

SENATE BILL REPORT

SB 6657

As of February 4, 2004

Title: An act relating to clarifying collective bargaining processes for individual providers.

Brief Description: Clarifying collective bargaining processes for individual providers.

Sponsors: Senators Esser, Benton, Schmidt, Sheahan, Roach, Rasmussen, Keiser, Doumit, Prentice, Haugen and Shin.

Brief History:

Committee Activity: Health & Long-Term Care: 2/5/04.

SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

Staff: Tanya Karwaki (786-7447)

Background: The state contracts with home care workers to provide long-term care services for elderly and disabled clients who are eligible for Medicaid through the Department of Social and Health Services' (DSHS) Aging and Adult Services and Developmental Disabilities programs. Home care workers provide DSHS clients with personal care assistance with various tasks such as toileting, bathing, dressing, ambulating, meal preparation, and household chores. These home care workers are hired and fired by the client, but are paid by DSHS. DSHS also pays unemployment insurance contributions to cover these workers.

In November 2001, voters enacted Initiative Measure No. 775. The initiative states that consumers of services retain the right to select, hire, supervise the work of, and terminate any individual home care worker providing them with services. I-775 provides individual home care workers with collective bargaining rights under the Public Employees' Collective Bargaining Act (PECBA). It also created the Home Care Quality Authority (HCQA) as an agency of state government to provide oversight of home care services and, for purposes of collective bargaining, to function as the "employer" of approximately 26,000 individual home care workers. I-775 states that the individual home care workers are not, because of these provisions, employees of the state for any purpose.

Individual home care workers do not have the right to strike and are covered by the binding interest arbitration provisions of the PECBA.

Under I-775, the Governor must submit a request to the Legislature for the funds and any legislative changes necessary to implement a collective bargaining agreement covering individual home care workers within ten days of the agreement's ratification. The Legislature may only approve or reject the submission of the request for funds as a whole. If the Legislature rejects or fails to act on the submission, the collective bargaining agreement will be reopened solely for the purpose of renegotiating the funds necessary to implement the agreement.

In August 2002, the individual home care workers voted to unionize. An initial contract submitted to the Legislature in January 2003 was returned to the parties for renegotiation after the Legislature adjourned without approving the funds for the contract.

Summary of Bill: The HCQA's responsibilities for collective bargaining with individual home care workers are clarified. It is expressly stated that the collective bargaining law governs the collective bargaining relationship, not the employment relationship, between the parties. The individual home care workers are employees of the HCQA only for collective bargaining purposes and are not, for that reason, employees of the state, its political subdivisions, or an area agency on aging for any purpose.

Individual home care workers are not to be considered state employees as a result of the state assuming responsibility for individual home care worker's unemployment insurance. Individual home care workers are expressly excluded from the statutory provisions that apply to state employees, such as pension programs.

Collective bargaining for home care worker agreements must begin by May 1 of the year before the year in which an existing collective bargaining agreement expires.

The Governor's submission of a request for funding to implement a collective bargaining agreement covering individual home care workers must be submitted as part of the Governor's budget proposal to the Legislature. Before the request may be submitted, the request must: (1) be submitted to the Office of Financial Management (OFM) by October 1 prior to the legislative session at which the request is considered, and (2) be certified by the Director of the OFM as being feasible financially for the state or be an arbitration award.

The Joint Committee on Home Care Worker Relations is created. The committee consists of two members with leadership positions representing each of the two largest caucuses in each house of the Legislature and the chair and ranking minority members of the House Appropriations and Senate Ways & Means Committees. The HCQA must periodically consult with the committee regarding the compensation and fringe benefit provisions of a collective bargaining agreement and, after completing negotiations, advise the committee of the elements of the agreement and any legislation necessary to implement the agreement.

When an arbitration panel determines a dispute arising from a bargaining impasse involving individual home care workers, the panel must consider the financial ability of the state to pay for compensation and fringe benefit provisions.

The wages, hours, and working conditions of individual providers are determined solely through collective bargaining. No agency or department of this state, other than the HCQA, may establish rules governing these items. This requirement for collective bargaining does not apply to DSHS's authority to establish a plan of care for each consumer and determine the hours of care for the consumer, DSHS's authority to terminate contracts with individual providers who are not meeting the needs of the consumer, the consumer's right to assign hours to one or more individual provider within the maximum hours determined by his or her plan of care, or the consumer's right to determine conditions of employment for each individual provider in his or her employ.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.