

SENATE BILL REPORT

E2SHB 1725

As of Second Reading

Title: An act relating to the consumer's right to assign hours to individual providers and the department of social and health services' authority to adopt rules related to payment of individual providers.

Brief Description: Concerning the consumer's right to assign hours to individual providers and the department of social and health services' authority to adopt rules related to payment of individual providers.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Cody and Tharinger; by request of Department of Social and Health Services).

Brief History: Passed House: 2/15/16, 97-0; 3/29/16, 95-0.

Committee Activity: Ways & Means: 3/02/16, 3/03/16 [DPA, w/oRec].

SENATE COMMITTEE ON WAYS & MEANS

Staff: Julie Murray (786-7711)

Background: Individuals with long-term care needs and/or developmental disabilities who meet financial and functional eligibility criteria are eligible to receive in-home personal care and respite services. The Department of Social and Health Services (DSHS) assesses consumers to determine their support needs and the amount of services they are eligible to receive. Consumers may choose to receive services either from an individual provider (IP) or agency provider (AP). Consumers have the right to select, hire, supervise the work of, and terminate any IP providing services to them as long as they do not exceed their monthly award identified in their plan of care or individual support plan. The state is the employer only for the purposes of collective bargaining.

Wages, hours, and working conditions of IPs are determined through the collective bargaining process. The statute specifically provides that no state agency or department may establish policies or rules governing the wages or hours of IPs. The consumer has the right to assign hours to one or more IPs selected by the consumer, within the maximum hours determined by the consumer's care plan.

In 2014, the Department of Labor modified the "Domestic Service Rules" to now require third-party employers to pay overtime at a rate of 150 percent of the hourly wage when IPs

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provide work more than 40 hours a week. Those rules were set to go into effect on January 1, 2015.

As a result of legal challenges in U.S. District Court regarding the authority of the Department of Labor (DOL) to implement new rules requiring overtime to be paid for home care workers when they work over 40 hours in a week, implementation of the rule was delayed. In August 2015, the United States Court of Appeals disagreed with the district court ruling and issued a unanimous opinion affirming the validity of the new DOL rule. The new rule went into effect on January 1, 2016 and enforcement action by DOL is expected to begin on April 1, 2016; last October, the United State Supreme Court refused to stay the United States Court of Appeals ruling, allowing the final rule to take effect.

There are approximately 35,000 individual providers who provide almost 45 million hours of support to individuals in their own home each year.

Summary of Bill: The number of hours DSHS may pay any single individual provider (IP) is limited as follows:

- Sixty hours each work week are allowed if the IP was working more than 40 hours a week during January 2016. For fiscal years 2016 and 2017, the limit is 65 hours each work week, but will not apply until the IP's clients' receive his or her annual plan of care review.
- OR
- Forty hours each work week are allowed if the IP was working 40 hours or less a week during January 2016.
- AND
- Additional hours are authorized for required training.
- Additional hours may be authorized under criteria to be established by DSHS rule.

Total overtime spending cannot exceed the cost of 8.75 percent of total average authorized personal care hours for the fiscal year. The Caseload Forecast Council can temporarily increase the limit to 10 percent if a higher percentage of overtime is required due to a shortage of IPs to provide adequate client care.

Requires the Department of Social and Health Services to establish a spending plan and a system to monitor the authorization and costs of overtime hours.

Establishes the Joint Legislative-Executive Overtime Oversight Task Force to monitor spending and drivers of overtime costs.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 28, 2016.

Committee/Commission/Task Force Created: Yes.

Effective Date: The bill contains an emergency clause and takes effect immediately.