

SENATE BILL REPORT

SHB 1942

As Passed Senate, March 1, 2024

Title: An act relating to clarifying employment standards for long-term care individual providers.

Brief Description: Clarifying employment standards for long-term care individual providers.

Sponsors: House Committee on Labor & Workplace Standards (originally sponsored by Representatives Fosse, Schmidt, Reed, Simmons, Ormsby, Rule, Macri and Ortiz-Self; by request of Department of Social and Health Services).

Brief History: Passed House: 2/12/24, 97-0.

Committee Activity: Labor & Commerce: 2/19/24, 2/20/24 [DP-WM, DNP, w/oRec].
Ways & Means: 2/23/24, 2/26/24 [DP, w/oRec].

Floor Activity: Passed Senate: 3/1/24, 49-0.

Brief Summary of Bill

- Provides that the hours worked by an individual provider in excess of the number of hours authorized in the client's plan of care are not compensable if the individual provider is the client's family or household member and the client's plan of care is reasonable.

SENATE COMMITTEE ON LABOR & COMMERCE

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Saldaña, Vice Chair; King, Ranking Member; Hansen and Stanford.

Minority Report: Do not pass.

Signed by Senator Schoesler.

Minority Report: That it be referred without recommendation.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Signed by Senators Braun and MacEwen.

Staff: Jarrett Sacks (786-7448)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Robinson, Chair; Mullet, Vice Chair, Capital; Nguyen, Vice Chair, Operating; Wilson, L., Ranking Member, Operating; Gildon, Assistant Ranking Member, Operating; Rivers, Assistant Ranking Member, Capital; Billig, Conway, Dhingra, Hasegawa, Hunt, Keiser, Muzzall, Pedersen, Randall, Saldaña, Torres, Van De Wege, Wagoner and Wellman.

Minority Report: That it be referred without recommendation.

Signed by Senators Schoesler, Ranking Member, Capital; Boehnke and Braun.

Staff: Maria Hovde (786-7474)

Background: Individuals with long-term care needs or developmental disabilities who meet financial and functional eligibility criteria are eligible for in-home personal care services through Medicaid funded programs administered by the Department of Social and Health Services (DSHS). Personal care services include assistance with tasks such as toileting, bathing, dressing, meal preparation and household chores. These services may be provided by an employee of a home care agency or by an individual provider. Individual providers provide these personal care or respite care services under contract with DSHS or as an employee of a consumer-directed employer. An individual provider can be a family or household member of the person receiving care (client). The number of paid hours the individual provider is authorized to work is determined in the client's plan of care, which is developed by the client and DSHS.

Consumer-directed employers are private entities that contract with DSHS to be the legal employer of individual providers for the purpose of administrative functions. The client retains the authority to select, schedule, supervise the work of, and dismiss an individual provider. Individual providers are employees, and the Minimum Wage Act, including overtime provisions, apply to their work.

Under a prior DSHS policy, if the client and the individual provider, who is a family or household member, both benefited from the individual provider's personal care tasks, such as shopping or household chores, there would be a reduction in the number of paid in-home personal care hours for the individual provider. This policy ended after class action suit and a settlement agreement was reached with the plaintiffs.

Summary of Bill: The hours worked by an individual provider in excess of the number of hours authorized in the client's plan of care are not compensable if:

- the individual provider is a family or household member of the client; and
- the client's plan of care is reasonable.

DSHS and the consumer-directed employer may not claim any exemptions from the Minimum Wage Act or any overtime exemption, except for the one established by the bill. Hours worked to address temporary emergencies or unexpected health or safety events that cannot be postponed are not exempt from the Minimum Wage Act and overtime provisions.

A client's plan of care is reasonable if:

- the plan of care includes the same number of paid hours it would have if the individual provider were not the client's family member or household member;
- DSHS does not otherwise require an increase in the hours of unpaid services performed by an individual provider who is a family or household member in order to reduce the number of hours of paid services; and
- the plan of care does not reflect unequal treatment of an individual provider or their client because of their familial or household relationship.

Unequal treatment includes the plan of care including fewer paid hours than it would have if the client's individual provider were not a family or household member or because:

- the individual provider shares in the benefit of the personal care service;
- the client lives in a multicient household and two or more clients share in the benefit of the personal care service; or
- the client receives paid or unpaid assistance by the client's paid provider.

A determination that a plan of care is reasonable does not mean the amount or type of services or paid hours are or are not appropriate for the client under the long-term care statutes. DSHS retains its core responsibility to manage long-term in-home care services and its authority to set a client's benefit level.

The bill is curative and remedial and applies retroactively and prospectively to all actions, regardless of when they were filed, except for actions pertaining to the settlement agreement.

The Minimum Wage Act is amended to make explicit that a consumer-directed employer contracting with the state is an employer of individual providers. The long-term care statutes are amended to specify that a consumer-directed employer is the legal employer for individual providers, and the qualifying phrase "for purposes of performing administrative functions" is removed.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony (Labor & Commerce): PRO: This bill aligns state law with federal guidelines. Individual providers are generally people taking care of elderly parents with dementia or adult kids with disabilities, and they are a critical workforce. The bill clarifies the Minimum Wage Act when IPs are family members, which comprises 72 percent of the total number of IPs.

CON: The bill causes IPs to lose wage protections. Currently, they are being paid under minimum wage, and the bill will allow DSHS to continue to exploit their labor. Federal law still applies. The whole system may collapse if the root cause of the problem is not fixed.

Persons Testifying (Labor & Commerce): PRO: Representative Mary Fosse, Prime Sponsor; Bea Rector, Dept. of Social and Health Services; Alexa Silver, Consumer Direct of Washington.

CON: Loren Freeman.

Persons Signed In To Testify But Not Testifying (Labor & Commerce): No one.

Staff Summary of Public Testimony (Ways & Means): PRO: 72 percent of individual providers in Washington State are caring for a family or household member. This bill is intended to protect the long-term solvency of this program by aligning statute with Department of Labor guidance 79F. The funding in the House budget is sufficient for DSHS to implement this legislation.

CON: The costs of this bill cannot be anticipated and there are two class action lawsuits currently being constructed on behalf of employees who have had their wage protections stripped under this bill. There is also a federal criminal investigation of the state and the consumer directed employer for willful disregard of federal labor law and Medicaid clients will have the ability to sue the state.

Persons Testifying (Ways & Means): PRO: Bea Rector, Dept. of Social and Health Services.

CON: Loren Freeman, None.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.