

CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE HOUSE BILL 1916

Chapter 278, Laws of 2007

60th Legislature
2007 Regular Session

CARE PROVIDERS--INTEREST ARBITRATION

EFFECTIVE DATE: 07/22/07

Passed by the House April 16, 2007
Yeas 82 Nays 13

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 5, 2007
Yeas 43 Nays 3

BRAD OWEN

President of the Senate

Approved May 2, 2007, 11:08 a.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1916** as passed by the House of Representatives and the Senate on the dates hereon set forth.

RICHARD NAFZIGER

Chief Clerk

FILED

May 3, 2007

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1916

AS AMENDED BY THE SENATE

Passed Legislature - 2007 Regular Session

State of Washington 60th Legislature 2007 Regular Session

By House Committee on Commerce & Labor (originally sponsored by Representatives Conway, Ericksen, Moeller, Strow, Green, Haler, Appleton, Seaquist, Chase, Priest, McDermott, Walsh, Ormsby, Hasegawa, Fromhold, Kessler, Dunshee, Dunn, Sells, Wood, P. Sullivan, Kenney and Morrell)

READ FIRST TIME 02/28/07.

1 AN ACT Relating to interest arbitration regarding certain care
2 providers; and amending RCW 41.56.465, 41.56.028, and 74.39A.270.

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

4 **Sec. 1.** RCW 41.56.465 and 1995 c 273 s 2 are each amended to read
5 as follows:

6 (1) In making its determination, the panel shall be mindful of the
7 legislative purpose enumerated in RCW 41.56.430 and, as additional
8 standards or guidelines to aid it in reaching a decision, ~~((it))~~ the
9 panel shall ~~((take into consideration the following factors))~~ consider:

10 (a) The constitutional and statutory authority of the employer;

11 (b) Stipulations of the parties;

12 ~~((i)) For employees listed in RCW 41.56.030(7) (a) through (d),~~
13 ~~comparison of the wages, hours, and conditions of employment of~~
14 ~~personnel involved in the proceedings with the wages, hours, and~~
15 ~~conditions of employment of like personnel of like employers of similar~~
16 ~~size on the west coast of the United States;~~

17 ~~((ii)) For employees listed in RCW 41.56.030(7) (e) through (h),~~
18 ~~comparison of the wages, hours, and conditions of employment of~~
19 ~~personnel involved in the proceedings with the wages, hours, and~~

1 ~~conditions of employment of like personnel of public fire departments~~
2 ~~of similar size on the west coast of the United States. However, when~~
3 ~~an adequate number of comparable employers exists within the state of~~
4 ~~Washington, other west coast employers may not be considered;~~

5 ~~(d))~~ The average consumer prices for goods and services, commonly
6 known as the cost of living;

7 ~~((e))~~ (d) Changes in any of the circumstances under (a) through
8 ~~((d))~~ (c) of this subsection during the pendency of the proceedings;
9 and

10 ~~((f))~~ (e) Such other factors, not confined to the factors under
11 (a) through ~~((e))~~ (d) of this subsection, that are normally or
12 traditionally taken into consideration in the determination of wages,
13 hours, and conditions of employment. For those employees listed in RCW
14 41.56.030(7)(a) who are employed by the governing body of a city or
15 town with a population of less than fifteen thousand, or a county with
16 a population of less than seventy thousand, consideration must also be
17 given to regional differences in the cost of living.

18 (2) For employees listed in RCW 41.56.030(7) (a) through (d), the
19 panel shall also consider a comparison of the wages, hours, and
20 conditions of employment of personnel involved in the proceedings with
21 the wages, hours, and conditions of employment of like personnel of
22 like employers of similar size on the west coast of the United States.

23 (3) For employees listed in RCW 41.56.030(7) (e) through (h), the
24 panel shall also consider a comparison of the wages, hours, and
25 conditions of employment of personnel involved in the proceedings with
26 the wages, hours, and conditions of employment of like personnel of
27 public fire departments of similar size on the west coast of the United
28 States. However, when an adequate number of comparable employers
29 exists within the state of Washington, other west coast employers may
30 not be considered.

31 (4) For employees listed in RCW 41.56.028:

32 (a) The panel shall also consider:

33 (i) A comparison of child care provider subsidy rates and
34 reimbursement programs by public entities, including counties and
35 municipalities, along the west coast of the United States; and

36 (ii) The financial ability of the state to pay for the compensation
37 and benefit provisions of a collective bargaining agreement; and

38 (b) The panel may consider:

1 (i) The public's interest in reducing turnover and increasing
2 retention of child care providers;

3 (ii) The state's interest in promoting, through education and
4 training, a stable child care workforce to provide quality and reliable
5 child care from all providers throughout the state; and

6 (iii) In addition, for employees exempt from licensing under
7 chapter 74.15 RCW, the state's fiscal interest in reducing reliance
8 upon public benefit programs including but not limited to medical
9 coupons, food stamps, subsidized housing, and emergency medical
10 services.

11 (5) For employees listed in RCW 74.39A.270:

12 (a) The panel shall consider:

13 (i) A comparison of wages, hours, and conditions of employment of
14 publicly reimbursed personnel providing similar services to similar
15 clients, including clients who are elderly, frail, or have
16 developmental disabilities, both in the state and across the United
17 States; and

18 (ii) The financial ability of the state to pay for the compensation
19 and fringe benefit provisions of a collective bargaining agreement; and

20 (b) The panel may consider:

21 (i) A comparison of wages, hours, and conditions of employment of
22 publicly employed personnel providing similar services to similar
23 clients, including clients who are elderly, frail, or have
24 developmental disabilities, both in the state and across the United
25 States;

26 (ii) The state's interest in promoting a stable long-term care
27 workforce to provide quality and reliable care to vulnerable elderly
28 and disabled recipients;

29 (iii) The state's interest in ensuring access to affordable,
30 quality health care for all state citizens; and

31 (iv) The state's fiscal interest in reducing reliance upon public
32 benefit programs including but not limited to medical coupons, food
33 stamps, subsidized housing, and emergency medical services.

34 (6) Subsections ((1)(e)) (2) and (3) of this section may not be
35 construed to authorize the panel to require the employer to pay,
36 directly or indirectly, the increased employee contributions resulting
37 from chapter 502, Laws of 1993 or chapter 517, Laws of 1993 as required
38 under chapter 41.26 RCW.

1 **Sec. 2.** RCW 41.56.028 and 2006 c 54 s 1 are each amended to read
2 as follows:

3 (1) In addition to the entities listed in RCW 41.56.020, this
4 chapter applies to the governor with respect to family child care
5 providers. Solely for the purposes of collective bargaining and as
6 expressly limited under subsections (2) and (3) of this section, the
7 governor is the public employer of family child care providers who,
8 solely for the purposes of collective bargaining, are public employees.
9 The public employer shall be represented for bargaining purposes by the
10 governor or the governor's designee appointed under chapter 41.80 RCW.

11 (2) This chapter governs the collective bargaining relationship
12 between the governor and family child care providers, except as
13 follows:

14 (a) A statewide unit of all family child care providers is the only
15 unit appropriate for purposes of collective bargaining under RCW
16 41.56.060.

17 (b) The exclusive bargaining representative of family child care
18 providers in the unit specified in (a) of this subsection shall be the
19 representative chosen in an election conducted pursuant to RCW
20 41.56.070, except that in the initial election conducted under chapter
21 54, Laws of 2006, if more than one labor organization is on the ballot
22 and none of the choices receives a majority of the votes cast, a
23 run-off election shall be held.

24 (c) Notwithstanding the definition of "collective bargaining" in
25 RCW 41.56.030(4), the scope of collective bargaining for child care
26 providers under this section shall be limited solely to: (i) Economic
27 compensation, such as manner and rate of subsidy and reimbursement,
28 including tiered reimbursements; (ii) health and welfare benefits;
29 (iii) professional development and training; (iv) labor-management
30 committees; (v) grievance procedures; and (vi) other economic matters.
31 Retirement benefits shall not be subject to collective bargaining. By
32 such obligation neither party shall be compelled to agree to a proposal
33 or be required to make a concession unless otherwise provided in this
34 chapter.

35 (d) The mediation and interest arbitration provisions of RCW
36 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

37 (i) With respect to commencement of negotiations between the
38 governor and the exclusive bargaining representative of family child

1 care providers, negotiations shall be commenced initially upon
2 certification of an exclusive bargaining representative under (a) of
3 this subsection and, thereafter, by February 1st of any even-numbered
4 year; and

5 ~~(ii) ((In addition to the factors to be taken into consideration by~~
6 ~~an interest arbitration panel under RCW 41.56.465, the panel shall~~
7 ~~consider the financial ability of the state to pay for the compensation~~
8 ~~and benefit provisions of a collective bargaining agreement; and~~

9 ~~(iii))~~ The decision of the arbitration panel is not binding on the
10 legislature and, if the legislature does not approve the request for
11 funds necessary to implement the compensation and benefit provisions of
12 the arbitrated collective bargaining agreement, is not binding on the
13 state.

14 (e) Family child care providers do not have the right to strike.

15 (3) Family child care providers who are public employees solely for
16 the purposes of collective bargaining under subsection (1) of this
17 section are not, for that reason, employees of the state for any
18 purpose. This section applies only to the governance of the collective
19 bargaining relationship between the employer and family child care
20 providers as provided in subsections (1) and (2) of this section.

21 (4) This section does not create or modify:

22 (a) The parents' or legal guardians' right to choose and terminate
23 the services of any family child care provider that provides care for
24 their child or children;

25 (b) The secretary of the department of social and health services'
26 right to adopt requirements under RCW 74.15.030, except for
27 requirements related to grievance procedures and collective
28 negotiations on personnel matters as specified in subsection (2)(c) of
29 this section;

30 (c) Chapter 26.44 RCW, RCW 43.43.832, 43.20A.205, and 74.15.130;
31 and

32 (d) The legislature's right to make programmatic modifications to
33 the delivery of state services through child care subsidy programs,
34 including standards of eligibility of parents, legal guardians, and
35 family child care providers participating in child care subsidy
36 programs, and the nature of services provided. The governor shall not
37 enter into, extend, or renew any agreement under this section that does

1 not expressly reserve the legislative rights described in this
2 subsection (4)(d).

3 (5) Upon meeting the requirements of subsection (6) of this
4 section, the governor must submit, as a part of the proposed biennial
5 or supplemental operating budget submitted to the legislature under RCW
6 43.88.030, a request for funds necessary to implement the compensation
7 and benefit provisions of a collective bargaining agreement entered
8 into under this section or for legislation necessary to implement such
9 agreement.

10 (6) A request for funds necessary to implement the compensation and
11 benefit provisions of a collective bargaining agreement entered into
12 under this section shall not be submitted by the governor to the
13 legislature unless such request has been:

14 (a) Submitted to the director of financial management by October
15 1st before the legislative session at which the request is to be
16 considered, except that, for initial negotiations under this section,
17 the request must be submitted by November 15, 2006; and

18 (b) Certified by the director of financial management as being
19 feasible financially for the state or reflects the binding decision of
20 an arbitration panel reached under this section.

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

26 (8) The governor shall periodically consult with the joint
27 committee on employment relations established by RCW 41.80.010
28 regarding appropriations necessary to implement the compensation and
29 benefit provisions of any collective bargaining agreement and, upon
30 completion of negotiations, advise the committee on the elements of the
31 agreement and on any legislation necessary to implement such agreement.

32 (9) After the expiration date of any collective bargaining
33 agreement entered into under this section, all of the terms and
34 conditions specified in any such agreement remain in effect until the
35 effective date of a subsequent agreement, not to exceed one year from
36 the expiration date stated in the agreement, except as provided in
37 subsection (4)(d) of this section.

1 (10) If, after the compensation and benefit provisions of an
2 agreement are approved by the legislature, a significant revenue
3 shortfall occurs resulting in reduced appropriations, as declared by
4 proclamation of the governor or by resolution of the legislature, both
5 parties shall immediately enter into collective bargaining for a
6 mutually agreed upon modification of the agreement.

7 (11) In enacting this section, the legislature intends to provide
8 state action immunity under federal and state antitrust laws for the
9 joint activities of family child care providers and their exclusive
10 bargaining representative to the extent such activities are authorized
11 by this chapter.

12 **Sec. 3.** RCW 74.39A.270 and 2006 c 106 s 1 are each amended to read
13 as follows:

14 (1) Solely for the purposes of collective bargaining and as
15 expressly limited under subsections (2) and (3) of this section, the
16 governor is the public employer, as defined in chapter 41.56 RCW, of
17 individual providers, who, solely for the purposes of collective
18 bargaining, are public employees as defined in chapter 41.56 RCW. To
19 accommodate the role of the state as payor for the community-based
20 services provided under this chapter and to ensure coordination with
21 state employee collective bargaining under chapter 41.80 RCW and the
22 coordination necessary to implement RCW 74.39A.300, the public employer
23 shall be represented for bargaining purposes by the governor or the
24 governor's designee appointed under chapter 41.80 RCW. The governor or
25 governor's designee shall periodically consult with the authority
26 during the collective bargaining process to allow the authority to
27 communicate issues relating to the long-term in-home care services
28 received by consumers. The governor or the governor's designee shall
29 consult the authority on all issues for which the exclusive bargaining
30 representative requests to engage in collective bargaining under
31 subsection (6) of this section. The authority shall work with the
32 developmental disabilities council, the governor's committee on
33 disability issues and employment, the state council on aging, and other
34 consumer advocacy organizations to obtain informed input from consumers
35 on their interests, including impacts on consumer choice, for all
36 issues proposed for collective bargaining under subsection (6) of this
37 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) The showing of interest required to request an election under
8 RCW 41.56.060 is ten percent of the unit, and any intervener seeking to
9 appear on the ballot must make the same showing of interest;

10 (c) The mediation and interest arbitration provisions of RCW
11 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

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

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

20 ~~(iii))~~) The decision of the arbitration panel is not binding on the
21 legislature and, if the legislature does not approve the request for
22 funds necessary to implement the compensation and fringe benefit
23 provisions of the arbitrated collective bargaining agreement, is not
24 binding on the authority or the state;

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

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

29 (3) Individual providers who are public employees solely for the
30 purposes of collective bargaining under subsection (1) of this section
31 are not, for that reason, employees of the state, its political
32 subdivisions, or an area agency on aging for any purpose. Chapter
33 41.56 RCW applies only to the governance of the collective bargaining
34 relationship between the employer and individual providers as provided
35 in subsections (1) and (2) of this section.

36 (4) Consumers and prospective consumers retain the right to select,
37 hire, supervise the work of, and terminate any individual provider

1 providing services to them. Consumers may elect to receive long-term
2 in-home care services from individual providers who are not referred to
3 them by the authority.

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

9 (6) Except as expressly limited in this section and RCW 74.39A.300,
10 the wages, hours, and working conditions of individual providers are
11 determined solely through collective bargaining as provided in this
12 chapter. No agency or department of the state may establish policies
13 or rules governing the wages or hours of individual providers.
14 However, this subsection does not modify:

15 (a) The department's authority to establish a plan of care for each
16 consumer or its core responsibility to manage long-term in-home care
17 services under this chapter, including determination of the level of
18 care that each consumer is eligible to receive. However, at the
19 request of the exclusive bargaining representative, the governor or the
20 governor's designee appointed under chapter 41.80 RCW shall engage in
21 collective bargaining, as defined in RCW 41.56.030(4), with the
22 exclusive bargaining representative over how the department's core
23 responsibility affects hours of work for individual providers. This
24 subsection shall not be interpreted to require collective bargaining
25 over an individual consumer's plan of care;

26 (b) The department's authority to terminate its contracts with
27 individual providers who are not adequately meeting the needs of a
28 particular consumer, or to deny a contract under RCW 74.39A.095(8);

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

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

35 (e) The department's obligation to comply with the federal medicaid
36 statute and regulations and the terms of any community-based waiver
37 granted by the federal department of health and human services and to

1 ensure federal financial participation in the provision of the
2 services; and

3 (f) The legislature's right to make programmatic modifications to
4 the delivery of state services under this title, including standards of
5 eligibility of consumers and individual providers participating in the
6 programs under this title, and the nature of services provided. The
7 governor shall not enter into, extend, or renew any agreement under
8 this chapter that does not expressly reserve the legislative rights
9 described in this subsection (6)(f).

10 (7)(a) The state, the department, the authority, the area agencies
11 on aging, or their contractors under this chapter may not be held
12 vicariously or jointly liable for the action or inaction of any
13 individual provider or prospective individual provider, whether or not
14 that individual provider or prospective individual provider was
15 included on the authority's referral registry or referred to a consumer
16 or prospective consumer. The existence of a collective bargaining
17 agreement, the placement of an individual provider on the referral
18 registry, or the development or approval of a plan of care for a
19 consumer who chooses to use the services of an individual provider and
20 the provision of case management services to that consumer, by the
21 department or an area agency on aging, does not constitute a special
22 relationship with the consumer.

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

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

Passed by the House April 16, 2007.
Passed by the Senate April 5, 2007.
Approved by the Governor May 2, 2007.
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