

RCW 49.46.800 Rights and remedies—Long-term care individual providers covered under this chapter—Definitions—Compensable hours.

(1) All existing rights and remedies available under state or local law for enforcement of the minimum wage shall be applicable to enforce all of the rights established under chapter 2, Laws of 2017.

(2) (a) If the department of social and health services contracts with an individual provider for personal care services or respite care services, the state shall pay individual providers, as defined in RCW 74.39A.240, in accordance with the minimum wage, overtime, and paid sick leave requirements of this chapter, except as provided in subsection (4) of this section.

(b) A consumer directed employer contracting with the state is an employer of individual providers for the purposes of this chapter. Individual providers are employees of the consumer directed employer.

(c) Neither the department of social and health services nor the consumer directed employer may avail itself of any state law minimum wage or overtime exemption, except as provided in subsection (4) of this section.

(3) The definitions in this subsection apply to this section:

(a) "Authorized hours" means the number of paid hours of care included in the client's plan of care as determined by the department of social and health services.

(b) "Client" has the same meaning as in RCW 74.39A.009.

(c) "Consumer directed employer" has the same meaning as in RCW 74.39A.009.

(d) "Family member" includes, but is not limited to, a parent, child, sibling, aunt, uncle, niece, nephew, cousin, grandparent, grandchild, grandniece, grandnephew, or such relatives when related by marriage, adoption, or domestic partnership.

(e) "Household member" means an individual provider who lives with the client and did so before the employment relationship between the client and individual provider began.

(f) "Individual provider" has the same meaning as in RCW 74.39A.240.

(g) "Personal care services" has the same meaning as in RCW 74.39A.009.

(4) (a) Hours worked by an individual provider in excess of the number of authorized hours in the client's plan of care are not compensable if:

(i) The individual provider is a family member or household member of the client, as defined by this section; and

(ii) The client's plan of care is reasonable.

(b) This subsection (4) does not apply to hours worked to address temporary emergencies or an unexpected health or safety event of the client that cannot be postponed.

(c) A client's plan of care is reasonable under (a)(ii) of this subsection if all of the following are true:

(i) The plan of care includes the same number of paid hours it would have if the individual provider were not a family member or household member of the client;

(ii) The plan of care does not reflect unequal treatment of an individual provider or their client because of their familial or household relationship. Unequal treatment includes the plan of care including fewer paid hours than it would have if the client's individual provider were not a family or household member of the client; the plan of care including fewer paid hours because the

client's individual provider shares in the benefit of a personal care service or task provided to the client; the plan of care including fewer paid hours because the client lives in a multiclient household and two or more clients benefit from the same personal care service or task being performed; or the plan of care including fewer paid hours because of paid or unpaid assistance provided to a client by that client's paid provider; and

(iii) The department of social and health services does not otherwise require an increase in the hours of unpaid services performed by the family or household member individual provider in order to reduce the number of hours of paid services.

(d) A determination that a plan of care is reasonable for purposes of this section does not mean that the amount or type of services or paid hours to be provided are or are not appropriate for the client under chapter 74.39A RCW.

(5) The department of social and health services retains its core responsibility to manage long-term in-home care services under chapters 74.39A and 74.41 RCW and its authority to set a client's benefit level as required by RCW 74.09.520(3). However, to limit an individual provider's compensable hours as described in subsection (4)(a) of this section, a plan of care must satisfy the requirements of subsection (4)(a) and (c) of this section.

(6) The director of labor and industries may adopt rules to implement this section. [2024 c 224 s 1; 2017 c 2 s 6 (Initiative Measure No. 1433, approved November 8, 2016).]

Retroactive application—Applicability—2024 c 224: "(1) This act is curative and remedial. It applies retroactively and prospectively to all actions filed under RCW 49.46.800, regardless of when they were filed, except for the actions referenced in subsection (2) of this section.

(2) Subsection (1) of this section does not apply to the following actions: Liang v. State of Washington, No. 20-2-02506-34 (Thurston Cnty. Superior Court); SEIU 775 v. Washington State Dep't of Soc. And Health Servs., No. 97216-8 (Washington Supreme Court); or SEIU 775 v. Washington State Dep't of Soc. And Health Servs., No. 99659-8 (Washington Supreme Court)." [2024 c 224 s 2.]

Intent—Effective date—2017 c 2 (Initiative Measure No. 1433):
See notes following RCW 49.46.005.