
SUBSTITUTE SENATE BILL 6180

State of Washington

61st Legislature

2009 Regular Session

By Senate Ways & Means (originally sponsored by Senators Keiser, Tom, and Prentice)

READ FIRST TIME 04/19/09.

1 AN ACT Relating to the training and background checks of long-term
2 care workers; amending RCW 74.39A.055, 18.20.125, 18.88B.030,
3 43.20A.710, 43.43.837, 74.39A.050, 74.39A.095, 74.39A.260, 74.39A.073,
4 74.39A.075, 74.39A.340, 74.39A.350, 74.39A.085, 18.88B.040, 18.88A.115,
5 18.88B.050, and 18.88B.020; and providing an effective date.

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

7 **Sec. 1.** RCW 74.39A.055 and 2009 c 2 s 3 (Initiative Measure No.
8 1029) are each amended to read as follows:

9 (1) All long-term care workers for the elderly or persons with
10 disabilities hired after January 1, (~~2010~~) 2011, shall be screened
11 through state and federal background checks in a uniform and timely
12 manner to ensure that they do not have a criminal history that would
13 disqualify them from working with vulnerable persons. These background
14 checks shall include checking against the federal bureau of
15 investigation fingerprint identification records system and against the
16 national sex offenders registry or their successor programs. The
17 department shall require these long-term care workers to submit
18 fingerprints for the purpose of investigating conviction records

1 through both the Washington state patrol and the federal bureau of
2 investigation.

3 (2) To allow the department of health to satisfy its certification
4 responsibilities under chapter 18.88B RCW, the department shall share
5 ((this information)) state and federal background check results with
6 the department of health. Neither department may share the federal
7 background check results with any other state agency or person.

8 (3) The department shall not pass on the cost of these criminal
9 background checks to the workers or their employers.

10 (4) The department shall adopt rules to implement the provisions of
11 this section by August 1, ((2009)) 2010.

12 **Sec. 2.** RCW 18.20.125 and 2004 c 140 s 4 are each amended to read
13 as follows:

14 (1) Inspections must be outcome based and responsive to resident
15 complaints and based on a clear set of health, quality of care, and
16 safety standards that are easily understandable and have been made
17 available to facilities, residents, and other interested parties. This
18 includes that when conducting licensing inspections, the department
19 shall interview an appropriate percentage of residents, family members,
20 and advocates in addition to interviewing appropriate staff.

21 (2) Prompt and specific enforcement remedies shall also be
22 implemented without delay, consistent with RCW 18.20.190, for
23 facilities found to have delivered care or failed to deliver care
24 resulting in problems that are serious, recurring, or uncorrected, or
25 that create a hazard that is causing or likely to cause death or
26 serious harm to one or more residents. These enforcement remedies may
27 also include, when appropriate, reasonable conditions on a license. In
28 the selection of remedies, the safety, health, and well-being of
29 residents shall be of paramount importance.

30 (3)(a) To the extent funding is available, the licensee,
31 administrator, and their staff should be screened through background
32 checks in a uniform and timely manner to ensure that they do not have
33 a criminal history that would disqualify them from working with
34 vulnerable adults. Employees may be provisionally hired pending the
35 results of the background check if they have been given three positive
36 references.

1 (b) Long-term care workers, as defined in RCW 74.39A.009, who are
2 hired after January 1, 2011, are subject to background checks under RCW
3 74.39A.055.

4 (4) No licensee, administrator, or staff, or prospective licensee,
5 administrator, or staff, with a stipulated finding of fact, conclusion
6 of law, and agreed order, or finding of fact, conclusion of law, or
7 final order issued by a disciplining authority, a court of law, or
8 entered into the state registry finding him or her guilty of abuse,
9 neglect, exploitation, or abandonment of a minor or a vulnerable adult
10 as defined in chapter 74.34 RCW shall be employed in the care of and
11 have unsupervised access to vulnerable adults.

12 **Sec. 3.** RCW 18.88B.030 and 2009 c 2 s 6 (Initiative Measure No.
13 1029) are each amended to read as follows:

14 (1) Effective January 1, (~~2010~~) 2011, except as provided in RCW
15 18.88B.040, the department of health shall require that all long-term
16 care workers successfully complete a certification examination. Any
17 long-term care worker failing to make the required grade for the
18 examination will not be certified as a home care aide.

19 (2) The department of health, in consultation with consumer and
20 worker representatives, shall develop a home care aide certification
21 examination to evaluate whether an applicant possesses the skills and
22 knowledge necessary to practice competently. Unless excluded by RCW
23 18.88B.040 (1) and (2), only those who have completed the training
24 requirements in RCW 74.39A.073 shall be eligible to sit for this
25 examination.

26 (3) The examination shall include both a skills demonstration and
27 a written or oral knowledge test. The examination papers, all grading
28 of the papers, and records related to the grading of skills
29 demonstration shall be preserved for a period of not less than one
30 year. The department of health shall establish rules governing the
31 number of times and under what circumstances individuals who have
32 failed the examination may sit for the examination, including whether
33 any intermediate remedial steps should be required.

34 (4) All examinations shall be conducted by fair and wholly
35 impartial methods. The certification examination shall be administered
36 and evaluated by the department of health or by a contractor to the

1 department of health that is neither an employer of long-term care
2 workers or private contractors providing training services under this
3 chapter.

4 (5) The department of health has the authority to:

5 (a) Establish forms, procedures, and examinations necessary to
6 certify home care aides pursuant to this chapter;

7 (b) Hire clerical, administrative, and investigative staff as
8 needed to implement this section;

9 (c) Issue certification as a home care aide to any applicant who
10 has successfully completed the home care aide examination;

11 (d) Maintain the official record of all applicants and persons with
12 certificates;

13 (e) Exercise disciplinary authority as authorized in chapter 18.130
14 RCW; and

15 (f) Deny certification to applicants who do not meet training,
16 competency examination, and conduct requirements for certification.

17 (6) The department of health shall adopt rules by August 1,
18 ((2009)) 2010, that establish the procedures, including criteria for
19 reviewing an applicant's state and federal background checks, and
20 examinations necessary to carry this section into effect.

21 **Sec. 4.** RCW 43.20A.710 and 2001 c 296 s 5 are each amended to read
22 as follows:

23 (1) The secretary shall investigate the conviction records, pending
24 charges and disciplinary board final decisions of:

25 (a) Any current employee or applicant seeking or being considered
26 for any position with the department who will or may have unsupervised
27 access to children, vulnerable adults, or individuals with mental
28 illness or developmental disabilities. This includes, but is not
29 limited to, positions conducting comprehensive assessments, financial
30 eligibility determinations, licensing and certification activities,
31 investigations, surveys, or case management; or for state positions
32 otherwise required by federal law to meet employment standards;

33 (b) Individual providers who are paid by the state and providers
34 who are paid by home care agencies to provide in-home services
35 involving unsupervised access to persons with physical, mental, or
36 developmental disabilities or mental illness, or to vulnerable adults

1 as defined in chapter 74.34 RCW, including but not limited to services
2 provided under chapter 74.39 or 74.39A RCW; and

3 (c) Individuals or businesses or organizations for the care,
4 supervision, case management, or treatment of children,
5 (~~developmentally disabled~~) persons with developmental disabilities,
6 or vulnerable adults, including but not limited to services contracted
7 for under chapter 18.20, (~~18.48,~~) 70.127, 70.128, 72.36, or 74.39A
8 RCW or Title 71A RCW.

9 (2) The investigation may include an examination of state and
10 national criminal identification data. The secretary shall use the
11 information solely for the purpose of determining the character,
12 suitability, and competence of these applicants.

13 (3) Except as provided in subsection (4) of this section, an
14 individual provider or home care agency provider who has resided in the
15 state less than three years before applying for employment involving
16 unsupervised access to a vulnerable adult as defined in chapter 74.34
17 RCW must be fingerprinted for the purpose of investigating conviction
18 records (~~both~~) through both the Washington state patrol and the
19 federal bureau of investigation. This subsection applies only with
20 respect to the provision of in-home services funded by medicaid
21 personal care under RCW 74.09.520, community options program entry
22 system waiver services under RCW 74.39A.030, or chore services under
23 RCW 74.39A.110. However, this subsection does not supersede RCW
24 74.15.030(2)(b).

25 (4) Long-term care workers, as defined in RCW 74.39A.009, who are
26 hired after January 1, 2011, are subject to background checks under RCW
27 74.39A.055, except that the department may require a background check
28 at any time under RCW 43.43.837. For the purposes of this subsection,
29 "background check" includes, but is not limited to, a fingerprint check
30 submitted for the purpose of investigating conviction records through
31 both the Washington state patrol and the federal bureau of
32 investigation.

33 (5) An individual provider or home care agency provider hired to
34 provide in-home care for and having unsupervised access to a vulnerable
35 adult as defined in chapter 74.34 RCW must have no conviction for a
36 disqualifying crime under RCW 43.43.830 and 43.43.842. An individual
37 or home care agency provider must also have no conviction for a crime
38 relating to drugs as defined in RCW 43.43.830. This subsection applies

1 only with respect to the provision of in-home services funded by
2 medicaid personal care under RCW 74.09.520, community options program
3 entry system waiver services under RCW 74.39A.030, or chore services
4 under RCW 74.39A.110.

5 ((+5+)) (6) The secretary shall provide the results of the state
6 background check on long-term care workers, including individual
7 providers, to the persons hiring them or to their legal guardians, if
8 any, for their determination of the character, suitability, and
9 competence of the applicants. If the person elects to hire or retain
10 an individual provider after receiving notice from the department that
11 the applicant has a conviction for an offense that would disqualify the
12 applicant from having unsupervised access to persons with physical,
13 mental, or developmental disabilities or mental illness, or to
14 vulnerable adults as defined in chapter 74.34 RCW, then the secretary
15 shall deny payment for any subsequent services rendered by the
16 disqualified individual provider.

17 ((+6+)) (7) Criminal justice agencies shall provide the secretary
18 such information as they may have and that the secretary may require
19 for such purpose.

20 **Sec. 5.** RCW 43.43.837 and 2007 c 387 s 1 are each amended to read
21 as follows:

22 (1) Except as provided in subsection (2) of this section, in order
23 to determine the character, competence, and suitability of any
24 applicant or service provider to have unsupervised access, the
25 secretary may require a fingerprint-based background check through both
26 the Washington state patrol and the federal bureau of investigation at
27 any time, but shall require a fingerprint-based background check when
28 the applicant or service provider has resided in the state less than
29 three consecutive years before application, and:

30 (a) Is an applicant or service provider providing services to
31 children or people with developmental disabilities under RCW 74.15.030;

32 (b) Is an individual residing in an applicant or service provider's
33 home, facility, entity, agency, or business or who is authorized by the
34 department to provide services to children or people with developmental
35 disabilities under RCW 74.15.030; or

36 (c) Is an applicant or service provider providing in-home services
37 funded by:

- 1 (i) Medicaid personal care under RCW 74.09.520;
- 2 (ii) Community options program entry system waiver services under
- 3 RCW 74.39A.030;
- 4 (iii) Chore services under RCW 74.39A.110; or
- 5 (iv) Other home and community long-term care programs, established
- 6 pursuant to chapters 74.39 and 74.39A RCW, administered by the
- 7 department.

8 (2) Long-term care workers, as defined in RCW 74.39A.009, who are
9 hired after January 1, 2011, are subject to background checks under RCW
10 74.39A.055.

11 (3) The secretary shall require a fingerprint-based background
12 check through the Washington state patrol identification and criminal
13 history section and the federal bureau of investigation when the
14 department seeks to approve an applicant or service provider for a
15 foster or adoptive placement of children in accordance with federal and
16 state law.

17 (~~(3)~~) (4) Any secure facility operated by the department under
18 chapter 71.09 RCW shall require applicants and service providers to
19 undergo a fingerprint-based background check through the Washington
20 state patrol identification and criminal history section and the
21 federal bureau of investigation.

22 (~~(4)~~) (5) Service providers and service provider applicants who
23 are required to complete a fingerprint-based background check may be
24 hired for a one hundred twenty-day provisional period as allowed under
25 law or program rules when:

- 26 (a) A fingerprint-based background check is pending; and
- 27 (b) The applicant or service provider is not disqualified based on
- 28 the immediate result of the background check.

29 (~~(5)~~) (6) Fees charged by the Washington state patrol and the
30 federal bureau of investigation for fingerprint-based background checks
31 shall be paid by the department for applicants or service providers
32 providing:

- 33 (a) Services to people with a developmental disability under RCW
- 34 74.15.030;
- 35 (b) In-home services funded by medicaid personal care under RCW
- 36 74.09.520;
- 37 (c) Community options program entry system waiver services under
- 38 RCW 74.39A.030;

1 (d) Chore services under RCW 74.39A.110;

2 (e) Services under other home and community long-term care
3 programs, established pursuant to chapters 74.39 and 74.39A RCW,
4 administered by the department;

5 (f) Services in, or to residents of, a secure facility under RCW
6 71.09.115; and

7 (g) Foster care as required under RCW 74.15.030.

8 ~~((+6+))~~ (7) Service providers licensed under RCW 74.15.030 must pay
9 fees charged by the Washington state patrol and the federal bureau of
10 investigation for conducting fingerprint-based background checks.

11 ~~((+7+))~~ (8) Children's administration service providers licensed
12 under RCW 74.15.030 may not pass on the cost of the background check
13 fees to their applicants unless the individual is determined to be
14 disqualified due to the background information.

15 ~~((+8+))~~ (9) The department shall develop rules identifying the
16 financial responsibility of service providers, applicants, and the
17 department for paying the fees charged by law enforcement to roll,
18 print, or scan fingerprints-based for the purpose of a Washington state
19 patrol or federal bureau of investigation fingerprint-based background
20 check.

21 ~~((+9+))~~ (10) For purposes of this section, unless the context
22 plainly indicates otherwise:

23 (a) "Applicant" means a current or prospective department or
24 service provider employee, volunteer, student, intern, researcher,
25 contractor, or any other individual who will or may have unsupervised
26 access because of the nature of the work or services he or she
27 provides. "Applicant" includes but is not limited to any individual
28 who will or may have unsupervised access and is:

29 (i) Applying for a license or certification from the department;

30 (ii) Seeking a contract with the department or a service provider;

31 (iii) Applying for employment, promotion, reallocation, or
32 transfer;

33 (iv) An individual that a department client or guardian of a
34 department client chooses to hire or engage to provide services to
35 himself or herself or another vulnerable adult, juvenile, or child and
36 who might be eligible to receive payment from the department for
37 services rendered; or

1 (v) A department applicant who will or may work in a department-
2 covered position.

3 (b) "Authorized" means the department grants an applicant, home, or
4 facility permission to:

5 (i) Conduct licensing, certification, or contracting activities;

6 (ii) Have unsupervised access to vulnerable adults, juveniles, and
7 children;

8 (iii) Receive payments from a department program; or

9 (iv) Work or serve in a department-covered position.

10 (c) "Department" means the department of social and health
11 services.

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

14 (e) "Secure facility" has the meaning provided in RCW 71.09.020.

15 (f) "Service provider" means entities, facilities, agencies,
16 businesses, or individuals who are licensed, certified, authorized, or
17 regulated by, receive payment from, or have contracts or agreements
18 with the department to provide services to vulnerable adults,
19 juveniles, or children. "Service provider" includes individuals whom
20 a department client or guardian of a department client may choose to
21 hire or engage to provide services to himself or herself or another
22 vulnerable adult, juvenile, or child and who might be eligible to
23 receive payment from the department for services rendered. "Service
24 provider" does not include those certified under chapter 70.96A RCW.

25 **Sec. 6.** RCW 74.39A.050 and 2009 c 2 s 14 (Initiative Measure No.
26 1029) are each amended to read as follows:

27 The department's system of quality improvement for long-term care
28 services shall use the following principles, consistent with applicable
29 federal laws and regulations:

30 (1) The system shall be client-centered and promote privacy,
31 independence, dignity, choice, and a home or home-like environment for
32 consumers consistent with chapter 392, Laws of 1997.

33 (2) The goal of the system is continuous quality improvement with
34 the focus on consumer satisfaction and outcomes for consumers. This
35 includes that when conducting licensing or contract inspections, the
36 department shall interview an appropriate percentage of residents,

1 family members, resident case managers, and advocates in addition to
2 interviewing providers and staff.

3 (3) Providers should be supported in their efforts to improve
4 quality and address identified problems initially through training,
5 consultation, technical assistance, and case management.

6 (4) The emphasis should be on problem prevention both in monitoring
7 and in screening potential providers of service.

8 (5) Monitoring should be outcome based and responsive to consumer
9 complaints and based on a clear set of health, quality of care, and
10 safety standards that are easily understandable and have been made
11 available to providers, residents, and other interested parties.

12 (6) Prompt and specific enforcement remedies shall also be
13 implemented without delay, pursuant to RCW 74.39A.080, RCW 70.128.160,
14 chapter 18.51 RCW, or chapter 74.42 RCW, for providers found to have
15 delivered care or failed to deliver care resulting in problems that are
16 serious, recurring, or uncorrected, or that create a hazard that is
17 causing or likely to cause death or serious harm to one or more
18 residents. These enforcement remedies may also include, when
19 appropriate, reasonable conditions on a contract or license. In the
20 selection of remedies, the safety, health, and well-being of residents
21 shall be of paramount importance.

22 (7) All long-term care workers shall be screened through background
23 checks in a uniform and timely manner to ensure that they do not have
24 a criminal history that would disqualify them from working with
25 vulnerable persons. Long-term care workers who are hired after January
26 1, 2011, are subject to background checks under RCW 74.39A.055. This
27 information will be shared with the department of health in accordance
28 with RCW 74.39A.055 to advance the purposes of chapter 2, Laws of 2009.

29 (8) No provider, or its staff, or long-term care worker, or
30 prospective provider or long-term care worker, with a stipulated
31 finding of fact, conclusion of law, an agreed order, or finding of
32 fact, conclusion of law, or final order issued by a disciplining
33 authority, a court of law, or entered into a state registry finding him
34 or her guilty of abuse, neglect, exploitation, or abandonment of a
35 minor or a vulnerable adult as defined in chapter 74.34 RCW shall be
36 employed in the care of and have unsupervised access to vulnerable
37 adults.

1 (9) The department shall establish, by rule, a state registry which
2 contains identifying information about long-term care workers
3 identified under this chapter who have substantiated findings of abuse,
4 neglect, financial exploitation, or abandonment of a vulnerable adult
5 as defined in RCW 74.34.020. The rule must include disclosure,
6 disposition of findings, notification, findings of fact, appeal rights,
7 and fair hearing requirements. The department shall disclose, upon
8 request, substantiated findings of abuse, neglect, financial
9 exploitation, or abandonment to any person so requesting this
10 information. This information will also be shared with the department
11 of health to advance the purposes of chapter 2, Laws of 2009.

12 (10) Until December 31, (~~2009~~) 2010, individual providers and
13 home care agency providers must satisfactorily complete department-
14 approved orientation, basic training, and continuing education within
15 the time period specified by the department in rule. The department
16 shall adopt rules by March 1, 2002, for the implementation of this
17 section. The department shall deny payment to an individual provider
18 or a home care provider who does not complete the training requirements
19 within the time limit specified by the department by rule.

20 (11) Until December 31, (~~2009~~) 2010, in an effort to improve
21 access to training and education and reduce costs, especially for rural
22 communities, the coordinated system of long-term care training and
23 education must include the use of innovative types of learning
24 strategies such as internet resources, videotapes, and distance
25 learning using satellite technology coordinated through community
26 colleges or other entities, as defined by the department.

27 (12) The department shall create an approval system by March 1,
28 2002, for those seeking to conduct department-approved training.

29 (13) The department shall establish, by rule, background checks and
30 other quality assurance requirements for long-term care workers who
31 provide in-home services funded by medicaid personal care as described
32 in RCW 74.09.520, community options program entry system waiver
33 services as described in RCW 74.39A.030, or chore services as described
34 in RCW 74.39A.110 that are equivalent to requirements for individual
35 providers. Long-term care workers who are hired after January 1, 2011,
36 are subject to background checks under RCW 74.39A.055.

37 (14) Under existing funds the department shall establish internally

1 a quality improvement standards committee to monitor the development of
2 standards and to suggest modifications.

3 (15) Within existing funds, the department shall design, develop,
4 and implement a long-term care training program that is flexible,
5 relevant, and qualifies towards the requirements for a nursing
6 assistant certificate as established under chapter 18.88A RCW. This
7 subsection does not require completion of the nursing assistant
8 certificate training program by providers or their staff. The long-
9 term care teaching curriculum must consist of a fundamental module, or
10 modules, and a range of other available relevant training modules that
11 provide the caregiver with appropriate options that assist in meeting
12 the resident's care needs. Some of the training modules may include,
13 but are not limited to, specific training on the special care needs of
14 persons with developmental disabilities, dementia, mental illness, and
15 the care needs of the elderly. No less than one training module must
16 be dedicated to workplace violence prevention. The nursing care
17 quality assurance commission shall work together with the department to
18 develop the curriculum modules. The nursing care quality assurance
19 commission shall direct the nursing assistant training programs to
20 accept some or all of the skills and competencies from the curriculum
21 modules towards meeting the requirements for a nursing assistant
22 certificate as defined in chapter 18.88A RCW. A process may be
23 developed to test persons completing modules from a caregiver's class
24 to verify that they have the transferable skills and competencies for
25 entry into a nursing assistant training program. The department may
26 review whether facilities can develop their own related long-term care
27 training programs. The department may develop a review process for
28 determining what previous experience and training may be used to waive
29 some or all of the mandatory training. The department of social and
30 health services and the nursing care quality assurance commission shall
31 work together to develop an implementation plan by December 12, 1998.

32 **Sec. 7.** RCW 74.39A.095 and 2004 c 141 s 1 are each amended to read
33 as follows:

34 (1) In carrying out case management responsibilities established
35 under RCW 74.39A.090 for consumers who are receiving services under the
36 medicaid personal care, community options programs entry system or
37 chore services program through an individual provider, each area agency

1 on aging shall provide oversight of the care being provided to
2 consumers receiving services under this section to the extent of
3 available funding. Case management responsibilities incorporate this
4 oversight, and include, but are not limited to:

5 (a) Verification that any individual provider who has not been
6 referred to a consumer by the authority (~~established under chapter 3,~~
7 ~~Laws of 2002~~) has met any training requirements established by the
8 department;

9 (b) Verification of a sample of worker time sheets;

10 (c) Monitoring the consumer's plan of care to verify that it
11 adequately meets the needs of the consumer, through activities such as
12 home visits, telephone contacts, and responses to information received
13 by the area agency on aging indicating that a consumer may be
14 experiencing problems relating to his or her home care;

15 (d) (~~Reassessment and reauthorization of~~) Reassessing and
16 reauthorizing services;

17 (e) Monitoring of individual provider performance. If, in the
18 course of its case management activities, the area agency on aging
19 identifies concerns regarding the care being provided by an individual
20 provider who was referred by the authority, the area agency on aging
21 must notify the authority regarding its concerns; and

22 (f) Conducting criminal background checks or verifying that
23 criminal background checks have been conducted for any individual
24 provider who has not been referred to a consumer by the authority.
25 Individual providers who are hired after January 1, 2011, are subject
26 to background checks under RCW 74.39A.055.

27 (2) The area agency on aging case manager shall work with each
28 consumer to develop a plan of care under this section that identifies
29 and ensures coordination of health and long-term care services that
30 meet the consumer's needs. In developing the plan, they shall utilize,
31 and modify as needed, any comprehensive community service plan
32 developed by the department as provided in RCW 74.39A.040. The plan of
33 care shall include, at a minimum:

34 (a) The name and telephone number of the consumer's area agency on
35 aging case manager, and a statement as to how the case manager can be
36 contacted about any concerns related to the consumer's well-being or
37 the adequacy of care provided;

1 (b) The name and telephone numbers of the consumer's primary health
2 care provider, and other health or long-term care providers with whom
3 the consumer has frequent contacts;

4 (c) A clear description of the roles and responsibilities of the
5 area agency on aging case manager and the consumer receiving services
6 under this section;

7 (d) The duties and tasks to be performed by the area agency on
8 aging case manager and the consumer receiving services under this
9 section;

10 (e) The type of in-home services authorized, and the number of
11 hours of services to be provided;

12 (f) The terms of compensation of the individual provider;

13 (g) A statement by the individual provider that he or she has the
14 ability and willingness to carry out his or her responsibilities
15 relative to the plan of care; and

16 (h)(i) Except as provided in (h)(ii) of this subsection, a clear
17 statement indicating that a consumer receiving services under this
18 section has the right to waive any of the case management services
19 offered by the area agency on aging under this section, and a clear
20 indication of whether the consumer has, in fact, waived any of these
21 services.

22 (ii) The consumer's right to waive case management services does
23 not include the right to waive reassessment or reauthorization of
24 services, or verification that services are being provided in
25 accordance with the plan of care.

26 (3) Each area agency on aging shall retain a record of each waiver
27 of services included in a plan of care under this section.

28 (4) Each consumer has the right to direct and participate in the
29 development of their plan of care to the maximum practicable extent of
30 their abilities and desires, and to be provided with the time and
31 support necessary to facilitate that participation.

32 (5) A copy of the plan of care must be distributed to the
33 consumer's primary care provider, individual provider, and other
34 relevant providers with whom the consumer has frequent contact, as
35 authorized by the consumer.

36 (6) The consumer's plan of care shall be an attachment to the
37 contract between the department, or their designee, and the individual
38 provider.

1 (7) If the department or area agency on aging case manager finds
2 that an individual provider's inadequate performance or inability to
3 deliver quality care is jeopardizing the health, safety, or well-being
4 of a consumer receiving service under this section, the department or
5 the area agency on aging may take action to terminate the contract
6 between the department and the individual provider. If the department
7 or the area agency on aging has a reasonable, good faith belief that
8 the health, safety, or well-being of a consumer is in imminent
9 jeopardy, the department or area agency on aging may summarily suspend
10 the contract pending a fair hearing. The consumer may request a fair
11 hearing to contest the planned action of the case manager, as provided
12 in chapter 34.05 RCW. When the department or area agency on aging
13 terminates or summarily suspends a contract under this subsection, it
14 must provide oral and written notice of the action taken to the
15 authority. The department may by rule adopt guidelines for
16 implementing this subsection.

17 (8) The department or area agency on aging may reject a request by
18 a consumer receiving services under this section to have a family
19 member or other person serve as his or her individual provider if the
20 case manager has a reasonable, good faith belief that the family member
21 or other person will be unable to appropriately meet the care needs of
22 the consumer. The consumer may request a fair hearing to contest the
23 decision of the case manager, as provided in chapter 34.05 RCW. The
24 department may by rule adopt guidelines for implementing this
25 subsection.

26 **Sec. 8.** RCW 74.39A.260 and 2002 c 3 s 5 are each amended to read
27 as follows:

28 The department must perform criminal background checks for
29 individual providers and prospective individual providers and ensure
30 that the authority has ready access to any long-term care abuse and
31 neglect registry used by the department. Individual providers who are
32 hired after January 1, 2011, are subject to background checks under RCW
33 74.39A.055.

34 **Sec. 9.** RCW 74.39A.073 and 2009 c 2 s 5 (Initiative Measure No.
35 1029) are each amended to read as follows:

36 (1) Effective January 1, (~~2010~~) 2011, except as provided in RCW

1 18.88B.040, all persons employed as long-term care workers for the
2 elderly or persons with disabilities must meet the minimum training
3 requirements in this section within one hundred twenty calendar days of
4 employment.

5 (2) All persons employed as long-term care workers must obtain
6 seventy-five hours of entry-level training approved by the department.
7 A long-term care worker must accomplish five of these seventy-five
8 hours before becoming eligible to provide care.

9 (3) Training required by subsection (4)(c) of this section will be
10 applied towards training required under RCW 18.20.270 or 70.128.230 as
11 well as any statutory or regulatory training requirements for long-term
12 care workers employed by supportive living providers.

13 (4) Only training curriculum approved by the department may be used
14 to fulfill the training requirements specified in this section. The
15 seventy-five hours of entry-level training required shall be as
16 follows:

17 (a) Before a long-term care worker is eligible to provide care, he
18 or she must complete two hours of orientation training regarding his or
19 her role as caregiver and the applicable terms of employment;

20 (b) Before a long-term care worker is eligible to provide care, he
21 or she must complete three hours of safety training, including basic
22 safety precautions, emergency procedures, and infection control; and

23 (c) All long-term care workers must complete seventy hours of
24 long-term care basic training, including training related to core
25 competencies and population specific competencies.

26 (5) The department shall only approve training curriculum that:

27 (a) Has been developed with input from consumer and worker
28 representatives; and

29 (b) Requires comprehensive instruction by qualified instructors on
30 the competencies and training topics in this section.

31 (6) Individual providers under RCW 74.39A.270 shall be compensated
32 for training time required by this section.

33 (7) The department of health shall adopt rules by August 1,
34 ((2009)) 2010, to implement subsections (1), (2), and (3) of this
35 section.

36 (8) The department shall adopt rules by August 1, ((2009)) 2010, to
37 implement subsections (4) and (5) of this section.

1 **Sec. 10.** RCW 74.39A.075 and 2009 c 2 s 8 (Initiative Measure No.
2 1029) are each amended to read as follows:

3 (1) Effective January 1, (~~2010~~) 2011, a biological, step, or
4 adoptive parent who is the individual provider only for his or her
5 developmentally disabled son or daughter must receive twelve hours of
6 training relevant to the needs of adults with developmental
7 disabilities within the first one hundred twenty days of becoming an
8 individual provider.

9 (2) Effective January 1, (~~2010~~) 2011, individual providers
10 identified in (a) and (b) of this subsection must complete thirty-five
11 hours of training within the first one hundred twenty days of becoming
12 an individual provider. Five of the thirty-five hours must be
13 completed before becoming eligible to provide care. Two of these five
14 hours shall be devoted to an orientation training regarding an
15 individual provider's role as caregiver and the applicable terms of
16 employment, and three hours shall be devoted to safety training,
17 including basic safety precautions, emergency procedures, and infection
18 control. Individual providers subject to this requirement include:

19 (a) An individual provider caring only for his or her biological,
20 step, or adoptive child or parent unless covered by subsection (1) of
21 this section; and

22 (b) Before January 1, 2014, a person hired as an individual
23 provider who provides twenty hours or less of care for one person in
24 any calendar month.

25 (3) Only training curriculum approved by the department may be used
26 to fulfill the training requirements specified in this section. The
27 department shall only approve training curriculum that:

28 (a) Has been developed with input from consumer and worker
29 representatives; and

30 (b) Requires comprehensive instruction by qualified instructors.

31 (4) The department shall adopt rules by August 1, (~~2009~~) 2010, to
32 implement this section.

33 **Sec. 11.** RCW 74.39A.340 and 2009 c 2 s 9 (Initiative Measure No.
34 1029) are each amended to read as follows:

35 (1) The department of health shall ensure that all long-term care
36 workers shall complete twelve hours of continuing education training in

1 advanced training topics each year. This requirement applies beginning
2 on January 1, (~~2010~~) 2011.

3 (2) Completion of continuing education as required in this section
4 is a prerequisite to maintaining home care aide certification under
5 chapter 2, Laws of 2009.

6 (3) Unless voluntarily certified as a home care aide under chapter
7 2, Laws of 2009, subsection (1) of this section does not apply to:

8 (a) An individual provider caring only for his or her biological,
9 step, or adoptive child; and

10 (b) Before June 30, 2014, a person hired as an individual provider
11 who provides twenty hours or less of care for one person in any
12 calendar month.

13 (4) Only training curriculum approved by the department may be used
14 to fulfill the training requirements specified in this section. The
15 department shall only approve training curriculum that:

16 (a) Has been developed with input from consumer and worker
17 representatives; and

18 (b) Requires comprehensive instruction by qualified instructors.

19 (5) Individual providers under RCW 74.39A.270 shall be compensated
20 for training time required by this section.

21 (6) The department of health shall adopt rules by August 1,
22 (~~2009~~) 2010, to implement subsections (1), (2), and (3) of this
23 section.

24 (7) The department shall adopt rules by August 1, (~~2009~~) 2010, to
25 implement subsection (4) of this section.

26 **Sec. 12.** RCW 74.39A.350 and 2009 c 2 s 10 (Initiative Measure No.
27 1029) are each amended to read as follows:

28 The department shall offer, directly or through contract, training
29 opportunities sufficient for a long-term care worker to accumulate
30 seventy hours of training within a reasonable time period. For
31 individual providers represented by an exclusive bargaining
32 representative under RCW 74.39A.270, the training opportunities shall
33 be offered through 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~~) July 1, 2011.

7 **Sec. 13.** RCW 74.39A.085 and 2009 c 2 s 12 (Initiative Measure No.
8 1029) are each amended to read as follows:

9 (1) The department shall deny payment to any individual provider of
10 home care services who has not been certified by the department of
11 health as a home care aide as required under chapter 2, Laws of 2009
12 or, if exempted from certification by RCW 18.88B.040, has not completed
13 his or her required training pursuant to chapter 2, Laws of 2009.

14 (2) The department may terminate the contract of any individual
15 provider of home care services, or take any other enforcement measure
16 deemed appropriate by the department if the individual provider's
17 certification is revoked under chapter 2, Laws of 2009 or, if exempted
18 from certification by RCW 18.88B.040, has not completed his or her
19 required training pursuant to chapter 2, Laws of 2009.

20 (3) The department shall take appropriate enforcement action
21 related to the contract of a private agency or facility licensed by the
22 state, to provide personal care services, other than an individual
23 provider, who knowingly employs a long-term care worker who is not a
24 certified home care aide as required under chapter 2, Laws of 2009 or,
25 if exempted from certification by RCW 18.88B.040, has not completed his
26 or her required training pursuant to chapter 2, Laws of 2009.

27 (4) Chapter 34.05 RCW shall govern actions by the department under
28 this section.

29 (5) The department shall adopt rules by August 1, (~~2009~~) 2010, to
30 implement this section.

31 **Sec. 14.** RCW 18.88B.040 and 2009 c 2 s 7 (Initiative Measure No.
32 1029) are each amended to read as follows:

33 The following long-term care workers are not required to become a
34 certified home care aide pursuant to this chapter.

35 (1) Registered nurses, licensed practical nurses, certified nursing
36 assistants, medicare-certified home health aides, or other persons who

1 hold a similar health credential, as determined by the secretary of
2 health, or persons with special education training and an endorsement
3 granted by the superintendent of public instruction, as described in
4 RCW 28A.300.010, if the secretary of health determines that the
5 circumstances do not require certification. Individuals exempted by
6 this subsection may obtain certification as a home care aide from the
7 department of health without fulfilling the training requirements in
8 RCW 74.39A.073 but must successfully complete a certification
9 examination pursuant to RCW 18.88B.030.

10 (2) A person already employed as a long-term care worker prior to
11 January 1, (~~2010~~) 2011, who completes all of his or her training
12 requirements in effect as of the date he or she was hired, is not
13 required to obtain certification. Individuals exempted by this
14 subsection may obtain certification as a home care aide from the
15 department of health without fulfilling the training requirements in
16 RCW 74.39A.073 but must successfully complete a certification
17 examination pursuant to RCW 18.88B.030.

18 (3) All long-term care workers employed by supported living
19 providers are not required to obtain certification under this chapter.

20 (4) An individual provider caring only for his or her biological,
21 step, or adoptive child or parent is not required to obtain
22 certification under this chapter.

23 (5) Prior to June 30, 2014, a person hired as an individual
24 provider who provides twenty hours or less of care for one person in
25 any calendar month is not required to obtain certification under this
26 chapter.

27 (6) A long-term care worker exempted by this section from the
28 training requirements contained in RCW 74.39A.073 may not be prohibited
29 from enrolling in training pursuant to that section.

30 (7) The department of health shall adopt rules by August 1,
31 (~~2009~~) 2010, to implement this section.

32 **Sec. 15.** RCW 18.88A.115 and 2009 c 2 s 11 (Initiative Measure No.
33 1029) are each amended to read as follows:

34 By August 1, (~~2009~~) 2010, the department of health shall develop,
35 in consultation with the nursing care quality assurance commission and
36 consumer and worker representatives, rules permitting reciprocity to

1 the maximum extent possible under federal law between home care aide
2 certification and nursing assistant certification.

3 **Sec. 16.** RCW 18.88B.050 and 2009 c 2 s 13 (Initiative Measure No.
4 1029) are each amended to read as follows:

5 (1) The uniform disciplinary act, chapter 18.130 RCW, governs
6 uncertified practice, issuance of certificates, and the discipline of
7 persons with certificates under this chapter. The secretary of health
8 shall be the disciplinary authority under this chapter.

9 (2) The secretary of health may take action to immediately suspend
10 the certification of a long-term care worker upon finding that conduct
11 of the long-term care worker has caused or presents an imminent threat
12 of harm to a functionally disabled person in his or her care.

13 (3) If the secretary of health imposes suspension or conditions for
14 continuation of certification, the suspension or conditions for
15 continuation are effective immediately upon notice and shall continue
16 in effect pending the outcome of any hearing.

17 (4) The department of health shall take appropriate enforcement
18 action related to the licensure of a private agency or facility
19 licensed by the state, to provide personal care services, other than an
20 individual provider, who knowingly employs a long-term care worker who
21 is not a certified home care aide as required under this chapter or, if
22 exempted from certification by RCW 18.88B.040, has not completed his or
23 her required training pursuant to this chapter.

24 (5) Chapter 34.05 RCW shall govern actions by the department of
25 health under this section.

26 (6) The department of health shall adopt rules by August 1,
27 ((2009)) 2010, to implement this section.

28 **Sec. 17.** RCW 18.88B.020 and 2009 c 2 s 4 (Initiative Measure No.
29 1029) are each amended to read as follows:

30 (1) Effective January 1, ((2010)) 2011, except as provided in RCW
31 18.88B.040, the department of health shall require that any person
32 hired as a long-term care worker for the elderly or persons with
33 disabilities must be certified as a home care aide within one hundred
34 fifty days from the date of being hired.

35 (2) Except as provided in RCW 18.88B.040, certification as a home

1 care aide requires both completion of seventy-five hours of training
2 and successful completion of a certification examination pursuant to
3 RCW 74.39A.073 and 18.88B.030.

4 (3) No person may practice or, by use of any title or description,
5 represent himself or herself as a certified home care aide without
6 being certified pursuant to this chapter.

7 (4) The department of health shall adopt rules by August 1,
8 ((2009)) 2010, to implement this section.

9 NEW SECTION. **Sec. 18.** Section 15 of this act takes effect
10 September 1, 2009.

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