

SENATE BILL REPORT

ESHB 2933

As Reported By Senate Committee On:
Ways & Means, February 23, 2004

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

Brief Description: Clarifying collective bargaining processes for individual providers.

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

Brief History:

Committee Activity: Ways & Means: 2/18/04, 2/23/04 [DPA].

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.

Signed by Senators Zarelli, Chair; Hewitt, Vice Chair; Parlette, Vice Chair; Carlson, Doumit, Fairley, Fraser, Hale, Johnson, Pflug, Prentice, Rasmussen, Regala, Roach, Sheahan, B. Sheldon and Winsley.

Staff: Steve Jones (786-7440)

Background: The state contracts with home care workers to provide long-term care services for elderly and disabled clients who are eligible for Medicaid through the Department of Social and Health Services' (DSHS) Aging and Adult Services and Developmental Disabilities programs. 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. The state contracts with both individual home care workers and with private agencies providing these services. Individual home care workers are employed by the client, but are paid by DSHS. Case management services are provided by local area agencies on ageing. DSHS also pays unemployment insurance and social security contributions to cover these workers.

In November 2001, the voters enacted Initiative Measure No. 775 (I-775), which provides individual home care workers with collective bargaining rights under the Public Employees' Collective Bargaining Act (PECBA). The initiative states that consumers of services retain the right to select, hire, supervise the work of, and terminate any individual home care workers providing them with services. The initiative also establishes 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. I-775 states that the individual home care workers are not, because of these provisions, employees of the state for any other purpose. Individual home care workers do not have the right to strike and are covered by the binding interest arbitration provisions of the PECBA.

Upon completion of collective bargaining between the HCQA and the bargaining representative of the individual home care workers, I-775 requires the Governor to submit to the Legislature a request for the funds and any legislation necessary to implement the collective bargaining agreement. 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 request, the collective bargaining agreement is 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. A request to fund a new collective bargaining agreement has been submitted to the 2004 Legislature.

Beginning in July 2004, as a result of the Personnel System Reform Act of 2002, state employees will have the power to collectively bargain over wages, hours, and working conditions. The collective bargaining process for state employees is similar to the process for individual home care workers, with several differences: (1) collective bargaining with state employees is conducted by the Governor or the Governor's designee, with advice from a legislative Joint Committee on Employment Relations, (2) state employees' collective bargaining is not subject to binding interest arbitration, (3) the Governor must submit the funding of the state employees' collective bargaining agreement as part of his or her biennial budget request to the Legislature, and (4) contracts with state employees may be reopened in the event of a significant shortfall in state revenue.

Summary of Amended Bill: Collective Bargaining Relationship. The Home Care Quality Authority's (HCQA) responsibilities for collective bargaining with individual home care workers are clarified. 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 public employees 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 considered state employees as a result of state contributions for unemployment insurance, and individual home care workers are expressly excluded from other statutes that apply to state employees, such as civil service, retirement benefits, and other public employee benefit programs.

The wages, hours, and working conditions of individual home care workers are determined solely by the collective bargaining process. However, pursuant to federal requirements relating to client safety, quality of care, and federal financial participation, DSHS retains the authority to establish each consumer's plan of care and to terminate contracts with workers who are unable to adequately meet the consumer's needs.

Collective Bargaining Process. Negotiations with the bargaining representative of individual home care workers will be conducted by the Governor's designee and bargaining must begin by May 1 of the year prior to the expiration of any existing agreement.

If binding arbitration is invoked, the arbitration panel must consider the financial ability of the state to pay for the agreement. The arbitration decision is not binding on the Legislature.

The Governor's 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 be certified by the Director of the Office of Financial Management as being feasible financially for the state, unless the request is the result of an arbitration award.

In the collective bargaining process, the Governor's designee is required to consult with the Home Care Quality Authority and the Joint Committee on Employment Relations established under the state employee collective bargaining statute.

Contract negotiations will be reopened in the event of a significant state revenue shortfall, as determined by a declaration of the Governor of the Legislature.

Notwithstanding a collective bargaining agreement, the Legislature reserves its right to make statutory changes to the in-home care services program.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: The bill is a bipartisan effort to increase the accountability of the home care collective bargaining process while simultaneously shielding the state from concerns that the home care workers may be deemed to be state employees. Putting the Governor in the front end of the bargaining negotiations is appropriate since the Governor will be required to include the funding in his or her budget submittal to the Legislature. To address legislative concerns raised in 2003, the collective bargaining process for home care workers is being revised to reflect the process to be used for state employees. Binding arbitration, while not available to state employees, is a trade-off for the statutory prohibition on labor strikes. DSHS is concerned about recognizing its authority to apportion the consumer's hours of care among several workers in order to protect the consumer's health and safety, while preserving the consumer's right to select the caregiver. The state should not be exposed to vicarious liability for the actions of caregivers selected by the consumer. The bill should not be amended to weaken the collective bargaining process. The Home Care Quality Authority has a role to play as representing the interests of consumers in maintaining quality care.

Testimony Against: None.

Testified: Representatives Steve Conway and Bill Fromhold; Marty Brown, Office of Financial Management; Mindy Schaffner, Home Care Quality Authority; Penny Black, Department of Social and Health Services; David Rolf, Service Employees International Union.