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HOUSE BILL 2352

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State of Washington                      61st Legislature                      2009 Regular Session

By Representatives Morrell, Walsh, Kagi, Dickerson, and Hinkle

Read first time 04/15/09. Referred to Committee on Ways & Means.

1            AN ACT Relating to long-term care worker training and  
2            credentialing; amending RCW 74.39A.009, 74.39A.073, 18.88B.040,  
3            74.39A.050, and 74.39A.340; and repealing RCW 74.39.070.

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

5            **Sec. 1.** RCW 74.39A.009 and 2009 c 2 s 2 (Initiative Measure No.  
6            1029) are each amended to read as follows:

7            Unless the context clearly requires otherwise, the definitions in  
8            this section apply throughout this chapter.

9            (1) "Adult family home" means a home licensed under chapter 70.128  
10            RCW.

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

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

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

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

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

17 (7) "Department" means the department of social and health  
18 services.

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

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

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

29 (11) "Functionally disabled person" or "person who is functionally  
30 disabled" is synonymous with chronic functionally disabled and means a  
31 person who because of a recognized chronic physical or mental condition  
32 or disease, or developmental disability, including chemical dependency,  
33 is impaired to the extent of being dependent upon others for direct  
34 care, support, supervision, or monitoring to perform activities of  
35 daily living. "Activities of daily living", in this context, means  
36 self-care abilities related to personal care such as bathing, eating,  
37 using the toilet, dressing, and transfer. Instrumental activities of  
38 daily living may also be used to assess a person's functional abilities

1 as they are related to the mental capacity to perform activities in the  
2 home and the community such as cooking, shopping, house cleaning, doing  
3 laundry, working, and managing personal finances.

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

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

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

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

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

35 (b) "Long-term care workers" do not include~~((or~~ ~~((i))~~) persons  
36 employed in nursing homes subject to chapter 18.51 RCW, hospitals or  
37 other acute care settings, hospice agencies subject to chapter 70.127

1 RCW, adult day care centers, and adult day health care centers(~~(i) or~~  
2 ~~(ii) persons who are not paid by the state or by a private agency or~~  
3 ~~facility licensed by the state to provide personal care services~~)).

4 (17) "Nursing home" means a facility licensed under chapter 18.51  
5 RCW.

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

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

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

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

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

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

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

30 **Sec. 2.** RCW 74.39A.073 and 2009 c 2 s 5 (Initiative Measure No.  
31 1029) are each amended to read as follows:

32 (1) Effective January 1, 2010, except as provided in RCW  
33 18.88B.040, all persons (~~employed~~) hired as long-term care workers  
34 for the elderly or persons with disabilities must meet the minimum  
35 training requirements in this section within one hundred twenty  
36 calendar days of employment.

1 (2) All persons (~~employed~~) hired as long-term care workers must  
2 obtain seventy-five hours of entry-level training approved by the  
3 department. A long-term care worker must accomplish five of these  
4 seventy-five hours before becoming eligible to provide care.

5 (~~Training required by subsection (4)(c) of this section will~~  
6 ~~be applied towards~~) A long-term care worker exempt under RCW  
7 18.88B.040(3) who elects to become certified as a home care aide under  
8 chapter 18.88B RCW may apply the training required under RCW 18.20.270  
9 (~~or~~), 70.128.230 (~~as well as~~), or 74.39A.050 or any statutory or  
10 regulatory training requirements for long-term care workers employed by  
11 (~~supportive~~) supported living providers toward the training  
12 requirements under subsection (4)(c) of this section.

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

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

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

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

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

27 (a) Has been developed with input from consumer and worker  
28 representatives; and

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

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

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

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

1       **Sec. 3.** RCW 18.88B.040 and 2009 c 2 s 7 (Initiative Measure No.  
2 1029) are each amended to read as follows:

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

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

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

24       (3) All long-term care workers employed by in-home services  
25 agencies licensed under chapter 70.127 RCW, boarding homes licensed  
26 under chapter 18.20 RCW, adult family homes licensed under chapter  
27 70.128 RCW, and assisted living facilities, community residential  
28 service providers, and supported living providers approved or certified  
29 pursuant to programs authorized under chapter 74.39A or 71A.12 RCW are  
30 not required to obtain certification under this chapter. Individuals  
31 initially hired on or after January 1, 2010, and exempted by this  
32 subsection may obtain certification as a home care aide from the  
33 department of health by fulfilling the training requirements in RCW  
34 74.39A.073 and successfully completing a certification examination  
35 pursuant to RCW 18.88B.030.

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

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

5 (6) A long-term care worker exempt from certification by this  
6 section is also exempt from the training requirements contained in RCW  
7 74.39A.073 (~~may not be prohibited~~). However, this subsection does  
8 not prohibit an exempt long-term care worker from enrolling in training  
9 pursuant to that section.

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

12 **Sec. 4.** RCW 74.39A.050 and 2009 c 2 s 14 (Initiative Measure No.  
13 1029) are each amended to read as follows:

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

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

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

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

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

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

35 (6) Prompt and specific enforcement remedies shall also be  
36 implemented without delay, pursuant to RCW 74.39A.080, RCW 70.128.160,  
37 chapter 18.51 RCW, or chapter 74.42 RCW, for providers found to have

1 delivered care or failed to deliver care resulting in problems that are  
2 serious, recurring, or uncorrected, or that create a hazard that is  
3 causing or likely to cause death or serious harm to one or more  
4 residents. These enforcement remedies may also include, when  
5 appropriate, reasonable conditions on a contract or license. In the  
6 selection of remedies, the safety, health, and well-being of residents  
7 shall be of paramount importance.

8 (7) All long-term care workers shall be screened through background  
9 checks in a uniform and timely manner to ensure that they do not have  
10 a criminal history that would disqualify them from working with  
11 vulnerable persons. This information will be shared with the  
12 department of health to advance the purposes of chapter 2, Laws of  
13 2009.

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

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

33 (10) (~~Until December 31, 2009~~) Except as provided in RCW  
34 74.39A.073 and 74.39A.075, individual providers and home care agency  
35 providers must satisfactorily complete department-approved orientation,  
36 basic training, and continuing education within the time period  
37 specified by the department in rule. The department shall adopt rules  
38 by March 1, 2002, for the implementation of this section. The



1 department shall deny payment to an individual provider or a home care  
2 provider who does not complete the training requirements within the  
3 time limit specified by the department by rule.

4 (11) (~~Until December 31, 2009~~) Except as provided in RCW  
5 74.39A.073 and 74.39A.075, in an effort to improve access to training  
6 and education and reduce costs, especially for rural communities, the  
7 coordinated system of long-term care training and education must  
8 include the use of innovative types of learning strategies such as  
9 internet resources, videotapes, and distance learning using satellite  
10 technology coordinated through community colleges or other entities, as  
11 defined by the department.

12 (12) The department shall create an approval system by March 1,  
13 2002, for those seeking to conduct department-approved training.

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

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

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

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

15 **Sec. 5.** RCW 74.39A.340 and 2009 c 2 s 9 (Initiative Measure No.  
16 1029) are each amended to read as follows:

17 (1) (~~The department of health shall ensure that~~) (a) Except as  
18 provided in (b) of this subsection, all long-term care workers shall  
19 complete (~~twelve~~) ten hours of continuing education training in  
20 advanced training topics each year.

21 (b) All individual providers shall complete twelve hours of  
22 continuing education in advanced training topics each year. This  
23 requirement applies beginning on January 1, 2010.

24 (2) Completion of continuing education as required in this section  
25 is a prerequisite to maintaining home care aide certification under  
26 (~~chapter 2, Laws of 2009~~) chapter 18.88B RCW.

27 (3) Unless voluntarily certified as a home care aide under  
28 (~~chapter 2, Laws of 2009~~) chapter 18.88B RCW, subsection (1) of this  
29 section does not apply to:

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

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

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

1 (a) Has been developed with input from consumer and worker  
2 representatives; and

3 (b) Requires comprehensive instruction by qualified instructors.

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

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

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

10 NEW SECTION. **Sec. 6.** RCW 74.39.070 (Personal aide--Qualification  
11 exemptions) and 1999 c 336 s 8 are each repealed.

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