
SENATE BILL 6879

State of Washington 61st Legislature 2010 Regular Session

By Senators Keiser, Tom, and Kline

Read first time 03/01/10. Referred to Committee on Ways & Means.

1 AN ACT Relating to transferring the functions of the home care
2 quality authority to the department of social and health services;
3 amending RCW 41.56.030, 43.105.340, 74.39A.095, 74.39A.220, 74.39A.240,
4 74.39A.260, and 74.39A.250; reenacting and amending RCW 74.39A.270;
5 creating new sections; decodifying RCW 74.39A.290; repealing RCW
6 70.127.041, 74.39A.230, and 74.39A.280; and providing an effective
7 date.

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

9 **Sec. 1.** RCW 41.56.030 and 2007 c 184 s 2 are each amended to read
10 as follows:

11 As used in this chapter:

12 (1) "Public employer" means any officer, board, commission,
13 council, or other person or body acting on behalf of any public body
14 governed by this chapter, or any subdivision of such public body. For
15 the purposes of this section, the public employer of district court or
16 superior court employees for wage-related matters is the respective
17 county legislative authority, or person or body acting on behalf of the
18 legislative authority, and the public employer for nonwage-related

1 matters is the judge or judge's designee of the respective district
2 court or superior court.

3 (2) "Public employee" means any employee of a public employer
4 except any person (a) elected by popular vote, or (b) appointed to
5 office pursuant to statute, ordinance or resolution for a specified
6 term of office as a member of a multimember board, commission, or
7 committee, whether appointed by the executive head or body of the
8 public employer, or (c) whose duties as deputy, administrative
9 assistant or secretary necessarily imply a confidential relationship to
10 (i) the executive head or body of the applicable bargaining unit, or
11 (ii) any person elected by popular vote, or (iii) any person appointed
12 to office pursuant to statute, ordinance or resolution for a specified
13 term of office as a member of a multimember board, commission, or
14 committee, whether appointed by the executive head or body of the
15 public employer, or (d) who is a court commissioner or a court
16 magistrate of superior court, district court, or a department of a
17 district court organized under chapter 3.46 RCW, or (e) who is a
18 personal assistant to a district court judge, superior court judge, or
19 court commissioner. For the purpose of (e) of this subsection, no more
20 than one assistant for each judge or commissioner may be excluded from
21 a bargaining unit.

22 (3) "Bargaining representative" means any lawful organization which
23 has as one of its primary purposes the representation of employees in
24 their employment relations with employers.

25 (4) "Collective bargaining" means the performance of the mutual
26 obligations of the public employer and the exclusive bargaining
27 representative to meet at reasonable times, to confer and negotiate in
28 good faith, and to execute a written agreement with respect to
29 grievance procedures and collective negotiations on personnel matters,
30 including wages, hours and working conditions, which may be peculiar to
31 an appropriate bargaining unit of such public employer, except that by
32 such obligation neither party shall be compelled to agree to a proposal
33 or be required to make a concession unless otherwise provided in this
34 chapter.

35 (5) "Commission" means the public employment relations commission.

36 (6) "Executive director" means the executive director of the
37 commission.

1 (7) "Uniformed personnel" means: (a) Law enforcement officers as
2 defined in RCW 41.26.030 employed by the governing body of any city or
3 town with a population of two thousand five hundred or more and law
4 enforcement officers employed by the governing body of any county with
5 a population of ten thousand or more; (b) correctional employees who
6 are uniformed and nonuniformed, commissioned and noncommissioned
7 security personnel employed in a jail as defined in RCW
8 70.48.020(~~(+5+)~~) (9), by a county with a population of seventy thousand
9 or more, and who are trained for and charged with the responsibility of
10 controlling and maintaining custody of inmates in the jail and
11 safeguarding inmates from other inmates; (c) general authority
12 Washington peace officers as defined in RCW 10.93.020 employed by a
13 port district in a county with a population of one million or more; (d)
14 security forces established under RCW 43.52.520; (e) firefighters as
15 that term is defined in RCW 41.26.030; (f) employees of a port district
16 in a county with a population of one million or more whose duties
17 include crash fire rescue or other firefighting duties; (g) employees
18 of fire departments of public employers who dispatch exclusively either
19 fire or emergency medical services, or both; or (h) employees in the
20 several classes of advanced life support technicians, as defined in RCW
21 18.71.200, who are employed by a public employer.

22 (8) "Institution of higher education" means the University of
23 Washington, Washington State University, Central Washington University,
24 Eastern Washington University, Western Washington University, The
25 Evergreen State College, and the various state community colleges.

26 (~~(9) ("Home care quality authority" means the authority under~~
27 ~~chapter 74.39A RCW.~~

28 ~~(+10+)~~) "Individual provider" means an individual provider as
29 defined in RCW 74.39A.240(4) who, solely for the purposes of collective
30 bargaining, is a public employee as provided in RCW 74.39A.270.

31 (~~(+11+)~~) (10) "Child care subsidy" means a payment from the state
32 through a child care subsidy program established pursuant to RCW
33 74.12.340 or 74.08A.340, 45 C.F.R. Sec. 98.1 through 98.17, or any
34 successor program.

35 (~~(+12+)~~) (11) "Family child care provider" means a person who: (a)
36 Provides regularly scheduled care for a child or children in the home
37 of the provider or in the home of the child or children for periods of
38 less than twenty-four hours or, if necessary due to the nature of the

1 parent's work, for periods equal to or greater than twenty-four hours;
2 (b) receives child care subsidies; and (c) is either licensed by the
3 state under RCW 74.15.030 or is exempt from licensing under chapter
4 74.15 RCW.

5 ~~((+13+))~~ (12) "Adult family home provider" means a provider as
6 defined in RCW 70.128.010 who receives payments from the medicaid and
7 state-funded long-term care programs.

8 **Sec. 2.** RCW 43.105.340 and 2008 c 151 s 2 are each amended to read
9 as follows:

10 (1) The department shall coordinate among state agencies to develop
11 a consumer protection web site. The web site shall serve as a one-stop
12 web site for consumer information. At a minimum, the web site must
13 provide links to information on:

14 (a) Insurance information provided by the office of the insurance
15 commissioner, including information on how to file consumer complaints
16 against insurance companies, how to look up authorized insurers, and
17 how to learn more about health insurance benefits;

18 (b) Child care information provided by the department of early
19 learning, including how to select a child care provider, how child care
20 providers are rated, and information about product recalls;

21 (c) Financial information provided by the department of financial
22 institutions, including consumer information on financial fraud,
23 investing, credit, and enforcement actions;

24 (d) Health care information provided by the department of health,
25 including health care provider listings and quality assurance
26 information;

27 ~~((Home care information provided by the home care quality
28 authority, including information to assist consumers in finding an in-
29 home provider;~~

30 ~~(+f+))~~ Licensing information provided by the department of
31 licensing, including information regarding business, vehicle, and
32 professional licensing; and

33 ~~((+g+))~~ (f) Other information available on existing state agency
34 web sites that could be a helpful resource for consumers.

35 (2) By July 1, 2008, state agencies shall report to the department
36 on whether they maintain resources for consumers that could be made
37 available through the consumer protection web site.

1 (3) By September 1, 2008, the department shall make the consumer
2 protection web site available to the public.

3 (4) After September 1, 2008, the department, in coordination with
4 other state agencies, shall develop a plan on how to build upon the
5 consumer protection web site to create a consumer protection portal.
6 The plan must also include an examination of the feasibility of
7 developing a toll-free information line to support the consumer
8 protection portal. The plan must be submitted to the governor and the
9 appropriate committees of the legislature by December 1, 2008.

10 **Sec. 3.** RCW 74.39A.095 and 2009 c 580 s 8 are each amended to read
11 as follows:

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

20 (a) Verification that any individual provider (~~who has not been~~
21 ~~referred to a consumer by the authority~~) has met any training
22 requirements established by the department;

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

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

29 (d) Reassessing and reauthorizing services;

30 (e) Monitoring of individual provider performance. If, in the
31 course of its case management activities, the area agency on aging
32 identifies concerns regarding the care being provided by an individual
33 provider (~~who was referred by the authority~~), the area agency on
34 aging must notify the (~~authority~~) department regarding its concerns;
35 and

36 (f) Conducting criminal background checks or verifying that
37 criminal background checks have been conducted for any individual

1 provider (~~who has not been referred to a consumer by the authority~~).
2 Individual providers who are hired after January 1, 2012, are subject
3 to background checks under RCW 74.39A.055.

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

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

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

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

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

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

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

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

30 (h)(i) Except as provided in (h)(ii) of this subsection, a clear
31 statement indicating that a consumer receiving services under this
32 section has the right to waive any of the case management services
33 offered by the area agency on aging under this section, and a clear
34 indication of whether the consumer has, in fact, waived any of these
35 services.

36 (ii) The consumer's right to waive case management services does
37 not include the right to waive reassessment or reauthorization of

1 services, or verification that services are being provided in
2 accordance with the plan of care.

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

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

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

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

16 (7) If the department or area agency on aging case manager finds
17 that an individual provider's inadequate performance or inability to
18 deliver quality care is jeopardizing the health, safety, or well-being
19 of a consumer receiving service under this section, the department or
20 the area agency on aging may take action to terminate the contract
21 between the department and the individual provider. If the department
22 or the area agency on aging has a reasonable, good faith belief that
23 the health, safety, or well-being of a consumer is in imminent
24 jeopardy, the department or area agency on aging may summarily suspend
25 the contract pending a fair hearing. The consumer may request a fair
26 hearing to contest the planned action of the case manager, as provided
27 in chapter 34.05 RCW. ~~((When the department or area agency on aging
28 terminates or summarily suspends a contract under this subsection, it
29 must provide oral and written notice of the action taken to the
30 authority.))~~ The department may by rule adopt guidelines for
31 implementing this subsection.

32 (8) The department or area agency on aging may reject a request by
33 a consumer receiving services under this section to have a family
34 member or other person serve as his or her individual provider if the
35 case manager has a reasonable, good faith belief that the family member
36 or other person will be unable to appropriately meet the care needs of
37 the consumer. The consumer may request a fair hearing to contest the

1 decision of the case manager, as provided in chapter 34.05 RCW. The
2 department may by rule adopt guidelines for implementing this
3 subsection.

4 **Sec. 4.** RCW 74.39A.220 and 2002 c 3 s 1 are each amended to read
5 as follows:

6 The people of the state of Washington find as follows:

7 (1) Thousands of Washington seniors and persons with disabilities
8 live independently in their own homes, which they prefer and is less
9 costly than institutional care such as nursing homes.

10 (2) Many Washington seniors and persons with disabilities currently
11 receive long-term in-home care services from individual providers hired
12 directly by them under the medicaid personal care, community options
13 programs entry system, or chore services program.

14 (3) Quality long-term in-home care services allow Washington
15 seniors, persons with disabilities, and their families the choice of
16 allowing seniors and persons with disabilities to remain in their
17 homes, rather than forcing them into institutional care such as nursing
18 homes. Long-term in-home care services are also less costly, saving
19 Washington taxpayers significant amounts through lower reimbursement
20 rates.

21 (4) The quality of long-term in-home care services in Washington
22 would benefit from improved regulation, higher standards, better
23 accountability, and improved access to such services. The quality of
24 long-term in-home care services would further be improved by a well-
25 trained, stable individual provider workforce earning reasonable wages
26 and benefits.

27 ~~(5) ((Washington seniors and persons with disabilities would
28 benefit from the establishment of an authority that has the power and
29 duty to regulate and improve the quality of long term in home care
30 services.~~

31 ~~(6))~~ The ((authority)) state should ensure that the quality of
32 long-term in-home care services provided by individual providers is
33 improved through better regulation, higher standards, increased
34 accountability, and the enhanced ability to obtain services. The
35 ((authority)) state should also encourage stability in the individual
36 provider workforce through collective bargaining and by providing
37 training opportunities.

1 **Sec. 5.** RCW 74.39A.240 and 2002 c 3 s 3 are each amended to read
2 as follows:

3 The definitions in this section apply throughout RCW 74.39A.030
4 ~~((and)),~~ 74.39A.095 ~~((and)),~~ 74.39A.220 through 74.39A.300, and
5 41.56.026(~~, 70.127.041, and 74.09.740~~) unless the context clearly
6 requires otherwise.

7 (1) ~~("Authority" means the home care quality authority.~~
8 ~~(2) "Board" means the board created under RCW 74.39A.230.~~
9 ~~(3))~~ "Consumer" means a person to whom an individual provider
10 provides any such services.

11 ~~((4))~~ (2) "Individual provider" means a person, including a
12 personal aide, who has contracted with the department to provide
13 personal care or respite care services to functionally disabled persons
14 under the medicaid personal care, community options program entry
15 system, chore services program, or respite care program, or to provide
16 respite care or residential services and support to persons with
17 developmental disabilities under chapter 71A.12 RCW, or to provide
18 respite care as defined in RCW 74.13.270.

19 **Sec. 6.** RCW 74.39A.260 and 2009 c 580 s 9 are each amended to read
20 as follows:

21 The department must perform criminal background checks for
22 individual providers and prospective individual providers ~~((and ensure~~
23 ~~that the authority has ready access to any long term care abuse and~~
24 ~~neglect registry used by the department))~~. Individual providers who
25 are hired after January 1, 2012, are subject to background checks under
26 RCW 74.39A.055.

27 **Sec. 7.** RCW 74.39A.270 and 2007 c 361 s 7 and 2007 c 278 s 3 are
28 each reenacted and amended to read as follows:

29 (1) Solely for the purposes of collective bargaining and as
30 expressly limited under subsections (2) and (3) of this section, the
31 governor is the public employer, as defined in chapter 41.56 RCW, of
32 individual providers, who, solely for the purposes of collective
33 bargaining, are public employees as defined in chapter 41.56 RCW. To
34 accommodate the role of the state as payor for the community-based
35 services provided under this chapter and to ensure coordination with
36 state employee collective bargaining under chapter 41.80 RCW and the

1 coordination necessary to implement RCW 74.39A.300, the public employer
2 shall be represented for bargaining purposes by the governor or the
3 governor's designee appointed under chapter 41.80 RCW. The governor or
4 governor's designee shall periodically consult with the ((~~authority~~))
5 department during the collective bargaining process to allow the
6 ((~~authority~~)) department to communicate issues relating to the long-
7 term in-home care services received by consumers. The governor or the
8 governor's designee shall consult the ((~~authority~~)) department on all
9 issues for which the exclusive bargaining representative requests to
10 engage in collective bargaining under subsections (5) and (6) ((~~and~~
11 ~~(7)~~)) of this section. The ((~~authority~~)) department shall work with
12 the developmental disabilities council, the governor's committee on
13 disability issues and employment, the state council on aging, and other
14 consumer advocacy organizations to obtain informed input from consumers
15 on their interests, including impacts on consumer choice, for all
16 issues proposed for collective bargaining under subsections (5) and (6)
17 ((~~and (7)~~)) of this section.

18 (2) Chapter 41.56 RCW governs the collective bargaining
19 relationship between the governor and individual providers, except as
20 otherwise expressly provided in this chapter and except as follows:

21 (a) The only unit appropriate for the purpose of collective
22 bargaining under RCW 41.56.060 is a statewide unit of all individual
23 providers;

24 (b) The showing of interest required to request an election under
25 RCW 41.56.060 is ten percent of the unit, and any intervener seeking to
26 appear on the ballot must make the same showing of interest;

27 (c) The mediation and interest arbitration provisions of RCW
28 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

29 (i) With respect to commencement of negotiations between the
30 governor and the bargaining representative of individual providers,
31 negotiations shall be commenced by May 1st of any year prior to the
32 year in which an existing collective bargaining agreement expires; and

33 (ii) The decision of the arbitration panel is not binding on the
34 legislature and, if the legislature does not approve the request for
35 funds necessary to implement the compensation and fringe benefit
36 provisions of the arbitrated collective bargaining agreement, is not
37 binding on ((~~the authority or~~)) the state;

38 (d) Individual providers do not have the right to strike; and

1 (e) Individual providers who are related to, or family members of,
2 consumers or prospective consumers are not, for that reason, exempt
3 from this chapter or chapter 41.56 RCW.

4 (3) Individual providers who are public employees solely for the
5 purposes of collective bargaining under subsection (1) of this section
6 are not, for that reason, employees of the state, its political
7 subdivisions, or an area agency on aging for any purpose. Chapter
8 41.56 RCW applies only to the governance of the collective bargaining
9 relationship between the employer and individual providers as provided
10 in subsections (1) and (2) of this section.

11 (4) Consumers and prospective consumers retain the right to select,
12 hire, supervise the work of, and terminate any individual provider
13 providing services to them. ~~((Consumers may elect to receive long term
14 in-home care services from individual providers who are not referred to
15 them by the authority.))~~

16 ~~(5) ((In implementing and administering this chapter, neither the
17 authority nor any of its contractors may reduce or increase the hours
18 of service for any consumer below or above the amount determined to be
19 necessary under any assessment prepared by the department or an area
20 agency on aging.~~

21 ~~(6))~~ Except as expressly limited in this section and RCW
22 74.39A.300, the wages, hours, and working conditions of individual
23 providers are determined solely through collective bargaining as
24 provided in this chapter. No agency or department of the state may
25 establish policies or rules governing the wages or hours of individual
26 providers. However, this subsection does not modify:

27 (a) The department's authority to establish a plan of care for each
28 consumer or its core responsibility to manage long-term in-home care
29 services under this chapter, including determination of the level of
30 care that each consumer is eligible to receive. However, at the
31 request of the exclusive bargaining representative, the governor or the
32 governor's designee appointed under chapter 41.80 RCW shall engage in
33 collective bargaining, as defined in RCW 41.56.030(4), with the
34 exclusive bargaining representative over how the department's core
35 responsibility affects hours of work for individual providers. This
36 subsection shall not be interpreted to require collective bargaining
37 over an individual consumer's plan of care;

1 (b) The department's authority to terminate its contracts with
2 individual providers who are not adequately meeting the needs of a
3 particular consumer, or to deny a contract under RCW 74.39A.095(8);

4 (c) The consumer's right to assign hours to one or more individual
5 providers selected by the consumer within the maximum hours determined
6 by his or her plan of care;

7 (d) The consumer's right to select, hire, terminate, supervise the
8 work of, and determine the conditions of employment for each individual
9 provider providing services to the consumer under this chapter;

10 (e) The department's obligation to comply with the federal medicaid
11 statute and regulations and the terms of any community-based waiver
12 granted by the federal department of health and human services and to
13 ensure federal financial participation in the provision of the
14 services; and

15 (f) The legislature's right to make programmatic modifications to
16 the delivery of state services under this title, including standards of
17 eligibility of consumers and individual providers participating in the
18 programs under this title, and the nature of services provided. The
19 governor shall not enter into, extend, or renew any agreement under
20 this chapter that does not expressly reserve the legislative rights
21 described in this subsection ~~((+6+))~~ (5)(f).

22 ~~((+7+))~~ (6) At the request of the exclusive bargaining
23 representative, the governor or the governor's designee appointed under
24 chapter 41.80 RCW shall engage in collective bargaining, as defined in
25 RCW 41.56.030(4), with the exclusive bargaining representative over
26 employer contributions to the training partnership for the costs of:
27 (a) Meeting all training and peer mentoring required under this
28 chapter; and (b) other training intended to promote the career
29 development of individual providers.

30 ~~((+8+(a+))~~ (7) The state, the department, ~~((the authority,))~~ the
31 area agencies on aging, or their contractors under this chapter may not
32 be held vicariously or jointly liable for the action or inaction of any
33 individual provider or prospective individual provider, whether or not
34 that individual provider or prospective individual provider was
35 included on the ~~((authority's))~~ referral registry or referred to a
36 consumer or prospective consumer. The existence of a collective
37 bargaining agreement, the placement of an individual provider on the
38 referral registry, or the development or approval of a plan of care for

1 a consumer who chooses to use the services of an individual provider
2 and the provision of case management services to that consumer, by the
3 department or an area agency on aging, does not constitute a special
4 relationship with the consumer.

5 ~~((b) The members of the board are immune from any liability~~
6 ~~resulting from implementation of this chapter.~~

7 ~~(9))~~ (8) Nothing in this section affects the state's
8 responsibility with respect to unemployment insurance for individual
9 providers. However, individual providers are not to be considered, as
10 a result of the state assuming this responsibility, employees of the
11 state.

12 NEW SECTION. **Sec. 8.** (1) The home care quality authority is
13 hereby abolished and its powers, duties, and functions are hereby
14 transferred to the department of social and health services. All
15 references to the home care quality authority in the Revised Code of
16 Washington shall be construed to mean the department of social and
17 health services.

18 (2)(a) All reports, documents, surveys, books, records, files,
19 papers, or written material in the possession of the home care quality
20 authority shall be delivered to the custody of the department of social
21 and health services. All cabinets, furniture, office equipment, motor
22 vehicles, and other tangible property employed by the home care quality
23 authority shall be made available to the department of social and
24 health services. All funds, credits, or other assets held by the home
25 care quality authority shall be assigned to the department of social
26 and health services.

27 (b) Any appropriations made to the home care quality authority
28 shall, on the effective date of this section, be transferred and
29 credited to the department of social and health services.

30 (c) If any question arises as to the transfer of any funds, books,
31 documents, records, papers, files, equipment, or other tangible
32 property used or held in the exercise of the powers and the performance
33 of the duties and functions transferred, the director of financial
34 management shall make a determination as to the proper allocation and
35 certify the same to the state agencies concerned.

36 (3) All rules and all pending business before the home care quality
37 authority shall be continued and acted upon by the department of social

1 and health services. All existing contracts and obligations shall
2 remain in full force and shall be performed by the department of social
3 and health services.

4 (4) The transfer of the powers, duties, functions, and personnel of
5 the home care quality authority shall not affect the validity of any
6 act performed before the effective date of this section.

7 (5) If apportionments of budgeted funds are required because of the
8 transfers directed by this section, the director of financial
9 management shall certify the apportionments to the agencies affected,
10 the state auditor, and the state treasurer. Each of these shall make
11 the appropriate transfer and adjustments in funds and appropriation
12 accounts and equipment records in accordance with the certification.

13 (6) Nothing contained in this section may be construed to alter any
14 existing collective bargaining unit or the provisions of any existing
15 collective bargaining agreement until the agreement has expired or
16 until the bargaining unit has been modified by action of the public
17 employment relations commission as provided by law.

18 **Sec. 9.** RCW 74.39A.250 and 2002 c 3 s 4 are each amended to read
19 as follows:

20 (1) The ((authority)) department must carry out the following
21 duties:

22 (a) Establish qualifications and reasonable standards for
23 accountability for and investigate the background of individual
24 providers and prospective individual providers, except in cases where,
25 after the department has sought approval of any appropriate amendments
26 or waivers ((under RCW 74.09.740,)) federal law or regulation requires
27 that such qualifications and standards for accountability be
28 established by another entity in order to preserve eligibility for
29 federal funding. Qualifications established must include compliance
30 with the minimum requirements for training and satisfactory criminal
31 background checks as provided in RCW 74.39A.050 and confirmation that
32 the individual provider or prospective individual provider is not
33 currently listed on any long-term care abuse and neglect registry used
34 by the department at the time of the investigation;

35 (b) Undertake recruiting activities to identify and recruit
36 individual providers and prospective individual providers;

1 (c) Provide training opportunities, either directly or through
2 contract, for individual providers, prospective individual providers,
3 consumers, and prospective consumers;

4 (d) Provide assistance to consumers and prospective consumers in
5 finding individual providers and prospective individual providers
6 through the establishment of a referral registry of individual
7 providers and prospective individual providers. Before placing an
8 individual provider or prospective individual provider on the referral
9 registry, the ((~~authority~~)) department shall determine that:

10 (i) The individual provider or prospective individual provider has
11 met the minimum requirements for training set forth in RCW 74.39A.050;

12 (ii) The individual provider or prospective individual provider has
13 satisfactorily undergone a criminal background check conducted within
14 the prior twelve months; and

15 (iii) The individual provider or prospective individual provider is
16 not listed on any long-term care abuse and neglect registry used by the
17 department;

18 (e) Remove from the referral registry any individual provider or
19 prospective individual provider the ((~~authority~~)) department determines
20 not to meet the qualifications set forth in (d) of this subsection or
21 to have committed misfeasance or malfeasance in the performance of his
22 or her duties as an individual provider. The individual provider or
23 prospective individual provider, or the consumer to which the
24 individual provider is providing services, may request a fair hearing
25 to contest the removal from the referral registry, as provided in
26 chapter 34.05 RCW;

27 (f) Provide routine, emergency, and respite referrals of individual
28 providers and prospective individual providers to consumers and
29 prospective consumers who are authorized to receive long-term in-home
30 care services through an individual provider;

31 (g) Give preference in the recruiting, training, referral, and
32 employment of individual providers and prospective individual providers
33 to recipients of public assistance or other low-income persons who
34 would qualify for public assistance in the absence of such employment;
35 and

36 (h) Cooperate with ((~~the department,~~)) area agencies on aging((~~7~~))
37 and other federal, state, and local agencies to provide the services
38 described and set forth in this section. If, in the course of carrying

1 out its duties, the ((authority)) department identifies concerns
2 regarding the services being provided by an individual provider, the
3 ((authority)) department must notify the relevant area agency or
4 department case manager regarding such concerns.

5 (2) In determining how best to carry out its duties, the
6 ((authority)) department must identify existing individual provider
7 recruitment, training, and referral resources made available to
8 consumers by other state and local public, private, and nonprofit
9 agencies. The ((authority)) department may coordinate with the
10 agencies to provide a local presence for the ((authority)) department
11 and to provide consumers greater access to individual provider
12 recruitment, training, and referral resources in a cost-effective
13 manner. Using requests for proposals or similar processes, the
14 ((authority)) department may contract with the agencies to provide
15 recruitment, training, and referral services if the ((authority))
16 department determines the agencies can provide the services according
17 to reasonable standards of performance determined by the ((authority))
18 department. The ((authority)) department must provide an opportunity
19 for consumer participation in the determination of the standards.

20 NEW SECTION. **Sec. 10.** RCW 74.39A.290 is decodified.

21 NEW SECTION. **Sec. 11.** The following acts or parts of acts are
22 each repealed:

- 23 (1) RCW 70.127.041 (Home care quality authority not subject to
24 regulation) and 2002 c 3 s 13;
- 25 (2) RCW 74.39A.230 (Authority created) and 2002 c 3 s 2; and
- 26 (3) RCW 74.39A.280 (Powers) and 2002 c 3 s 7.

27 NEW SECTION. **Sec. 12.** This act takes effect July 1, 2010.

28 NEW SECTION. **Sec. 13.** If any part of this act is found to be in
29 conflict with federal requirements that are a prescribed condition to
30 the allocation of federal funds to the state, the conflicting part of
31 this act is inoperative solely to the extent of the conflict and with
32 respect to the agencies directly affected, and this finding does not
33 affect the operation of the remainder of this act in its application to

1 the agencies concerned. Rules adopted under this act must meet federal
2 requirements that are a necessary condition to the receipt of federal
3 funds by the state.

4 NEW SECTION. **Sec. 14.** If any provision of this act or its
5 application to any person or circumstance is held invalid, the
6 remainder of the act or the application of the provision to other
7 persons or circumstances is not affected.

--- END ---