

SSB 6180 - S AMD 520
By Senator Keiser

ADOPTED 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 ~~((in))~~ by the following facilities or agencies: Nursing homes subject
22 to chapter 18.51 RCW, hospitals or other acute care settings,
23 residential habilitation centers under chapter 71A.20 RCW, facilities
24 certified under 42 CFR, Part 483, hospice agencies subject to chapter
25 70.127 RCW, adult day care centers, and adult day health care centers;
26 or (ii) 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."

ADOPTED 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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