

RCW 74.39A.270 Individual providers contracted with the department—Collective bargaining—Circumstances in which individual providers are considered public employees—Exceptions—Limitations.

The following provisions apply only to individual providers who are contracted with the department to provide personal care or respite care services:

(1) Solely for the purposes of collective bargaining and as expressly limited under subsections (2) and (3) of this section, the governor is the public employer, as defined in chapter 41.56 RCW, of individual providers, who, solely for the purposes of collective bargaining, are public employees as defined in chapter 41.56 RCW. To accommodate the role of the state as payor for the community-based services provided under this chapter and to ensure coordination with state employee collective bargaining under chapter 41.80 RCW and the coordination necessary to implement RCW 74.39A.300, the public employer shall be represented for bargaining purposes by the governor or the governor's designee appointed under chapter 41.80 RCW. The department shall solicit input from the developmental disabilities council, the governor's committee on disability issues and employment, the state council on aging, and other consumer advocacy organizations to obtain informed input from consumers on their interests, including impacts on consumer choice, for all issues proposed for collective bargaining under subsections (5) and (7) of this section.

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

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

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

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

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

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

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

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

(3) Individual providers who are public employees solely for the purposes of collective bargaining under subsection (1) of this section are not, for that reason, employees of the state, its political subdivisions, or an area agency on aging for any purpose. Chapter 41.56 RCW applies only to the governance of the collective bargaining relationship between the employer and individual providers as provided in subsections (1) and (2) of this section.

(4) Consumers and prospective consumers retain the right to select, hire, supervise the work of, and terminate any individual

provider providing services to them. Consumers may elect to receive long-term in-home care services from individual providers who are not referred to them by the department or a department contractor.

(5) Except as expressly limited in this section and RCW 74.39A.300, the wages, hours, and working conditions of individual providers are determined solely through collective bargaining as provided in this chapter. Except as described in RCW 74.39A.525, no agency or department of the state may establish policies or rules governing the wages or hours of individual providers.

(6) Nothing in this section modifies:

(a) The department's authority to deny individual provider contracts to individuals who will not be able to meet the needs of a consumer or to terminate contracts of individual providers who are not adequately meeting the needs of a particular consumer; or

(b) The consumer's right to: (i) Assign hours to one or more individual providers consistent with the rules adopted under this chapter and his or her plan of care; and (ii) select, hire, terminate, supervise the work of, and determine the conditions of employment for each individual provider providing services to the consumer under this chapter.

(7) At the request of the exclusive bargaining representative, the governor or the governor's designee appointed under chapter 41.80 RCW shall engage in collective bargaining, as defined in RCW 41.56.030(4), with the exclusive bargaining representative over the following subjects:

(a) Employer contributions to the training partnership for the costs of: (i) Meeting all training and peer mentoring requirements under this chapter; and (ii) other training intended to promote the career development of individual providers; and

(b) How the department's core responsibility affects hours of work for individual providers; this subsection shall not be interpreted to require collective bargaining over an individual consumer's plan of care.

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

(9) Nothing in this section affects the state's responsibility with respect to unemployment insurance for individual providers. However, individual providers are not to be considered, as a result of the state assuming this responsibility, employees of the state. [2018 c 278 § 19; 2017 3rd sp.s. c 24 § 1; 2016 sp.s. c 30 § 1; 2011 1st sp.s. c 21 § 10; 2007 c 361 § 7; 2007 c 278 § 3; 2006 c 106 § 1; 2004 c 3 § 1; 2002 c 3 § 6 (Initiative Measure No. 775, approved November 6, 2001).]

Findings—Intent—2018 c 278: See note following RCW 74.39A.500.

Effective date—2017 3rd sp.s. c 24: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [July 6, 2017]." [2017 3rd sp.s. c 24 § 2.]

Effective date—2016 sp.s. c 30: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 18, 2016]." [2016 sp.s. c 30 § 4.]

Overtime emergency rules—2016 sp.s. c 30: "The department of social and health services shall immediately adopt emergency rules under RCW 34.05.350 to limit the number of hours per workweek that the department may pay any single provider to forty hours and to establish criteria to authorize additional hours in accordance with section 1 of this act. The emergency rules shall remain in effect until permanent rules can be adopted." [2016 sp.s. c 30 § 2.]

Effective date—2011 1st sp.s. c 21: See note following RCW 72.23.025.

Effective date—2007 c 361 §§ 7 and 8: "Sections 7 and 8 of this act take effect March 1, 2008." [2007 c 361 § 14.]

Construction—Severability—Captions not law—Short title—2007 c 361: See notes following RCW 74.39A.009.

Effective date—2006 c 106: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 17, 2006]." [2006 c 106 § 2.]

Severability—2004 c 3: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2004 c 3 § 8.]

Effective date—2004 c 3: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 9, 2004]." [2004 c 3 § 9.]