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SENATE BILL 6720

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State of Washington 57th Legislature

2002 Regular Session

By Senators Thibaudeau, Deccio and Winsley; by request of Governor Locke

Read first time 01/29/2002. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to technical and clarifying amendments to  
2 Initiative 775; amending RCW 74.39A.230, 74.39A.250, 74.39A.270,  
3 74.39A.280, and 74.39A.300; and providing an effective date.

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

5 **Sec. 1.** RCW 74.39A.230 and 2002 c 3 s 2 (Initiative Measure No.  
6 775) are each amended to read as follows:

7 (1) The home care quality authority is established to regulate and  
8 improve the quality of long-term in-home care services by recruiting,  
9 training, and stabilizing the work force of individual providers.

10 (2) The authority consists of a board of nine members appointed by  
11 the governor. Five board members shall be current and/or former  
12 consumers of long-term in-home care services provided for functionally  
13 disabled persons, at least one of whom shall be a person with a  
14 developmental disability; one board member shall be a representative of  
15 the developmental disabilities planning council; one board member shall  
16 be a representative of the governor's committee on disability issues  
17 and employment; one board member shall be a representative of the state  
18 council on aging; and one board member shall be a representative of the  
19 Washington state association of area agencies on aging. In making

1 appointments, the governor shall consider any nominations or  
2 recommendations made by the groups or agencies represented.

3 (3) The initial appointments to the board will be as follows:  
4 Three board members will be appointed for a one-year term, three board  
5 members will be appointed for a two-year term, and three board members  
6 will be appointed to a three-year term. Thereafter, each board member  
7 ((serves)) will be appointed to serve a term of three years. If a  
8 vacancy occurs, the governor will make an appointment to become  
9 immediately effective for the unexpired term. Each board member is  
10 eligible for reappointment and may serve no more than two consecutive  
11 terms. ((In making appointments, the governor will take into  
12 consideration any nominations or recommendations made by the groups or  
13 agencies represented.))

14 (4) Members of the home care quality authority board will be  
15 compensated in accordance with RCW 43.03.250, 43.03.050, and 43.03.060.

16 **Sec. 2.** RCW 74.39A.250 and 2002 c 3 s 4 (Initiative Measure No.  
17 775) are each amended to read as follows:

18 (1) Within funds appropriated specifically for this purpose, the  
19 authority must carry out the following duties:

20 (a) Establish qualifications and reasonable standards for  
21 accountability for and investigate the background of individual  
22 providers and prospective individual providers, except in cases where,  
23 after the department has sought approval of any appropriate amendments  
24 or waivers under RCW 74.09.740, federal law or regulation requires that  
25 such qualifications and standards for accountability be established by  
26 another entity in order to preserve eligibility for federal funding.  
27 Qualifications established must include compliance with the minimum  
28 requirements for training and satisfactory criminal background checks  
29 as provided in RCW 74.39A.050 and confirmation that the individual  
30 provider or prospective individual provider is not currently listed on  
31 any long-term care abuse and neglect registry used by the department at  
32 the time of the investigation;

33 (b) Undertake recruiting activities to identify and recruit  
34 individual providers and prospective individual providers;

35 (c) Provide training opportunities, either directly or through  
36 contract, for individual providers, prospective individual providers,  
37 consumers, and prospective consumers;

1 (d) Provide assistance to consumers and prospective consumers in  
2 finding individual providers and prospective individual providers  
3 through the establishment of a referral registry of individual  
4 providers and prospective individual providers. Before placing an  
5 individual provider or prospective individual provider on the referral  
6 registry, the authority shall determine that:

7 (i) The individual provider or prospective individual provider has  
8 met the minimum requirements for training set forth in RCW 74.39A.050;

9 (ii) The individual provider or prospective individual provider has  
10 satisfactorily undergone a criminal background check conducted within  
11 the prior twelve months; and

12 (iii) The individual provider or prospective individual provider is  
13 not listed on any long-term care abuse and neglect registry used by the  
14 department;

15 (e) Remove from the referral registry any individual provider or  
16 prospective individual provider the authority determines not to meet  
17 the qualifications set forth in (d) of this subsection or to have  
18 committed misfeasance or malfeasance in the performance of his or her  
19 duties as an individual provider. The individual provider or  
20 prospective individual provider, or the consumer to which the  
21 individual provider is providing services, may request a fair hearing  
22 to contest the removal from the referral registry, as provided in  
23 chapter 34.05 RCW;

24 (f) Provide routine, emergency, and respite referrals of individual  
25 providers and prospective individual providers to consumers and  
26 prospective consumers who are authorized to receive long-term in-home  
27 care services through an individual provider;

28 (g) Give preference in the recruiting, training, referral, and  
29 employment of individual providers and prospective individual providers  
30 to recipients of public assistance or other low-income persons who  
31 would qualify for public assistance in the absence of such employment;  
32 and

33 (h) Cooperate with the department, area agencies on aging, and  
34 other federal, state, and local agencies to provide the services  
35 described and set forth in this section. If, in the course of carrying  
36 out its duties, the authority identifies concerns regarding the  
37 services being provided by an individual provider, the authority must  
38 notify the relevant area agency or department case manager regarding  
39 such concerns.

1 (2) In determining how best to carry out its duties, the authority  
2 must identify existing individual provider recruitment, training, and  
3 referral resources made available to consumers by other state and local  
4 public, private, and nonprofit agencies. The authority may coordinate  
5 with the agencies to provide a local presence for the authority and to  
6 provide consumers greater access to individual provider recruitment,  
7 training, and referral resources in a cost-effective manner. Using  
8 requests for proposals or similar processes, the authority may contract  
9 with the agencies to provide recruitment, training, and referral  
10 services if the authority determines the agencies can provide the  
11 services according to reasonable standards of performance determined by  
12 the authority. The authority must provide an opportunity for consumer  
13 participation in the determination of the standards.

14 **Sec. 3.** RCW 74.39A.270 and 2002 c 3 s 6 (Initiative Measure No.  
15 775) are each amended to read as follows:

16 (1) Solely for the purposes of collective bargaining, the authority  
17 is the public employer, as defined in chapter 41.56 RCW, of individual  
18 providers, who are public employees, as defined in chapter 41.56 RCW,  
19 of the authority.

20 (2) Chapter 41.56 RCW governs the employment relationship between  
21 the authority and individual providers, except as otherwise expressly  
22 provided in chapter 3, Laws of 2002 and except as follows:

23 (a) The only unit appropriate for the purpose of collective  
24 bargaining under RCW 41.56.060 is a statewide unit of all individual  
25 providers;

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

29 (c) The mediation and interest arbitration provisions of RCW  
30 41.56.430 through 41.56.470 and 41.56.480 apply;

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

32 (e) Individual providers who are related to, or family members of,  
33 consumers or prospective consumers are not, for that reason, exempt  
34 from chapter 3, Laws of 2002 or chapter 41.56 RCW.

35 (3) Individual providers who are employees of the authority under  
36 subsection (1) of this section are not, for that reason, employees of  
37 the state for any purpose.

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

6 (5) In implementing and administering chapter 3, Laws of 2002,  
7 neither the authority nor any of its contractors may reduce or increase  
8 the hours of service for any consumer below or above the amount  
9 determined to be necessary under any assessment prepared by the  
10 department or an area agency on aging.

11 (6)(a) The authority, the area agencies on aging, or their  
12 contractors under chapter 3, Laws of 2002 may not be held vicariously  
13 liable for the action or inaction of any individual provider or  
14 prospective individual provider, whether or not that individual  
15 provider or prospective individual provider was included on the  
16 authority's referral registry or referred to a consumer or prospective  
17 consumer.

18 (b) The members of the board are immune from any liability  
19 resulting from implementation of chapter 3, Laws of 2002.

20 (c) The authority, acting in good faith in recruiting providers,  
21 listing providers on the referral registry, referring providers, and  
22 training consumers and providers, is immune from civil or criminal  
23 liability for such action.

24 (7) Nothing in this section affects the state's responsibility with  
25 respect to the state payroll system or unemployment insurance for  
26 individual providers.

27 **Sec. 4.** RCW 74.39A.280 and 2002 c 3 s 7 (Initiative Measure No.  
28 775) are each amended to read as follows:

29 In carrying out its duties under chapter 3, Laws of 2002, the  
30 authority may:

31 (1) Make and execute contracts and all other instruments necessary  
32 or convenient for the performance of its duties or exercise of its  
33 powers, including contracts with public and private agencies,  
34 organizations, corporations, and individuals to pay them for services  
35 rendered or furnished;

36 (2) Offer and provide recruitment, training, and referral services  
37 to providers of long-term in-home care services other than individual

1 providers and prospective individual providers, for a fee to be  
2 determined by the authority;

3 (3) Issue rules under the administrative procedure act, chapter  
4 34.05 RCW, as necessary for the purpose and policies of chapter 3, Laws  
5 of 2002;

6 (4) Establish offices, employ and discharge employees, agents, and  
7 contractors as necessary, and prescribe their duties and powers and fix  
8 their compensation, incur expenses, and create such liabilities as are  
9 reasonable and proper for the administration of chapter 3, Laws of  
10 2002;

11 (5)(a) Appoint an executive director of the home care quality  
12 authority who is exempt from chapter 41.06 RCW, and who will be  
13 appointed by and serve at the pleasure of the home care quality  
14 authority board. The salary of the executive director will be fixed by  
15 the board in accordance with RCW 43.03.040.

16 (b) The executive director may appoint and discharge other  
17 personnel who are exempt from chapter 41.06 RCW. Such personnel will  
18 serve at the pleasure of the executive director who will prescribe  
19 their duties and powers and fix their compensation;

20 (6) Solicit and accept for use any grant of money, services, or  
21 property from the federal government, the state, or any political  
22 subdivision or agency thereof, including federal matching funds under  
23 Title XIX of the federal social security act, and do all things  
24 necessary to cooperate with the federal government, the state, or any  
25 political subdivision or agency thereof in making an application for  
26 any grant;

27 (~~(+6)~~) (7) Coordinate its activities and cooperate with similar  
28 agencies in other states;

29 (~~(+7)~~) (8) Establish technical advisory committees to assist the  
30 board;

31 (~~(+8)~~) (9) Keep records and engage in research and the gathering  
32 of relevant statistics;

33 (~~(+9)~~) (10) Acquire, hold, or dispose of real or personal property  
34 or any interest therein, and construct, lease, or otherwise provide  
35 facilities for the activities conducted under this chapter, provided  
36 that the authority may not exercise any power of eminent domain;

37 (~~(+10)~~) (11) Sue and be sued in its own name;

38 (~~(+11)~~) (12) Delegate to the appropriate persons the power to  
39 execute contracts and other instruments on its behalf and delegate any

1 of its powers and duties if consistent with the purposes of this  
2 chapter; and

3 ~~((12))~~ (13) Do other acts necessary or convenient to execute the  
4 powers expressly granted to it.

5 **Sec. 5.** RCW 74.39A.300 and 2002 c 3 s 9 (Initiative Measure No.  
6 775) are each amended to read as follows:

7 (1) The governor must submit a request for funds necessary to  
8 administer chapter 3, Laws of 2002 ~~((and))~~.

9 (2) The governor must also submit a biennial request for funds  
10 necessary to implement any collective bargaining agreement entered into  
11 under RCW 74.39A.270 or for legislation necessary to implement any such  
12 agreement within ten days of the date on which the agreement is  
13 ratified or, if the legislature is not in session, within ten days  
14 after the next legislative session convenes. Requests for funds  
15 necessary to implement bargaining agreements will not be submitted to  
16 the legislature by the governor unless such requests:

17 (a) Have been submitted to the director of financial management on  
18 or before October 1st of the year preceding the next ensuing biennium;  
19 and

20 (b) Have been certified by the director of financial management as  
21 being feasible financially for the state.

22 (3) The legislature must approve or reject the submission of the  
23 request for funds as a whole. If the legislature rejects or fails to  
24 act on the submission, any such agreement will be reopened solely for  
25 the purpose of renegotiating the funds necessary to implement the  
26 agreement.

27 ~~((2))~~ (4) When any increase in individual provider wages or  
28 benefits is negotiated or agreed to by the authority, no increase in  
29 wages or benefits negotiated or agreed to under chapter 3, Laws of 2002  
30 will take effect unless and until, before its implementation, the  
31 department has determined that the increase is consistent with federal  
32 law and federal financial participation in the provision of services  
33 under Title XIX of the federal social security act.

34 ~~((3))~~ (5) After the expiration date of any collective bargaining  
35 agreement entered into under RCW 74.39A.270, all of the terms and  
36 conditions specified in any such agreement remain in effect until the  
37 effective date of a subsequent agreement, not to exceed one year from  
38 the expiration date stated in the agreement.

1        NEW SECTION.   **Sec. 6.**   Section 5 of this act takes effect July 1,  
2   2003.

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