

FINAL BILL REPORT

ESHB 2475

C 106 L 06

Synopsis as Enacted

Brief Description: Requiring collective bargaining regarding hours of work for individual providers.

Sponsors: By House Committee on Commerce & Labor (originally sponsored by Representatives Conway, Williams, Fromhold, Wood, B. Sullivan, Simpson, Sells, Ormsby and Green).

House Committee on Commerce & Labor

House Committee on Appropriations

Senate Committee on Labor, Commerce, Research & Development

Senate Committee on Ways & Means

Background:

Long-term Care Services Provided by Home Care Workers

The Department of Social and Health Services (DSHS) contracts with agency and individual home care workers (individual providers) to provide in-home long-term care services for elderly and disabled clients (consumers) who are eligible for publicly funded services through the DSHS's Aging and Adult Services and Developmental Disabilities programs. Home care workers provide consumers personal care assistance with various tasks such as toileting, bathing, dressing, ambulating, meal preparation, and household chores. The individual providers are hired and fired by the consumer, but are paid by the DSHS.

The Home Care Quality Authority (HCQA) has responsibility for establishing qualifications for individual providers, recruiting and training individual providers, and providing assistance to consumers in finding care by establishing a referral registry.

The DSHS "Shared Living" Rule

In implementing the long-term care services program, the DSHS adopted a rule, generally known as the "shared living" rule. Under this rule, the DSHS will not pay for services such as shopping, housework, laundry, or meal preparation if the individual provider lives in the same household with the consumer. According to hearing examiner findings in an unfair labor practice case filed with the Public Employment Relations Commission (PERC), this rule has resulted in a 15 percent deduction from the hours allotted to individual providers as compensation for their services in homes where they also reside.

Collective Bargaining for Individual Providers

Individual providers have collective bargaining rights under the Public Employees' Collective Bargaining Act (PECBA) administered by the PERC. The individual providers' exclusive bargaining representative bargains with the Governor or Governor's designee. The law explicitly states that wages, hours, and working conditions are determined solely through collective bargaining and, except for the HCQA, no state agency may establish policies or rules governing wages or hours of individual providers. However, this provision also states that it does not modify various responsibilities of the DSHS, including the authority to establish a consumer's plan of care and determine the hours of care for which a consumer is eligible.

The first contract to be implemented under the individual provider collective bargaining law was effective until June 30, 2005. By law, negotiations for a new agreement must begin by May 1 of the year before the year in which an existing collective bargaining agreement expires. In April 2004, the union representing the individual providers and the Governor's Labor Relations Office began negotiating for a successor contract. By August, a PERC mediator determined that the parties were at impasse on several issues, which were certified to an arbitrator. One of these issues involved the "shared living" rule.

On August 31, 2004, the Office of Financial Management filed an unfair labor practice with the PERC, alleging that the union failed to bargain in good faith by insisting on submitting some issues, including the "shared living" rule issue, to arbitration. The PERC hearing examiner agreed that the union had committed an unfair labor practice, finding that the Legislature intended the DSHS to retain its core responsibility to administer the home care program and to set the hours of care and the plan of care for consumers receiving services. This decision was affirmed by the PERC on October 12, 2005.

Summary:

At the request of the bargaining representative for individual providers, the Governor or designee must collectively bargain over how DSHS's core responsibility to manage long-term in-home care affects hours of work for individual providers. The Governor or designee must consult with the HCQA when bargaining these issues. The HCQA must work with consumer advocacy organizations to obtain informed input from consumers on their interests related to issues proposed to be bargained.

This bargaining requirement is not to be interpreted as requiring bargaining over an individual consumer's plan of care.

The language recognizing DSHS authority to establish consumer plans of care and determine their hours of care is modified to (1) delete the reference to determining hours of care and (2) add a reference to the agency's core responsibility to manage long-term in-home care, including determining the level of care that consumers are eligible to receive.

The reference to the HCQA adopting rules governing wages or hours of individual providers is deleted.

Votes on Final Passage:

House 97 1
Senate 40 5 (Senate amended)

House Refuses to Concur

Senate (Senate receded)
Senate 42 3 (Senate amended)
House 95 3 (House concurred)

Effective: March 17, 2006