

SSB 6180 - S AMD 480

By Senators Keiser, Tom

PULLED 04/25/2009

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 74.39A.009 and 2009 c 2 s 2 (Initiative Measure No.  
4 1029) are each amended to read as follows:

5 Unless the context clearly requires otherwise, the definitions in  
6 this section apply throughout this chapter.

7 (1) "Adult family home" means a home licensed under chapter 70.128  
8 RCW.

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

13 (3) "Assisted living services" means services provided by a  
14 boarding home that has a contract with the department under RCW  
15 74.39A.010 to provide personal care services, intermittent nursing  
16 services, and medication administration services, and the resident is  
17 housed in a private apartment-like unit.

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

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

26 (6) "Cost-effective care" means care provided in a setting of an  
27 individual's choice that is necessary to promote the most appropriate  
28 level of physical, mental, and psychosocial well-being consistent with  
29 client choice, in an environment that is appropriate to the care and  
30 safety needs of the individual, and such care cannot be provided at a

1 lower cost in any other setting. But this in no way precludes an  
2 individual from choosing a different residential setting to achieve his  
3 or her desired quality of life.

4 (7) "Department" means the department of social and health  
5 services.

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

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

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

16 (11) "Functionally disabled person" or "person who is functionally  
17 disabled" is synonymous with chronic functionally disabled and means a  
18 person who because of a recognized chronic physical or mental condition  
19 or disease, or developmental disability, including chemical dependency,  
20 is impaired to the extent of being dependent upon others for direct  
21 care, support, supervision, or monitoring to perform activities of  
22 daily living. "Activities of daily living", in this context, means  
23 self-care abilities related to personal care such as bathing, eating,  
24 using the toilet, dressing, and transfer. Instrumental activities of  
25 daily living may also be used to assess a person's functional abilities  
26 as they are related to the mental capacity to perform activities in the  
27 home and the community such as cooking, shopping, house cleaning, doing  
28 laundry, working, and managing personal finances.

29 (12) "Home and community services" means adult family homes, in-  
30 home services, and other services administered or provided by contract  
31 by the department directly or through contract with area agencies on  
32 aging or similar services provided by facilities and agencies licensed  
33 by the department.

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

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

37 (15) "Long-term care" is synonymous with chronic care and means  
38 care and supports delivered indefinitely, intermittently, or over a

1 sustained time to persons of any age disabled by chronic mental or  
2 physical illness, disease, chemical dependency, or a medical condition  
3 that is permanent, not reversible or curable, or is long-lasting and  
4 severely limits their mental or physical capacity for self-care. The  
5 use of this definition is not intended to expand the scope of services,  
6 care, or assistance by any individuals, groups, residential care  
7 settings, or professions unless otherwise expressed by law.

8 (16)(a) "Long-term care workers for the elderly or persons with  
9 disabilities" or "long-term care workers" includes all persons who are  
10 long-term care workers for the elderly or persons with disabilities,  
11 including but not limited to individual providers of home care  
12 services, direct care employees of home care agencies, providers of  
13 home care services to persons with developmental disabilities under  
14 Title 71 RCW, all direct care workers in state-licensed boarding homes,  
15 assisted living facilities, and adult family homes, respite care  
16 providers, community residential service providers, and any other  
17 direct care worker providing home or community-based services to the  
18 elderly or persons with functional disabilities or developmental  
19 disabilities.

20 (b) "Long-term care workers" do not include: (i) Persons employed  
21 by the following facilities or agencies in nursing homes subject to  
22 chapter 18.51 RCW, hospitals or other acute care settings, residential  
23 habilitation centers under chapter 71A.20 RCW, facilities certified  
24 under 42 CFR, Part 483, hospice agencies subject to chapter 70.127 RCW,  
25 adult day care centers, and adult day health care centers; or (ii)  
26 persons who are not paid by the state or by a private agency or  
27 facility licensed by the state to provide personal care services.

28 (17) "Nursing home" means a facility licensed under chapter 18.51  
29 RCW.

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

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

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

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

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

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

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

17 **Sec. 2.** RCW 74.39A.055 and 2009 c 2 s 3 (Initiative Measure No.  
18 1029) are each amended to read as follows:

19 (1) All long-term care workers for the elderly or persons with  
20 disabilities hired after January 1, ((2010)) 2012, shall be screened  
21 through state and federal background checks in a uniform and timely  
22 manner to ensure that they do not have a criminal history that would  
23 disqualify them from working with vulnerable persons. These background  
24 checks shall include checking against the federal bureau of  
25 investigation fingerprint identification records system and against the  
26 national sex offenders registry or their successor programs. The  
27 department shall require these long-term care workers to submit  
28 fingerprints for the purpose of investigating conviction records  
29 through both the Washington state patrol and the federal bureau of  
30 investigation.

31 (2) To allow the department of health to satisfy its certification  
32 responsibilities under chapter 18.88B RCW, the department shall share  
33 ((this information)) state and federal background check results with  
34 the department of health. Neither department may share the federal  
35 background check results with any other state agency or person.

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

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

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

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

12       (2) Prompt and specific enforcement remedies shall also be  
13 implemented without delay, consistent with RCW 18.20.190, for  
14 facilities found to have delivered care or failed to deliver care  
15 resulting in problems that are serious, recurring, or uncorrected, or  
16 that create a hazard that is causing or likely to cause death or  
17 serious harm to one or more residents. These enforcement remedies may  
18 also include, when appropriate, reasonable conditions on a license. In  
19 the selection of remedies, the safety, health, and well-being of  
20 residents shall be of paramount importance.

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

28       (b) Long-term care workers, as defined in RCW 74.39A.009, who are  
29 hired after January 1, 2012, are subject to background checks under RCW  
30 74.39A.055.

31       (4) No licensee, administrator, or staff, or prospective licensee,  
32 administrator, or staff, with a stipulated finding of fact, conclusion  
33 of law, and agreed order, or finding of fact, conclusion of law, or  
34 final order issued by a disciplining authority, a court of law, or  
35 entered into the state registry finding him or her guilty of abuse,  
36 neglect, exploitation, or abandonment of a minor or a vulnerable adult

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

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

5 (1) Effective January 1, (~~(2010)~~) 2011, except as provided in RCW  
6 18.88B.040, the department of health shall require that all long-term  
7 care workers successfully complete a certification examination. Any  
8 long-term care worker failing to make the required grade for the  
9 examination will not be certified as a home care aide.

10 (2) The department of health, in consultation with consumer and  
11 worker representatives, shall develop a home care aide certification  
12 examination to evaluate whether an applicant possesses the skills and  
13 knowledge necessary to practice competently. Unless excluded by RCW  
14 18.88B.040 (1) and (2), only those who have completed the training  
15 requirements in RCW 74.39A.073 shall be eligible to sit for this  
16 examination.

17 (3) The examination shall include both a skills demonstration and  
18 a written or oral knowledge test. The examination papers, all grading  
19 of the papers, and records related to the grading of skills  
20 demonstration shall be preserved for a period of not less than one  
21 year. The department of health shall establish rules governing the  
22 number of times and under what circumstances individuals who have  
23 failed the examination may sit for the examination, including whether  
24 any intermediate remedial steps should be required.

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

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

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

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

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

1 (d) Maintain the official record of all applicants and persons with  
2 certificates;

3 (e) Exercise disciplinary authority as authorized in chapter 18.130  
4 RCW; and

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

7 (6) The department of health shall adopt rules by August 1,  
8 ((2009)) 2010, that establish the procedures, including criteria for  
9 reviewing an applicant's state and federal background checks, and  
10 examinations necessary to carry this section into effect.

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

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

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

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

29 (c) Individuals or businesses or organizations for the care,  
30 supervision, case management, or treatment of children,  
31 ((developmentally disabled)) persons with developmental disabilities,  
32 or vulnerable adults, including but not limited to services contracted  
33 for under chapter 18.20, ((18.48)) 70.127, 70.128, 72.36, or 74.39A  
34 RCW or Title 71A RCW.

35 (2) The investigation may include an examination of state and  
36 national criminal identification data. The secretary shall use the

1 information solely for the purpose of determining the character,  
2 suitability, and competence of these applicants.

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

15 (4) Long-term care workers, as defined in RCW 74.39A.009, who are  
16 hired after January 1, 2012, are subject to background checks under RCW  
17 74.39A.055, except that the department may require a background check  
18 at any time under RCW 43.43.837. For the purposes of this subsection,  
19 "background check" includes, but is not limited to, a fingerprint check  
20 submitted for the purpose of investigating conviction records through  
21 both the Washington state patrol and the federal bureau of  
22 investigation.

23 (5) An individual provider or home care agency provider hired to  
24 provide in-home care for and having unsupervised access to a vulnerable  
25 adult as defined in chapter 74.34 RCW must have no conviction for a  
26 disqualifying crime under RCW 43.43.830 and 43.43.842. An individual  
27 or home care agency provider must also have no conviction for a crime  
28 relating to drugs as defined in RCW 43.43.830. This subsection applies  
29 only with respect to the provision of in-home services funded by  
30 medicaid personal care under RCW 74.09.520, community options program  
31 entry system waiver services under RCW 74.39A.030, or chore services  
32 under RCW 74.39A.110.

33 ~~((+5))~~ (6) The secretary shall provide the results of the state  
34 background check on long-term care workers, including individual  
35 providers, to the persons hiring them or to their legal guardians, if  
36 any, for their determination of the character, suitability, and  
37 competence of the applicants. If the person elects to hire or retain  
38 an individual provider after receiving notice from the department that



1 the applicant has a conviction for an offense that would disqualify the  
2 applicant from having unsupervised access to persons with physical,  
3 mental, or developmental disabilities or mental illness, or to  
4 vulnerable adults as defined in chapter 74.34 RCW, then the secretary  
5 shall deny payment for any subsequent services rendered by the  
6 disqualified individual provider.

7 ~~((6))~~ (7) Criminal justice agencies shall provide the secretary  
8 such information as they may have and that the secretary may require  
9 for such purpose.

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

12 (1) Except as provided in subsection (2) of this section, in order  
13 to determine the character, competence, and suitability of any  
14 applicant or service provider to have unsupervised access, the  
15 secretary may require a fingerprint-based background check through both  
16 the Washington state patrol and the federal bureau of investigation at  
17 any time, but shall require a fingerprint-based background check when  
18 the applicant or service provider has resided in the state less than  
19 three consecutive years before application, and:

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

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

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

28 (i) Medicaid personal care under RCW 74.09.520;

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

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

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

35 (2) Long-term care workers, as defined in RCW 74.39A.009, who are  
36 hired after January 1, 2012, are subject to background checks under RCW  
37 74.39A.055.

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

7        ~~((+3))~~ (4) Any secure facility operated by the department under  
8 chapter 71.09 RCW shall require applicants and service providers to  
9 undergo a fingerprint-based background check through the Washington  
10 state patrol identification and criminal history section and the  
11 federal bureau of investigation.

12        ~~((+4))~~ (5) Service providers and service provider applicants who  
13 are required to complete a fingerprint-based background check may be  
14 hired for a one hundred twenty-day provisional period as allowed under  
15 law or program rules when:

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

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

19        ~~((+5))~~ (6) Fees charged by the Washington state patrol and the  
20 federal bureau of investigation for fingerprint-based background checks  
21 shall be paid by the department for applicants or service providers  
22 providing:

23        (a) Services to people with a developmental disability under RCW  
24 74.15.030;

25        (b) In-home services funded by medicaid personal care under RCW  
26 74.09.520;

27        (c) Community options program entry system waiver services under  
28 RCW 74.39A.030;

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

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

33        (f) Services in, or to residents of, a secure facility under RCW  
34 71.09.115; and

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

36        ~~((+6))~~ (7) Service providers licensed under RCW 74.15.030 must pay  
37 fees charged by the Washington state patrol and the federal bureau of  
38 investigation for conducting fingerprint-based background checks.

1        (~~(7)~~) (8) Children's administration service providers licensed  
2 under RCW 74.15.030 may not pass on the cost of the background check  
3 fees to their applicants unless the individual is determined to be  
4 disqualified due to the background information.

5        (~~(8)~~) (9) The department shall develop rules identifying the  
6 financial responsibility of service providers, applicants, and the  
7 department for paying the fees charged by law enforcement to roll,  
8 print, or scan fingerprints-based for the purpose of a Washington state  
9 patrol or federal bureau of investigation fingerprint-based background  
10 check.

11       (~~(9)~~) (10) For purposes of this section, unless the context  
12 plainly indicates otherwise:

13       (a) "Applicant" means a current or prospective department or  
14 service provider employee, volunteer, student, intern, researcher,  
15 contractor, or any other individual who will or may have unsupervised  
16 access because of the nature of the work or services he or she  
17 provides. "Applicant" includes but is not limited to any individual  
18 who will or may have unsupervised access and is:

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

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

21       (iii) Applying for employment, promotion, reallocation, or  
22 transfer;

23       (iv) An individual that a department client or guardian of a  
24 department client chooses to hire or engage to provide services to  
25 himself or herself or another vulnerable adult, juvenile, or child and  
26 who might be eligible to receive payment from the department for  
27 services rendered; or

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

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

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

33       (ii) Have unsupervised access to vulnerable adults, juveniles, and  
34 children;

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

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

37       (c) "Department" means the department of social and health  
38 services.

1 (d) "Secretary" means the secretary of the department of social and  
2 health services.

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

4 (f) "Service provider" means entities, facilities, agencies,  
5 businesses, or individuals who are licensed, certified, authorized, or  
6 regulated by, receive payment from, or have contracts or agreements  
7 with the department to provide services to vulnerable adults,  
8 juveniles, or children. "Service provider" includes individuals whom  
9 a department client or guardian of a department client may choose to  
10 hire or engage to provide services to himself or herself or another  
11 vulnerable adult, juvenile, or child and who might be eligible to  
12 receive payment from the department for services rendered. "Service  
13 provider" does not include those certified under chapter 70.96A RCW.

14 **Sec. 7.** RCW 74.39A.050 and 2009 c 2 s 14 (Initiative Measure No.  
15 1029) are each amended to read as follows:

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

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

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

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

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

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

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

11 (7) All long-term care workers shall be screened through background  
12 checks in a uniform and timely manner to ensure that they do not have  
13 a criminal history that would disqualify them from working with  
14 vulnerable persons. Long-term care workers who are hired after January  
15 1, 2012, are subject to background checks under RCW 74.39A.055. This  
16 information will be shared with the department of health in accordance  
17 with RCW 74.39A.055 to advance the purposes of chapter 2, Laws of 2009.

18 (8) No provider, or its staff, or long-term care worker, or  
19 prospective provider or long-term care worker, with a stipulated  
20 finding of fact, conclusion of law, an agreed order, or finding of  
21 fact, conclusion of law, or final order issued by a disciplining  
22 authority, a court of law, or entered into a state registry finding him  
23 or her guilty of abuse, neglect, exploitation, or abandonment of a  
24 minor or a vulnerable adult as defined in chapter 74.34 RCW shall be  
25 employed in the care of and have unsupervised access to vulnerable  
26 adults.

27 (9) The department shall establish, by rule, a state registry which  
28 contains identifying information about long-term care workers  
29 identified under this chapter who have substantiated findings of abuse,  
30 neglect, financial exploitation, or abandonment of a vulnerable adult  
31 as defined in RCW 74.34.020. The rule must include disclosure,  
32 disposition of findings, notification, findings of fact, appeal rights,  
33 and fair hearing requirements. The department shall disclose, upon  
34 request, substantiated findings of abuse, neglect, financial  
35 exploitation, or abandonment to any person so requesting this  
36 information. This information will also be shared with the department  
37 of health to advance the purposes of chapter 2, Laws of 2009.

1 (10) Until December 31, ((2009)) 2010, individual providers and  
2 home care agency providers must satisfactorily complete department-  
3 approved orientation, basic training, and continuing education within  
4 the time period specified by the department in rule. The department  
5 shall adopt rules by March 1, 2002, for the implementation of this  
6 section. The department shall deny payment to an individual provider  
7 or a home care provider who does not complete the training requirements  
8 within the time limit specified by the department by rule.

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

16 (12) The department shall create an approval system by March 1,  
17 2002, for those seeking to conduct department-approved training.

18 (13) The department shall establish, by rule, background checks and  
19 other quality assurance requirements for long-term care workers who  
20 provide in-home services funded by medicaid personal care as described  
21 in RCW 74.09.520, community options program entry system waiver  
22 services as described in RCW 74.39A.030, or chore services as described  
23 in RCW 74.39A.110 that are equivalent to requirements for individual  
24 providers. Long-term care workers who are hired after January 1, 2012,  
25 are subject to background checks under RCW 74.39A.055.

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

29 (15) Within existing funds, the department shall design, develop,  
30 and implement a long-term care training program that is flexible,  
31 relevant, and qualifies towards the requirements for a nursing  
32 assistant certificate as established under chapter 18.88A RCW. This  
33 subsection does not require completion of the nursing assistant  
34 certificate training program by providers or their staff. The long-  
35 term care teaching curriculum must consist of a fundamental module, or  
36 modules, and a range of other available relevant training modules that  
37 provide the caregiver with appropriate options that assist in meeting  
38 the resident's care needs. Some of the training modules may include,

1 but are not limited to, specific training on the special care needs of  
2 persons with developmental disabilities, dementia, mental illness, and  
3 the care needs of the elderly. No less than one training module must  
4 be dedicated to workplace violence prevention. The nursing care  
5 quality assurance commission shall work together with the department to  
6 develop the curriculum modules. The nursing care quality assurance  
7 commission shall direct the nursing assistant training programs to  
8 accept some or all of the skills and competencies from the curriculum  
9 modules towards meeting the requirements for a nursing assistant  
10 certificate as defined in chapter 18.88A RCW. A process may be  
11 developed to test persons completing modules from a caregiver's class  
12 to verify that they have the transferable skills and competencies for  
13 entry into a nursing assistant training program. The department may  
14 review whether facilities can develop their own related long-term care  
15 training programs. The department may develop a review process for  
16 determining what previous experience and training may be used to waive  
17 some or all of the mandatory training. The department of social and  
18 health services and the nursing care quality assurance commission shall  
19 work together to develop an implementation plan by December 12, 1998.

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

22 (1) In carrying out case management responsibilities established  
23 under RCW 74.39A.090 for consumers who are receiving services under the  
24 medicaid personal care, community options programs entry system or  
25 chore services program through an individual provider, each area agency  
26 on aging shall provide oversight of the care being provided to  
27 consumers receiving services under this section to the extent of  
28 available funding. Case management responsibilities incorporate this  
29 oversight, and include, but are not limited to:

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

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

35 (c) Monitoring the consumer's plan of care to verify that it  
36 adequately meets the needs of the consumer, through activities such as

1 home visits, telephone contacts, and responses to information received  
2 by the area agency on aging indicating that a consumer may be  
3 experiencing problems relating to his or her home care;

4 (d) (~~Reassessment and reauthorization of~~) Reassessing and  
5 reauthorizing services;

6 (e) Monitoring of individual provider performance. If, in the  
7 course of its case management activities, the area agency on aging  
8 identifies concerns regarding the care being provided by an individual  
9 provider who was referred by the authority, the area agency on aging  
10 must notify the authority regarding its concerns; and

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

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

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

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

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

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

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

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



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

4 (h)(i) Except as provided in (h)(ii) of this subsection, a clear  
5 statement indicating that a consumer receiving services under this  
6 section has the right to waive any of the case management services  
7 offered by the area agency on aging under this section, and a clear  
8 indication of whether the consumer has, in fact, waived any of these  
9 services.

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

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

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

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

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

27 (7) If the department or area agency on aging case manager finds  
28 that an individual provider's inadequate performance or inability to  
29 deliver quality care is jeopardizing the health, safety, or well-being  
30 of a consumer receiving service under this section, the department or  
31 the area agency on aging may take action to terminate the contract  
32 between the department and the individual provider. If the department  
33 or the area agency on aging has a reasonable, good faith belief that  
34 the health, safety, or well-being of a consumer is in imminent  
35 jeopardy, the department or area agency on aging may summarily suspend  
36 the contract pending a fair hearing. The consumer may request a fair  
37 hearing to contest the planned action of the case manager, as provided  
38 in chapter 34.05 RCW. When the department or area agency on aging

1 terminates or summarily suspends a contract under this subsection, it  
2 must provide oral and written notice of the action taken to the  
3 authority. The department may by rule adopt guidelines for  
4 implementing this subsection.

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

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

16 The department must perform criminal background checks for  
17 individual providers and prospective individual providers and ensure  
18 that the authority has ready access to any long-term care abuse and  
19 neglect registry used by the department. Individual providers who are  
20 hired after January 1, 2012, are subject to background checks under RCW  
21 74.39A.055.

22 **Sec. 10.** RCW 74.39A.073 and 2009 c 2 s 5 (Initiative Measure No.  
23 1029) are each amended to read as follows:

24 (1) Effective January 1, (~~(2010)~~) 2011, except as provided in RCW  
25 18.88B.040, all persons employed as long-term care workers for the  
26 elderly or persons with disabilities must meet the minimum training  
27 requirements in this section within one hundred twenty calendar days of  
28 employment.

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

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

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

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

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

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

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

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

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

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

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

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

26 **Sec. 11.** RCW 74.39A.075 and 2009 c 2 s 8 (Initiative Measure No.  
27 1029) are each amended to read as follows:

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

34 (2) Effective January 1, ((2010)) 2011, individual providers  
35 identified in (a) and (b) of this subsection must complete thirty-five  
36 hours of training within the first one hundred twenty days of becoming  
37 an individual provider. Five of the thirty-five hours must be

1 completed before becoming eligible to provide care. Two of these five  
2 hours shall be devoted to an orientation training regarding an  
3 individual provider's role as caregiver and the applicable terms of  
4 employment, and three hours shall be devoted to safety training,  
5 including basic safety precautions, emergency procedures, and infection  
6 control. Individual providers subject to this requirement include:

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

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

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

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

18 (b) Requires comprehensive instruction by qualified instructors.

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

21 **Sec. 12.** RCW 74.39A.340 and 2009 c 2 s 9 (Initiative Measure No.  
22 1029) are each amended to read as follows:

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

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

30 (3) Unless voluntarily certified as a home care aide under chapter  
31 2, Laws of 2009, subsection (1) of this section does not apply to:

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

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

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

4 (a) Has been developed with input from consumer and worker  
5 representatives; and

6 (b) Requires comprehensive instruction by qualified instructors.

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

9 (6) The department of health shall adopt rules by August 1,  
10 ((2009)) 2010, to implement subsections (1), (2), and (3) of this  
11 section.

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

14 **Sec. 13.** RCW 74.39A.350 and 2009 c 2 s 10 (Initiative Measure No.  
15 1029) are each amended to read as follows:

16 The department shall offer, directly or through contract, training  
17 opportunities sufficient for a long-term care worker to accumulate  
18 seventy hours of training within a reasonable time period. For  
19 individual providers represented by an exclusive bargaining  
20 representative under RCW 74.39A.270, the training opportunities shall  
21 be offered through the training partnership established under RCW  
22 74.39A.360. Training topics shall include, but are not limited to:  
23 Client rights; personal care; mental illness; dementia; developmental  
24 disabilities; depression; medication assistance; advanced communication  
25 skills; positive client behavior support; developing or improving  
26 client-centered activities; dealing with wandering or aggressive client  
27 behaviors; medical conditions; nurse delegation core training; peer  
28 mentor training; and advocacy for quality care training. The  
29 department may not require long-term care workers to obtain the  
30 training described in this section. This requirement to offer advanced  
31 training applies beginning January 1, ((2011)) 2012.

32 **Sec. 14.** RCW 74.39A.085 and 2009 c 2 s 12 (Initiative Measure No.  
33 1029) are each amended to read as follows:

34 (1) The department shall deny payment to any individual provider of  
35 home care services who has not been certified by the department of

1 health as a home care aide as required under chapter 2, Laws of 2009  
2 or, if exempted from certification by RCW 18.88B.040, has not completed  
3 his or her required training pursuant to chapter 2, Laws of 2009.

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

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

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

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

21 **Sec. 15.** RCW 18.88B.040 and 2009 c 2 s 7 (Initiative Measure No.  
22 1029) are each amended to read as follows:

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

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

36 (2) A person already employed as a long-term care worker prior to  
37 January 1, (~~2010~~) 2011, who completes all of his or her training

1 requirements in effect as of the date he or she was hired, is not  
2 required to obtain certification. Individuals exempted by this  
3 subsection may obtain certification as a home care aide from the  
4 department of health without fulfilling the training requirements in  
5 RCW 74.39A.073 but must successfully complete a certification  
6 examination pursuant to RCW 18.88B.030.

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

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

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

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

19 (7) The department of health shall adopt rules by August 1,  
20 ((2009)) 2010, to implement this section.

21 **Sec. 16.** RCW 18.88A.115 and 2009 c 2 s 11 (Initiative Measure No.  
22 1029) are each amended to read as follows:

23 By August 1, ((2009)) 2010, the department of health shall develop,  
24 in consultation with the nursing care quality assurance commission and  
25 consumer and worker representatives, rules permitting reciprocity to  
26 the maximum extent possible under federal law between home care aide  
27 certification and nursing assistant certification.

28 **Sec. 17.** RCW 18.88B.050 and 2009 c 2 s 13 (Initiative Measure No.  
29 1029) are each amended to read as follows:

30 (1) The uniform disciplinary act, chapter 18.130 RCW, governs  
31 uncertified practice, issuance of certificates, and the discipline of  
32 persons with certificates under this chapter. The secretary of health  
33 shall be the disciplinary authority under this chapter.

34 (2) The secretary of health may take action to immediately suspend  
35 the certification of a long-term care worker upon finding that conduct

1 of the long-term care worker has caused or presents an imminent threat  
2 of harm to a functionally disabled person in his or her care.

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

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

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

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

18 **Sec. 18.** RCW 18.88B.020 and 2009 c 2 s 4 (Initiative Measure No.  
19 1029) are each amended to read as follows:

20 (1) Effective January 1, ((2010)) 2011, except as provided in RCW  
21 18.88B.040, the department of health shall require that any person  
22 hired as a long-term care worker for the elderly or persons with  
23 disabilities must be certified as a home care aide within one hundred  
24 fifty days from the date of being hired.

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

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

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

34 NEW SECTION. **Sec. 19.** Section 16 of this act takes effect  
35 September 1, 2009."



**SSB 6180** - S AMD

By Senators Keiser, Tom

**PULLED 04/25/2009**

1           On page 1, line 2 of the title, after "workers;" strike the  
2 remainder of the title and insert "amending RCW 74.39A.009, 74.39A.055,  
3 18.20.125, 18.88B.030, 43.20A.710, 43.43.837, 74.39A.050, 74.39A.095,  
4 74.39A.260, 74.39A.073, 74.39A.075, 74.39A.340, 74.39A.350, 74.39A.085,  
5 18.88B.040, 18.88A.115, 18.88B.050, and 18.88B.020; and providing an  
6 effective date."

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