

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1880

Chapter 336, Laws of 1999

56th Legislature
1999 Regular Session

DISABLED PERSONS--SELF-DIRECTED CARE

EFFECTIVE DATE: 7/25/99

Passed by the House April 19, 1999
Yeas 97 Nays 0

CLYDE BALLARD
Speaker of the House of Representatives

FRANK CHOPP
Speaker of the House of Representatives

Passed by the Senate April 17, 1999
Yeas 46 Nays 0

BRAD OWEN
President of the Senate

Approved May 14, 1999

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

We, Dean R. Foster and Timothy A. Martin, Co-Chief Clerks of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1880** as passed by the House of Representatives and the Senate on the dates hereon set forth.

DEAN R. FOSTER
Chief Clerk

TIMOTHY A. MARTIN
Chief Clerk

FILED

May 14, 1999 - 6:46 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1880

AS AMENDED BY THE SENATE

Passed Legislature - 1999 Regular Session

State of Washington 56th Legislature 1999 Regular Session

By House Committee on Health Care (originally sponsored by Representatives Cody, Schual-Berke, Kenney and Edmonds)

Read first time 03/02/1999.

1 AN ACT Relating to providing for self-directed care of persons with
2 disabilities; amending RCW 74.39A.050 and 43.20A.710; adding new
3 sections to chapter 74.39 RCW; adding a new section to chapter 74.34
4 RCW; and creating new sections.

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

6 NEW SECTION. **Sec. 1.** (1) The legislature finds that certain
7 aspects of health licensure laws have the unintended consequence of
8 limiting the right of persons with functional disabilities to care for
9 themselves in their own home, and of securing assistance from other
10 persons in performing routine health-related tasks that persons without
11 these disabilities customarily perform.

12 (2) It is the intent of the legislature to clarify the right of
13 adults with functional disabilities to choose to self-direct their own
14 health-related tasks through personal aides, and to describe the
15 circumstances under which self-directed care may take place in the home
16 setting. The legislature declares that it is in the public interest to
17 preserve the autonomy and dignity of persons with functional
18 disabilities to care for themselves in their own homes, among the

1 continuum of options for health care services where the judgment and
2 control over the care rests with the individual.

3 NEW SECTION. **Sec. 2.** The definitions in this section apply
4 throughout sections 1 through 4 and 8 of this act and RCW 43.190.060
5 unless the context clearly requires otherwise.

6 (1) "Self-directed care" means the process in which an adult
7 person, who is prevented by a functional disability from performing a
8 manual function related to health care that an individual would
9 otherwise perform for himself or herself, chooses to direct and
10 supervise a paid personal aide to perform those tasks.

11 (2) "Personal aide" means an individual, working privately or as an
12 individual provider under contract or agreement with the department of
13 social and health services, who acts at the direction of an adult
14 person with a functional disability living in his or her own home and
15 provides that person with health care services that a person without a
16 functional disability can perform.

17 NEW SECTION. **Sec. 3.** (1) An adult person with a functional
18 disability living in his or her own home may direct and supervise a
19 paid personal aide in the performance of a health care task.

20 (2) The following requirements shall guide the provision of self-
21 directed care under this act:

22 (a) Health care tasks are those medical, nursing, or home health
23 services that enable the person to maintain independence, personal
24 hygiene, and safety in his or her own home, and that are services that
25 a person without a functional disability would customarily and
26 personally perform without the assistance of a licensed health care
27 provider.

28 (b) The individual who chooses to self-direct a health care task is
29 responsible for initiating self-direction by informing the health care
30 professional who has ordered the treatment which involves that task of
31 the individual's intent to perform that task through self-direction.

32 (c) When state funds are used to pay for self-directed tasks, a
33 description of those tasks will be included in the client's
34 comprehensive assessment, and subject to review with each annual
35 reassessment.

36 (d) When a licensed health care provider orders treatment involving
37 a health care task to be performed through self-directed care, the

1 responsibility to ascertain that the patient understands the treatment
2 and will be able to follow through on the self-directed care task is
3 the same as it would be for a patient who performs the health care task
4 for himself or herself, and the licensed health care provider incurs no
5 additional liability when ordering a health care task which is to be
6 performed through self-directed care.

7 (e) The role of the personal aide in self-directed care is limited
8 to performing the physical aspect of health care tasks under the
9 direction of the person for whom the tasks are being done. This shall
10 not affect the ability of a personal aide to provide other home care
11 services, such as personal care or homemaker services, which enable the
12 client to remain at home.

13 (f) The responsibility to initiate self-directed health care tasks,
14 to possess the necessary knowledge and training for those tasks, and to
15 exercise judgment regarding the manner of their performance rests and
16 remains with the person who has chosen to self-direct those tasks,
17 including the decision to employ and dismiss a personal aide.

18 NEW SECTION. **Sec. 4.** Any individual who, for compensation, serves
19 as a personal aide provider under contract or agreement with the
20 department of social and health services, to a person who self-directs
21 his or her own care in his or her own home, shall register with the
22 department of social and health services.

23 **Sec. 5.** RCW 74.39A.050 and 1998 c 85 s 1 are each amended to read
24 as follows:

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

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

31 (2) The goal of the system is continuous quality improvement with
32 the focus on consumer satisfaction and outcomes for consumers. This
33 includes that when conducting licensing inspections, the department
34 shall interview an appropriate percentage of residents, family members,
35 resident managers, and advocates in addition to interviewing providers
36 and staff.

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

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

6 (5) Monitoring should be outcome based and responsive to consumer
7 complaints and a clear set of health, quality of care, and safety
8 standards that are easily understandable and have been made available
9 to providers.

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

20 (7) To the extent funding is available, all long-term care staff
21 directly responsible for the care, supervision, or treatment of
22 vulnerable persons should be screened through background checks in a
23 uniform and timely manner to ensure that they do not have a criminal
24 history that would disqualify them from working with vulnerable
25 persons. Whenever a state conviction record check is required by state
26 law, persons may be employed or engaged as volunteers or independent
27 contractors on a conditional basis according to law and rules adopted
28 by the department.

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

37 (9) The department shall establish, by rule, a state registry which
38 contains identifying information about personal care aides identified
39 under this chapter who have substantiated findings of abuse, neglect,

1 financial exploitation, or abandonment of a vulnerable adult as defined
2 in RCW 74.34.020. The rule must include disclosure, disposition of
3 findings, notification, findings of fact, appeal rights, and fair
4 hearing requirements. The department shall disclose, upon request,
5 substantiated findings of abuse, neglect, financial exploitation, or
6 abandonment to any person so requesting this information.

7 (10) The department shall by rule develop training requirements for
8 individual providers and home care agency providers. The department
9 shall deny payment to an individual provider or a home care provider
10 who does not complete the training requirement within the time limit
11 specified by the department by rule.

12 (11) The department shall establish, by rule, training, background
13 checks, and other quality assurance requirements for personal aides who
14 provide in-home services funded by medicaid personal care as described
15 in RCW 74.09.520, community options program entry system waiver
16 services as described in RCW 74.39A.030, or chore services as described
17 in RCW 74.39A.110 that are equivalent to requirements for individual
18 providers.

19 (12) Under existing funds the department shall establish internally
20 a quality improvement standards committee to monitor the development of
21 standards and to suggest modifications.

22 (~~(10)~~) (13) Within existing funds, the department shall design,
23 develop, and implement a long-term care training program that is
24 flexible, relevant, and qualifies towards the requirements for a
25 nursing assistant certificate as established under chapter 18.88A RCW.
26 This subsection does not require completion of the nursing assistant
27 certificate training program by providers or their staff. The long-
28 term care teaching curriculum must consist of a fundamental module, or
29 modules, and a range of other available relevant training modules that
30 provide the caregiver with appropriate options that assist in meeting
31 the resident's care needs. Some of the training modules may include,
32 but are not limited to, specific training on the special care needs of
33 persons with developmental disabilities, dementia, mental illness, and
34 the care needs of the elderly. No less than one training module must
35 be dedicated to workplace violence prevention. The nursing care
36 quality assurance commission shall work together with the department to
37 develop the curriculum modules. The nursing care quality assurance
38 commission shall direct the nursing assistant training programs to
39 accept some or all of the skills and competencies from the curriculum

1 modules towards meeting the requirements for a nursing assistant
2 certificate as defined in chapter 18.88A RCW. A process may be
3 developed to test persons completing modules from a caregiver's class
4 to verify that they have the transferable skills and competencies for
5 entry into a nursing assistant training program. The department may
6 review whether facilities can develop their own related long-term care
7 training programs. The department may develop a review process for
8 determining what previous experience and training may be used to waive
9 some or all of the mandatory training. The department of social and
10 health services and the nursing care quality assurance commission shall
11 work together to develop an implementation plan by December 12, 1998.

12 NEW SECTION. **Sec. 6.** A new section is added to chapter 74.34 RCW
13 to read as follows:

14 For the purposes of this chapter, the term "vulnerable adult"
15 includes persons receiving services from any individual who for
16 compensation serves as a personal aide to a person who self-directs his
17 or her own care in his or her home under this act.

18 **Sec. 7.** RCW 43.20A.710 and 1997 c 392 s 525 are each amended to
19 read as follows:

20 (1) The secretary shall investigate the conviction records, pending
21 charges or disciplinary board final decisions of:

22 (a) Persons being considered for state employment in positions
23 directly responsible for the supervision, care, or treatment of
24 children or individuals with mental illness or developmental
25 disabilities; and

26 (b) Individual providers who are paid by the state for in-home
27 services and hired by individuals with physical disabilities,
28 developmental disabilities, mental illness, or mental impairment,
29 including but not limited to services provided under chapter 74.39A
30 RCW.

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

35 (3) The secretary shall provide the results of the state background
36 check on individual providers to the individuals with physical
37 disabilities, developmental disabilities, mental illness, or mental

1 impairment or to their legal guardians, if any, for their determination
2 of the character, suitability, and competence of the applicants. If an
3 individual elects to hire or retain an individual provider after
4 receiving notice from the department that the applicant has a
5 conviction for an offense that would disqualify the applicant from
6 employment with the department, then the secretary ((may)) shall deny
7 payment for any subsequent services rendered by the disqualified
8 individual provider.

9 (4) Criminal justice agencies shall provide the secretary such
10 information as they may have and that the secretary may require for
11 such purpose.

12 NEW SECTION. **Sec. 8.** A personal aide, in the performance of a
13 health care task, who is directed and supervised by a person with a
14 functional disability in his or her own home, is exempt from any legal
15 requirement to qualify and be credentialed by the department of health
16 as a health care provider under Title 18 RCW to the extent of the
17 responsibilities provided and health care tasks performed under this
18 act.

19 NEW SECTION. **Sec. 9.** (1) To the extent that funds are
20 appropriated for this purpose, the University of Washington school of
21 nursing shall study the implementation of this act as it relates to
22 self-directed care performed for persons receiving services through
23 department of social and health services' programs, and submit a report
24 to the legislature by November 1, 2001, to include findings as well as
25 any recommendations for improvements to this act. If there are not
26 sufficient numbers of consumers who have elected self-directed care in
27 order for the study to be completed by November 1, 2001, the study
28 deadline shall be extended as necessary, but not to exceed one year.

29 (2) The study shall be performed in consultation with the
30 governor's committee on disability issues and employment, and the
31 departments of health and social and health services. The report shall
32 include data, to the extent reasonably available, on the following:

33 (a) Consumer satisfaction with self-directed care, including
34 consumer perception of the degree of autonomy, self-determination, and
35 choice afforded;

1 (b) Service quality and consumer safety, as determined by consumers
2 and quantifiable outcomes such as rate of hospitalization or other
3 facility placement;

4 (c) Number of personal aides who have been found to have abused or
5 neglected consumers;

6 (d) Consumer outcomes in emergency situations such as abandonment,
7 abuse, neglect, or exploitation by personal aide; and

8 (e) Whether coercion is a factor in consumers requesting self-
9 directed care, or with personal aides performing self-directed care
10 tasks.

11 NEW SECTION. **Sec. 10.** Sections 2 through 4 and 8 of this act are
12 each added to chapter 74.39 RCW.

Passed the House April 19, 1999.

Passed the Senate April 17, 1999.

Approved by the Governor May 14, 1999.

Filed in Office of Secretary of State May 14, 1999.