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ENGROSSED SUBSTITUTE HOUSE BILL 1548

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State of Washington                      62nd Legislature                      2011 1st Special Session

By House Ways & Means (originally sponsored by Representatives Hunter, Darneille, and Kenney; by request of Department of Social and Health Services)

READ FIRST TIME 04/19/11.

1            AN ACT Relating to implementation of long-term care worker  
2 requirements regarding background checks and training; amending RCW  
3 18.88B.020, 18.88B.030, 18.88B.040, 18.88B.050, 74.39A.050, 74.39A.055,  
4 74.39A.073, 74.39A.075, 74.39A.085, 74.39A.260, 74.39A.330, 74.39A.340,  
5 74.39A.350, 74.39A.095, 18.20.125, 43.20A.710, and 43.43.837; and  
6 declaring an emergency.

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

8            **Sec. 1.** RCW 18.88B.020 and 2009 c 580 s 18 are each amended to  
9 read as follows:

10            (1) Effective January 1, (~~2011~~) 2014, except as provided in RCW  
11 18.88B.040, the department of health shall require that any person  
12 hired as a long-term care worker for the elderly or persons with  
13 disabilities must be certified as a home care aide within one hundred  
14 fifty days from the date of being hired.

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

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

4 (4) The department of health shall adopt rules by August 1,  
5 ((2010)) 2013, to implement this section.

6 **Sec. 2.** RCW 18.88B.030 and 2009 c 580 s 4 are each amended to read  
7 as follows:

8 (1) Effective January 1, ((2011)) 2014, except as provided in RCW  
9 18.88B.040, the department of health shall require that all long-term  
10 care workers successfully complete a certification examination. Any  
11 long-term care worker failing to make the required grade for the  
12 examination will not be certified as a home care aide.

13 (2) The department of health, in consultation with consumer and  
14 worker representatives, shall develop a home care aide certification  
15 examination to evaluate whether an applicant possesses the skills and  
16 knowledge necessary to practice competently. Unless excluded by RCW  
17 18.88B.040 (1) and (2), only those who have completed the training  
18 requirements in RCW 74.39A.073 shall be eligible to sit for this  
19 examination.

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

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

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

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

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

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

5 (d) Maintain the official record of all applicants and persons with  
6 certificates;

7 (e) Exercise disciplinary authority as authorized in chapter 18.130  
8 RCW; and

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

11 (6) The department of health shall adopt rules by August 1,  
12 (~~2010~~) 2013, that establish the procedures, including criteria for  
13 reviewing an applicant's state and federal background checks, and  
14 examinations necessary to carry this section into effect.

15 **Sec. 3.** RCW 18.88B.040 and 2010 c 169 s 11 are each amended to  
16 read as follows:

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

19 (1) Registered nurses, licensed practical nurses, certified nursing  
20 assistants or persons who are in an approved training program for  
21 certified nursing assistants under chapter 18.88A RCW, medicare-  
22 certified home health aides, or other persons who hold a similar health  
23 credential, as determined by the secretary of health, or persons with  
24 special education training and an endorsement granted by the  
25 superintendent of public instruction, as described in RCW 28A.300.010,  
26 if the secretary of health determines that the circumstances do not  
27 require certification. After December 31, 2013, individuals exempted  
28 by this subsection may obtain certification as a home care aide from  
29 the department of health without fulfilling the training requirements  
30 in RCW 74.39A.073 but must successfully complete a certification  
31 examination pursuant to RCW 18.88B.030.

32 (2) A person already employed as a long-term care worker prior to  
33 January 1, (~~2011~~) 2014, who completes all of his or her training  
34 requirements in effect as of the date he or she was hired, is not  
35 required to obtain certification. After December 31, 2013, individuals  
36 exempted by this subsection may obtain certification as a home care

1 aide from the department of health without fulfilling the training  
2 requirements in RCW 74.39A.073 but must successfully complete a  
3 certification examination pursuant to RCW 18.88B.030.

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

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

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

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

16 ~~((7))~~) (6) The department of health shall adopt rules by August 1,  
17 ~~((2010))~~ 2013, to implement this section.

18 **Sec. 4.** RCW 18.88B.050 and 2009 c 580 s 17 are each amended to  
19 read as follows:

20 (1) The uniform disciplinary act, chapter 18.130 RCW, governs  
21 uncertified practice, issuance of certificates, and the discipline of  
22 persons with certificates under this chapter. The secretary of health  
23 shall be the disciplinary authority under this chapter.

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

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

32 (4) The department of health shall take appropriate enforcement  
33 action related to the licensure of a private agency or facility  
34 licensed by the state, to provide personal care services, other than an  
35 individual provider, who knowingly employs a long-term care worker who  
36 is not a certified home care aide as required under this chapter or, if

1 exempted from certification by RCW 18.88B.040, has not completed his or  
2 her required training pursuant to this chapter.

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

5 (6) The department of health shall adopt rules by August 1,  
6 (~~2010~~) 2013, to implement this section.

7 **Sec. 5.** RCW 74.39A.050 and 2009 c 580 s 7 are each amended to read  
8 as follows:

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

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

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

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

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

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

30 (6) Prompt and specific enforcement remedies shall also be  
31 implemented without delay, pursuant to RCW 74.39A.080, RCW 70.128.160,  
32 chapter 18.51 RCW, or chapter 74.42 RCW, for providers found to have  
33 delivered care or failed to deliver care resulting in problems that are  
34 serious, recurring, or uncorrected, or that create a hazard that is  
35 causing or likely to cause death or serious harm to one or more  
36 residents. These enforcement remedies may also include, when

1 appropriate, reasonable conditions on a contract or license. In the  
2 selection of remedies, the safety, health, and well-being of residents  
3 shall be of paramount importance.

4 (7) All long-term care workers shall be screened through background  
5 checks in a uniform and timely manner to ensure that they do not have  
6 a criminal history that would disqualify them from working with  
7 vulnerable persons. Long-term care workers who are hired after January  
8 1, (~~2012~~) 2014, are subject to background checks under RCW  
9 74.39A.055. This information will be shared with the department of  
10 health in accordance with RCW 74.39A.055 to advance the purposes of  
11 chapter 2, Laws of 2009.

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

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

32 (10) Until December 31, (~~2010~~) 2013, individual providers and  
33 home care agency providers must satisfactorily complete department-  
34 approved orientation, basic training, and continuing education within  
35 the time period specified by the department in rule. The department  
36 shall adopt rules by March 1, 2002, for the implementation of this  
37 section. The department shall deny payment to an individual provider

1 or a home care provider who does not complete the training requirements  
2 within the time limit specified by the department by rule.

3 (11) Until December 31, (~~2010~~) 2013, in an effort to improve  
4 access to training and education and reduce costs, especially for rural  
5 communities, the coordinated system of long-term care training and  
6 education must include the use of innovative types of learning  
7 strategies such as internet resources, videotapes, and distance  
8 learning using satellite technology coordinated through community  
9 colleges or other entities, as defined by the department.

10 (12) The department shall create an approval system by March 1,  
11 2002, for those seeking to conduct department-approved training.

12 (13) The department shall establish, by rule, background checks and  
13 other quality assurance requirements for long-term care workers who  
14 provide in-home services funded by medicaid personal care as described  
15 in RCW 74.09.520, community options program entry system waiver  
16 services as described in RCW 74.39A.030, or chore services as described  
17 in RCW 74.39A.110 that are equivalent to requirements for individual  
18 providers. Long-term care workers who are hired after January 1,  
19 (~~2012~~) 2014, are subject to background checks under RCW 74.39A.055.

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

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

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

14 **Sec. 6.** RCW 74.39A.055 and 2009 c 580 s 2 are each amended to read  
15 as follows:

16 (1) All long-term care workers for the elderly or persons with  
17 disabilities hired after January 1, (~~2012~~) 2014, shall be screened  
18 through state and federal background checks in a uniform and timely  
19 manner to ensure that they do not have a criminal history that would  
20 disqualify them from working with vulnerable persons. These background  
21 checks shall include checking against the federal bureau of  
22 investigation fingerprint identification records system and against the  
23 national sex offenders registry or their successor programs. The  
24 department shall require these long-term care workers to submit  
25 fingerprints for the purpose of investigating conviction records  
26 through both the Washington state patrol and the federal bureau of  
27 investigation.

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

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

35 (4) The department shall adopt rules to implement the provisions of  
36 this section by August 1, (~~2010~~) 2013.



1       **Sec. 7.** RCW 74.39A.073 and 2009 c 580 s 10 are each amended to  
2 read as follows:

3       (1) Effective January 1, (~~2011~~) 2014, except as provided in RCW  
4 18.88B.040, all persons employed as long-term care workers for the  
5 elderly or persons with disabilities must meet the minimum training  
6 requirements in this section within one hundred twenty calendar days of  
7 employment.

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

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

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

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

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

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

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

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

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

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

36       (7) The department of health shall adopt rules by August 1,  
37 (~~2010~~) 2013, to implement subsections (1), (2), and (3) of this  
38 section.

1 (8) The department shall adopt rules by August 1, ~~((2010))~~ 2013, to  
2 implement subsections (4) and (5) of this section.

3 **Sec. 8.** RCW 74.39A.075 and 2009 c 580 s 11 are each amended to  
4 read as follows:

5 (1) Effective January 1, ~~((2011))~~ 2014, a biological, step, or  
6 adoptive parent who is the individual provider only for his or her  
7 developmentally disabled son or daughter must receive twelve hours of  
8 training relevant to the needs of adults with developmental  
9 disabilities within the first one hundred twenty days of becoming an  
10 individual provider.

11 (2) Effective January 1, ~~((2011))~~ 2014, individual providers  
12 identified in ~~((a) and (b) of)~~ this subsection must complete  
13 thirty-five hours of training within the first one hundred twenty days  
14 of becoming an individual provider. Five of the thirty-five hours must  
15 be completed before becoming eligible to provide care. Two of these  
16 five hours shall be devoted to an orientation training regarding an  
17 individual provider's role as caregiver and the applicable terms of  
18 employment, and three hours shall be devoted to safety training,  
19 including basic safety precautions, emergency procedures, and infection  
20 control. Individual providers subject to this requirement include~~((+~~

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

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

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

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

32 (b) Requires comprehensive instruction by qualified instructors.

33 (4) The department shall adopt rules by August 1, ~~((2010))~~ 2013, to  
34 implement this section.

35 **Sec. 9.** RCW 74.39A.085 and 2009 c 580 s 14 are each amended to  
36 read as follows:

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

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

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

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

21 (5) The department shall adopt rules by August 1, (~~2010~~) 2013, to  
22 implement this section.

23 **Sec. 10.** RCW 74.39A.260 and 2009 c 580 s 9 are each amended to  
24 read as follows:

25 The department must perform criminal background checks for  
26 individual providers and prospective individual providers and ensure  
27 that the authority has ready access to any long-term care abuse and  
28 neglect registry used by the department. Individual providers who are  
29 hired after January 1, (~~2012~~) 2014, are subject to background checks  
30 under RCW 74.39A.055.

31 **Sec. 11.** RCW 74.39A.330 and 2009 c 478 s 1 are each amended to  
32 read as follows:

33 Long-term care workers shall be offered on-the-job training or peer  
34 mentorship for at least one hour per week in the first ninety days of  
35 work from a long-term care worker who has completed at least twelve

1 hours of mentor training and is mentoring no more than ten other  
2 workers at any given time. This requirement applies to long-term care  
3 workers who begin work on or after (~~July 1, 2011~~) January 1, 2014.

4 **Sec. 12.** RCW 74.39A.340 and 2009 c 580 s 12 are each amended to  
5 read as follows:

6 (1) The department of health shall ensure that all long-term care  
7 workers shall complete twelve hours of continuing education training in  
8 advanced training topics each year. This requirement applies beginning  
9 on July 1, (~~2011~~) 2014.

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

13 (3) Unless voluntarily certified as a home care aide under chapter  
14 2, Laws of 2009, subsection (1) of this section does not apply to:

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

17 (b) (~~Before June 30, 2014, a person hired as an individual~~  
18 ~~provider who provides twenty hours or less of care for one person in~~  
19 ~~any calendar month~~) A person who is exempt under RCW 18.88B.040(1) so  
20 long as he or she maintains his or her credential in good standing.

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

24 (a) Has been developed with input from consumer and worker  
25 representatives; and

26 (b) Requires comprehensive instruction by qualified instructors.

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

29 (6) The department of health shall adopt rules by August 1,  
30 (~~2010~~) 2013, to implement subsections (1), (2), and (3) of this  
31 section.

32 (7) The department shall adopt rules by August 1, (~~2010~~) 2013, to  
33 implement subsection (4) of this section.

34 **Sec. 13.** RCW 74.39A.350 and 2009 c 580 s 13 are each amended to  
35 read as follows:

36 The department shall offer, directly or through contract, training

1 opportunities sufficient for a long-term care worker to accumulate  
2 seventy hours of training within a reasonable time period. For  
3 individual providers represented by an exclusive bargaining  
4 representative under RCW 74.39A.270, the training opportunities shall  
5 be offered through the training partnership established under RCW  
6 74.39A.360. Training topics shall include, but are not limited to:  
7 Client rights; personal care; mental illness; dementia; developmental  
8 disabilities; depression; medication assistance; advanced communication  
9 skills; positive client behavior support; developing or improving  
10 client-centered activities; dealing with wandering or aggressive client  
11 behaviors; medical conditions; nurse delegation core training; peer  
12 mentor training; and advocacy for quality care training. The  
13 department may not require long-term care workers to obtain the  
14 training described in this section. This requirement to offer advanced  
15 training applies beginning January 1, (~~2012~~) 2014.

16 **Sec. 14.** RCW 74.39A.095 and 2009 c 580 s 8 are each amended to  
17 read as follows:

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

26 (a) Verification that any individual provider who has not been  
27 referred to a consumer by the authority has met any training  
28 requirements established by the department;

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

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

35 (d) Reassessing and reauthorizing services;

36 (e) Monitoring of individual provider performance. If, in the  
37 course of its case management activities, the area agency on aging

1 identifies concerns regarding the care being provided by an individual  
2 provider who was referred by the authority, the area agency on aging  
3 must notify the authority regarding its concerns; and

4 (f) Conducting criminal background checks or verifying that  
5 criminal background checks have been conducted for any individual  
6 provider who has not been referred to a consumer by the authority.  
7 Individual providers who are hired after January 1, (~~2012~~) 2014, are  
8 subject to background checks under RCW 74.39A.055.

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

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

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

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

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

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

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

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

35 (h)(i) Except as provided in (h)(ii) of this subsection, a clear  
36 statement indicating that a consumer receiving services under this  
37 section has the right to waive any of the case management services

1 offered by the area agency on aging under this section, and a clear  
2 indication of whether the consumer has, in fact, waived any of these  
3 services.

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

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

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

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

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

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

37 (8) The department or area agency on aging may reject a request by  
38 a consumer receiving services under this section to have a family

1 member or other person serve as his or her individual provider if the  
2 case manager has a reasonable, good faith belief that the family member  
3 or other person will be unable to appropriately meet the care needs of  
4 the consumer. The consumer may request a fair hearing to contest the  
5 decision of the case manager, as provided in chapter 34.05 RCW. The  
6 department may by rule adopt guidelines for implementing this  
7 subsection.

8 **Sec. 15.** RCW 18.20.125 and 2009 c 580 s 3 are each amended to read  
9 as follows:

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

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

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

33 (b) Long-term care workers, as defined in RCW 74.39A.009, who are  
34 hired after January 1, (~~2012~~) 2014, are subject to background checks  
35 under RCW 74.39A.055.

36 (4) No licensee, administrator, or staff, or prospective licensee,  
37 administrator, or staff, with a stipulated finding of fact, conclusion



1 of law, and agreed order, or finding of fact, conclusion of law, or  
2 final order issued by a disciplining authority, a court of law, or  
3 entered into the state registry finding him or her guilty of abuse,  
4 neglect, exploitation, or abandonment of a minor or a vulnerable adult  
5 as defined in chapter 74.34 RCW shall be employed in the care of and  
6 have unsupervised access to vulnerable adults.

7 **Sec. 16.** RCW 43.20A.710 and 2011 c 253 s 1 are each amended to  
8 read as follows:

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

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

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

25 (c) Individuals or businesses or organizations for the care,  
26 supervision, case management, or treatment of children, persons with  
27 developmental disabilities, or vulnerable adults, including but not  
28 limited to services contracted for under chapter 18.20, 70.127, 70.128,  
29 72.36, or 74.39A RCW or Title 71A RCW.

30 (2) The secretary shall require a fingerprint-based background  
31 check through both the Washington state patrol and the federal bureau  
32 of investigation as provided in RCW 43.43.837. Unless otherwise  
33 authorized by law, the secretary shall use the information solely for  
34 the purpose of determining the character, suitability, and competence  
35 of the applicant.

36 (3) Except as provided in subsection (4) of this section, an  
37 individual provider or home care agency provider who has resided in the

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

10 (4) Long-term care workers, as defined in RCW 74.39A.009, who are  
11 hired after January 1, (~~2012~~) 2014, are subject to background checks  
12 under RCW 74.39A.055, except that the department may require a  
13 background check at any time under RCW 43.43.837. For the purposes of  
14 this subsection, "background check" includes, but is not limited to, a  
15 fingerprint check submitted for the purpose of investigating conviction  
16 records through both the Washington state patrol and the federal bureau  
17 of investigation.

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

28 (6) The secretary shall provide the results of the state background  
29 check on long-term care workers, including individual providers, to the  
30 persons hiring them or to their legal guardians, if any, for their  
31 determination of the character, suitability, and competence of the  
32 applicants. If the person elects to hire or retain an individual  
33 provider after receiving notice from the department that the applicant  
34 has a conviction for an offense that would disqualify the applicant  
35 from having unsupervised access to persons with physical, mental, or  
36 developmental disabilities or mental illness, or to vulnerable adults  
37 as defined in chapter 74.34 RCW, then the secretary shall deny payment

1 for any subsequent services rendered by the disqualified individual  
2 provider.

3 (7) Criminal justice agencies shall provide the secretary such  
4 information as they may have and that the secretary may require for  
5 such purpose.

6 **Sec. 17.** RCW 43.43.837 and 2011 c 253 s 2 are each amended to read  
7 as follows:

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

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

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

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

24 (i) Medicaid personal care under RCW 74.09.520;

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

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

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

31 (2) Long-term care workers, as defined in RCW 74.39A.009, who are  
32 hired after January 1, (~~2012~~) 2014, are subject to background checks  
33 under RCW 74.39A.055.

34 (3) To satisfy the shared background check requirements provided  
35 for in RCW 43.215.215 and 43.20A.710, the department of early learning  
36 and the department of social and health services shall share federal  
37 fingerprint-based background check results as permitted under the law.

1 The purpose of this provision is to allow both departments to fulfill  
2 their joint background check responsibility of checking any individual  
3 who may have unsupervised access to vulnerable adults, children, or  
4 juveniles. Neither department may share the federal background check  
5 results with any other state agency or person.

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

12 (5) Any secure facility operated by the department under chapter  
13 71.09 RCW shall require applicants and service providers to undergo a  
14 fingerprint-based background check through the Washington state patrol  
15 identification and criminal history section and the federal bureau of  
16 investigation.

17 (6) Service providers and service provider applicants who are  
18 required to complete a fingerprint-based background check may be hired  
19 for a one hundred twenty-day provisional period as allowed under law or  
20 program rules when:

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

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

24 (7) Fees charged by the Washington state patrol and the federal  
25 bureau of investigation for fingerprint-based background checks shall  
26 be paid by the department for applicants or service providers  
27 providing:

28 (a) Services to people with a developmental disability under RCW  
29 74.15.030;

30 (b) In-home services funded by medicaid personal care under RCW  
31 74.09.520;

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

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

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

1 (f) Services in, or to residents of, a secure facility under RCW  
2 71.09.115; and

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

4 (8) Service providers licensed under RCW 74.15.030 must pay fees  
5 charged by the Washington state patrol and the federal bureau of  
6 investigation for conducting fingerprint-based background checks.

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

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

16 (11) For purposes of this section, unless the context plainly  
17 indicates otherwise:

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

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

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

26 (iii) Applying for employment, promotion, reallocation, or  
27 transfer;

28 (iv) An individual that a department client or guardian of a  
29 department client chooses to hire or engage to provide services to  
30 himself or herself or another vulnerable adult, juvenile, or child and  
31 who might be eligible to receive payment from the department for  
32 services rendered; or

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

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

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

1 (ii) Have unsupervised access to vulnerable adults, juveniles, and  
2 children;

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

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

5 (c) "Department" means the department of social and health  
6 services.

7 (d) "Secretary" means the secretary of the department of social and  
8 health services.

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

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

20 NEW SECTION. **Sec. 18.** Except for sections 6, 10, and 14 through  
21 17 of this act, this act is necessary for the immediate preservation of  
22 the public peace, health, or safety, or support of the state government  
23 and its existing public institutions, and takes effect immediately.

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