

# HOUSE BILL REPORT

## HB 1725

---

### As Reported by House Committee On: Labor

**Title:** An act relating to the consumer's right to assign hours to individual providers and the department of social and health services' authority to adopt rules related to payment of individual providers.

**Brief Description:** Concerning a consumer's right to assign hours to individual providers and the department of social and health services' authority to establish criteria regarding the payment of individual providers.

**Sponsors:** Representatives Cody and Tharinger; by request of Department of Social and Health Services.

#### **Brief History:**

##### **Committee Activity:**

Labor: 2/9/15, 2/10/15, 2/12/15 [DP].

#### **Brief Summary of Bill**

- Provides that the Department of Social and Health Services (Department) may adopt rules establishing criteria for the number of hours per week the Department may pay an individual provider.
- Provides that the consumer's right to assign hours to individual providers must be consistent with the Department's rules and criteria, rather than based on the maximum hours determined by the consumer's care plan.

---

### HOUSE COMMITTEE ON LABOR

**Majority Report:** Do pass. Signed by 4 members: Representatives Sells, Chair; Gregerson, Vice Chair; Moeller and Ormsby.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Manweller, Ranking Minority Member; G. Hunt, Assistant Ranking Minority Member; McCabe.

**Staff:** Trudes Tango (786-7384).

---

*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Background:**

Aging persons on Medicaid and people with developmental disabilities are eligible to receive in-home care services. The Department of Social and Health Services (Department) assesses these eligible persons (consumers) to determine the level of their in-home care needs. The consumers may choose to receive services either from an individual provider (IP) or agency providers. Consumers have the right to select, hire, supervise the work of, and terminate any IP providing services to them. The state is the employer only for the purposes of collective bargaining.

Wages, hours, and working conditions of IPs are determined through the collective bargaining process. The statute specifically provides that no state agency or department may establish policies or rules governing the wages or hours of IPs. The consumer has the right to assign hours to one or more IPs selected by the consumer, within the maximum hours determined by the consumer's care plan.

The Fair Labor Standards Act (FLSA) specifically exempts from federal overtime laws domestic service workers who provide "companionship services" to the elderly and people with illnesses, injuries, or disabilities. In 2014 the United States Department of Labor (DOL) adopted rules to amend the definition of "companionship services" so that direct care workers, such as IPs, would be provided overtime pay. Those rules were set to go into effect January 1, 2015; however, a federal court held that the DOL's rules were inconsistent with the language in the FLSA and Congress' intent. The court vacated the rules, and the case has been appealed.

The most recent collective bargaining agreement governing IPs in Washington provides for overtime pay, but only if the statute authorizing the consumer to assign hours to IPs is amended to allow the state to manage the hours of IPs on a weekly basis.

---

**Summary of Bill:**

The statute is amended to give the Department authority to adopt rules establishing criteria regarding the number of hours per week the Department may pay any single IP. In addition, the consumer's right to assign hours to IPs of the consumer's choice must be consistent with the rules and criteria adopted by the Department.

---

**Appropriation:** None.**Fiscal Note:** Available.**Effective Date:** The bill contains an emergency clause and takes effect immediately.**Staff Summary of Public Testimony:**

(In support) There are approximately 35,000 independent providers in the state. Originally, independent providers were exempt from overtime requirements, but the federal rule was revised and then vacated by the federal court. That decision is on appeal. There would be a significant fiscal impact to have overtime apply to independent providers. The Department of Social and Health Services (DSHS) needs authority to manage the use of overtime.

(With concerns) Additional workers would have to be brought in to meet consumers' needs. It's up to the consumer to find a caregiver and direct their own care. Recruitment and retention are issues. Consumers need flexibility when using providers. If a consumer has high needs that require many hours of care, restricting overtime will lead to situations where the consumer will not be able to find a provider. The bill should ensure that the DSHS has flexibility for high need consumers.

(Opposed) Allowing the DSHS to manage the hours of small businesses is hamstringing. It will create a headache for management.

**Persons Testifying:** (In support) Representative Cody, prime sponsor; and Bill Moss, Department of Social and Health Services.

(With concerns) Nathan Loose; and David Lord, Disability Rights Washington.

(Opposed) Loren Freeman, Freeman and Associates.

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