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SENATE BILL 5709

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State of Washington

64th Legislature

2015 Regular Session

By Senator Keiser; by request of Department of Social and Health Services

Read first time 01/29/15. Referred to Committee on Health Care.

1 AN ACT Relating to the consumer's right to assign hours to  
2 individual providers and the department of social and health  
3 services' authority to adopt rules related to payment of individual  
4 providers; amending RCW 74.39A.270; and declaring an emergency.

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

6 **Sec. 1.** RCW 74.39A.270 and 2011 1st sp.s. c 21 s 10 are each  
7 amended to read as follows:

8 (1) Solely for the purposes of collective bargaining and as  
9 expressly limited under subsections (2) and (3) of this section, the  
10 governor is the public employer, as defined in chapter 41.56 RCW, of  
11 individual providers, who, solely for the purposes of collective  
12 bargaining, are public employees as defined in chapter 41.56 RCW. To  
13 accommodate the role of the state as payor for the community-based  
14 services provided under this chapter and to ensure coordination with  
15 state employee collective bargaining under chapter 41.80 RCW and the  
16 coordination necessary to implement RCW 74.39A.300, the public  
17 employer shall be represented for bargaining purposes by the governor  
18 or the governor's designee appointed under chapter 41.80 RCW. The  
19 governor or governor's designee shall periodically consult with the  
20 authority during the collective bargaining process to allow the  
21 authority to communicate issues relating to the long-term in-home

1 care services received by consumers. The department shall solicit  
2 input from the developmental disabilities council, the governor's  
3 committee on disability issues and employment, the state council on  
4 aging, and other consumer advocacy organizations to obtain informed  
5 input from consumers on their interests, including impacts on  
6 consumer choice, for all issues proposed for collective bargaining  
7 under subsections (5) and (6) of this section.

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

11 (a) The only unit appropriate for the purpose of collective  
12 bargaining under RCW 41.56.060 is a statewide unit of all individual  
13 providers;

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

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

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

24 (ii) The decision of the arbitration panel is not binding on the  
25 legislature and, if the legislature does not approve the request for  
26 funds necessary to implement the compensation and fringe benefit  
27 provisions of the arbitrated collective bargaining agreement, is not  
28 binding on the authority or the state;

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

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

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

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

6 (5) Except as expressly limited in this section and RCW  
7 74.39A.300, the wages, hours, and working conditions of individual  
8 providers are determined solely through collective bargaining as  
9 provided in this chapter. Except as described in this subsection, no  
10 agency or department of the state may establish policies or rules  
11 governing the wages or hours of individual providers. ~~((However,))~~  
12 This subsection does not modify:

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

24 (b) The department's authority to adopt rules establishing  
25 criteria regarding the number of hours per week the department may  
26 pay any single provider;

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

30 ~~((e))~~ (d) The consumer's right to assign hours to one or more  
31 individual providers ~~((selected by the consumer within the maximum~~  
32 ~~hours determined by))~~ consistent with the rules and criteria adopted  
33 under this chapter and his or her plan of care;

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

38 ~~((e))~~ (f) The department's obligation to comply with the  
39 federal medicaid statute and regulations and the terms of any  
40 community-based waiver granted by the federal department of health

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

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

11 (6) At the request of the exclusive bargaining representative,  
12 the governor or the governor's designee appointed under chapter 41.80  
13 RCW shall engage in collective bargaining, as defined in RCW  
14 41.56.030(4), with the exclusive bargaining representative over  
15 employer contributions to the training partnership for the costs of:  
16 (a) Meeting all training and peer mentoring required under this  
17 chapter; and (b) other training intended to promote the career  
18 development of individual providers.

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

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

36 NEW SECTION. **Sec. 2.** This act is necessary for the immediate  
37 preservation of the public peace, health, or safety, or support of

1 the state government and its existing public institutions, and takes  
2 effect immediately.

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