

**ESHB 2475 - S AMD 397**

By Senator Kohl-Welles

ADOPTED 03/07/2006

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 74.39A.270 and 2004 c 3 s 1 are each amended to read  
4 as follows:

5 (1) Solely for the purposes of collective bargaining and as  
6 expressly limited under subsections (2) and (3) of this section, the  
7 governor is the public employer, as defined in chapter 41.56 RCW, of  
8 individual providers, who, solely for the purposes of collective  
9 bargaining, are public employees as defined in chapter 41.56 RCW. To  
10 accommodate the role of the state as payor for the community-based  
11 services provided under this chapter and to ensure coordination with  
12 state employee collective bargaining under chapter 41.80 RCW and the  
13 coordination necessary to implement RCW 74.39A.300, the public employer  
14 shall be represented for bargaining purposes by the governor or the  
15 governor's designee appointed under chapter 41.80 RCW. The governor or  
16 governor's designee shall periodically consult with the authority  
17 during the collective bargaining process to allow the authority to  
18 communicate issues relating to the long-term in-home care services  
19 received by consumers. The governor or the governor's designee shall  
20 consult the authority on all issues for which the exclusive bargaining  
21 representative requests to engage in collective bargaining under  
22 subsection (6) of this section. The authority shall work with the  
23 developmental disabilities council, the governor's committee on  
24 disability issues and employment, the state council on aging, and other  
25 consumer advocacy organizations to obtain informed input from consumers  
26 on their interests, including impacts on consumer choice, for all  
27 issues proposed for collective bargaining under subsection (6) of this  
28 section.

29 (2) Chapter 41.56 RCW governs the collective bargaining

1 relationship between the governor and individual providers, except as  
2 otherwise expressly provided in this chapter and except as follows:

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

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

9 (c) The mediation and interest arbitration provisions of RCW  
10 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

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

15 (ii) With respect to factors to be taken into consideration by an  
16 interest arbitration panel, the panel shall consider the financial  
17 ability of the state to pay for the compensation and fringe benefit  
18 provisions of a collective bargaining agreement; and

19 (iii) The decision of the arbitration panel is not binding on the  
20 legislature and, if the legislature does not approve the request for  
21 funds necessary to implement the compensation and fringe benefit  
22 provisions of the arbitrated collective bargaining agreement, is not  
23 binding on the authority or the state;

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

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

28 (3) Individual providers who are public employees solely for the  
29 purposes of collective bargaining under subsection (1) of this section  
30 are not, for that reason, employees of the state, its political  
31 subdivisions, or an area agency on aging for any purpose. Chapter  
32 41.56 RCW applies only to the governance of the collective bargaining  
33 relationship between the employer and individual providers as provided  
34 in subsections (1) and (2) of this section.

35 (4) Consumers and prospective consumers retain the right to select,  
36 hire, supervise the work of, and terminate any individual provider  
37 providing services to them. Consumers may elect to receive long-term

1 in-home care services from individual providers who are not referred to  
2 them by the authority.

3 (5) In implementing and administering this chapter, neither the  
4 authority nor any of its contractors may reduce or increase the hours  
5 of service for any consumer below or above the amount determined to be  
6 necessary under any assessment prepared by the department or an area  
7 agency on aging.

8 (6) Except as expressly limited in this section and RCW 74.39A.300,  
9 the wages, hours, and working conditions of individual providers are  
10 determined solely through collective bargaining as provided in this  
11 chapter. No agency or department of the state(~~(, other than the~~  
12 ~~authority,~~) may establish policies or rules governing the wages or  
13 hours of individual providers. However, this subsection does not  
14 modify:

15 (a) The department's authority to establish a plan of care for each  
16 consumer (~~(and to determine the hours)~~) or its core responsibility to  
17 manage long-term in-home care services under this chapter, including  
18 determination of the level of care that each consumer is eligible to  
19 receive. However, at the request of the exclusive bargaining  
20 representative, the governor or the governor's designee appointed under  
21 chapter 41.80 RCW shall engage in collective bargaining, as defined in  
22 RCW 41.56.030(4), with the exclusive bargaining representative over how  
23 the department's core responsibility affects hours of work for  
24 individual providers. This subsection shall not be interpreted to  
25 require collective bargaining over an individual consumer's plan of  
26 care;

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

30 (c) The consumer's right to assign hours to one or more individual  
31 providers selected by the consumer within the maximum hours determined  
32 by his or her plan of care;

33 (d) The consumer's right to select, hire, terminate, supervise the  
34 work of, and determine the conditions of employment for each individual  
35 provider providing services to the consumer under this chapter;

36 (e) The department's obligation to comply with the federal medicaid  
37 statute and regulations and the terms of any community-based waiver

1 granted by the federal department of health and human services and to  
2 ensure federal financial participation in the provision of the  
3 services; and

4 (f) The legislature's right to make programmatic modifications to  
5 the delivery of state services under this title, including standards of  
6 eligibility of consumers and individual providers participating in the  
7 programs under this title, and the nature of services provided. The  
8 governor shall not enter into, extend, or renew any agreement under  
9 this chapter that does not expressly reserve the legislative rights  
10 described in this subsection (6)(f).

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

24 (b) The members of the board are immune from any liability  
25 resulting from implementation of this chapter.

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

30 NEW SECTION. **Sec. 2.** This act is necessary for the immediate  
31 preservation of the public peace, health, or safety, or support of the  
32 state government and its existing public institutions, and takes effect  
33 immediately."

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1        On page 1, line 2 of the title, after "providers;" strike the  
2 remainder of the title and insert "amending RCW 74.39A.270; and  
3 declaring an emergency."

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