



STATE OF WASHINGTON
PUBLIC EMPLOYMENT RELATIONS COMMISSION

MICHAEL P. SELLARS, EXECUTIVE DIRECTOR

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Via Email Only

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Advisory Opinion 24-01

Case 139165-O-24, Washington State Office of Financial Management
Adult Family Home Providers Bargaining Unit

Dear Janelle Peterson, Sara Wilmot, and Edward Earl Younglove:

On June 27, 2024, the Adult Family Home Council (union) submitted a request for an advisory opinion under WAC 391-55-365.¹ The union seeks an advisory opinion over whether its proposed article 7.14 is a nonmandatory subject of bargaining. Proposed article 7.14 sets the rates to be paid by L&I when L&I is paying for an individual's care. The union asserts that the proposed article specifically addresses an issue that falls within the mandatory subjects of bargaining set forth in RCW 41.56.029.

On July 5, 2024, the Washington State Office of Financial Management, on behalf of the State of Washington (employer), responded to the request. The employer joins in the request but asserts that the issue of rates paid by L&I is an illegal subject of bargaining. The employer contends that the proposal is nonmandatory for two reasons. First, the employer argues that bargaining over the rates paid by L&I is precluded by RCW 51.04.030(2). Second, the employer argues that the subjects of bargaining in RCW 41.56.029(2)(c) are limited to Medicaid and state-funded services administered by the Washington State Department of Social and Health Services and the Washington State Health Care Authority. I conclude that any proposal that would set L&I pay

¹ The advisory opinion process is authorized by WAC 391-55-365. It applies to certain state interest arbitration eligible bargaining units, including individuals bargaining under RCW 41.56.029, and allows a party to request an opinion from the Executive Director as to whether a matter is a mandatory or nonmandatory subject of bargaining. *Id.* The process is less formal than an adjudication proceeding, with each party limited to filing a five-page brief. If the Executive Director decides to issue an advisory opinion, it is due within 30 days from the date that all brief submissions were received. Any advisory opinion is nonbinding, non-precedential, and inadmissible in any proceeding before this agency. *Id.*

rates above what has been set by the Director of L&I is prohibited by RCW 51.04.030(2) and constitutes a nonmandatory subject of bargaining.

ANALYSIS

The union represents a bargaining unit of adult family home providers who receive payment from Medicaid and state-funded long-term care programs. *State – Adult Family Home Providers*, Decision 12319 (PECB, 2015). Those adult family home providers have the right to organize and collectively bargain with the state. RCW 41.56.029. The bargaining unit includes all providers who house clients that receive services from Medicaid and state-funded long-term care programs, regardless of whether the clients use a managed care organization to coordinate their services. *Id*; *State – Adult Family Home Providers*, Decision 12319.

RCW 41.56.029 specifically identifies the bargainable subjects for adult family home providers and the state. The scope of bargaining “shall be limited solely to: (i) [e]conomic compensation, such as manner and rate of subsidy and reimbursement, including tiered reimbursements; (ii) health and welfare benefits; (iii) professional development and training; (iv) labor-management committees; (v) grievance procedures; and (vi) other economic matters.” RCW 41.56.029(2)(c).

The parties are bargaining a successor agreement to their current collective bargaining agreement. During the negotiations, the union proposed article 7.14 which includes a tiered rate reimbursement to be paid to adult family home providers “when an individual is admitted to an adult family home and that individual’s care is paid for by L&I.” The rates in the proposed article would become effective July 1, 2025, and July 1, 2026.

The proposed article reads as follows:

7.14 Labor and Industries (L&I) Rates

A. Effective July 1, 2025, when an individual is admitted to an adult family home and that individual’s care is paid for with L&I, the L&I rates for adult family home providers shall be as follows:

L&I Billing Code	Payment Rate	L&I Payment Group
8893H	\$200.43	13
8894H	\$243.41	13
8895H	\$286.36	13

B. Effective July 1, 2026, when an individual is admitted to an adult family home and that individual’s care is paid for with L&I, the L&I rates for adult family home providers shall be as follows:

L&I Billing Code	Payment Rate	L&I Payment Group
8893H	\$204.84	13
8894H	\$248.76	13
8895H	\$292.66	13

L&I is responsible for the state’s workers’ compensation system, which provides medical and limited wage replacement coverage to workers injured on the job. *About Labor & Industries*, Washington State Department of L & I, <https://lni.wa.gov/agency/> (last visited July 25, 2024). The Director of L&I is empowered to administer the workers’ compensation system. RCW 43.22.030(1). Included among the Director’s authority is the right to set the maximum fees schedule for services provided as part of the worker’s compensation system. RCW 51.04.030. Specifically, that statute provides,

[T]he director shall, in consultation with interested persons, establish and, in his or her discretion, periodically change as may be necessary, and make available a fee schedule of the maximum charges to be made by any physician, surgeon, chiropractor, hospital, druggist, licensed advanced registered nurse practitioner, physicians' assistants as defined in chapter 18.71A RCW, acting under a supervising physician or other agency or person rendering services to injured workers.

RCW 51.04.030(2). The Director’s authority is exclusive. The statute further provides, “No service covered under this title . . . shall be charged or paid at a rate or rates exceeding those specified in such fee schedule, and no contract providing for greater fees shall be valid as to the excess.” *Id.*

Injured workers may be eligible for care provided by adult family home providers after being assessed and approved for placement through the industrial insurance program administered by L&I. Emp’r.’s Resp. to Un.’s Req. Att. 2. The reimbursement rate to be paid to adult family home providers for that approved care is among the rates set by the Director of L&I. The current collective bargaining agreement does not address the rate for services authorized and paid for by L&I. The maximum fee schedule is generally set by L&I on an annual basis. The most recent fee schedule became effective on July 1, 2024. The fee schedule for adult family home providers is as follows:

Table 3 - ALF, AFH, Boarding Home Facilities

**Effective July 1,
2024**

L&I Payment Group	Payment Rate	Use L&I Billing Code	
13	190.59	8893H	Basic/Low level care
13	231.46	8894H	Intermediate/Mid level care
13	272.30	8895H	Advanced/Special/High level care

Policy 2024, Washington State Department of Labor & Industries, <https://www.lni.wa.gov/patient-care/billing-payments/fee-schedules-and-payment-policies/policy-2024> (last visited July 25, 2024).

The union contends that the proposed article deals with tiered reimbursements which constitutes a mandatory subject of bargaining under RCW 41.56.029(2)(c). The union asserts that the Director being tasked with setting the maximum fees schedule does not make the subject a nonmandatory one.

However, the union’s argument ignores two critical points. First, the Director is tasked with setting the maximum rate. And more importantly, the statute explicitly and unambiguously states that any contract providing for greater fees shall be invalid as to the excess. On its face, this language would appear to preempt the more general grant of authority to bargain under RCW 41.56.029(2)(c). The Commission has recognized other instances where more specific language makes some issues nonmandatory subjects of bargaining. *See, e.g., Skagit County*, Decision 8886-A (PECB, 2007); *Kitsap County*, Decision 13306-A (PECB, 2021).

In *Skagit County*, the Commission held that RCW 51.16.140(1) unambiguously required the employer to deduct one half of the industrial insurance premiums from the employees’ wages, which rendered the matter a nonmandatory subject of bargaining. In *Kitsap County*, the Commission held that RCW 41.14.060(7) removed the employer’s authority to bargain with respect to the number of candidates certified by the civil service commission for sheriff’s office vacancies, thus rendering the matter a nonmandatory subject of bargaining.

Here the language of RCW 51.04.030(2) removes the parties’ ability to negotiate a reimbursement rate for services paid for by L&I in excess of that set by the Director of L&I. The proposed article sets rates in excess of the maximum rate currently set by the Director. Granted, the proposed article would not take effect until July 1, 2025, and July 1, 2026, and we do not yet know whether these proposed rates will exceed the maximum fees schedule that the Director will

set for those time frames. But it is clear that the union cannot propose to exceed what the Director eventually sets as the maximum rate. To the extent that the article proposes rates that will exceed the maximum rates to be set by the Director, article 7.14 is a nonmandatory subject of bargaining.²

Sincerely,

A handwritten signature in black ink, appearing to read "M. Sellars", written over the typed name and contact information.

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² The employer also requested an opinion on whether the subjects of bargaining in RCW 41.56.029(2)(c) were limited to payments made by DSHS and the HCA. Given the result above, I decline to reach that question.