



## Washington State Senate

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Rep. Anna Scharf  
Vice Chair, Committee on Early Childhood and Human Services  
Oregon House of Representatives  
900 Court St. NE, H-387  
Salem, Oregon 97301

Rep. Scharf,

Thank you for your inquiry regarding Washington state's experience in recent years with its transition to an agency with choice (AwC) model of community-based, long-term care service delivery to our state's Medicaid population needing assistance with activities of daily living. Washington's adoption of the AwC model was required by passage of SB 6199 in 2018.<sup>1</sup> The legislation directed the Department of Social and Health Services (DSHS) to contract with no more than two vendors to serve as "consumer directed employer" (CDE) defined as, "a private entity that contracts with the department to be the legal employer of individual providers for purposes of performing administrative functions."

The implications of the change to caregivers' employment status are key to understanding the push for the AwC model.

Prior to the passage of SB 6199, Washington state utilized a fiscal/employer agent model under which home care aides contracted with DSHS to serve particular Medicaid clients and were paid directly by the state or by a state-contracted payroll vendor on the client's behalf. For nearly every other legal purpose, however, home care aides were considered employees of the client(s) they served. Because it maximizes clients' ability to self-direct their care, states' use of the fiscal/employer agency model was encouraged by the U.S. Department of Health and Human Services during both the Obama and Trump administrations.<sup>2</sup>

However, this model poses a challenge for labor unions seeking to organize and collectively bargain on behalf of home care aides, since bargaining with tens or hundreds of thousands of client employers in a state simply isn't possible. To solve this problem, an SEIU-backed ballot measure adopted in 2001 classified these caregivers as public employees for the sole purpose of placing them under Washington state collective bargaining laws for public employees and designating the governor as their employer, thus creating the conditions for their unionization by the SEIU.<sup>3</sup>

In 2014 the U.S. Supreme Court struck down state laws requiring "partial public employees," like Medicaid-compensated caregivers, to pay union fees as a condition of employment, allowing thousands of Washington caregivers to cancel their union membership.<sup>4</sup> In response, SEIU approached Gov. Inslee with a proposal to have the state "contract with an outside entity to run the home care system, making IPs [individual providers] private-sector employees."<sup>5</sup> Because Washington has not extended right-to-work

protections to private-sector workers, they can be compelled to pay union fees pursuant to the National Labor Relations Act.<sup>6</sup>

As DSHS admitted in response to an inquiry from the Senate Health and Long-Term Care Committee during the debate over SB 6199, transitioning to an AwC model could allow SEIU and the contracted CDE to negotiate a “closed shop when bargaining future contracts.”<sup>7</sup> Sure enough, when the contracted CDE—the Consumer Direct Care Network of Washington (CDWA)—and SEIU ultimately negotiated their first collective bargaining agreement, effective July 1, 2023, it required all future caregivers, “...as a condition of continued employment, [to] be or become, and then remain, members of the Union...”<sup>8</sup>

While attempting to circumvent a Supreme Court ruling to strip caregivers of their civil liberties and force them back into union membership they don’t want is bad enough, achieving SEIU’s goal has unfortunately produced additional collateral damage.

First, the transition to the AwC model has cost Washington taxpayers tens of millions of dollars. At the time SB 6199 was passed, DSHS estimated it would cost about 40 percent more than the prior system to administer.<sup>9</sup> While the bill’s fiscal note forecast about \$30 million in additional state expenditures in the 2021-23 biennium, the actual cost turned out to be about three times that.<sup>10</sup> Though there’s little indication DSHS meaningfully cut back on its own personnel following the contracting out, CDWA had to hire nearly 500 FTEs to handle the DSHS contract, all at taxpayers’ expense.<sup>11</sup>

Second, implementation of SB 6199 was significantly delayed, a testament to the unnecessary logistical challenges posed by finding a contractor qualified to take over administration of a workforce of this size (there are about 45,000 individual providers in Washington). While DSHS initially intended to transition the workforce to a new CDE vendor in July of 2020, the process wasn’t completed until the spring of 2022—four years after passage of SB 6199.<sup>12</sup>

DSHS received only two bids in response to its initial, “very complex,” RFP, neither of which were satisfactory, forcing it to restart the process.<sup>13</sup> Following the second RFP, DSHS announced its intention to hire two CDE vendors,<sup>14</sup> though it eventually eliminated one of the two, granting the entire statewide contract to CDWA. While some states contract with a network of dozens or hundreds of home care vendors to service the Medicaid populations in their states, there was little-to-no precedent for hiring a single company to manage a home care workforce this large.<sup>15</sup>

Third, even once implemented, the new CDE has not produced an easier working experience for caregivers. If anything, it has further complicated matters by adding another party with responsibility for only part of the home care system, creating more opportunities for confusion and breakdowns in communication and data sharing.

While CDWA handles administrative employment matters like background checks and payroll, caregivers must continue to interface to some extent with DSHS, which performs care assessments to determine clients’ hourly care needs. SEIU 775 remains caregivers’ union, handling matters pertaining to membership, contract negotiations and grievances. State-mandated training continues to be provided through the SEIU Training Partnership, health benefits remain provided through the SEIU Health Benefits Trust, and retirement benefits are still managed by the SEIU Secure Retirement Trust.

Such an array of independent entities deprives caregivers of a one-stop-shop to resolve problems that could stem from multiple points of failure. For instance, if the Training Partnership fails to make sufficient training opportunities available for caregivers to remain certified to work, or a breakdown in data sharing means that CDWA doesn’t have records confirming training completion, then CDWA is forced to limit the caregiver’s ability to work or perhaps even terminate them, and the caregiver doesn’t know where to turn. In this case, the work restrictions would come from CDWA, but a home care aide’s attempt to resolve the matter through CDWA would be unavailing, as the issue stemmed from the Training Partnership. And DSHS can no longer provide assistance in resolving the issue because it has

outsourced its responsibility. Of course, any disruptions in the continuity of home care aides' ability to work has ramifications for client care.

If the constituent correspondence received by my office is any indication, these and other administrative difficulties are a common source of frustration to the caregivers our state relies on to serve some of Washington's most vulnerable residents. I hope this information proves useful to you as the Oregon legislature considers adopting a AwC home care service delivery model apparently based at least loosely on Washington state's CDE program.

If you have additional questions, please do not hesitate to contact my office.

Sincerely,



Senator John Braun  
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Washington State, 20<sup>th</sup> Legislative District

1 <https://app.leg.wa.gov/billsummary?BillNumber=6199&Year=2017>

2 Janet O'Keeffe, Paul Saucier, Beth Jackson, Robin Cooper, Ernest McKenney, Suzanne Crisp and Charles Moseley. "Understanding Medicaid Home and Community Services: A Primer, 2010 Edition." U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation. October 28, 2010.

<https://aspe.hhs.gov/reports/understanding-medicaid-home-community-services-primer-2010-edition-0>

Vikki Wachino and Shantanu Agrawal. "Strengthening Program Integrity in Medicaid Personal Care Services." Centers for Medicare & Medicaid Services. December 13, 2016.

[https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/cib121316\\_1](https://www.hhs.gov/guidance/sites/default/files/hhs-guidance-documents/cib121316_1)

3 [https://ballotpedia.org/Washington\\_Initiative\\_775,\\_Home\\_Care\\_Quality\\_Authority\\_Measure\\_\(2001\)](https://ballotpedia.org/Washington_Initiative_775,_Home_Care_Quality_Authority_Measure_(2001))

4 Harris v. Quinn, 573 U.S. 616 (2014)

5 Maxford Nelsen. "Inslee Administration Working to Help Unions Avoid Complying with Supreme Court Ruling." Freedom Foundation. September 12, 2014.

<https://www.freedomfoundation.com/labor/inslee-administration-working-to-help-unions-avoid-complying-with-supreme-court-ruling/>

6 29 U.S. Code § 158(a)(3).

7 Bill Moss. Letter to the Washington State Senate Health and Long-Term Care Committee. January 26, 2018.

8 <https://seiu775.org/wp-content/uploads/2023/08/Consumer-Direct-Washington-2023-2025-CBA-1.pdf>

9 Washington State Sen. John Braun. Economic Sense. February 2018.

<https://johnbraun.src.wastateleg.org/wp-content/uploads/sites/16/2018/02/Economic-Sense-The-Most-Disingenuous-and-cynical-bill-in-Olympia.pdf>

10 <https://fnspublic.ofm.wa.gov/FNSPublicSearch/GetPDF?packageID=52595>

11

<https://www.dshs.wa.gov/sites/default/files/AL TSA/stakeholders/documents/CDE/Briefing%20Book%2005.19.2022.pdf>

12 Ibid.

13 Washington State Department of Social and Health Services. "Consumer Directed Employer (CDE) Project Talking Points #8 – Changes in CDE Procurement." March 2019.

[https://www.dshs.wa.gov/sites/default/files/AL TSA/stakeholders/documents/CDE/CDE\\_Talking%20Points\\_8.pdf](https://www.dshs.wa.gov/sites/default/files/AL TSA/stakeholders/documents/CDE/CDE_Talking%20Points_8.pdf)

14 Washington State Department of Social and Health Services. “Consumer Directed Employer (CDE) Project Talking Points #15- Counties Served by each CDE Vendor.” August 2019.

<https://www.dshs.wa.gov/sites/default/files/ALISA/stakeholders/documents/CDE/Talking%20Points%2015-%20Counties%20Served%20by%20each%20CDE.pdf>

15 DSHS admitted that there were no “evidence-based examples of this model being used in other states.” Washington State Department of Social and Health Services. “CDE Questions and Answers.” February 2021.

<https://www.dshs.wa.gov/sites/default/files/ALISA/stakeholders/documents/CDE/CDE%20Questions%20and%20Answers.pdf>