

2SHB 1725 - H AMD 981

By Representative Cody

ADOPTED 03/29/2016

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

3 "Sec. 1. RCW 74.39A.270 and 2011 1st sp.s. c 21 s 10 are each
4 amended to read 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
14 employer shall be represented for bargaining purposes by the governor
15 or the governor's designee appointed under chapter 41.80 RCW. The
16 governor or governor's designee shall periodically consult with the
17 authority during the collective bargaining process to allow the
18 authority to communicate issues relating to the long-term in-home
19 care services received by consumers. The department shall solicit
20 input from the developmental disabilities council, the governor's
21 committee on disability issues and employment, the state council on
22 aging, and other consumer advocacy organizations to obtain informed
23 input from consumers on their interests, including impacts on
24 consumer choice, for all issues proposed for collective bargaining
25 under subsections (5) and (6) of this section.

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

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

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

4 (c) The mediation and interest arbitration provisions of RCW
5 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

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

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

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

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

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

27 (4) Consumers and prospective consumers retain the right to
28 select, hire, supervise the work of, and terminate any individual
29 provider providing services to them. Consumers may elect to receive
30 long-term in-home care services from individual providers who are not
31 referred to them by the authority.

32 (5) Except as expressly limited in this section and RCW
33 74.39A.300, the wages, hours, and working conditions of individual
34 providers are determined solely through collective bargaining as
35 provided in this chapter. Except as described in subsection (9) of
36 this section, no agency or department of the state may establish
37 policies or rules governing the wages or hours of individual
38 providers. ((However,)) This subsection does not modify:

39 (a) The department's authority to establish a plan of care for
40 each consumer or its core responsibility to manage long-term in-home

1 care services under this chapter, including determination of the
2 level of care that each consumer is eligible to receive. However, at
3 the request of the exclusive bargaining representative, the governor
4 or the governor's designee appointed under chapter 41.80 RCW shall
5 engage in collective bargaining, as defined in RCW 41.56.030(4), with
6 the exclusive bargaining representative over how the department's
7 core responsibility affects hours of work for individual providers.
8 This subsection shall not be interpreted to require collective
9 bargaining over an individual consumer's plan of care;

10 (b)(i) The requirement that the number of hours the department
11 may pay any single individual provider is limited to:

12 (A) Sixty hours each workweek if the individual provider was
13 working an average number of hours in excess of forty hours for the
14 workweeks during January 2016, except for fiscal years 2016 and 2017,
15 the limit is sixty-five hours each workweek; or

16 (B) Forty hours each workweek if the individual provider was not
17 working an average number of hours in excess of forty hours for the
18 workweeks during January 2016, or had no reported hours for the month
19 of January 2016.

20 (ii) Additional hours may be authorized under criteria
21 established by rules adopted by the department under subsection (9)
22 of this section.

23 (iii) Additional hours may be authorized for required training
24 under RCW 74.39A.074, 74.39A.076, and 74.39A.341.

25 (iv) An individual provider may appeal to the department for
26 qualification for the hour limitation in (b)(i)(A) of this subsection
27 if the average weekly hours the provider was working in January 2016
28 materially underrepresent the average weekly hours worked by the
29 individual provider during the first three months of 2016.

30 (v) No individual provider is subject to the hour limitations in
31 (b)(i)(A) of this subsection until the department has conducted a
32 review of the plan of care for the consumers served by the provider.
33 The department shall review plans of care expeditiously, starting
34 with consumers connected with the most individual provider overtime;

35 (c) The requirement that the total number of additional hours in
36 excess of forty hours authorized under (b) of this subsection and
37 subsection (9) of this section are limited by the total hours as
38 provided in subsection (10) of this section;

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

4 ~~((e))~~ (e) The consumer's right to assign hours to one or more
5 individual providers ~~((selected by the consumer within the maximum
6 hours determined by))~~ consistent with the rules adopted under this
7 chapter and his or her plan of care;

8 ~~((d))~~ (f) The consumer's right to select, hire, terminate,
9 supervise the work of, and determine the conditions of employment for
10 each individual provider providing services to the consumer under
11 this chapter;

12 ~~((e))~~ (g) The department's obligation to comply with the
13 federal medicaid statute and regulations and the terms of any
14 community-based waiver granted by the federal department of health
15 and human services and to ensure federal financial participation in
16 the provision of the services; and

17 ~~((f))~~ (h) The legislature's right to make programmatic
18 modifications to the delivery of state services under this title,
19 including standards of eligibility of consumers and individual
20 providers participating in the programs under this title, and the
21 nature of services provided. The governor shall not enter into,
22 extend, or renew any agreement under this chapter that does not
23 expressly reserve the legislative rights described in this subsection
24 (5)~~((f))~~ (h).

25 (6) At the request of the exclusive bargaining representative,
26 the governor or the governor's designee appointed under chapter 41.80
27 RCW shall engage in collective bargaining, as defined in RCW
28 41.56.030(4), with the exclusive bargaining representative over
29 employer contributions to the training partnership for the costs of:
30 (a) Meeting all training and peer mentoring required under this
31 chapter; and (b) other training intended to promote the career
32 development of individual providers.

33 (7) The state, the department, the area agencies on aging, or
34 their contractors under this chapter may not be held vicariously or
35 jointly liable for the action or inaction of any individual provider
36 or prospective individual provider, whether or not that individual
37 provider or prospective individual provider was included on the
38 referral registry or referred to a consumer or prospective consumer.
39 The existence of a collective bargaining agreement, the placement of
40 an individual provider on the referral registry, or the development

1 or approval of a plan of care for a consumer who chooses to use the
2 services of an individual provider and the provision of case
3 management services to that consumer, by the department or an area
4 agency on aging, does not constitute a special relationship with the
5 consumer.

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

10 (9) The department may not pay any single individual provider
11 more than the hours listed in subsection (5)(b) of this section
12 unless the department authorizes additional hours under criteria
13 established by rule. The criteria must be limited in scope to reduce
14 the state's exposure to payment of overtime, address travel time from
15 worksite to worksite, and address the following needs of consumers:

16 (a) Ensuring that consumers are not at increased risk for
17 institutionalization;

18 (b) When there is a limited number of providers within the
19 geographic region of the consumer;

20 (c) When there is a limited number of providers available to
21 support a consumer with complex medical and behavioral needs or
22 specific language needs;

23 (d) Emergencies that could pose a health and safety risk for
24 consumers; and

25 (e) Instances where the cost of the allowed hour is less than
26 other alternatives to provide care to a consumer, distinct from any
27 increased risk of institutionalization.

28 (10)(a) Each fiscal year, the department shall establish a
29 spending plan and a system to monitor the authorization and cost of
30 hours in excess of forty hours each workweek from subsections (5)(b)
31 and (9) of this section beginning July 1, 2016, and each fiscal year
32 thereafter. Expenditures for hours in excess of forty hours each
33 workweek under subsections (5)(b) and (9) of this section shall not
34 exceed 8.75 percent of the total average authorized personal care
35 hours for the fiscal year as projected by the caseload forecast
36 council. The caseload forecast council may adopt a temporary
37 adjustment to the 8.75 percent of the total average hours projection
38 for that fiscal year, up to a maximum of 10.0 percent, if it finds a
39 higher percentage of overtime hours is necessitated by a shortage of
40 individual providers to provide adequate client care, taking into

1 consideration factors including the criteria in subsection (9) of
2 this section. If the council elects to temporarily increase the
3 limit, it may do so only upon a majority vote of the council.

4 (b) The department also shall provide expenditure reports
5 beginning September 1, 2016, and on a quarterly basis thereafter. If
6 the department determines, based upon quarterly expenditure reports,
7 that the annual expenditures will exceed the limitation established
8 in (a) of this subsection, the department shall take those actions
9 necessary to ensure compliance with the limitation.

10 (c) The spending plan and expenditure reports must be submitted
11 to the legislative fiscal committees and the joint legislative-
12 executive overtime oversight task force. The joint legislative-
13 executive overtime oversight task force members are as follows:

14 (i) Two members from each of the two largest caucuses of the
15 senate, appointed by the respective caucus leaders.

16 (ii) The speaker of the house of representatives shall appoint
17 two members from each of the two largest caucuses of the house of
18 representatives.

19 (iii) The governor shall appoint members representing the
20 department of social and health services and the office of financial
21 management.

22 (iv) The governor shall appoint two members representing
23 individual providers and two members representing consumers receiving
24 personal care or respite care services from an individual provider.

25 (d) The task force shall meet at least annually, but may meet
26 more frequently as desired by the task force. The task force shall
27 choose cochairs, one from among the legislative members and one from
28 among the executive branch members.

29 (e) The department is authorized to adopt rules, including
30 emergency rules under RCW 34.05.350, to implement this subsection.

31 NEW SECTION. Sec. 2. The department of social and health
32 services shall immediately adopt emergency rules under RCW 34.05.350
33 to limit the number of hours per workweek that the department may pay
34 any single provider to forty hours and to establish criteria to
35 authorize additional hours in accordance with section 1 of this act.
36 The emergency rules shall remain in effect until permanent rules can
37 be adopted.

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 74.39A
2 RCW to read as follows:

3 In order to monitor quality of care and safety of consumers,
4 employment conditions of individual providers, and compliance with
5 the provisions of payment of hours in excess of forty hours each
6 workweek for any single provider, the department must provide
7 quarterly expenditure reports to the legislative fiscal committees
8 and joint legislative-executive overtime oversight task force created
9 in RCW 74.39A.270(10). The report must contain the following
10 information:

11 (1) The number of providers receiving payment for more than forty
12 hours in a workweek, specifying how many of those providers were
13 eligible for those hours due to meeting the conditions of RCW
14 74.39A.270 (5)(b)(i)(A), (b)(ii), (b)(iii), and (9).

15 (2) The number of hours paid and the amount paid for hours in
16 excess of forty hours in a workweek, specifying how many of those
17 hours and payments were for providers eligible for those hours and
18 payments due to meeting the conditions of RCW 74.39A.270
19 (5)(b)(i)(A), (b)(ii), (b)(iii), and (9).

20 (3) In reporting the information required in subsections (1) and
21 (2) of this section, the department must provide total amounts,
22 averages, and a display of the distribution of the amounts.

23 (4) The information required must be provided by department
24 region and county of client, department program, and must be
25 specified for providers by the number of clients they serve.

26 (5) Any personally identifiable information of consumers and
27 individual providers used to develop this report is confidential and
28 exempt from public disclosure, inspection, or copying under chapter
29 42.56 RCW. However, information may be released in aggregate form,
30 with any personally identifiable information redacted, for the
31 purpose of statistical analysis and oversight of agency performance
32 and actions.

33 NEW SECTION. **Sec. 4.** This act is necessary for the immediate
34 preservation of the public peace, health, or safety, or support of
35 the state government and its existing public institutions, and takes
36 effect immediately."

37 Correct the title.

EFFECT: (1) Authorizes the Department of Social and Health Services (DSHS) to establish rules that limit the number of hours it may pay any single Individual Provider (IP) and limits total overtime hours to 8.75% of all projected personal care hours for each fiscal year. Provides DSHS with emergency rulemaking authority until permanent rules can be adopted.

(2) Establishes total weekly hour limits, with exceptions, per IP for IPs in two categories:

(a) 65 hours total in FY 2016 and FY 2017 and 60 hours total in FY 2018 and ongoing for IPs who worked above 40 hours per week on average in January 2016; and

(b) 40 hours total for IPs who worked 0-40 hours per week on average in January 2016.

(c) Allows DSHS to authorize additional hours above these limits for required training, for certain appeals, before an IP's client's plan of care has been reviewed, and to meet needs of consumers such as ensuring that consumers are not at increased risk of institutionalization or when there is a limited number of IPs within a consumer's geographic area.

(3) Authorizes the Caseload Forecast Council, upon a majority vote, to adopt a temporary adjustment to the 8.75% limit on overtime hours as a share of total personal care hours, up to a ceiling of 10%, if it finds that a higher percentage of overtime hours is necessitated by a shortage of IPs to provide adequate client care.

(4) Requires DSHS to establish an annual spending plan and system for monitoring the authorization and cost of IP overtime hours beginning in FY 2017, and to provide quarterly overtime expenditure reports.

(5) Creates a Joint Legislative-Executive Overtime Oversight Task Force with membership from the two Senate caucuses, two House caucuses, DSHS, the Office of Financial Management, and representatives of IPs and personal care consumers.

--- END ---