

INITIATIVE 775

to the People

Chapter 3, Laws of 2002

LONG-TERM IN-HOME CARE SERVICES

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Approved by the
People of the State of Washington
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April 17, 2001

**Secretary of State
State of Washington**

1 AN ACT Relating to regulating and improving long-term in-home care
2 services; amending RCW 74.39A.030 and 74.39A.095; adding new sections
3 to chapter 74.39A RCW; adding a new section to chapter 41.56 RCW;
4 adding a new section to chapter 70.127 RCW; adding a new section to
5 chapter 74.09 RCW; and creating a new section.

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

7 NEW SECTION. **Sec. 1.** FINDINGS. The people of the state of
8 Washington find as follows:

9 (1) Thousands of Washington seniors and persons with disabilities
10 live independently in their own homes, which they prefer and is less
11 costly than institutional care such as nursing homes.

12 (2) Many Washington seniors and persons with disabilities currently
13 receive long-term in-home care services from individual providers hired
14 directly by them under the medicaid personal care, community options
15 programs entry system, or chore services program.

16 (3) Quality long-term in-home care services allow Washington
17 seniors, persons with disabilities, and their families the choice of
18 allowing seniors and persons with disabilities to remain in their
19 homes, rather than forcing them into institutional care such as nursing

1 homes. Long-term in-home care services are also less costly, saving
2 Washington taxpayers significant amounts through lower reimbursement
3 rates.

4 (4) The quality of long-term in-home care services in Washington
5 would benefit from improved regulation, higher standards, better
6 accountability, and improved access to such services. The quality of
7 long-term in-home care services would further be improved by a well-
8 trained, stable individual provider work force earning reasonable wages
9 and benefits.

10 (5) Washington seniors and persons with disabilities would benefit
11 from the establishment of an authority that has the power and duty to
12 regulate and improve the quality of long-term in-home care services.

13 (6) The authority should ensure that the quality of long-term in-
14 home care services provided by individual providers is improved through
15 better regulation, higher standards, increased accountability, and the
16 enhanced ability to obtain services. The authority should also
17 encourage stability in the individual provider work force through
18 collective bargaining and by providing training opportunities.

19 NEW SECTION. **Sec. 2.** AUTHORITY CREATED. (1) The home care
20 quality authority is established to regulate and improve the quality of
21 long-term in-home care services by recruiting, training, and
22 stabilizing the work force of individual providers.

23 (2) The authority consists of a board of nine members appointed by
24 the governor. Five board members shall be current and/or former
25 consumers of long-term in-home care services provided for functionally
26 disabled persons, at least one of whom shall be a person with a
27 developmental disability; one board member shall be a representative of
28 the developmental disabilities planning council; one board member shall
29 be a representative of the governor's committee on disability issues
30 and employment; one board member shall be a representative of the state
31 council on aging; and one board member shall be a representative of the
32 Washington state association of area agencies on aging. Each board
33 member serves a term of three years. If a vacancy occurs, the governor
34 will make an appointment to become immediately effective for the
35 unexpired term. Each board member is eligible for reappointment and
36 may serve no more than two consecutive terms. In making appointments,
37 the governor will take into consideration any nominations or
38 recommendations made by the groups or agencies represented.

1 NEW SECTION. **Sec. 3.** DEFINITIONS. The definitions in this
2 section apply throughout RCW 74.39A.030 and 74.39A.095 and sections 1
3 through 9 and 12 through 14 of this act unless the context clearly
4 requires otherwise.

5 (1) "Authority" means the home care quality authority.

6 (2) "Board" means the board created under section 2 of this act.

7 (3) "Consumer" means a person to whom an individual provider
8 provides any such services.

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

17 NEW SECTION. **Sec. 4.** AUTHORITY DUTIES. (1) The authority must
18 carry out the following duties:

19 (a) Establish qualifications and reasonable standards for
20 accountability for and investigate the background of individual
21 providers and prospective individual providers, except in cases where,
22 after the department has sought approval of any appropriate amendments
23 or waivers under section 14 of this act, federal law or regulation
24 requires that such qualifications and standards for accountability be
25 established by another entity in order to preserve eligibility for
26 federal funding. Qualifications established must include compliance
27 with the minimum requirements for training and satisfactory criminal
28 background checks as provided in RCW 74.39A.050 and confirmation that
29 the individual provider or prospective individual provider is not
30 currently listed on any long-term care abuse and neglect registry used
31 by the department at the time of the investigation;

32 (b) Undertake recruiting activities to identify and recruit
33 individual providers and prospective individual providers;

34 (c) Provide training opportunities, either directly or through
35 contract, for individual providers, prospective individual providers,
36 consumers, and prospective consumers;

37 (d) Provide assistance to consumers and prospective consumers in
38 finding individual providers and prospective individual providers

1 through the establishment of a referral registry of individual
2 providers and prospective individual providers. Before placing an
3 individual provider or prospective individual provider on the referral
4 registry, the authority shall determine that:

5 (i) The individual provider or prospective individual provider has
6 met the minimum requirements for training set forth in RCW 74.39A.050;

7 (ii) The individual provider or prospective individual provider has
8 satisfactorily undergone a criminal background check conducted within
9 the prior twelve months; and

10 (iii) The individual provider or prospective individual provider is
11 not listed on any long-term care abuse and neglect registry used by the
12 department;

13 (e) Remove from the referral registry any individual provider or
14 prospective individual provider the authority determines not to meet
15 the qualifications set forth in (d) of this subsection or to have
16 committed misfeasance or malfeasance in the performance of his or her
17 duties as an individual provider. The individual provider or
18 prospective individual provider, or the consumer to which the
19 individual provider is providing services, may request a fair hearing
20 to contest the removal from the referral registry, as provided in
21 chapter 34.05 RCW;

22 (f) Provide routine, emergency, and respite referrals of individual
23 providers and prospective individual providers to consumers and
24 prospective consumers who are authorized to receive long-term in-home
25 care services through an individual provider;

26 (g) Give preference in the recruiting, training, referral, and
27 employment of individual providers and prospective individual providers
28 to recipients of public assistance or other low-income persons who
29 would qualify for public assistance in the absence of such employment;
30 and

31 (h) Cooperate with the department, area agencies on aging, and
32 other federal, state, and local agencies to provide the services
33 described and set forth in this section. If, in the course of carrying
34 out its duties, the authority identifies concerns regarding the
35 services being provided by an individual provider, the authority must
36 notify the relevant area agency or department case manager regarding
37 such concerns.

38 (2) In determining how best to carry out its duties, the authority
39 must identify existing individual provider recruitment, training, and

1 referral resources made available to consumers by other state and local
2 public, private, and nonprofit agencies. The authority may coordinate
3 with the agencies to provide a local presence for the authority and to
4 provide consumers greater access to individual provider recruitment,
5 training, and referral resources in a cost-effective manner. Using
6 requests for proposals or similar processes, the authority may contract
7 with the agencies to provide recruitment, training, and referral
8 services if the authority determines the agencies can provide the
9 services according to reasonable standards of performance determined by
10 the authority. The authority must provide an opportunity for consumer
11 participation in the determination of the standards.

12 NEW SECTION. **Sec. 5.** DEPARTMENT DUTIES. The department must
13 perform criminal background checks for individual providers and
14 prospective individual providers and ensure that the authority has
15 ready access to any long-term care abuse and neglect registry used by
16 the department.

17 NEW SECTION. **Sec. 6.** EMPLOYMENT RELATIONSHIP--CONSUMER RIGHTS.
18 (1) Solely for the purposes of collective bargaining, the authority is
19 the public employer, as defined in chapter 41.56 RCW, of individual
20 providers, who are public employees, as defined in chapter 41.56 RCW,
21 of the authority.

22 (2) Chapter 41.56 RCW governs the employment relationship between
23 the authority and individual providers, except as otherwise expressly
24 provided in this act and except as follows:

25 (a) The only unit appropriate for the purpose of collective
26 bargaining under RCW 41.56.060 is a statewide unit of all individual
27 providers;

28 (b) The showing of interest required to request an election under
29 RCW 41.56.060 is ten percent of the unit, and any intervener seeking to
30 appear on the ballot must make the same showing of interest;

31 (c) The mediation and interest arbitration provisions of RCW
32 41.56.430 through 41.56.470 and 41.56.480 apply;

33 (d) Individual providers do not have the right to strike; and

34 (e) Individual providers who are related to, or family members of,
35 consumers or prospective consumers are not, for that reason, exempt
36 from this act or chapter 41.56 RCW.

1 (3) Individual providers who are employees of the authority under
2 subsection (1) of this section are not, for that reason, employees of
3 the state for any purpose.

4 (4) Consumers and prospective consumers retain the right to select,
5 hire, supervise the work of, and terminate any individual provider
6 providing services to them. Consumers may elect to receive long-term
7 in-home care services from individual providers who are not referred to
8 them by the authority.

9 (5) In implementing and administering this act, neither the
10 authority nor any of its contractors may reduce or increase the hours
11 of service for any consumer below or above the amount determined to be
12 necessary under any assessment prepared by the department or an area
13 agency on aging.

14 (6)(a) The authority, the area agencies on aging, or their
15 contractors under this act may not be held vicariously liable for the
16 action or inaction of any individual provider or prospective individual
17 provider, whether or not that individual provider or prospective
18 individual provider was included on the authority's referral registry
19 or referred to a consumer or prospective consumer.

20 (b) The members of the board are immune from any liability
21 resulting from implementation of this act.

22 (7) Nothing in this section affects the state's responsibility with
23 respect to the state payroll system or unemployment insurance for
24 individual providers.

25 NEW SECTION. **Sec. 7. POWERS.** In carrying out its duties under
26 this act, the authority may:

27 (1) Make and execute contracts and all other instruments necessary
28 or convenient for the performance of its duties or exercise of its
29 powers, including contracts with public and private agencies,
30 organizations, corporations, and individuals to pay them for services
31 rendered or furnished;

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

36 (3) Issue rules under the administrative procedure act, chapter
37 34.05 RCW, as necessary for the purpose and policies of this act;

1 (4) Establish offices, employ and discharge employees, agents, and
2 contractors as necessary, and prescribe their duties and powers and fix
3 their compensation, incur expenses, and create such liabilities as are
4 reasonable and proper for the administration of this act;

5 (5) Solicit and accept for use any grant of money, services, or
6 property from the federal government, the state, or any political
7 subdivision or agency thereof, including federal matching funds under
8 Title XIX of the federal social security act, and do all things
9 necessary to cooperate with the federal government, the state, or any
10 political subdivision or agency thereof in making an application for
11 any grant;

12 (6) Coordinate its activities and cooperate with similar agencies
13 in other states;

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

15 (8) Keep records and engage in research and the gathering of
16 relevant statistics;

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

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

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

25 (12) Do other acts necessary or convenient to execute the powers
26 expressly granted to it.

27 NEW SECTION. **Sec. 8.** PERFORMANCE REVIEW. (1) The joint
28 legislative audit and review committee will conduct a performance
29 review of the authority every two years and submit the review to the
30 legislature and the governor. The first review will be submitted
31 before December 1, 2006.

32 (2) The performance review will include an evaluation of the
33 health, welfare, and satisfaction with services provided of the
34 consumers receiving long-term in-home care services from individual
35 providers under this act, including the degree to which all required
36 services have been delivered, the degree to which consumers receiving
37 services from individual providers have ultimately required additional
38 or more intensive services, such as home health care, or have been

1 placed in other residential settings or nursing homes, the promptness
2 of response to consumer complaints, and any other issue the committee
3 deems relevant.

4 (3) The performance review will provide an explanation of the full
5 cost of individual provider services, including the administrative
6 costs of the authority, unemployment compensation, social security and
7 medicare payroll taxes paid by the department, and area agency on aging
8 home care oversight costs.

9 (4) The performance review will make recommendations to the
10 legislature and the governor for any amendments to this act that will
11 further ensure the well-being of consumers and prospective consumers
12 under this act, and the most efficient means of delivering required
13 services. In addition, the first performance review will include
14 findings and recommendations regarding the appropriateness of the
15 authority's assumption of responsibility for verification of hours
16 worked by individual providers, payment of individual providers, and
17 other duties.

18 NEW SECTION. **Sec. 9.** FUNDING. (1) The governor must submit a
19 request for funds necessary to administer this act and to implement any
20 collective bargaining agreement entered into under section 6 of this
21 act or for legislation necessary to implement any such agreement within
22 ten days of the date on which the agreement is ratified or, if the
23 legislature is not in session, within ten days after the next
24 legislative session convenes. The legislature must approve or reject
25 the submission of the request for funds as a whole. If the legislature
26 rejects or fails to act on the submission, any such agreement will be
27 reopened solely for the purpose of renegotiating the funds necessary to
28 implement the agreement.

29 (2) When any increase in individual provider wages or benefits is
30 negotiated or agreed to by the authority, no increase in wages or
31 benefits negotiated or agreed to under this act will take effect unless
32 and until, before its implementation, the department has determined
33 that the increase is consistent with federal law and federal financial
34 participation in the provision of services under Title XIX of the
35 federal social security act.

36 (3) After the expiration date of any collective bargaining
37 agreement entered into under section 6 of this act, all of the terms
38 and conditions specified in any such agreement remain in effect until

1 the effective date of a subsequent agreement, not to exceed one year
2 from the expiration date stated in the agreement.

3 **Sec. 10.** RCW 74.39A.030 and 1995 1st sp.s. c 18 s 2 are each
4 amended to read as follows:

5 (1) To the extent of available funding, the department shall expand
6 cost-effective options for home and community services for consumers
7 for whom the state participates in the cost of their care.

8 (2) In expanding home and community services, the department shall:

9 (a) Take full advantage of federal funding available under Title XVIII
10 and Title XIX of the federal social security act, including home
11 health, adult day care, waiver options, and state plan services; and

12 (b) be authorized to use funds available under its community options
13 program entry system waiver granted under section 1915(c) of the
14 federal social security act to expand the availability of in-home,
15 adult residential care, adult family homes, enhanced adult residential
16 care, and assisted living services. By June 30, 1997, the department
17 shall undertake to reduce the nursing home medicaid census by at least
18 one thousand six hundred by assisting individuals who would otherwise
19 require nursing facility services to obtain services of their choice,
20 including assisted living services, enhanced adult residential care,
21 and other home and community services. If a resident, or his or her
22 legal representative, objects to a discharge decision initiated by the
23 department, the resident shall not be discharged if the resident has
24 been assessed and determined to require nursing facility services. In
25 contracting with nursing homes and boarding homes for enhanced adult
26 residential care placements, the department shall not require, by
27 contract or through other means, structural modifications to existing
28 building construction.

29 (3)(a) The department shall by rule establish payment rates for
30 home and community services that support the provision of cost-
31 effective care. In the event of any conflict between any such rule and
32 a collective bargaining agreement entered into under sections 6 and 9
33 of this act, the collective bargaining agreement prevails.

34 (b) The department may authorize an enhanced adult residential care
35 rate for nursing homes that temporarily or permanently convert their
36 bed use for the purpose of providing enhanced adult residential care
37 under chapter 70.38 RCW, when the department determines that payment of
38 an enhanced rate is cost-effective and necessary to foster expansion of

1 contracted enhanced adult residential care services. As an incentive
2 for nursing homes to permanently convert a portion of its nursing home
3 bed capacity for the purpose of providing enhanced adult residential
4 care, the department may authorize a supplemental add-on to the
5 enhanced adult residential care rate.

6 (c) The department may authorize a supplemental assisted living
7 services rate for up to four years for facilities that convert from
8 nursing home use and do not retain rights to the converted nursing home
9 beds under chapter 70.38 RCW, if the department determines that payment
10 of a supplemental rate is cost-effective and necessary to foster
11 expansion of contracted assisted living services.

12 **Sec. 11.** RCW 74.39A.095 and 2000 c 87 s 5 are each amended to read
13 as follows:

14 (1) In carrying out case management responsibilities established
15 under RCW 74.39A.090 for consumers who are receiving services under the
16 medicaid personal care, community options programs entry system or
17 chore services program through an individual provider, each area agency
18 on aging shall provide ~~((adequate))~~ oversight of the care being
19 provided to consumers receiving services under this section~~((—Such~~
20 ~~oversight shall))~~ to the extent of available funding. Case management
21 responsibilities incorporate this oversight, and include, but ((is))
22 are not limited to:

23 (a) Verification that ~~((the))~~ any individual provider who has not
24 been referred to a consumer by the authority established under this act
25 has met any training requirements established by the department;

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

27 (c) ~~((Home visits or telephone contacts sufficient to ensure that~~
28 ~~the plan of care is being appropriately implemented))~~ Monitoring the
29 consumer's plan of care to ensure that it adequately meets the needs of
30 the consumer, through activities such as home visits, telephone
31 contacts, and responses to information received by the area agency on
32 aging indicating that a consumer may be experiencing problems relating
33 to his or her home care;

34 (d) Reassessment and reauthorization of services;

35 (e) Monitoring of individual provider performance. If, in the
36 course of its case management activities, the area agency on aging
37 identifies concerns regarding the care being provided by an individual

1 provider who was referred by the authority, the area agency on aging
2 must notify the authority regarding its concerns; and

3 (f) Conducting criminal background checks or verifying that
4 criminal background checks have been conducted for any individual
5 provider who has not been referred to a consumer by the authority.

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

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

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

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

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

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

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

29 (g) A statement that the individual provider has the ability and
30 willingness to carry out his or her responsibilities relative to the
31 plan of care; and

32 (h)(i) Except as provided in (h)(ii) of this subsection, a clear
33 statement indicating that a consumer receiving services under this
34 section has the right to waive any of the case management services
35 offered by the area agency on aging under this section, and a clear
36 indication of whether the consumer has, in fact, waived any of these
37 services.

38 (ii) The consumer's right to waive case management services does
39 not include the right to waive reassessment or reauthorization of

1 services, or verification that services are being provided in
2 accordance with the plan of care.

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

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

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

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

16 (7) If the department or area agency on aging case manager finds
17 that an individual provider's inadequate performance or inability to
18 deliver quality care is jeopardizing the health, safety, or well-being
19 of a consumer receiving service under this section, the department or
20 the area agency on aging may take action to terminate the contract
21 between the department and the individual provider. If the department
22 or the area agency on aging has a reasonable, good faith belief that
23 the health, safety, or well-being of a consumer is in imminent
24 jeopardy, the department or area agency on aging may summarily suspend
25 the contract pending a fair hearing. The consumer may request a fair
26 hearing to contest the planned action of the case manager, as provided
27 in chapter 34.05 RCW. When the department or area agency on aging
28 terminates or summarily suspends a contract under this subsection, it
29 must provide oral and written notice of the action taken to the
30 authority. The department may by rule adopt guidelines for
31 implementing this subsection.

32 (8) The department or area agency on aging may reject a request by
33 a consumer receiving services under this section to have a family
34 member or other person serve as his or her individual provider if the
35 case manager has a reasonable, good faith belief that the family member
36 or other person will be unable to appropriately meet the care needs of
37 the consumer. The consumer may request a fair hearing to contest the
38 decision of the case manager, as provided in chapter 34.05 RCW. The

1 department may by rule adopt guidelines for implementing this
2 subsection.

3 NEW SECTION. **Sec. 12.** In addition to the entities listed in RCW
4 41.56.020, this chapter applies to individual providers under sections
5 6 and 9 of this act.

6 NEW SECTION. **Sec. 13.** The authority established by this act is
7 not subject to regulation for purposes of this chapter.

8 NEW SECTION. **Sec. 14.** The department must seek approval from the
9 federal health care financing administration of any amendments to the
10 existing state plan or waivers necessary to ensure federal financial
11 participation in the provision of services to consumers under Title XIX
12 of the federal social security act.

13 NEW SECTION. **Sec. 15.** CODIFICATION. Sections 1 through 9 of this
14 act are each added to chapter 74.39A RCW. Section 12 of this act is
15 added to chapter 41.56 RCW. Section 13 of this act is added to chapter
16 70.127 RCW. Section 14 of this act is added to chapter 74.09 RCW.

17 NEW SECTION. **Sec. 16.** CAPTIONS. Captions used in this act are
18 not any part of the law.

19 NEW SECTION. **Sec. 17.** SEVERABILITY. If any provision of this act
20 or its application to any person or circumstance is held invalid, the
21 remainder of the act or the application of the provision to other
22 persons or circumstances is not affected.

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