
SENATE BILL 6350

State of Washington

60th Legislature

2008 Regular Session

By Senators Prentice, Keiser, and Kohl-Welles

Read first time 01/15/08. Referred to Committee on Labor, Commerce, Research & Development.

1 AN ACT Relating to adult family home caregivers; amending RCW
2 74.39A.240, 74.39A.280, 41.56.113, 41.56.029, 41.04.810, 43.01.047,
3 74.39A.009, 74.39A.350, and 74.39A.360; reenacting and amending RCW
4 43.79A.040; adding new sections to chapter 74.39A RCW; creating new
5 sections; and providing an effective date.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 **PART I - DEFINITIONS**

8 **Sec. 1.** RCW 74.39A.240 and 2002 c 3 s 3 are each amended to read
9 as follows:

10 The definitions in this section apply throughout RCW 74.39A.030
11 ~~((and))~~, 74.39A.095 ~~((and))~~, 74.39A.220 through 74.39A.300, sections 2
12 through 4, 6, 7, and 9 of this act, 41.56.026, 41.56.113, 70.127.041,
13 and 74.09.740 unless the context clearly requires otherwise.

14 (1) "Adult family home provider" means the same as in RCW
15 41.56.030.

16 (2) "Authority" means the home care quality authority.

17 ~~((+2))~~ (3) "Board" means the board created under RCW 74.39A.230.

1 ~~((3))~~ (4) "Caregiver" means a caregiver, as defined in RCW
2 70.128.230, who is employed by an adult family home provider.
3 "Caregiver" does not include adult family home providers.

4 (5) "Consumer" means a person to whom an individual provider or
5 caregiver provides any such services.

6 ~~((4))~~ (6) "Individual provider" means a person, including a
7 personal aide, who has contracted with the department to provide
8 personal care or respite care services to ~~((functionally disabled))~~
9 persons with functional disabilities under the medicaid personal care,
10 community options program entry system, chore services program, or
11 respite care program, or to provide respite care or residential
12 services and support to persons with developmental disabilities under
13 chapter 71A.12 RCW, or to provide respite care as defined in RCW
14 74.13.270.

15 **PART II - CAREGIVER REGISTRY**

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

18 ESTABLISHMENT OF REFERRAL REGISTRY. (1) The authority shall
19 establish a single, centralized referral registry, known as the "adult
20 family home caregiver recruitment center," to carry out the duties in
21 this section.

22 (2) The authority shall request and every adult family home
23 provider shall provide a list of all current caregivers annually by
24 July 1st, except that initially the lists shall be provided within
25 thirty days of the effective date of this section. The list shall
26 include the names and addresses of such caregivers, as well as
27 information necessary to determine whether the caregiver or prospective
28 caregiver has met the minimum requirements for training set forth in
29 RCW 74.39A.050 and has satisfactorily undergone a criminal background
30 check within the prior twelve months.

31 (3) Before placing a caregiver or prospective caregiver on the
32 referral registry, the authority shall determine that the caregiver or
33 prospective caregiver has met the minimum requirements for training set
34 forth in RCW 74.39A.050, has satisfactorily undergone a criminal
35 background check within the prior twelve months, and is not listed on
36 any long-term care abuse and neglect registry used by the department.

1 (4) The authority shall not deny any caregivers or prospective
2 caregivers referred by adult family home providers a place on the
3 registry, unless the caregiver or prospective caregiver fails to meet
4 the minimum requirements set forth in subsection (3) of this section.

5 (5) The authority shall remove from the referral registry any
6 caregiver or prospective caregiver the authority determines not to meet
7 the minimum requirements set forth in subsection (3) of this section or
8 to have committed misfeasance or malfeasance in the performance of his
9 or her duties as a caregiver. The caregiver or prospective caregiver
10 may request a fair hearing to contest the removal from the referral
11 registry, as provided in chapter 34.05 RCW.

12 (6) The authority shall provide assistance to adult family home
13 providers and prospective adult family home providers in finding
14 caregivers and prospective caregivers through the referral registry.

15 (7) The authority shall, to the extent authorized by caregivers and
16 prospective caregivers, provide routine, emergency, and respite
17 referrals of caregivers and prospective caregivers to adult family home
18 providers and prospective adult family home providers.

19 (8) The authority shall, upon request, provide to a labor
20 organization seeking to organize caregivers a list of all caregivers
21 and prospective caregivers on the referral registry. The list shall
22 contain the names and addresses of such caregivers.

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

25 PROVIDER DUTIES. (1) Every adult family home provider shall pay to
26 each caregiver wages at a rate of not less than nine dollars per hour.

27 (2) Beginning October 1, 2009, every adult family home provider
28 shall contract with the authority for all hours of care provided by
29 each caregiver.

30 NEW SECTION. **Sec. 4.** A new section is added to chapter 74.39A RCW
31 to read as follows:

32 AUTHORITY DUTIES. Beginning October 1, 2009, the authority must
33 carry out the following duties:

34 (1) Establish qualifications and reasonable standards for
35 accountability for, and investigate the background of, caregivers and
36 prospective caregivers, except in cases where, after the department has

1 sought approval of any appropriate amendments or waivers under RCW
2 74.09.740, federal law or regulation requires that such qualifications
3 and standards for accountability be established by another entity in
4 order to preserve eligibility for federal funding. Qualifications
5 established must include compliance with the minimum requirements for
6 training and satisfactory criminal background checks as provided in RCW
7 74.39A.050 and confirmation that the caregiver or prospective caregiver
8 is not currently listed on any long-term care abuse and neglect
9 registry used by the department at the time of the investigation;

10 (2) Undertake recruiting activities to identify and recruit
11 caregivers and prospective caregivers;

12 (3) Provide training opportunities through a contract with the
13 training partnership established under RCW 74.39A.360 for caregivers
14 and prospective caregivers;

15 (4) Cooperate with the department, area agencies on aging, and
16 other federal, state, and local agencies to provide the services
17 described and set forth in this section. If, in the course of carrying
18 out its duties, the authority identifies concerns regarding the
19 services being provided by a caregiver, the authority must notify the
20 relevant area agency or department case manager regarding such
21 concerns;

22 (5) Enter into contracts with adult family home providers, whereby
23 providers pay the authority an hourly rate for caregivers. The
24 authority shall establish the rate or rates through rule, according to
25 the following criteria:

26 (a) The initial rate should cover, at a minimum, the hourly cost of
27 the minimum wage for caregivers established under section 2 of this
28 act;

29 (b) The initial rate may also cover reasonable administrative costs
30 related to the authority's duties in this section; and

31 (c) The rate shall be adjusted upward to reflect increases in wages
32 and/or fringe benefits: (i) Mandated by federal or state legislation,
33 administrative rule, or decision; (ii) mandated by a legislatively
34 funded collective bargaining agreement; or (iii) requested by a
35 provider;

36 (6) Pay wages to caregivers for hours of care provided on behalf of
37 adult family home providers under contracts established under
38 subsection (5) of this section. Wages shall be based on the greater of

1 the hourly wage: (a) Established under section 3 of this act; (b)
2 mandated by federal or state legislation, administrative rule or
3 decision; (c) mandated by a legislatively funded collective bargaining
4 agreement; or (d) requested by a provider;

5 (7) Administer fringe benefits for caregivers. Fringe benefits,
6 including but not limited to health insurance, paid and unpaid leave,
7 and retirement, shall be established either through legislation and/or
8 through a legislatively funded collective bargaining agreement. If an
9 adult family home provider wishes to offer a fringe benefit not
10 established through legislation and/or collective bargaining to a
11 caregiver providing care in the provider's adult family home, the
12 provider may do so. Any additional fringe benefits shall be the sole
13 responsibility of the adult family home provider;

14 (8) Deduct and remit payroll taxes from wages. Payroll taxes
15 include, but are not limited to, income taxes, industrial insurance
16 premiums, and social security and medicare taxes;

17 (9) Collect cost reports for all adult family home providers, and
18 share cost reports with the department. The cost report information
19 shall include, at a minimum, the total hours of care provided by adult
20 family home providers, the total hours of care provided by caregivers,
21 and the total cost of each of the above. The cost report information
22 shall also include, at a minimum, the total cost of noncare-related
23 items, such as supplies or capital costs. Cost reports shall be
24 submitted annually on a calendar year basis. Partial year cost reports
25 will be acceptable in the event that an adult family home provider
26 begins or ceases holding a medicaid contract, and/or for the partial
27 year beginning on October 1, 2009.

28 **Sec. 5.** RCW 74.39A.280 and 2002 c 3 s 7 are each amended to read
29 as follows:

30 AUTHORITY POWERS. In carrying out its duties under chapter 3, Laws
31 of 2002 and this act, the authority may:

32 (1) Make and execute contracts and all other instruments necessary
33 or convenient for the performance of its duties or exercise of its
34 powers, including contracts with public and private agencies,
35 organizations, corporations, and individuals to pay them for services
36 rendered or furnished;

1 (2) Offer and provide recruitment, training, and referral services
2 to providers of long-term in-home care services other than individual
3 providers, caregivers, and prospective individual providers and
4 caregivers, for a fee to be determined by the authority;

5 (3) Issue rules under the administrative procedure act, chapter
6 34.05 RCW, as necessary for the purpose and policies of chapter 3, Laws
7 of 2002 and this act;

8 (4) Establish offices, employ and discharge employees, agents, and
9 contractors as necessary, and prescribe their duties and powers and fix
10 their compensation, incur expenses, and create such liabilities as are
11 reasonable and proper for the administration of chapter 3, Laws of 2002
12 and this act;

13 (5) Solicit and accept for use any grant of money, services, or
14 property from the federal government, the state, or any political
15 subdivision or agency thereof, including federal matching funds under
16 Title XIX of the federal social security act, and do all things
17 necessary to cooperate with the federal government, the state, or any
18 political subdivision or agency thereof in making an application for
19 any grant;

20 (6) Coordinate its activities and cooperate with similar agencies
21 in other states;

22 (7) Establish technical advisory committees to assist the board;

23 (8) Keep records and engage in research and the gathering of
24 relevant statistics;

25 (9) Acquire, hold, or dispose of real or personal property or any
26 interest therein, and construct, lease, or otherwise provide facilities
27 for the activities conducted under this chapter, provided that the
28 authority may not exercise any power of eminent domain;

29 (10) Sue and be sued in its own name;

30 (11) Delegate to the appropriate persons the power to execute
31 contracts and other instruments on its behalf and delegate any of its
32 powers and duties if consistent with the purposes of this chapter;
33 ((and))

34 (12) Contract with a financial institution either to act as trustee
35 or custodian to receive and deposit payments in and make expenditures
36 from the caregiver payment account as described in sections 4 and 7 of
37 this act, and to perform other duties and functions in connection with
38 the transactions authorized under this section; and

1 (13) Do other acts necessary or convenient to execute the powers
2 expressly granted to it.

3 NEW SECTION. **Sec. 6.** A new section is added to chapter 74.39A RCW
4 to read as follows:

5 PAYMENT RATES. (1) The authority shall determine, for each adult
6 family home provider each time the authority increases the hourly rate:

7 (a) The percent increase in the hourly rate by which the adult
8 family home provider contracts with the authority for caregivers; and

9 (b) The percent of costs incurred by adult family home providers
10 that are personnel costs associated with hours of care provided by
11 caregivers, according to the previous year's cost report data.

12 (2) For each adult family home provider, the percentage in
13 subsection (1)(a) of this section shall be multiplied by the percentage
14 in subsection (1)(b) of this section. Each client-specific daily rate
15 of payment from the medicaid and state-funded long-term care programs
16 to the adult family home provider shall be increased by the resulting
17 percentage.

18 NEW SECTION. **Sec. 7.** A new section is added to chapter 74.39A RCW
19 to read as follows:

20 ACCOUNT. The caregiver payment account is created in the custody
21 of the state treasurer. All payments received from adult family home
22 providers as described in section 4(5) of this act must be deposited in
23 the account. Expenditures from the account may be used only for the
24 purposes of paying wages to caregivers as described in section 4(6) of
25 this act, administering fringe benefits under section 4(7) of this act,
26 and making deductions from wages for purposes described in section 4(8)
27 of this act and RCW 41.56.113. Only the executive director of the
28 authority or the executive director's designee may authorize
29 expenditures from the account. The account is subject to the allotment
30 procedures under chapter 43.88 RCW. An appropriation is not required
31 for expenditures described in this section.

32 **Sec. 8.** RCW 43.79A.040 and 2007 c 523 s 5, 2007 c 357 s 21, and
33 2007 c 214 s 14 are each reenacted and amended to read as follows:

34 INVESTMENT OF ACCOUNT. (1) Money in the treasurer's trust fund may

1 be deposited, invested, and reinvested by the state treasurer in
2 accordance with RCW 43.84.080 in the same manner and to the same extent
3 as if the money were in the state treasury.

4 (2) All income received from investment of the treasurer's trust
5 fund shall be set aside in an account in the treasury trust fund to be
6 known as the investment income account.

7 (3) The investment income account may be utilized for the payment
8 of purchased banking services on behalf of treasurer's trust funds
9 including, but not limited to, depository, safekeeping, and
10 disbursement functions for the state treasurer or affected state
11 agencies. The investment income account is subject in all respects to
12 chapter 43.88 RCW, but no appropriation is required for payments to
13 financial institutions. Payments shall occur prior to distribution of
14 earnings set forth in subsection (4) of this section.

15 (4)(a) Monthly, the state treasurer shall distribute the earnings
16 credited to the investment income account to the state general fund
17 except under (b) and (c) of this subsection.

18 (b) The following accounts and funds shall receive their
19 proportionate share of earnings based upon each account's or fund's
20 average daily balance for the period: The Washington promise
21 scholarship account, the college savings program account, the
22 Washington advanced college tuition payment program account, the
23 agricultural local fund, the American Indian scholarship endowment
24 fund, the foster care scholarship endowment fund, the foster care
25 endowed scholarship trust fund, the students with dependents grant
26 account, the basic health plan self-insurance reserve account, the
27 caregiver payment account, the contract harvesting revolving account,
28 the Washington state combined fund drive account, the commemorative
29 works account, the Washington international exchange scholarship
30 endowment fund, the developmental disabilities endowment trust fund,
31 the energy account, the fair fund, the family leave insurance account,
32 the fruit and vegetable inspection account, the future teachers
33 conditional scholarship account, the game farm alternative account, the
34 GET ready for math and science scholarship account, the grain
35 inspection revolving fund, the juvenile accountability incentive
36 account, the law enforcement officers' and firefighters' plan 2 expense
37 fund, the local tourism promotion account, the produce railcar pool
38 account, the regional transportation investment district account, the

1 rural rehabilitation account, the stadium and exhibition center
2 account, the youth athletic facility account, the self-insurance
3 revolving fund, the sulfur dioxide abatement account, the children's
4 trust fund, the Washington horse racing commission Washington bred
5 owners' bonus fund account, the Washington horse racing commission
6 class C purse fund account, the individual development account program
7 account, the Washington horse racing commission operating account
8 (earnings from the Washington horse racing commission operating account
9 must be credited to the Washington horse racing commission class C
10 purse fund account), the life sciences discovery fund, the Washington
11 state heritage center account, and the reading achievement account.
12 However, the earnings to be distributed shall first be reduced by the
13 allocation to the state treasurer's service fund pursuant to RCW
14 43.08.190.

15 (c) The following accounts and funds shall receive eighty percent
16 of their proportionate share of earnings based upon each account's or
17 fund's average daily balance for the period: The advanced right-of-way
18 revolving fund, the advanced environmental mitigation revolving
19 account, the city and county advance right-of-way revolving fund, the
20 federal narcotics asset forfeitures account, the high occupancy vehicle
21 account, the local rail service assistance account, and the
22 miscellaneous transportation programs account.

23 (5) In conformance with Article II, section 37 of the state
24 Constitution, no trust accounts or funds shall be allocated earnings
25 without the specific affirmative directive of this section.

26 **PART III - CAREGIVER BARGAINING**

27 NEW SECTION. **Sec. 9.** A new section is added to chapter 74.39A RCW
28 to read as follows:

29 COLLECTIVE BARGAINING FOR CAREGIVERS. (1) Solely for the purposes
30 of collective bargaining and as expressly limited under subsection (2)
31 of this section, the governor is the public employer, as defined in
32 chapter 41.56 RCW, of caregivers who, solely for the purposes of
33 collective bargaining, are public employees, as defined in chapter
34 41.56 RCW. The public employer shall be represented for bargaining
35 purposes by the governor or the governor's designee appointed under
36 chapter 41.80 RCW. The governor or the governor's designee shall

1 periodically consult the authority during the collective bargaining
2 process to allow the authority to communicate issues relating to the
3 long-term in-home care services received by consumers. The governor or
4 the governor's designee shall also consult the authority on all issues
5 for which the exclusive bargaining representative requests to engage in
6 collective bargaining under subsection (4) of this section. The
7 authority shall work with the developmental disabilities council, the
8 governor's committee on disability issues and employment, the state
9 council on aging, and other consumer advocacy organizations to obtain
10 informed input from consumers on their interests, including impacts on
11 consumer choice, for all issues proposed for collective bargaining
12 under subsection (4) of this section.

13 (2) Chapter 41.56 RCW governs the collective bargaining
14 relationship between the governor and caregivers, except as otherwise
15 expressly provided in this chapter and except as follows:

16 (a) The only unit appropriate for the purpose of collective
17 bargaining under RCW 41.56.060 is a statewide unit of all caregivers;

18 (b) Bargaining authorization cards furnished as the showing of
19 interest in support of any representation petition or motion for
20 intervention filed under this section shall be exempt from disclosure
21 under chapter 42.56 RCW;

22 (c) Notwithstanding the definition of "collective bargaining" in
23 RCW 41.56.030(4), the scope of collective bargaining for caregivers
24 under this section shall be limited solely to:

25 (i) Wages, fringe benefits, and training;

26 (ii) How the department's core responsibility affects hours of work
27 for caregivers as described in subsection (4)(b) of this section; and

28 (iii) Public employer contributions to the training partnership as
29 described in subsection (5) of this section;

30 (d) The mediation and interest arbitration provisions of RCW
31 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

32 (i) In addition to the factors to be taken into consideration by an
33 interest arbitration panel under RCW 41.56.465, the panel shall
34 consider the financial ability of the state to pay for the compensation
35 and fringe benefits provisions of a collective bargaining agreement;
36 and

37 (ii) The decision of the arbitration panel is not binding on the
38 legislature and, if the legislature does not approve the request for

1 funds necessary to implement the compensation and fringe benefits
2 provisions of the arbitrated collective bargaining agreement, is not
3 binding on the authority or the state; and

4 (e) Caregivers who are related to, or family members of, consumers
5 or prospective consumers are not, for that reason, exempt from this
6 chapter or chapter 41.56 RCW.

7 (3) Caregivers who are public employees solely for the purposes of
8 collective bargaining under subsection (1) of this section are not, for
9 that reason, employees of the state for any other purpose. Chapter
10 41.56 RCW applies only to the governance of the collective bargaining
11 relationship between the employer and caregivers as provided in
12 subsections (1) and (2) of this section.

13 (4) This section does not create or modify:

14 (a) The adult family home providers' and prospective adult family
15 home providers' right to select, hire, supervise, and direct the work
16 of, terminate, and determine the conditions of employment for any
17 caregiver. The right to supervise and direct the work of any caregiver
18 includes assigning work tasks, evaluating job performance, and
19 providing additional worksite specific training;

20 (b) The department's authority to establish a plan of care for each
21 consumer or its core responsibility to manage long-term care services
22 under chapter 70.128 RCW, including determination of the level of care
23 that each consumer is eligible to receive;

24 (c) The department's obligation to comply with the federal medicaid
25 statute and regulations and the terms of any community-based waiver
26 granted by the federal department of health and human services and to
27 ensure federal financial participation in the provision of the
28 services;

29 (d) The legislature's right to make programmatic modifications to
30 the delivery of state services under chapter 70.128 RCW, including
31 standards of eligibility of consumers and adult family home providers
32 participating in the programs under chapter 70.128 RCW, and the nature
33 of services provided. The governor shall not enter into, extend, or
34 renew any agreement under this chapter that does not expressly reserve
35 the legislative rights described in this subsection (4)(d);

36 (e) The residents', parents', or legal guardians' right to choose
37 and terminate the services of any licensed adult family home provider;

1 (f) The rights of providers and caregivers under the national labor
2 relations act, 29 U.S.C. Sec. 151 et seq.; and

3 (g) RCW 43.43.832, 43.20A.205, or 74.15.130.

4 (5) At the request of the exclusive bargaining representative, the
5 governor or the governor's designee appointed under chapter 41.80 RCW
6 shall engage in collective bargaining, as defined in RCW 41.56.030(4),
7 with the exclusive bargaining representative over public employer
8 contributions to the training partnership for the costs of: (a)
9 Meeting all training and peer mentoring required under this chapter;
10 and (b) other training intended to promote the career development of
11 caregivers.

12 (6) The state, the department, and the authority may not be held
13 vicariously or jointly liable for the action or inaction of any
14 caregiver or prospective caregiver, whether or not that caregiver or
15 prospective caregiver was included on the referral registry. The
16 existence of a collective bargaining agreement or the placement of a
17 caregiver or prospective caregiver on the referral registry does not
18 constitute a special relationship with the consumer.

19 (7) Upon meeting the requirements of subsection (8) of this
20 section, the governor must submit, as a part of the proposed biennial
21 or supplemental operating budget submitted to the legislature under RCW
22 43.88.030, a request for funds necessary to administer this act and to
23 implement the compensation and fringe benefits provisions of a
24 collective bargaining agreement entered into under this section or for
25 legislation necessary to implement the agreement.

26 (8) A request for funds necessary to implement the compensation and
27 fringe benefits provisions of a collective bargaining agreement entered
28 into under this section shall not be submitted by the governor to the
29 legislature unless the request has been:

30 (a) Submitted to the director of financial management by October
31 1st prior to the legislative session at which the requests are to be
32 considered; and

33 (b) Certified by the director of financial management as
34 financially feasible for the state or reflective of a binding decision
35 of an arbitration panel reached under subsection (2)(d) of this
36 section.

37 (9) The legislature must approve or reject the submission of the
38 request for funds as a whole. If the legislature rejects or fails to

1 act on the submission, any collective bargaining agreement must be
2 reopened for the sole purpose of renegotiating the funds necessary to
3 implement the agreement.

4 (10) When any increase in caregiver wages or fringe benefits is
5 negotiated or agreed to, no increase in wages or fringe benefits
6 negotiated or agreed to under this chapter will take effect unless and
7 until, before its implementation, the department has determined that
8 the increase is consistent with federal law and federal financial
9 participation in the provision of services under Title XIX of the
10 federal social security act.

11 (11) The governor shall periodically consult with the joint
12 committee on employment relations established by RCW 41.80.010
13 regarding appropriations necessary to implement the compensation and
14 fringe benefits provisions of any collective bargaining agreement and,
15 upon completion of negotiations, advise the committee on the elements
16 of the agreement and on any legislation necessary to implement such an
17 agreement.

18 (12) After the expiration date of any collective bargaining
19 agreement entered into under this section, all of the terms and
20 conditions specified in any such agreement remain in effect until the
21 effective date of a subsequent agreement, not to exceed one year from
22 the expiration date stated in the agreement, except as provided in
23 subsection (4)(d) of this section.

24 (13) If, after the compensation and fringe benefits provisions of
25 an agreement are approved by the legislature, a significant revenue
26 shortfall occurs resulting in reduced appropriations, as declared by
27 proclamation of the governor or by resolution of the legislature, both
28 parties shall immediately enter into collective bargaining for a
29 mutually agreed upon modification of the agreement.

30 **Sec. 10.** RCW 41.56.113 and 2007 c 184 s 3 are each amended to read
31 as follows:

32 CAREGIVERS--PAYMENT FOR DUES. (1) Upon the written authorization
33 of an individual provider, a family child care provider, (~~or~~) an
34 adult family home provider, or a caregiver within the bargaining unit
35 and after the certification or recognition of the bargaining unit's
36 exclusive bargaining representative, the state as payor, but not as the
37 employer, shall, subject to subsection (3) of this section, deduct from

1 the payments to an individual provider, a family child care provider,
2 ((~~or~~)) an adult family home provider, or a caregiver the monthly amount
3 of dues as certified by the secretary of the exclusive bargaining
4 representative and shall transmit the same to the treasurer of the
5 exclusive bargaining representative.

6 (2) If the governor and the exclusive bargaining representative of
7 a bargaining unit of individual providers, family child care providers,
8 ((~~or~~)) adult family home providers, or caregivers enter into a
9 collective bargaining agreement that:

10 (a) Includes a union security provision authorized in RCW
11 41.56.122, the state as payor, but not as the employer, shall, subject
12 to subsection (3) of this section, enforce the agreement by deducting
13 from the payments to bargaining unit members the dues required for
14 membership in the exclusive bargaining representative, or, for
15 nonmembers thereof, a fee equivalent to the dues; or

16 (b) Includes requirements for deductions of payments other than the
17 deduction under (a) of this subsection, the state, as payor, but not as
18 the employer, shall, subject to subsection (3) of this section, make
19 such deductions upon written authorization of the individual provider,
20 family child care provider, ((~~or~~)) adult family home provider, or
21 caregiver.

22 (3)(a) The initial additional costs to the state in making
23 deductions from the payments to individual providers, family child care
24 providers, ((~~and~~)) adult family home providers, and caregivers under
25 this section shall be negotiated, agreed upon in advance, and
26 reimbursed to the state by the exclusive bargaining representative.

27 (b) The allocation of ongoing additional costs to the state in
28 making deductions from the payments to individual providers, family
29 child care providers, ((~~or~~)) adult family home providers, or caregivers
30 under this section shall be an appropriate subject of collective
31 bargaining between the exclusive bargaining representative and the
32 governor unless prohibited by another statute. If no collective
33 bargaining agreement containing a provision allocating the ongoing
34 additional cost is entered into between the exclusive bargaining
35 representative and the governor, or if the legislature does not approve
36 funding for the collective bargaining agreement as provided in RCW
37 74.39A.300, 41.56.028, or 41.56.029, as applicable, the ongoing
38 additional costs to the state in making deductions from the payments to

1 individual providers, family child care providers, (~~(or)~~) adult family
2 home providers, or caregivers under this section shall be negotiated,
3 agreed upon in advance, and reimbursed to the state by the exclusive
4 bargaining representative.

5 (4) The governor and the exclusive bargaining representative of a
6 bargaining unit of family child care providers may not enter into a
7 collective bargaining agreement that contains a union security
8 provision unless the agreement contains a process, to be administered
9 by the exclusive bargaining representative of a bargaining unit of
10 family child care providers, for hardship dispensation for license-
11 exempt family child care providers who are also temporary assistance
12 for needy families recipients or WorkFirst participants.

13 **Sec. 11.** RCW 41.56.029 and 2007 c 184 s 1 are each amended to read
14 as follows:

15 COLLECTIVE BARGAINING FOR PROVIDERS. (1) In addition to the
16 entities listed in RCW 41.56.020, this chapter applies to the governor
17 with respect to adult family home providers. Solely for the purposes
18 of collective bargaining and as expressly limited under subsections (2)
19 and (3) of this section, the governor is the public employer of adult
20 family home providers who, solely for the purposes of collective
21 bargaining, are public employees. The public employer shall be
22 represented for bargaining purposes by the governor or the governor's
23 designee.

24 (2) There shall be collective bargaining, as defined in RCW
25 41.56.030, between the governor and adult family home providers, except
26 as follows:

27 (a) A statewide unit of all adult family home providers is the only
28 unit appropriate for purposes of collective bargaining under RCW
29 41.56.060.

30 (b) The exclusive bargaining representative of adult family home
31 providers in the unit specified in (a) of this subsection shall be the
32 representative chosen in an election conducted pursuant to RCW
33 41.56.070.

34 Bargaining authorization cards furnished as the showing of interest
35 in support of any representation petition or motion for intervention
36 filed under this section shall be exempt from disclosure under chapter
37 42.56 RCW.

1 (c) Notwithstanding the definition of "collective bargaining" in
2 RCW 41.56.030(4), the scope of collective bargaining for adult family
3 home providers under this section shall be limited solely to: (i)
4 Economic compensation, such as manner and rate of subsidy and
5 reimbursement, including tiered reimbursements; (ii) health and welfare
6 benefits; (iii) professional development and training; (iv) labor-
7 management committees; (v) grievance procedures; and (vi) other
8 economic matters. Retirement benefits shall not be subject to
9 collective bargaining. Wages, fringe benefits, and training subject to
10 collective bargaining for caregivers under section 9 of this act shall
11 not be subject to collective bargaining under this section. By such
12 obligation neither party shall be compelled to agree to a proposal or
13 be required to make a concession unless otherwise provided in this
14 chapter.

15 (d) In addition to the entities listed in the mediation and
16 interest arbitration provisions of RCW 41.56.430 through 41.56.470 and
17 41.56.480, the provisions apply to the governor or the governor's
18 designee and the exclusive bargaining representative of adult family
19 home providers, except that:

20 (i) In addition to the factors to be taken into consideration by an
21 interest arbitration panel under RCW 41.56.465, the panel shall
22 consider the financial ability of the state to pay for the compensation
23 and benefit provisions of a collective bargaining agreement.

24 (ii) The decision of the arbitration panel is not binding on the
25 legislature and, if the legislature does not approve the request for
26 funds necessary to implement the compensation and benefit provisions of
27 the arbitrated collective bargaining agreement, the decision is not
28 binding on the state.

29 (e) Adult family home providers do not have the right to strike.

30 (3) Adult family home providers who are public employees solely for
31 the purposes of collective bargaining under subsection (1) of this
32 section are not, for that reason, employees of the state for any other
33 purpose. This section applies only to the governance of the collective
34 bargaining relationship between the employer and adult family home
35 providers as provided in subsections (1) and (2) of this section.

36 (4) This section does not create or modify:

37 (a) The department's authority to establish a plan of care for each
38 consumer or its core responsibility to manage long-term care services

1 under chapter 70.128 RCW, including determination of the level of care
2 that each consumer is eligible to receive. However, at the request of
3 the exclusive bargaining representative, the governor or the governor's
4 designee appointed under chapter 41.80 RCW shall engage in collective
5 bargaining, as defined in RCW 41.56.030(4), with the exclusive
6 bargaining representative over how the department's core responsibility
7 affects hours of work for adult family home providers. This subsection
8 shall not be interpreted to require collective bargaining over an
9 individual consumer's plan of care;

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

15 (c) The legislature's right to make programmatic modifications to
16 the delivery of state services under chapter 70.128 RCW, including
17 standards of eligibility of consumers and adult family home providers
18 participating in the programs under chapter 70.128 RCW, and the nature
19 of services provided. The governor shall not enter into, extend, or
20 renew any agreement under this chapter that does not expressly reserve
21 the legislative rights described in this subsection (4)(c);

22 (d) The residents', parents', or legal guardians' right to choose
23 and terminate the services of any licensed adult family home provider;
24 and

25 (e) RCW 43.43.832, 43.20A.205, or 74.15.130.

26 (5) Upon meeting the requirements of subsection (6) of this
27 section, the governor must submit, as a part of the proposed biennial
28 or supplemental operating budget submitted to the legislature under RCW
29 43.88.030, a request for funds necessary to implement the compensation
30 and benefit provisions of a collective bargaining agreement entered
31 into under this section or for legislation necessary to implement the
32 agreement.

33 (6) A request for funds necessary to implement the compensation and
34 benefit provisions of a collective bargaining agreement entered into
35 under this section shall not be submitted by the governor to the
36 legislature unless the request has been:

37 (a) Submitted to the director of financial management by October

1 1st prior to the legislative session at which the requests are to be
2 considered; and

3 (b) Certified by the director of financial management as
4 financially feasible for the state or reflective of a binding decision
5 of an arbitration panel reached under subsection (2)(d) of this
6 section.

7 (7) The legislature must approve or reject the submission of the
8 request for funds as a whole. If the legislature rejects or fails to
9 act on the submission, any collective bargaining agreement must be
10 reopened for the sole purpose of renegotiating the funds necessary to
11 implement the agreement.

12 (8) If, after the compensation and benefit provisions of an
13 agreement are approved by the legislature, a significant revenue
14 shortfall occurs resulting in reduced appropriations, as declared by
15 proclamation of the governor or by resolution of the legislature, both
16 parties shall immediately enter into collective bargaining for a
17 mutually agreed upon modification of the agreement.

18 (9) After the expiration date of any collective bargaining
19 agreement entered into under this section, all of the terms and
20 conditions specified in the agreement remain in effect until the
21 effective date of a subsequent agreement, not to exceed one year from
22 the expiration date stated in the agreement.

23 (10) In enacting this section, the legislature intends to provide
24 state action immunity under federal and state antitrust laws for the
25 joint activities of adult family home providers and their exclusive
26 bargaining representative to the extent the activities are authorized
27 by this chapter.

28 **Sec. 12.** RCW 41.04.810 and 2007 c 184 s 4 are each amended to read
29 as follows:

30 TITLE NOT APPLICABLE TO CAREGIVERS. Individual providers and
31 caregivers, as defined in RCW 74.39A.240, family child care providers,
32 as defined in RCW 41.56.030, and adult family home providers, as
33 defined in RCW 41.56.030, are not employees of the state or any of its
34 political subdivisions and are specifically and entirely excluded from
35 all provisions of this title, except as provided in RCW 74.39A.270,
36 41.56.028, (~~and~~) 41.56.029, and section 9 of this act.

1 (7) "Enhanced adult residential care" means services provided by a
2 boarding home that is licensed under chapter 18.20 RCW and that has a
3 contract with the department under RCW 74.39A.010 to provide personal
4 care services, intermittent nursing services, and medication
5 administration services.

6 (8) "Functionally disabled person" or "person who is functionally
7 disabled" is synonymous with chronic functionally disabled and means a
8 person who because of a recognized chronic physical or mental condition
9 or disease, including chemical dependency, is impaired to the extent of
10 being dependent upon others for direct care, support, supervision, or
11 monitoring to perform activities of daily living. "Activities of daily
12 living", in this context, means self-care abilities related to personal
13 care such as bathing, eating, using the toilet, dressing, and transfer.
14 Instrumental activities of daily living may also be used to assess a
15 person's functional abilities as they are related to the mental
16 capacity to perform activities in the home and the community such as
17 cooking, shopping, house cleaning, doing laundry, working, and managing
18 personal finances.

19 (9) "Home and community services" means adult family homes, in-home
20 services, and other services administered or provided by contract by
21 the department directly or through contract with area agencies on aging
22 or similar services provided by facilities and agencies licensed by the
23 department.

24 (10) "Long-term care" is synonymous with chronic care and means
25 care and supports delivered indefinitely, intermittently, or over a
26 sustained time to persons of any age disabled by chronic mental or
27 physical illness, disease, chemical dependency, or a medical condition
28 that is permanent, not reversible or curable, or is long-lasting and
29 severely limits their mental or physical capacity for self-care. The
30 use of this definition is not intended to expand the scope of services,
31 care, or assistance by any individuals, groups, residential care
32 settings, or professions unless otherwise expressed by law.

33 (11)(a) "Long-term care workers" includes all persons who are long-
34 term care workers for the elderly or persons with disabilities,
35 including but not limited to individual providers of home care
36 services, direct care employees of home care agencies, providers of
37 home care services to persons with developmental disabilities under
38 Title 71 RCW, all direct care workers in state-licensed boarding homes,

1 assisted living facilities, and adult family homes, respite care
2 providers, community residential service providers, and any other
3 direct care worker providing home or community-based services to the
4 elderly or persons with functional disabilities or developmental
5 disabilities.

6 (b) "Long-term care workers" do not include persons employed in
7 nursing homes subject to chapter 18.51 RCW, hospitals or other acute
8 care settings, hospice agencies subject to chapter 70.127 RCW, adult
9 day care centers, and adult day health care centers.

10 (12) "Nursing home" means a facility licensed under chapter 18.51
11 RCW.

12 (13) "Secretary" means the secretary of social and health services.

13 (14) "Training partnership" means a joint partnership or trust
14 established and maintained jointly by the office of the governor and
15 the exclusive bargaining representative of individual providers under
16 RCW 74.39A.270 and the exclusive bargaining representative of
17 caregivers under section 9 of this act to provide training, peer
18 mentoring, and examinations required under this chapter, and
19 educational, career development, or other services to individual
20 providers.

21 (15) "Tribally licensed boarding home" means a boarding home
22 licensed by a federally recognized Indian tribe which home provides
23 services similar to boarding homes licensed under chapter 18.20 RCW.

24 **Sec. 15.** RCW 74.39A.350 and 2007 c 361 s 5 are each amended to
25 read as follows:

26 ADVANCED TRAINING. The department shall offer, directly or through
27 contract, training opportunities sufficient for a long-term care worker
28 to accumulate sixty-five hours of training within a reasonable time
29 period. For individual providers represented by an exclusive
30 bargaining representative under RCW 74.39A.270 and for caregivers
31 represented by an exclusive bargaining representative under section 9
32 of this act, the training opportunities shall be offered through ((a))
33 contracts with the training partnership established under RCW
34 74.39A.360. Training topics shall include, but are not limited to:
35 Client rights; personal care; mental illness; dementia; developmental
36 disabilities; depression; medication assistance; advanced communication
37 skills; positive client behavior support; developing or improving

1 client-centered activities; dealing with wandering or aggressive client
2 behaviors; medical conditions; nurse delegation core training; peer
3 mentor training; and advocacy for quality care training. The
4 department may not require long-term care workers to obtain the
5 training described in this section. This requirement to offer advanced
6 training applies beginning January 1, 2010.

7 **Sec. 16.** RCW 74.39A.360 and 2007 c 361 s 6 are each amended to
8 read as follows:

9 TRAINING PARTNERSHIP. Beginning January 1, 2010, for individual
10 providers represented by an exclusive bargaining representative under
11 RCW 74.39A.270 and for caregivers represented by an exclusive
12 bargaining representative under section 9 of this act, all training and
13 peer mentoring required under this chapter shall be provided by a
14 training partnership. Contributions to the partnership pursuant to
15 ((a)) collective bargaining agreements negotiated under this chapter
16 shall be made beginning July 1, 2009. The training partnership shall
17 provide reports as required by the department verifying that all
18 individual providers have complied with all training requirements. The
19 exclusive bargaining representative shall designate the training
20 partnership.

21 **PART V - GENERAL PROVISIONS**

22 NEW SECTION. **Sec. 17.** Part headings and captions used in this act
23 are not any part of the law.

24 NEW SECTION. **Sec. 18.** If any provision of this act or its
25 application to any person or circumstance is held invalid, the
26 remainder of the act or the application of the provision to other
27 persons or circumstances is not affected.

28 NEW SECTION. **Sec. 19.** If any part of this act is found to be in
29 conflict with federal requirements that are a prescribed condition to
30 the allocation of federal funds to the state, the conflicting part of
31 this act is inoperative solely to the extent of the conflict and with
32 respect to the agencies directly affected, and this finding does not
33 affect the operation of the remainder of this act in its application to

1 the agencies concerned. Rules adopted under this act must meet federal
2 requirements that are a necessary condition to the receipt of federal
3 funds by the state.

4 NEW SECTION. **Sec. 20.** This act takes effect July 1, 2008.

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