separate  
14 licensure or certification category.

15 (h) A consumer directed employer that also provides home care  
16 services under chapter 70.127 RCW must demonstrate to the  
17 department's satisfaction that it operates the programs under  
18 separate business units, and that its business structures, policies,  
19 and procedures will prevent any conflicts of interest.

20 (3) If the department selects and contracts with a consumer  
21 directed employer, the department shall determine when to terminate  
22 the department's contracts with individual providers.

23 (a) Until the department determines the transition to the  
24 consumer directed employer program is complete, the state shall  
25 continue to administer the individual provider program for the  
26 remaining contracted individual providers and to act as the public  
27 employer solely for the purpose of collective bargaining under RCW  
28 74.39A.270 for those directly contracted individual providers.

29 (b) Once the department determines that the transition to the  
30 consumer directed employer is complete, the department may no longer  
31 contract with individual providers, unless there are not any  
32 contracted consumer directed employers available.

33 (4) The department of labor and industries shall initially place  
34 individual providers employed by a consumer directed employer in the  
35 classification for the home care services and home care referral  
36 registry. After the department determines that the transition to the  
37 consumer directed employer program is complete, the department of  
38 labor and industries may, if necessary, adjust the classification and  
39 rate in accordance with chapter 51.16 RCW.

1           (5) After the date on which the department enters into a contract  
2 with the consumer directed employer and determines the transition to  
3 the consumer directed employer program is complete, biennial funding  
4 in the next ensuing biennium for case management and social work  
5 shall be reduced by no more than: Two million nine hundred eight  
6 thousand dollars for area agencies on aging; one million three  
7 hundred sixty-one thousand dollars for home and community services;  
8 and one million two hundred eighty-nine thousand dollars for  
9 developmental disabilities.

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