

CERTIFICATION OF ENROLLMENT  
**ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1725**

64th Legislature  
2016 1st Special Session

Passed by the House March 29, 2016  
Yeas 95 Nays 0

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**Speaker of the House of Representatives**

Passed by the Senate March 29, 2016  
Yeas 42 Nays 1

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**President of the Senate**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1725** as passed by House of Representatives and the Senate on the dates hereon set forth.

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**Chief Clerk**

FILED

**Secretary of State  
State of Washington**

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ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1725

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Passed Legislature - 2016 1st Special Session

State of Washington

64th Legislature

2016 Regular Session

By House Appropriations (originally sponsored by Representatives Cody and Tharinger; by request of Department of Social and Health Services)

READ FIRST TIME 01/28/16.

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; adding a new section to chapter  
5 74.39A RCW; creating a new section; and declaring an emergency.

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

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

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

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

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

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

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

18 (c) The mediation and interest arbitration provisions of RCW  
19 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

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

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

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

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

34 (3) Individual providers who are public employees solely for the  
35 purposes of collective bargaining under subsection (1) of this  
36 section are not, for that reason, employees of the state, its  
37 political subdivisions, or an area agency on aging for any purpose.  
38 Chapter 41.56 RCW applies only to the governance of the collective  
39 bargaining relationship between the employer and individual providers  
40 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 subsection (9) of  
10 this section, no agency or department of the state may establish  
11 policies or rules governing the wages or hours of individual  
12 providers. ((However,)) 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)(i) The requirement that the number of hours the department  
25 may pay any single individual provider is limited to:

26 (A) Sixty hours each workweek if the individual provider was  
27 working an average number of hours in excess of forty hours for the  
28 workweeks during January 2016, except for fiscal years 2016 and 2017,  
29 the limit is sixty-five hours each workweek; or

30 (B) Forty hours each workweek if the individual provider was not  
31 working an average number of hours in excess of forty hours for the  
32 workweeks during January 2016, or had no reported hours for the month  
33 of January 2016.

34 (ii) Additional hours may be authorized under criteria  
35 established by rules adopted by the department under subsection (9)  
36 of this section.

37 (iii) Additional hours may be authorized for required training  
38 under RCW 74.39A.074, 74.39A.076, and 74.39A.341.

39 (iv) An individual provider may appeal to the department for  
40 qualification for the hour limitation in (b)(i)(A) of this subsection

1 if the average weekly hours the provider was working in January 2016  
2 materially underrepresent the average weekly hours worked by the  
3 individual provider during the first three months of 2016.

4 (v) No individual provider is subject to the hour limitations in  
5 (b)(i)(A) of this subsection until the department has conducted a  
6 review of the plan of care for the consumers served by the provider.  
7 The department shall review plans of care expeditiously, starting  
8 with consumers connected with the most individual provider overtime;

9 (c) The requirement that the total number of additional hours in  
10 excess of forty hours authorized under (b) of this subsection and  
11 subsection (9) of this section are limited by the total hours as  
12 provided in subsection (10) of this section;

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

16 ~~((e))~~ (e) The consumer's right to assign hours to one or more  
17 individual providers (~~selected by the consumer within the maximum~~  
18 hours determined by)) consistent with the rules adopted under this  
19 chapter and his or her plan of care;

20 ~~((d))~~ (f) The consumer's right to select, hire, terminate,  
21 supervise the work of, and determine the conditions of employment for  
22 each individual provider providing services to the consumer under  
23 this chapter;

24 ~~((e))~~ (g) The department's obligation to comply with the  
25 federal medicaid statute and regulations and the terms of any  
26 community-based waiver granted by the federal department of health  
27 and human services and to ensure federal financial participation in  
28 the provision of the services; and

29 ~~((f))~~ (h) The legislature's right to make programmatic  
30 modifications to the delivery of state services under this title,  
31 including standards of eligibility of consumers and individual  
32 providers participating in the programs under this title, and the  
33 nature of services provided. The governor shall not enter into,  
34 extend, or renew any agreement under this chapter that does not  
35 expressly reserve the legislative rights described in this subsection  
36 (5)((f)) (h).

37 (6) At the request of the exclusive bargaining representative,  
38 the governor or the governor's designee appointed under chapter 41.80  
39 RCW shall engage in collective bargaining, as defined in RCW  
40 41.56.030(4), with the exclusive bargaining representative over

1 employer contributions to the training partnership for the costs of:  
2 (a) Meeting all training and peer mentoring required under this  
3 chapter; and (b) other training intended to promote the career  
4 development of individual providers.

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

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

22 (9) The department may not pay any single individual provider  
23 more than the hours listed in subsection (5)(b) of this section  
24 unless the department authorizes additional hours under criteria  
25 established by rule. The criteria must be limited in scope to reduce  
26 the state's exposure to payment of overtime, address travel time from  
27 worksite to worksite, and address the following needs of consumers:

28 (a) Ensuring that consumers are not at increased risk for  
29 institutionalization;

30 (b) When there is a limited number of providers within the  
31 geographic region of the consumer;

32 (c) When there is a limited number of providers available to  
33 support a consumer with complex medical and behavioral needs or  
34 specific language needs;

35 (d) Emergencies that could pose a health and safety risk for  
36 consumers; and

37 (e) Instances where the cost of the allowed hour is less than  
38 other alternatives to provide care to a consumer, distinct from any  
39 increased risk of institutionalization.

1       (10)(a) Each fiscal year, the department shall establish a  
2 spending plan and a system to monitor the authorization and cost of  
3 hours in excess of forty hours each workweek from subsections (5)(b)  
4 and (9) of this section beginning July 1, 2016, and each fiscal year  
5 thereafter. Expenditures for hours in excess of forty hours each  
6 workweek under subsections (5)(b) and (9) of this section shall not  
7 exceed 8.75 percent of the total average authorized personal care  
8 hours for the fiscal year as projected by the caseload forecast  
9 council. The caseload forecast council may adopt a temporary  
10 adjustment to the 8.75 percent of the total average hours projection  
11 for that fiscal year, up to a maximum of 10.0 percent, if it finds a  
12 higher percentage of overtime hours is necessitated by a shortage of  
13 individual providers to provide adequate client care, taking into  
14 consideration factors including the criteria in subsection (9) of  
15 this section. If the council elects to temporarily increase the  
16 limit, it may do so only upon a majority vote of the council.

17       (b) The department also shall provide expenditure reports  
18 beginning September 1, 2016, and on a quarterly basis thereafter. If  
19 the department determines, based upon quarterly expenditure reports,  
20 that the annual expenditures will exceed the limitation established  
21 in (a) of this subsection, the department shall take those actions  
22 necessary to ensure compliance with the limitation.

23       (c) The spending plan and expenditure reports must be submitted  
24 to the legislative fiscal committees and the joint legislative-  
25 executive overtime oversight task force. The joint legislative-  
26 executive overtime oversight task force members are as follows:

27       (i) Two members from each of the two largest caucuses of the  
28 senate, appointed by the respective caucus leaders.

29       (ii) The speaker of the house of representatives shall appoint  
30 two members from each of the two largest caucuses of the house of  
31 representatives.

32       (iii) The governor shall appoint members representing the  
33 department of social and health services and the office of financial  
34 management.

35       (iv) The governor shall appoint two members representing  
36 individual providers and two members representing consumers receiving  
37 personal care or respite care services from an individual provider.

38       (d) The task force shall meet at least annually, but may meet  
39 more frequently as desired by the task force. The task force shall

1 choose cochairs, one from among the legislative members and one from  
2 among the executive branch members.

3 (e) The department is authorized to adopt rules, including  
4 emergency rules under RCW 34.05.350, to implement this subsection.

5 NEW SECTION. Sec. 2. The department of social and health  
6 services shall immediately adopt emergency rules under RCW 34.05.350  
7 to limit the number of hours per workweek that the department may pay  
8 any single provider to forty hours and to establish criteria to  
9 authorize additional hours in accordance with section 1 of this act.  
10 The emergency rules shall remain in effect until permanent rules can  
11 be adopted.

12 NEW SECTION. Sec. 3. A new section is added to chapter 74.39A  
13 RCW to read as follows:

14 In order to monitor quality of care and safety of consumers,  
15 employment conditions of individual providers, and compliance with  
16 the provisions of payment of hours in excess of forty hours each  
17 workweek for any single provider, the department must provide  
18 quarterly expenditure reports to the legislative fiscal committees  
19 and joint legislative-executive overtime oversight task force created  
20 in RCW 74.39A.270(10). The report must contain the following  
21 information:

22 (1) The number of providers receiving payment for more than forty  
23 hours in a workweek, specifying how many of those providers were  
24 eligible for those hours due to meeting the conditions of RCW  
25 74.39A.270 (5)(b)(i)(A), (b)(ii), (b)(iii), and (9).

26 (2) The number of hours paid and the amount paid for hours in  
27 excess of forty hours in a workweek, specifying how many of those  
28 hours and payments were for providers eligible for those hours and  
29 payments due to meeting the conditions of RCW 74.39A.270  
30 (5)(b)(i)(A), (b)(ii), (b)(iii), and (9).

31 (3) In reporting the information required in subsections (1) and  
32 (2) of this section, the department must provide total amounts,  
33 averages, and a display of the distribution of the amounts.

34 (4) The information required must be provided by department  
35 region and county of client, department program, and must be  
36 specified for providers by the number of clients they serve.

37 (5) Any personally identifiable information of consumers and  
38 individual providers used to develop this report is confidential and



1 exempt from public disclosure, inspection, or copying under chapter  
2 42.56 RCW. However, information may be released in aggregate form,  
3 with any personally identifiable information redacted, for the  
4 purpose of statistical analysis and oversight of agency performance  
5 and actions.

6 NEW SECTION. **Sec. 4.** This act is necessary for the immediate  
7 preservation of the public peace, health, or safety, or support of  
8 the state government and its existing public institutions, and takes  
9 effect immediately.

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