

# HOUSE BILL REPORT

## ESHB 2933

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### As Amended by the Senate

**Title:** An act relating to clarifying collective bargaining processes for individual providers.

**Brief Description:** Clarifying collective bargaining processes for individual providers.

**Sponsors:** By House Committee on Commerce & Labor (originally sponsored by Representatives Conway, Cody, Benson, Ormsby, O'Brien, Sullivan, Wood and Morrell).

### Brief History:

#### Committee Activity:

Commerce & Labor: 2/2/04, 2/5/04 [DPS].

#### Floor Activity:

Passed House: 2/14/04, 95-0.

Senate Amended.

Passed Senate: 2/25/04, 48-0.

### Brief Summary of Engrossed Substitute Bill

- Clarifies the Home Care Quality Authority's (HCQA) responsibilities as an "employer" for collective bargaining with individual home care workers, clarifies authority to determine wages and hours, and expressly excludes these workers from statutes applying to state employees.
- Requires the Governor's Labor Relations Office to conduct bargaining for home care worker collective bargaining agreements, and the Governor to submit the request for funding a collective bargaining agreement to the Legislature in the Governor's budget request, after the Director of the Office of Financial Management certifies the request for funding as feasible or after an arbitration award is made.
- Creates the Joint Committee on Home Care Worker Relations to consult on the compensation package in the collective bargaining agreement.
- Requires an arbitration panel to consider the ability of the state to pay for the compensation package in a collective bargaining agreement and makes an arbitration award contingent on legislative funding of the compensation package.

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## HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Conway, Chair; Wood, Vice Chair; McMorris, Ranking Minority Member; Crouse, Hudgins, Kenney and McCoy.

**Minority Report:** Do not pass. Signed by 2 members: Representatives Condotta, Assistant Ranking Minority Member; and Holmquist.

**Staff:** Chris Cordes (786-7103).

### **Background:**

The state contracts with agency and individual home care workers to provide long-term care services for elderly and disabled clients who are eligible for publicly funded services through the Department of Social and Health Services' (DSHS) Aging and Adult Services and Developmental Disabilities programs. These services are provided through the Medicaid Personal Care program, state-funded programs such as Chore, or under a home and community-based waiver granted by the federal Department of Health and Human Services, which allows the program to continue receiving federal Medicaid funds. Home care workers provide the DSHS clients with personal care assistance with various tasks such as toileting, bathing, dressing, ambulating, meal preparation, and household chores. These individual home care workers are hired and fired by the client, but are paid by the DSHS. The DSHS also pays unemployment insurance contributions to cover these workers.

In November 2001 the voters enacted Initiative Measure No. 775 (I-775). The initiative states that consumers of services retain the right to select, hire, supervise the work of, and terminate any individual home care worker providing them with services. Initiative 775 provides individual home care workers with collective bargaining rights under the Public Employees' Collective Bargaining Act (PECBA). It also created the Home Care Quality Authority (HCQA) as an agency of state government to provide oversight of home care services and, for purposes of collective bargaining, to function as the "employer" of approximately 26,000 individual home care workers. Initiative 775 states that the individual home care workers are not, because of these provisions, employees of the state for any purpose.

Individual home care workers do not have the right to strike and are covered by the binding interest arbitration provisions of the PECBA.

Under I-775, the Governor must submit a request to the Legislature for the funds and any legislative changes necessary to implement a collective bargaining agreement covering individual home care workers within 10 days of the agreement's ratification. The Legislature may only approve or reject the submission of the request for funds as a

whole. If the Legislature rejects or fails to act on the submission, the collective bargaining agreement will be reopened solely for the purpose of renegotiating the funds necessary to implement the agreement.

In August 2002 the individual home care workers voted to unionize. An initial contract submitted to the Legislature in January 2003 was returned to the parties for renegotiation after the Legislature adjourned without approving the funds for the contract.

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## **Summary of Engrossed Substitute Bill:**

### Collective Bargaining Relationship

The HCQA's responsibilities for collective bargaining with individual home care workers are clarified. To accommodate the state's role as payor of the community-based services and to ensure coordination with the process for bringing funding requests to the Legislature, the Governor's Labor Relations Office (Office) must conduct the bargaining for a home care worker collective bargaining agreement. The Office must consult with the HCQA before an agreement is reached.

Individual provider wages, hours, and working conditions are determined solely through collective bargaining. Except for the HCQA, no agency may establish policies or rules governing wages or hours of individual home care workers. However, to recognize the obligation of the DSHS to comply with conditions of the federal Medicaid waiver, including those related to client safety and quality of care, and to ensure federal financial participation, the DSHS retains authority to establish a consumer's plan of care and determine the hours of care for a consumer and to terminate or deny contracts with individual providers.

It is expressly stated that the collective bargaining law governs the collective bargaining relationship, not the employment relationship, between the parties. The individual home care workers are employees of the HCQA only for collective bargaining purposes and are not, for that reason, employees of the state, its political subdivisions, or an area agency on aging for any purpose.

Individual home care workers are not to be considered state employees as a result of the state assuming responsibility for individual home care worker's unemployment insurance. Individual home care workers are expressly excluded from the statutory provisions that apply to state employees, such as civil service, pension programs, and other employee benefit programs.

### Collective Bargaining Process

Collective bargaining for home care worker agreements must begin by May 1 of the year

before the year in which an existing collective bargaining agreement expires.

The Governor's submission of a request for funding to implement a collective bargaining agreement covering individual home care workers must be submitted as part of the Governor's budget proposal to the Legislature. Before the request may be submitted, the request must: (1) be submitted to the Office of Financial Management (OFM) by October 1 prior to the legislative session at which the request will be considered, and (2) be certified by the Director of the OFM as being feasible financially for the state or be an arbitration award.

The Joint Committee on Home Care Worker Relations (Committee) is created. The Committee consists of two members with leadership positions representing each of the two largest caucuses in each house of the Legislature and the chair and ranking minority members of the House Appropriations and Senate Ways and Means Committees. The HCQA must periodically consult with the Committee regarding the compensation and fringe benefit provisions of a collective bargaining agreement and, after completing negotiations, advise the Committee of the elements of the agreement and any legislation necessary to implement the agreement.

#### Arbitration Standards

When an arbitration panel determines a dispute arising from a bargaining impasse involving individual home care workers, the panel must consider the financial ability of the state to pay for compensation and fringe benefit provisions.

The decision of an arbitration panel is not binding on the Legislature and, if the Legislature does not fund the compensation and fringe benefit provisions, the decision is not binding on the HCQA or the state.

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#### **EFFECT OF SENATE AMENDMENT(S):**

Bargaining responsibilities: (1) makes the Governor the "public employer" of individual home care workers for purposes of collective bargaining; (2) requires consultation to be with the Joint Committee on Employment Relations established under the Personnel System Reform Act of 2002; and (3) changes consultation with the HCQA during bargaining to be for the purpose of communicating issues relating to the long-term in-home care services received by consumers.

Bargaining process: (1) adds that collective bargaining does not modify (in addition to those factors already listed) the consumer's right to assign hours to one or more individual home care workers within the maximum hours in the plan of care or the Legislature's right to make programmatic modifications to the delivery of state services (a right that must be reserved in collective bargaining agreements); (2) adds that if a

significant revenue shortfall occurs after the Legislature approves a compensation/fringe benefit package, the parties must negotiate a mutually agreed to modification; and (3) adds that if an individual home care worker collective bargaining agreement is found to be in conflict with federal requirements relating to federal funding, the conflicting part is inoperative.

Liability: (1) adds that the state and the DSHS, as well as the HCQA and Area Agencies on Aging, are not vicariously or jointly liable for the action or inaction of an individual home care worker; and (2) adds that the fact that the following exist does not create a special relationship with the consumer: a collective bargaining agreement, placement of a home care worker on the registry, or the development of a plan of care for a consumer who chooses to use an individual home care worker or provision of case management services to that consumer.

Other: adds a severability clause and an emergency clause with an immediate effective date.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** The bill is a response to concerns raised during the 2003 session. It attempts to resolve questions about the employment status of the individual home care workers. Even though these workers are not employees of the state, the bill adds clarity. It also allows for earlier legislative input into the bargaining process and for bringing the request for funding to the Legislature in a balanced budget. The concern raised by the HCQA about whether an arbitrator's award would be binding on the HCQA if funding was not approved should be addressed in an amendment. Another amendment should be adopted to make it clear that individual home care worker hours cannot be changed by unilateral agency action.

**Testimony Against:** None.

**Persons Testifying:** (In support) David Rolf, Service Employees International Union.

(In support, with concerns) Mindy Schaffner, Home Care Quality Authority.

**Persons Signed In To Testify But Not Testifying:** None.