

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 6180

Chapter 580, Laws of 2009

61st Legislature
2009 Regular Session

LONG-TERM CARE WORKERS--TRAINING--BACKGROUND CHECKS

EFFECTIVE DATE: 07/26/09 - Except section 16, which becomes effective 09/01/09.

Passed by the Senate April 25, 2009
YEAS 45 NAYS 4

BRAD OWEN

President of the Senate

Passed by the House April 25, 2009
YEAS 72 NAYS 22

FRANK CHOPP

Speaker of the House of Representatives

Approved May 19, 2009, 4:16 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 6180** as passed by the Senate and the House of Representatives on the dates hereon set forth.

THOMAS HOEMANN

Secretary

FILED

May 20, 2009

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 6180

Passed Legislature - 2009 Regular Session

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.009, 74.39A.055, 18.20.125,
3 18.88B.030, 43.20A.710, 43.43.837, 74.39A.050, 74.39A.095, 74.39A.260,
4 74.39A.073, 74.39A.075, 74.39A.340, 74.39A.350, 74.39A.085, 18.88B.040,
5 18.88A.115, 18.88B.050, and 18.88B.020; and providing an effective
6 date.

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

8 **Sec. 1.** RCW 74.39A.009 and 2009 c 2 s 2 (Initiative Measure No.
9 1029) are each amended to read as follows:

10 Unless the context clearly requires otherwise, the definitions in
11 this section apply throughout this chapter.

12 (1) "Adult family home" means a home licensed under chapter 70.128
13 RCW.

14 (2) "Adult residential care" means services provided by a boarding
15 home that is licensed under chapter 18.20 RCW and that has a contract
16 with the department under RCW 74.39A.020 to provide personal care
17 services.

18 (3) "Assisted living services" means services provided by a
19 boarding home that has a contract with the department under RCW

1 74.39A.010 to provide personal care services, intermittent nursing
2 services, and medication administration services, and the resident is
3 housed in a private apartment-like unit.

4 (4) "Boarding home" means a facility licensed under chapter 18.20
5 RCW.

6 (5) "Core competencies" means basic training topics, including but
7 not limited to, communication skills, worker self-care, problem
8 solving, maintaining dignity, consumer directed care, cultural
9 sensitivity, body mechanics, fall prevention, skin and body care, long-
10 term care worker roles and boundaries, supporting activities of daily
11 living, and food preparation and handling.

12 (6) "Cost-effective care" means care provided in a setting of an
13 individual's choice that is necessary to promote the most appropriate
14 level of physical, mental, and psychosocial well-being consistent with
15 client choice, in an environment that is appropriate to the care and
16 safety needs of the individual, and such care cannot be provided at a
17 lower cost in any other setting. But this in no way precludes an
18 individual from choosing a different residential setting to achieve his
19 or her desired quality of life.

20 (7) "Department" means the department of social and health
21 services.

22 (8) "Developmental disability" has the same meaning as defined in
23 RCW 71A.10.020.

24 (9) "Direct care worker" means a paid caregiver who provides
25 direct, hands-on personal care services to persons with disabilities or
26 the elderly requiring long-term care.

27 (10) "Enhanced adult residential care" means services provided by
28 a boarding home that is licensed under chapter 18.20 RCW and that has
29 a contract with the department under RCW 74.39A.010 to provide personal
30 care services, intermittent nursing services, and medication
31 administration services.

32 (11) "Functionally disabled person" or "person who is functionally
33 disabled" is synonymous with chronic functionally disabled and means a
34 person who because of a recognized chronic physical or mental condition
35 or disease, or developmental disability, including chemical dependency,
36 is impaired to the extent of being dependent upon others for direct
37 care, support, supervision, or monitoring to perform activities of
38 daily living. "Activities of daily living", in this context, means

1 self-care abilities related to personal care such as bathing, eating,
2 using the toilet, dressing, and transfer. Instrumental activities of
3 daily living may also be used to assess a person's functional abilities
4 as they are related to the mental capacity to perform activities in the
5 home and the community such as cooking, shopping, house cleaning, doing
6 laundry, working, and managing personal finances.

7 (12) "Home and community services" means adult family homes, in-
8 home services, and other services administered or provided by contract
9 by the department directly or through contract with area agencies on
10 aging or similar services provided by facilities and agencies licensed
11 by the department.

12 (13) "Home care aide" means a long-term care worker who has
13 obtained certification as a home care aide by the department of health.

14 (14) "Individual provider" is defined according to RCW 74.39A.240.

15 (15) "Long-term care" is synonymous with chronic care and means
16 care and supports delivered indefinitely, intermittently, or over a
17 sustained time to persons of any age disabled by chronic mental or
18 physical illness, disease, chemical dependency, or a medical condition
19 that is permanent, not reversible or curable, or is long-lasting and
20 severely limits their mental or physical capacity for self-care. The
21 use of this definition is not intended to expand the scope of services,
22 care, or assistance by any individuals, groups, residential care
23 settings, or professions unless otherwise expressed by law.

24 (16)(a) "Long-term care workers for the elderly or persons with
25 disabilities" or "long-term care workers" includes all persons who are
26 long-term care workers for the elderly or persons with disabilities,
27 including but not limited to individual providers of home care
28 services, direct care employees of home care agencies, providers of
29 home care services to persons with developmental disabilities under
30 Title 71 RCW, all direct care workers in state-licensed boarding homes,
31 assisted living facilities, and adult family homes, respite care
32 providers, community residential service providers, and any other
33 direct care worker providing home or community-based services to the
34 elderly or persons with functional disabilities or developmental
35 disabilities.

36 (b) "Long-term care workers" do not include: (i) Persons employed
37 (~~in~~) by the following facilities or agencies: Nursing homes subject
38 to chapter 18.51 RCW, hospitals or other acute care settings,

1 residential habilitation centers under chapter 71A.20 RCW, facilities
2 certified under 42 CFR, Part 483, hospice agencies subject to chapter
3 70.127 RCW, adult day care centers, and adult day health care centers;
4 or (ii) persons who are not paid by the state or by a private agency or
5 facility licensed by the state to provide personal care services.

6 (17) "Nursing home" means a facility licensed under chapter 18.51
7 RCW.

8 (18) "Personal care services" means physical or verbal assistance
9 with activities of daily living and instrumental activities of daily
10 living provided because of a person's functional disability.

11 (19) "Population specific competencies" means basic training topics
12 unique to the care needs of the population the long-term care worker is
13 serving, including but not limited to, mental health, dementia,
14 developmental disabilities, young adults with physical disabilities,
15 and older adults.

16 (20) "Qualified instructor" means a registered nurse or other
17 person with specific knowledge, training, and work experience in the
18 provision of direct, hands-on personal care and other assistance
19 services to the elderly or persons with disabilities requiring
20 long-term care.

21 (21) "Secretary" means the secretary of social and health services.

22 (22) "Secretary of health" means the secretary of health or the
23 secretary's designee.

24 (23) "Training partnership" means a joint partnership or trust that
25 includes the office of the governor and the exclusive bargaining
26 representative of individual providers under RCW 74.39A.270 with the
27 capacity to provide training, peer mentoring, and workforce
28 development, or other services to individual providers.

29 (24) "Tribally licensed boarding home" means a boarding home
30 licensed by a federally recognized Indian tribe which home provides
31 services similar to boarding homes licensed under chapter 18.20 RCW.

32 **Sec. 2.** RCW 74.39A.055 and 2009 c 2 s 3 (Initiative Measure No.
33 1029) are each amended to read as follows:

34 (1) All long-term care workers for the elderly or persons with
35 disabilities hired after January 1, (~~2010~~) 2012, shall be screened
36 through state and federal background checks in a uniform and timely
37 manner to ensure that they do not have a criminal history that would

1 disqualify them from working with vulnerable persons. These background
2 checks shall include checking against the federal bureau of
3 investigation fingerprint identification records system and against the
4 national sex offenders registry or their successor programs. The
5 department shall require these long-term care workers to submit
6 fingerprints for the purpose of investigating conviction records
7 through both the Washington state patrol and the federal bureau of
8 investigation.

9 (2) To allow the department of health to satisfy its certification
10 responsibilities under chapter 18.88B RCW, the department shall share
11 ((this information)) state and federal background check results with
12 the department of health. Neither department may share the federal
13 background check results with any other state agency or person.

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

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

18 **Sec. 3.** RCW 18.20.125 and 2004 c 140 s 4 are each amended to read
19 as follows:

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

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

36 (3)(a) To the extent funding is available, the licensee,
37 administrator, and their staff should be screened through background

1 checks in a uniform and timely manner to ensure that they do not have
2 a criminal history that would disqualify them from working with
3 vulnerable adults. Employees may be provisionally hired pending the
4 results of the background check if they have been given three positive
5 references.

6 (b) Long-term care workers, as defined in RCW 74.39A.009, who are
7 hired after January 1, 2012, are subject to background checks under RCW
8 74.39A.055.

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

17 **Sec. 4.** RCW 18.88B.030 and 2009 c 2 s 6 (Initiative Measure No.
18 1029) are each amended to read as follows:

19 (1) Effective January 1, (~~2010~~) 2011, except as provided in RCW
20 18.88B.040, the department of health shall require that all long-term
21 care workers successfully complete a certification examination. Any
22 long-term care worker failing to make the required grade for the
23 examination will not be certified as a home care aide.

24 (2) The department of health, in consultation with consumer and
25 worker representatives, shall develop a home care aide certification
26 examination to evaluate whether an applicant possesses the skills and
27 knowledge necessary to practice competently. Unless excluded by RCW
28 18.88B.040 (1) and (2), only those who have completed the training
29 requirements in RCW 74.39A.073 shall be eligible to sit for this
30 examination.

31 (3) The examination shall include both a skills demonstration and
32 a written or oral knowledge test. The examination papers, all grading
33 of the papers, and records related to the grading of skills
34 demonstration shall be preserved for a period of not less than one
35 year. The department of health shall establish rules governing the
36 number of times and under what circumstances individuals who have

1 failed the examination may sit for the examination, including whether
2 any intermediate remedial steps should be required.

3 (4) All examinations shall be conducted by fair and wholly
4 impartial methods. The certification examination shall be administered
5 and evaluated by the department of health or by a contractor to the
6 department of health that is neither an employer of long-term care
7 workers or private contractors providing training services under this
8 chapter.

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

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

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

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

16 (d) Maintain the official record of all applicants and persons with
17 certificates;

18 (e) Exercise disciplinary authority as authorized in chapter 18.130
19 RCW; and

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

22 (6) The department of health shall adopt rules by August 1,
23 ~~((2009))~~ 2010, that establish the procedures, including criteria for
24 reviewing an applicant's state and federal background checks, and
25 examinations necessary to carry this section into effect.

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

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

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

1 (b) Individual providers who are paid by the state and providers
2 who are paid by home care agencies to provide in-home services
3 involving unsupervised access to persons with physical, mental, or
4 developmental disabilities or mental illness, or to vulnerable adults
5 as defined in chapter 74.34 RCW, including but not limited to services
6 provided under chapter 74.39 or 74.39A RCW; and

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

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

17 (3) Except as provided in subsection (4) of this section, an
18 individual provider or home care agency provider who has resided in the
19 state less than three years before applying for employment involving
20 unsupervised access to a vulnerable adult as defined in chapter 74.34
21 RCW must be fingerprinted for the purpose of investigating conviction
22 records (~~both~~) through both the Washington state patrol and the
23 federal bureau of investigation. This subsection applies only with
24 respect to the provision of in-home services funded by medicaid
25 personal care under RCW 74.09.520, community options program entry
26 system waiver services under RCW 74.39A.030, or chore services under
27 RCW 74.39A.110. However, this subsection does not supersede RCW
28 74.15.030(2)(b).

29 (4) Long-term care workers, as defined in RCW 74.39A.009, who are
30 hired after January 1, 2012, are subject to background checks under RCW
31 74.39A.055, except that the department may require a background check
32 at any time under RCW 43.43.837. For the purposes of this subsection,
33 "background check" includes, but is not limited to, a fingerprint check
34 submitted for the purpose of investigating conviction records through
35 both the Washington state patrol and the federal bureau of
36 investigation.

37 (5) An individual provider or home care agency provider hired to
38 provide in-home care for and having unsupervised access to a vulnerable

1 adult as defined in chapter 74.34 RCW must have no conviction for a
2 disqualifying crime under RCW 43.43.830 and 43.43.842. An individual
3 or home care agency provider must also have no conviction for a crime
4 relating to drugs as defined in RCW 43.43.830. This subsection applies
5 only with respect to the provision of in-home services funded by
6 medicaid personal care under RCW 74.09.520, community options program
7 entry system waiver services under RCW 74.39A.030, or chore services
8 under RCW 74.39A.110.

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

21 ((+6)) (7) Criminal justice agencies shall provide the secretary
22 such information as they may have and that the secretary may require
23 for such purpose.

24 **Sec. 6.** RCW 43.43.837 and 2007 c 387 s 1 are each amended to read
25 as follows:

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

- 34 (a) Is an applicant or service provider providing services to
- 35 children or people with developmental disabilities under RCW 74.15.030;
- 36 (b) Is an individual residing in an applicant or service provider's

1 home, facility, entity, agency, or business or who is authorized by the
2 department to provide services to children or people with developmental
3 disabilities under RCW 74.15.030; or

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

6 (i) Medicaid personal care under RCW 74.09.520;

7 (ii) Community options program entry system waiver services under
8 RCW 74.39A.030;

9 (iii) Chore services under RCW 74.39A.110; or

10 (iv) Other home and community long-term care programs, established
11 pursuant to chapters 74.39 and 74.39A RCW, administered by the
12 department.

13 (2) Long-term care workers, as defined in RCW 74.39A.009, who are
14 hired after January 1, 2012, are subject to background checks under RCW
15 74.39A.055.

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

22 ((+3)) (4) Any secure facility operated by the department under
23 chapter 71.09 RCW shall require applicants and service providers to
24 undergo a fingerprint-based background check through the Washington
25 state patrol identification and criminal history section and the
26 federal bureau of investigation.

27 ((+4)) (5) Service providers and service provider applicants who
28 are required to complete a fingerprint-based background check may be
29 hired for a one hundred twenty-day provisional period as allowed under
30 law or program rules when:

31 (a) A fingerprint-based background check is pending; and

32 (b) The applicant or service provider is not disqualified based on
33 the immediate result of the background check.

34 ((+5)) (6) Fees charged by the Washington state patrol and the
35 federal bureau of investigation for fingerprint-based background checks
36 shall be paid by the department for applicants or service providers
37 providing:

- 1 (a) Services to people with a developmental disability under RCW
2 74.15.030;
- 3 (b) In-home services funded by medicaid personal care under RCW
4 74.09.520;
- 5 (c) Community options program entry system waiver services under
6 RCW 74.39A.030;
- 7 (d) Chore services under RCW 74.39A.110;
- 8 (e) Services under other home and community long-term care
9 programs, established pursuant to chapters 74.39 and 74.39A RCW,
10 administered by the department;
- 11 (f) Services in, or to residents of, a secure facility under RCW
12 71.09.115; and
- 13 (g) Foster care as required under RCW 74.15.030.
- 14 ~~((+6))~~ (7) Service providers licensed under RCW 74.15.030 must pay
15 fees charged by the Washington state patrol and the federal bureau of
16 investigation for conducting fingerprint-based background checks.
- 17 ~~((+7))~~ (8) Children's administration service providers licensed
18 under RCW 74.15.030 may not pass on the cost of the background check
19 fees to their applicants unless the individual is determined to be
20 disqualified due to the background information.
- 21 ~~((+8))~~ (9) The department shall develop rules identifying the
22 financial responsibility of service providers, applicants, and the
23 department for paying the fees charged by law enforcement to roll,
24 print, or scan fingerprints-based for the purpose of a Washington state
25 patrol or federal bureau of investigation fingerprint-based background
26 check.
- 27 ~~((+9))~~ (10) For purposes of this section, unless the context
28 plainly indicates otherwise:
- 29 (a) "Applicant" means a current or prospective department or
30 service provider employee, volunteer, student, intern, researcher,
31 contractor, or any other individual who will or may have unsupervised
32 access because of the nature of the work or services he or she
33 provides. "Applicant" includes but is not limited to any individual
34 who will or may have unsupervised access and is:
- 35 (i) Applying for a license or certification from the department;
- 36 (ii) Seeking a contract with the department or a service provider;
- 37 (iii) Applying for employment, promotion, reallocation, or
38 transfer;

1 (iv) An individual that a department client or guardian of a
2 department client chooses to hire or engage to provide services to
3 himself or herself or another vulnerable adult, juvenile, or child and
4 who might be eligible to receive payment from the department for
5 services rendered; or

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

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

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

11 (ii) Have unsupervised access to vulnerable adults, juveniles, and
12 children;

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

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

15 (c) "Department" means the department of social and health
16 services.

17 (d) "Secretary" means the secretary of the department of social and
18 health services.

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

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

30 **Sec. 7.** RCW 74.39A.050 and 2009 c 2 s 14 (Initiative Measure No.
31 1029) are each amended to read as follows:

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

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

1 (2) The goal of the system is continuous quality improvement with
2 the focus on consumer satisfaction and outcomes for consumers. This
3 includes that when conducting licensing or contract inspections, the
4 department shall interview an appropriate percentage of residents,
5 family members, resident case managers, and advocates in addition to
6 interviewing providers and staff.

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

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

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

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

26 (7) All long-term care workers shall be screened through background
27 checks in a uniform and timely manner to ensure that they do not have
28 a criminal history that would disqualify them from working with
29 vulnerable persons. Long-term care workers who are hired after January
30 1, 2012, are subject to background checks under RCW 74.39A.055. This
31 information will be shared with the department of health in accordance
32 with RCW 74.39A.055 to advance the purposes of chapter 2, Laws of 2009.

33 (8) No provider, or its staff, or long-term care worker, or
34 prospective provider or long-term care worker, with a stipulated
35 finding of fact, conclusion of law, an agreed order, or finding of
36 fact, conclusion of law, or final order issued by a disciplining
37 authority, a court of law, or entered into a state registry finding him
38 or her guilty of abuse, neglect, exploitation, or abandonment of a

1 minor or a vulnerable adult as defined in chapter 74.34 RCW shall be
2 employed in the care of and have unsupervised access to vulnerable
3 adults.

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

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

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

30 (12) The department shall create an approval system by March 1,
31 2002, for those seeking to conduct department-approved training.

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

1 providers. Long-term care workers who are hired after January 1, 2012,
2 are subject to background checks under RCW 74.39A.055.

3 (14) Under existing funds the department shall establish internally
4 a quality improvement standards committee to monitor the development of
5 standards and to suggest modifications.

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

35 **Sec. 8.** RCW 74.39A.095 and 2004 c 141 s 1 are each amended to read
36 as follows:

37 (1) In carrying out case management responsibilities established

1 under RCW 74.39A.090 for consumers who are receiving services under the
2 medicaid personal care, community options programs entry system or
3 chore services program through an individual provider, each area agency
4 on aging shall provide oversight of the care being provided to
5 consumers receiving services under this section to the extent of
6 available funding. Case management responsibilities incorporate this
7 oversight, and include, but are not limited to:

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

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

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

18 (d) (~~Reassessment and reauthorization of~~) Reassessing and
19 reauthorizing services;

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

25 (f) Conducting criminal background checks or verifying that
26 criminal background checks have been conducted for any individual
27 provider who has not been referred to a consumer by the authority.
28 Individual providers who are hired after January 1, 2012, are subject
29 to background checks under RCW 74.39A.055.

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

37 (a) The name and telephone number of the consumer's area agency on

1 aging case manager, and a statement as to how the case manager can be
2 contacted about any concerns related to the consumer's well-being or
3 the adequacy of care provided;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 **Sec. 9.** RCW 74.39A.260 and 2002 c 3 s 5 are each amended to read
30 as follows:

31 The department must perform criminal background checks for
32 individual providers and prospective individual providers and ensure
33 that the authority has ready access to any long-term care abuse and
34 neglect registry used by the department. Individual providers who are
35 hired after January 1, 2012, are subject to background checks under RCW
36 74.39A.055.

1 **Sec. 10.** RCW 74.39A.073 and 2009 c 2 s 5 (Initiative Measure No.
2 1029) are each amended to read as follows:

3 (1) Effective January 1, (~~2010~~) 2011, except as provided in RCW
4 18.88B.040, all persons employed as long-term care workers for the
5 elderly or persons with disabilities must meet the minimum training
6 requirements in this section within one hundred twenty calendar days of
7 employment.

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

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

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

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

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

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

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

30 (a) Has been developed with input from consumer and worker
31 representatives; and

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

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

36 (7) The department of health shall adopt rules by August 1,
37 (~~2009~~) 2010, to implement subsections (1), (2), and (3) of this
38 section.

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

3 **Sec. 11.** RCW 74.39A.075 and 2009 c 2 s 8 (Initiative Measure No.
4 1029) are each amended to read as follows:

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

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

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

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

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

30 (a) Has been developed with input from consumer and worker
31 representatives; and

32 (b) Requires comprehensive instruction by qualified instructors.

33 (4) The department shall adopt rules by August 1, ((2009)) 2010, to
34 implement this section.

35 **Sec. 12.** RCW 74.39A.340 and 2009 c 2 s 9 (Initiative Measure No.
36 1029) are each amended to read as follows:

1 (1) The department of health shall ensure that all long-term care
2 workers shall complete twelve hours of continuing education training in
3 advanced training topics each year. This requirement applies beginning
4 on ~~((January))~~ July 1, ~~((2010))~~ 2011.

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

8 (3) Unless voluntarily certified as a home care aide under chapter
9 2, Laws of 2009, subsection (1) of this section does not apply to:

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

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

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

18 (a) Has been developed with input from consumer and worker
19 representatives; and

20 (b) Requires comprehensive instruction by qualified instructors.

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

23 (6) The department of health shall adopt rules by August 1,
24 ~~((2009))~~ 2010, to implement subsections (1), (2), and (3) of this
25 section.

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

28 **Sec. 13.** RCW 74.39A.350 and 2009 c 2 s 10 (Initiative Measure No.
29 1029) are each amended to read as follows:

30 The department shall offer, directly or through contract, training
31 opportunities sufficient for a long-term care worker to accumulate
32 seventy hours of training within a reasonable time period. For
33 individual providers represented by an exclusive bargaining
34 representative under RCW 74.39A.270, the training opportunities shall
35 be offered through the training partnership established under RCW
36 74.39A.360. Training topics shall include, but are not limited to:
37 Client rights; personal care; mental illness; dementia; developmental

1 disabilities; depression; medication assistance; advanced communication
2 skills; positive client behavior support; developing or improving
3 client-centered activities; dealing with wandering or aggressive client
4 behaviors; medical conditions; nurse delegation core training; peer
5 mentor training; and advocacy for quality care training. The
6 department may not require long-term care workers to obtain the
7 training described in this section. This requirement to offer advanced
8 training applies beginning January 1, (~~2011~~) 2012.

9 **Sec. 14.** RCW 74.39A.085 and 2009 c 2 s 12 (Initiative Measure No.
10 1029) are each amended to read as follows:

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

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

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

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

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

33 **Sec. 15.** RCW 18.88B.040 and 2009 c 2 s 7 (Initiative Measure No.
34 1029) are each amended to read as follows:

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

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

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

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

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

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

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

32 (7) The department of health shall adopt rules by August 1,
33 (~~2009~~) 2010, to implement this section.

34 **Sec. 16.** RCW 18.88A.115 and 2009 c 2 s 11 (Initiative Measure No.
35 1029) are each amended to read as follows:

36 By August 1, (~~2009~~) 2010, the department of health shall develop,
37 in consultation with the nursing care quality assurance commission and

1 consumer and worker representatives, rules permitting reciprocity to
2 the maximum extent possible under federal law between home care aide
3 certification and nursing assistant certification.

4 **Sec. 17.** RCW 18.88B.050 and 2009 c 2 s 13 (Initiative Measure No.
5 1029) are each amended to read as follows:

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

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

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

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

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

27 (6) The department of health shall adopt rules by August 1,
28 ((2009)) 2010, to implement this section.

29 **Sec. 18.** RCW 18.88B.020 and 2009 c 2 s 4 (Initiative Measure No.
30 1029) are each amended to read as follows:

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

1 (2) Except as provided in RCW 18.88B.040, certification as a home
2 care aide requires both completion of seventy-five hours of training
3 and successful completion of a certification examination pursuant to
4 RCW 74.39A.073 and 18.88B.030.

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

8 (4) The department of health shall adopt rules by August 1,
9 ((2009)) 2010, to implement this section.

10 NEW_SECTION. **Sec. 19.** Section 16 of this act takes effect
11 September 1, 2009.

Passed by the Senate April 25, 2009.

Passed by the House April 25, 2009.

Approved by the Governor May 19, 2009.

Filed in Office of Secretary of State May 20, 2009.