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HOUSE BILL 2963

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State of Washington

65th Legislature

2018 Regular Session

By Representatives Cody and Macri

Read first time 01/30/18. Referred to Committee on Health Care & Wellness.

1 AN ACT Relating to the consumer directed employer program;  
2 amending RCW 74.39A.030, 74.39A.051, 74.39A.056, 74.39A.060,  
3 74.39A.086, 74.39A.090, 74.39A.095, 74.39A.155, 74.39A.210,  
4 74.39A.250, 74.39A.261, 74.39A.270, 74.39A.275, 74.39A.300,  
5 74.39A.310, 74.39A.351, 74.39A.360, 41.56.026, and 41.56.113;  
6 reenacting and amending RCW 74.39A.009; adding new sections to  
7 chapter 74.39A RCW; creating new sections; and repealing RCW  
8 74.39A.220 and 74.39A.240.

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

10 NEW SECTION. **Sec. 1.** The legislature finds that quality long-  
11 term in-home care services allow Washington seniors, persons with  
12 disabilities, and their families the choice of remaining in their own  
13 homes and communities, including whether to receive residential  
14 services, use licensed home care agencies, or coemploy individual  
15 providers.

16 The legislature further finds that long-term in-home care  
17 services are a less costly alternative to institutional care, saving  
18 Washington taxpayers significant amounts through lower reimbursement  
19 rates. Thousands of Washington seniors and persons with disabilities  
20 exercise their choice to live in their own homes and receive needed  
21 assistance through in-home services.

1 The legislature finds that many Washington seniors and persons  
2 with disabilities currently receive long-term in-home care services  
3 from individual providers hired directly by them under programs  
4 authorized through the medicaid state plan or medicaid waiver  
5 authorities and similar state-funded in-home care programs.

6 The legislature further finds that establishing an individual  
7 provider employment administrator program will: (1) Support the  
8 state's intent for consumers to direct their own services; (2) allow  
9 the state to focus on the provision of case management services to  
10 consumers; (3) enhance the efficient and effective delivery of home-  
11 based services by using an entity that provides the administrative  
12 functions of an employer and supports the consumer to manage the  
13 services provided in their own homes; (4) eliminate the possible  
14 classification of the state as the joint employer of individual  
15 providers; (5) prevent or reduce unnecessary and costly utilization  
16 of hospitals and institutions by taking a step toward integration of  
17 home care workers into a coordinated delivery system; and (6) support  
18 the development of new technology and interventions to enhance the  
19 skills of home care workers and services provided to consumers.

20 The legislature does not intend for the individual provider  
21 employment administrator program to replace the consumers' option to  
22 select a qualified home care agency to provide authorized in-home  
23 care.

24 **Sec. 2.** RCW 74.39A.009 and 2012 c 164 s 202 and 2012 c 10 s 63  
25 are each reenacted and amended to read as follows:

26 The definitions in this section apply throughout this chapter  
27 unless the context clearly requires otherwise.

28 (1) "Adult family home" means a home licensed under chapter  
29 70.128 RCW.

30 (2) "Adult residential care" means services provided by an  
31 assisted living facility that is licensed under chapter 18.20 RCW and  
32 that has a contract with the department under RCW 74.39A.020 to  
33 provide personal care services.

34 (3) "Assisted living facility" means a facility licensed under  
35 chapter 18.20 RCW.

36 (4) "Assisted living services" means services provided by an  
37 assisted living facility that has a contract with the department  
38 under RCW 74.39A.010 to provide personal care services, intermittent  
39 nursing services, and medication administration services((τ)); and

1 the (~~resident is housed~~) facility provides these services to  
2 residents who are living in ((a)) private apartment-like (~~unit~~)  
3 units.

4 (5) "Community residential service business" means a business  
5 that:

6 (a) Is certified by the department of social and health services  
7 to provide to individuals who have a developmental disability as  
8 defined in RCW 71A.10.020(~~(+4)~~)(5):

9 (i) Group home services;

10 (ii) Group training home services;

11 (iii) Supported living services; or

12 (iv) Voluntary placement services provided in a licensed staff  
13 residential facility for children;

14 (b) Has a contract with the (~~division of~~) developmental  
15 disabilities administration to provide the services identified in (a)  
16 of this subsection; and

17 (c) All of the business's long-term care workers are subject to  
18 statutory or regulatory training requirements that are required to  
19 provide the services identified in (a) of this subsection.

20 (6) "Consumer" or "client" means a person who is receiving or has  
21 applied for services under this chapter, including a person who is  
22 receiving services from an individual provider.

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

29 (~~(+7)~~) (8) "Cost-effective care" means care provided in a  
30 setting of an individual's choice that is necessary to promote the  
31 most appropriate level of physical, mental, and psychosocial well-  
32 being consistent with client choice, in an environment that is  
33 appropriate to the care and safety needs of the individual, and such  
34 care cannot be provided at a lower cost in any other setting. But  
35 this in no way precludes an individual from choosing a different  
36 residential setting to achieve his or her desired quality of life.

37 (~~(+8)~~) (9) "Department" means the department of social and  
38 health services.

39 (~~(+9)~~) (10) "Developmental disability" has the same meaning as  
40 defined in RCW 71A.10.020.

1       ~~((10))~~ (11) "Direct care worker" means a paid caregiver who  
2 provides direct, hands-on personal care services to persons with  
3 disabilities or the elderly requiring long-term care.

4       ~~((11))~~ (12) "Enhanced adult residential care" means services  
5 provided by an assisted living facility that is licensed under  
6 chapter 18.20 RCW and that has a contract with the department under  
7 RCW 74.39A.010 to provide personal care services, intermittent  
8 nursing services, and medication administration services.

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

23       (13) "Facility" means an adult family home, an assisted living  
24 facility, a nursing home, an enhanced services facility licensed  
25 under chapter 70.97 RCW, or a facility certified to provide medicare  
26 or medicaid services in nursing facilities or intermediate care  
27 facilities for individuals with intellectual disabilities under 42  
28 C.F.R. Part 483.

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

35       ~~((14))~~ (15) "Home care aide" means a long-term care worker who  
36 ~~((has obtained certification))~~ is certified as a home care aide by  
37 the department of health under chapter 18.88B RCW.

38       ~~((15))~~ (16) "Individual provider" ~~((is defined according to RCW~~  
39 74.39A.240)) means an individual, including a personal aide, who is:

1 (a) Paid to provide personal care or respite care services to a  
2 person who is functionally disabled through the medicaid state plan  
3 or waiver programs, chapter 71A.12 RCW, RCW 74.13.270, or similar  
4 state-funded in-home care programs; and

5 (b) An employee of an individual provider employment  
6 administrator or provides services under an individual provider  
7 contract with the department.

8 (17) "Individual provider employment administrator" is an entity  
9 that contracts with the department to be the legal employer of  
10 individual providers for purposes of performing administrative  
11 functions. The entity's responsibilities are described in section 13  
12 of this act and throughout this chapter and include: (a) Coordination  
13 with the consumer, who is the individual provider's managing  
14 employer; (b) withholding, filing, and paying income and employment  
15 taxes for individual providers; (c) verifying an individual  
16 provider's qualifications; and (d) providing other administrative and  
17 employment-related supports. The individual provider employment  
18 administrator is a social service agency and its employees are  
19 mandated reporters as defined in RCW 74.34.020.

20 (18) "Legal employer" means the individual provider employment  
21 administrator, which along with the consumer, coemploys individual  
22 providers.

23 ~~((16))~~ (19) "Long-term care" ~~((is synonymous with chronic care~~  
24 and)) means care and supports delivered indefinitely, intermittently,  
25 or over a sustained time to persons of any age who are functionally  
26 disabled ~~((by))~~ due to chronic mental or physical illness, disease,  
27 chemical dependency, or a medical condition that is permanent, not  
28 ~~((reversible or))~~ curable, or is long-lasting and severely limits  
29 their mental or physical capacity for self-care. The use of this  
30 definition is not intended to expand the scope of services, care, or  
31 assistance provided by any individuals, groups, residential care  
32 settings, or professions unless otherwise ~~((expressed))~~ required by  
33 law.

34 ~~((17))~~ (20)(a) "Long-term care workers" include all persons who  
35 provide paid, hands-on personal care services for the elderly or  
36 persons with disabilities, including but not limited to individual  
37 providers of home care services, direct care workers employed by home  
38 care agencies, an individual provider employment administrator,  
39 providers of home care services to persons with developmental  
40 disabilities under Title 71A RCW, all direct care workers in

1 state-licensed assisted living facilities, enhanced services  
2 facilities, and adult family homes, respite care providers, direct  
3 care workers employed by community residential service businesses,  
4 and any other direct care worker providing home or community-based  
5 services to the elderly or persons with functional disabilities or  
6 developmental disabilities.

7 (b) "Long-term care workers" do not include: (i) Persons employed  
8 by the following facilities or agencies: Nursing homes (~~(subject to)~~)  
9 licensed under chapter 18.51 RCW, hospitals or other acute care  
10 settings, residential habilitation centers under chapter 71A.20 RCW,  
11 facilities certified under 42 C.F.R., Part 483, hospice agencies  
12 subject to chapter 70.127 RCW, adult day care centers, and adult day  
13 health care centers; or (ii) persons who are not paid by the state or  
14 by a private agency or facility licensed or certified by the state to  
15 provide personal care services.

16 (~~(18)~~) (21) "Managing employer" means a consumer who coemploys  
17 one or more individual providers and whose responsibilities include  
18 (a) choosing potential individual providers and referring them to the  
19 individual provider employment administrator; (b) overseeing the day-  
20 to-day management and scheduling of the individual provider's tasks  
21 consistent with the plan of care; and (c) dismissing the individual  
22 provider when desired.

23 (22) "Nursing home" or "nursing facility" means a facility  
24 licensed under chapter 18.51 RCW or certified as a medicaid nursing  
25 facility under 42 C.F.R. Part 483, or both.

26 (~~(19)~~) (23) "Person who is functionally disabled" means a  
27 person who because of a recognized chronic physical or mental  
28 condition or disease, or developmental disability, is dependent upon  
29 others for direct care, support, supervision, or monitoring to  
30 perform activities of daily living. "Activities of daily living," in  
31 this context, means self-care abilities related to personal care such  
32 as bathing, eating, using the toilet, dressing, and transfer.  
33 Instrumental activities of daily living may also be used to assess a  
34 person's functional abilities to perform activities in the home and  
35 the community such as cooking, shopping, house cleaning, doing  
36 laundry, working, and managing personal finances.

37 (24) "Personal care services" means physical or verbal assistance  
38 with activities of daily living and instrumental activities of daily  
39 living provided because of a person's functional disability.

1       ~~((20))~~ (25) "Population specific competencies" means basic  
2 training topics unique to the care needs of the population the long-  
3 term care worker is serving, including but not limited to, mental  
4 health, dementia, developmental disabilities, young adults with  
5 physical disabilities, and older adults.

6       ~~((21))~~ (26) "Qualified instructor" means a registered nurse or  
7 other person with specific knowledge, training, and work experience  
8 in the provision of direct, hands-on personal care and other  
9 assistance services to the elderly or persons with disabilities  
10 requiring long-term care.

11       ~~((22))~~ (27) "Secretary" means the secretary of social and  
12 health services.

13       ~~((23) "Secretary of health" means the secretary of health or the  
14 secretary's designee.~~

15       ~~(24))~~ (28) "Training partnership" means a joint partnership or  
16 trust ~~((that includes the office of the governor and the exclusive  
17 bargaining representative of individual providers under RCW  
18 74.39A.270))~~ with the capacity to provide training, peer mentoring,  
19 and workforce development, or other services to individual providers.

20       ~~((25))~~ (29) "Tribally licensed assisted living facility" means  
21 an assisted living facility licensed by a federally recognized Indian  
22 tribe in which a facility provides services similar to services  
23 provided by assisted living facilities licensed under chapter 18.20  
24 RCW.

25       NEW SECTION.   **Sec. 3.** A new section is added to chapter 74.39A  
26 RCW to read as follows:

27       (1) The department may establish and implement an individual  
28 provider employment administrator program to provide personal care,  
29 respite care, and similar services to individuals with functional  
30 impairments under programs authorized through the medicaid state plan  
31 or medicaid waiver authorities and similar state-funded in-home care  
32 programs.

33       (a) The individual provider employment administrator program is a  
34 consumer-directed program and must be operated in a manner consistent  
35 with federal medicaid requirements. The individual provider  
36 employment administrator is the legal employer of individual  
37 providers for administrative purposes.

38       (b) Under the individual provider employment administrator, the  
39 consumer is the managing employer of individual providers and retains

1 the primary right to select, dismiss, assign hours, and supervise the  
2 work of one or more individual providers, as long as the consumer's  
3 actions are consistent with the consumer's plan of care, this  
4 chapter, and state and federal law.

5 (2) The department shall endeavor to select and contract with one  
6 individual provider employment administrator to be a medicaid  
7 provider that will coemploy individual providers. The department  
8 shall make every effort to select a single qualified vendor. In the  
9 event it is not possible to contract with a single vendor, the  
10 department is authorized to contract with up to two vendors. The  
11 department's activities to identify, select, and contract with an  
12 individual provider employment administrator are exempt from the  
13 requirements of chapter 39.26 RCW.

14 (a) When contracting with an individual provider employment  
15 administrator, the department should seek to contract with a vendor  
16 that demonstrates:

17 (i) A strong commitment to consumer choice, self-direction, and  
18 maximizing consumer autonomy and control over daily decisions; and

19 (ii) A commitment to recruiting and retaining a high quality and  
20 diverse workforce and working with a broad coalition of stakeholders  
21 in an effort to understand the changing needs of the workforce and  
22 consumer needs and preferences.

23 (b) Additional factors the department should consider in  
24 selecting a vendor include, but are not limited to, the vendor's:

25 (i) Ability to provide maximum support to consumers to focus on  
26 directing their own services through a model that recognizes that the  
27 provision of employer responsibility and human resource  
28 administration support is integral to successful self-directed home  
29 care programs;

30 (ii) Commitment to engage and work closely with consumers in  
31 design, implementation, and on-going operations through an advisory  
32 board, focus group, or other methods as approved by the department;

33 (iii) Focus on workforce retention and creating incentives for  
34 qualified and trained providers to meet the growing needs of state  
35 long-term care consumers;

36 (iv) Ability to meet the state's interest in preventing or  
37 mitigating disruptions to consumer services;

38 (v) Ability to deliver high quality training, health care, and  
39 retirement, which may include participation in existing trusts that  
40 deliver those benefits;



1 (vi) Ability to comply with the terms and conditions of  
2 employment of individual providers at the time of the transition;

3 (vii) Commitment to involving its home care workforce in decision  
4 making;

5 (viii) Vision for including and enhancing home care workers as a  
6 valued member of the consumer's care team, as desired and authorized  
7 by the consumer and reflected in the consumer's plan of care; and

8 (ix) Ability to build and adapt technology tools that can enhance  
9 efficiency and provide better quality of services.

10 (c) In order to be qualified as an individual provider employment  
11 administrator, an entity must meet the requirements in: (i) Its  
12 contract with the department; (ii) the medicaid state plan; (iii)  
13 rules adopted under this chapter, if any; and (iv) this section.

14 (d) Any qualified and willing individual may apply to become an  
15 employee of an individual provider employment administrator and may  
16 work as an individual provider when selected by a consumer.

17 (e) An individual provider employment administrator that holds a  
18 contract with the department to provide medicaid services through the  
19 employment of individual providers is deemed to be a certified  
20 medicaid provider.

21 (f) An individual provider employment administrator is not a home  
22 care agency under chapter 70.127 RCW.

23 (g) An individual provider employment administrator that also  
24 provides home care services under chapter 70.127 RCW must demonstrate  
25 to the department's satisfaction that it operates the programs under  
26 separate business units, and that its business structures, policies,  
27 and procedures will prevent any conflicts of interest.

28 (3) If the department selects and contracts with an individual  
29 provider employment administrator, the department shall determine  
30 when to terminate the department's contracts with individual  
31 providers.

32 (a) Until the department determines the transition to the  
33 individual provider employment administrator is complete, the state  
34 shall continue to administer the individual provider program for the  
35 remaining contracted individual providers and to act as the public  
36 employer solely for the purpose of collective bargaining under RCW  
37 74.39A.270 for those directly contracted individual providers.

38 (b) Once the department determines that the transition to the  
39 individual provider employment administrator is complete, the  
40 department may no longer contract with individual providers, unless

1 there are not any contracted individual provider employment  
2 administrators available.

3 (4) The department shall convene a stakeholder group to make  
4 recommendations to the legislature on the establishment of a separate  
5 licensure or certification category for an individual provider  
6 employment administrator. The stakeholder group shall make their  
7 recommendations by October 1, 2018.

8 (5) The department of labor and industries shall initially place  
9 individual providers employed by an individual provider employment  
10 administrator in the classification for the home care services and  
11 home care referral registry. After the department determines that the  
12 transition to the individual provider employment administrator model  
13 is complete, the department of labor and industries may, if  
14 necessary, adjust the classification and rate in accordance with  
15 chapter 51.16 RCW.

16 (6) After the date on which the department enters into a contract  
17 with the individual provider employment administrator and determines  
18 the transition to the individual provider employment administrator  
19 model is complete, biennial funding in the next ensuing biennium for  
20 case management and social work shall be reduced by no more than: Two  
21 million nine hundred eight thousand dollars for area agencies on  
22 aging; one million three hundred sixty-one thousand dollars for home  
23 and community services; and one million two hundred eighty-nine  
24 thousand dollars for developmental disabilities.

25 NEW SECTION. **Sec. 4.** A new section is added to chapter 74.39A  
26 RCW to read as follows:

27 The department may adopt any rules as it deems necessary to  
28 implement the provisions of this act.

29 NEW SECTION. **Sec. 5.** A new section is added to chapter 74.39A  
30 RCW to read as follows:

31 (1) Nothing in this act modifies the department's:

32 (a) Authority to establish a plan of care for each consumer,  
33 including establishing the number of hours in a week a consumer may  
34 assign to any one provider consistent with section 25 of this act;

35 (b) Core responsibility to manage long-term in-home care services  
36 under this chapter, including determination of the level of care that  
37 each consumer is eligible to receive;

1 (c) Obligation to comply with the federal medicaid laws and  
2 regulations, the state medicaid plan, or any waiver granted by the  
3 federal department of health and human services; and to ensure  
4 federal financial participation in the provision of services.

5 (2) Nothing in this act modifies the legislature's right to make  
6 programmatic modifications to the delivery of state services under  
7 this title, including eligibility standards for consumers, standards  
8 for individual providers, and the nature of services provided.

9 (3) Nothing in this chapter shall cause individuals who were  
10 hired as long-term care workers prior to January 7, 2012, to lose  
11 their exemption from certification requirements under RCW 18.88B.041  
12 solely because they became employees of an individual provider  
13 employment administrator.

14 **Sec. 6.** RCW 74.39A.030 and 2012 c 10 s 66 are each amended to  
15 read as follows:

16 (1) To the extent of available funding, the department shall  
17 expand cost-effective options for home and community services for  
18 consumers for whom the state participates in the cost of their care.

19 (2) In expanding home and community services, the department  
20 shall ~~((+-(a+))~~ take full advantage of federal funding available under  
21 Title XVIII and Title XIX of the federal social security act,  
22 including home health, adult day care, waiver options, and state plan  
23 services ~~((+))~~ and ~~((b) be authorized to use funds available under  
24 its community options program entry system waiver granted under  
25 section 1915(c) of the federal social security act to))~~ expand the  
26 availability of in-home ~~((, adult))~~ services and residential ~~((care))~~  
27 services, including services in adult family homes, ~~((enhanced adult  
28 residential care, and))~~ assisted living facilities, and enhanced  
29 services facilities. ~~((By June 30, 1997, the department shall  
30 undertake to reduce the nursing home medicaid census by at least one  
31 thousand six hundred by assisting individuals who would otherwise  
32 require nursing facility services to obtain services of their choice,  
33 including assisted living services, enhanced adult residential care,  
34 and other home and community services. If a resident, or his or her  
35 legal representative, objects to a discharge decision initiated by  
36 the department, the resident shall not be discharged if the resident  
37 has been assessed and determined to require nursing facility  
38 services. In contracting with nursing homes and assisted living  
39 facilities for enhanced adult residential care placements, the~~

1 ~~department shall not require, by contract or through other means,~~  
2 ~~structural modifications to existing building construction.))~~

3 (3)(a) The department shall by rule establish payment rates for  
4 home and community services that support the provision of cost-  
5 effective care. ~~((In the event of any conflict between any such rule~~  
6 ~~and a collective bargaining agreement entered into under RCW~~  
7 ~~74.39A.270 and 74.39A.300, the collective bargaining agreement~~  
8 ~~prevails.))~~

9 (b) The department may authorize an enhanced adult residential  
10 care rate for nursing homes that temporarily or permanently convert  
11 their bed use for the purpose of providing enhanced adult residential  
12 care under chapter 70.38 RCW, when the department determines that  
13 payment of an enhanced rate is cost-effective and necessary to foster  
14 expansion of contracted enhanced adult residential care services. As  
15 an incentive for nursing homes to permanently convert a portion of  
16 its nursing home bed capacity for the purpose of providing enhanced  
17 adult residential care, the department may authorize a supplemental  
18 add-on to the enhanced adult residential care rate.

19 (c) The department may authorize a supplemental assisted living  
20 services rate for up to four years for facilities that convert from  
21 nursing home use and do not retain rights to the converted nursing  
22 home beds under chapter 70.38 RCW, if the department determines that  
23 payment of a supplemental rate is cost-effective and necessary to  
24 foster expansion of contracted assisted living services.

25 **Sec. 7.** RCW 74.39A.051 and 2012 c 164 s 701 are each amended to  
26 read as follows:

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

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

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

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

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

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

10 (6) Prompt and specific enforcement remedies shall also be  
11 implemented without delay, pursuant to RCW 70.97.110, 71A.12.300,  
12 74.39A.080, or 70.128.160, or chapter 18.51 or 74.42 RCW, for  
13 providers found to have delivered care or failed to deliver care  
14 resulting in problems that are serious, recurring, or uncorrected, or  
15 that create a hazard that is causing or likely to cause death or  
16 serious harm to one or more residents. These enforcement remedies may  
17 also include, when appropriate, reasonable conditions on a contract  
18 or license. In the selection of remedies, the safety, health, and  
19 well-being of residents shall be of paramount importance.

20 (7) Background checks of long-term care workers must be conducted  
21 as provided in RCW 74.39A.056.

22 (8) Except as provided in RCW 74.39A.074 and 74.39A.076,  
23 individual providers and home care agency providers must  
24 satisfactorily complete department-approved orientation, basic  
25 training, and continuing education within the time period specified  
26 by the department in rule. The department shall adopt rules ~~((for the~~  
27 ~~implementation of))~~ to implement this section. The department shall  
28 deny payment to an individual provider employment administrator or a  
29 home care ~~((provider))~~ agency for services provided by employees who  
30 ~~((does))~~ have not ~~((complete))~~ completed the training requirements  
31 within the time limit specified by ~~((the))~~ department ~~((by rule))~~  
32 rules. The department shall deny payment to any individual providers  
33 who provide services under a contract with the department if they  
34 have been notified that they are no longer permitted to work because  
35 they have not completed the training requirements within the time  
36 period required by department rules.

37 (9) Under existing funds the department shall establish  
38 internally a quality improvement standards committee to monitor the  
39 development of standards and to suggest modifications.

1       **Sec. 8.** RCW 74.39A.056 and 2012 c 164 s 503 are each amended to  
2 read as follows:

3       (1)(a) All long-term care workers shall be screened through state  
4 and federal background checks in a uniform and timely manner to  
5 verify that they do not have a (~~criminal~~) history that would  
6 disqualify them from working with vulnerable persons. The department  
7 must (~~perform criminal~~) process background checks for (~~individual~~  
8 ~~providers and prospective individual providers~~) long-term care  
9 workers and make the information available to employers, prospective  
10 employers, and others as (~~provided~~) authorized by law.

11       (b)(i) Except as provided in (b)(ii) of this subsection, for  
12 long-term care workers hired on or after January 7, 2012, the  
13 background checks required under this section shall include checking  
14 against the federal bureau of investigation fingerprint  
15 identification records system and against the national sex offenders  
16 registry or their successor programs. The department shall require  
17 these long-term care workers to submit fingerprints for the purpose  
18 of investigating conviction records through both the Washington state  
19 patrol and the federal bureau of investigation. The department shall  
20 not pass on the cost of these criminal background checks to the  
21 workers or their employers.

22       (ii) This subsection does not apply to long-term care workers  
23 employed by community residential service businesses until January 1,  
24 2016.

25       (c) The department shall share state and federal background check  
26 results with the department of health in accordance with RCW  
27 18.88B.080.

28       (d) Background check screening required under this section and  
29 department rules is not required for an individual provider  
30 employment administrator employee if all of the following  
31 circumstances apply:

32       (i) The individual has an individual provider contract with the  
33 department;

34       (ii) The last background check on the contracted individual  
35 provider is still valid under department rules and did not disqualify  
36 the individual from providing personal care services;

37       (iii) Employment by the individual provider employment  
38 administrator is the only reason a new background check would be  
39 required; and

1        (iv) The department's background check results have been shared  
2 with the individual provider employment administrator.

3        (2) No provider, or its staff, or long-term care worker, or  
4 prospective provider or long-term care worker, with a stipulated  
5 finding of fact, conclusion of law, an agreed order, or finding of  
6 fact, conclusion of law, or final order issued by a disciplining  
7 authority or a court of law or entered into a state registry with a  
8 final substantiated finding of abuse, neglect, exploitation, or  
9 abandonment of a minor or a vulnerable adult as defined in chapter  
10 74.34 RCW shall be employed in the care of and have unsupervised  
11 access to vulnerable adults.

12        (3) The department shall establish, by rule, a state registry  
13 which contains identifying information about long-term care workers  
14 identified under this chapter who have final substantiated findings  
15 of abuse, neglect, financial exploitation, or abandonment of a  
16 vulnerable adult as defined in RCW 74.34.020. The rule must include  
17 disclosure, disposition of findings, notification, findings of fact,  
18 appeal rights, and fair hearing requirements. The department shall  
19 disclose, upon request, final substantiated findings of abuse,  
20 neglect, financial exploitation, or abandonment to any person so  
21 requesting this information. This information must also be shared  
22 with the department of health to advance the purposes of chapter  
23 18.88B RCW.

24        (4) The department shall adopt rules to implement this section.

25        **Sec. 9.** RCW 74.39A.060 and 2013 c 23 s 227 are each amended to  
26 read as follows:

27        (1) The aging and ~~((adult—services))~~ long-term support  
28 administration of the department shall establish and maintain a toll-  
29 free telephone number for receiving complaints regarding ~~((a—facility~~  
30 ~~that the administration licenses or with which it contracts for long-~~  
31 ~~term care services))~~ facilities and community residential services  
32 businesses as defined in this chapter.

33        (2) ~~((All facilities that are licensed by, or that contract with~~  
34 ~~the aging and adult services administration to provide chronic long-~~  
35 ~~term care services))~~ Each facility shall post in a place and manner  
36 clearly visible to residents and visitors the department's toll-free  
37 complaint telephone number and the toll-free number and program  
38 description of the long-term care ombuds as ~~((provided))~~ required by  
39 RCW 43.190.050.

1           (3) The aging and (~~adult services~~) long-term support  
2 administration shall investigate complaints (~~if the subject of the~~  
3 ~~complaint is within its authority~~) it receives about facilities and  
4 community residential services businesses unless the department  
5 determines that: (a) The complaint is intended to willfully harass  
6 (~~a licensee or employee of the licensee~~) the provider or the  
7 provider's employee; or (b) there is no reasonable basis for  
8 investigation; or (c) corrective action has been taken as determined  
9 by the ombuds or the department.

10           (4) The aging and (~~adult services~~) long-term support  
11 administration shall refer complaints to appropriate state agencies,  
12 law enforcement agencies, the attorney general, the long-term care  
13 ombuds, or other entities if the department lacks authority to  
14 investigate or if its investigation reveals that a follow-up referral  
15 to one or more of these entities is appropriate.

16           (5) The department shall adopt rules that include the following  
17 complaint investigation protocols:

18           (a) Upon receipt of a complaint, the department shall make a  
19 preliminary review of the complaint, assess the severity of the  
20 complaint, and assign an appropriate response time. Complaints  
21 involving imminent danger to the health, safety, or well-being of a  
22 resident must be responded to within two days. When appropriate, the  
23 department shall make an on-site investigation within a reasonable  
24 time after receipt of the complaint or otherwise ensure that  
25 complaints are responded to.

26           (b) The complainant must be: Promptly contacted by the  
27 department, unless anonymous or unavailable despite several attempts  
28 by the department, and informed of the right to discuss the alleged  
29 violations with the inspector and to provide other information the  
30 complainant believes will assist the inspector; informed of the  
31 department's course of action; and informed of the right to receive a  
32 written copy of the investigation report.

33           (c) In conducting the investigation, the department shall  
34 interview the complainant, unless anonymous, and shall use its best  
35 efforts to interview the vulnerable adult or adults allegedly harmed,  
36 and, consistent with the protection of the vulnerable adult shall  
37 interview facility staff, any available independent sources of  
38 relevant information, including if appropriate the family members of  
39 the vulnerable adult.



1 (d) Substantiated complaints involving harm to a resident, if an  
2 applicable law or rule has been violated, shall be subject to one or  
3 more of the actions provided in RCW 74.39A.080 or 70.128.160.  
4 Whenever appropriate, the department shall also give consultation and  
5 technical assistance to the provider.

6 (e) After a department finding of a violation for which a stop  
7 placement has been imposed, the department shall make an on-site  
8 revisit of the provider within fifteen working days from the request  
9 for revisit, to ensure correction of the violation. For violations  
10 that are serious or recurring or uncorrected following a previous  
11 citation, and create actual or threatened harm to one or more  
12 residents' well-being, including violations of residents' rights, the  
13 department shall make an on-site revisit as soon as appropriate to  
14 ensure correction of the violation. Verification of correction of all  
15 other violations may be made by either a department on-site revisit  
16 or by written or photographic documentation found by the department  
17 to be credible. This subsection does not prevent the department from  
18 enforcing license or contract suspensions or revocations. Nothing in  
19 this subsection shall interfere with or diminish the department's  
20 authority and duty to ensure that the provider adequately cares for  
21 residents, including to make departmental on-site revisits as needed  
22 to ensure that the provider protects residents and to enforce  
23 compliance with this chapter.

24 (f) Substantiated complaints of neglect, abuse, exploitation, or  
25 abandonment of residents, or suspected criminal violations, shall  
26 also be referred by the department to the appropriate law enforcement  
27 agencies, the attorney general, and appropriate professional  
28 disciplining authority.

29 (6) The department may provide the substance of the complaint to  
30 the licensee or contractor before the completion of the investigation  
31 by the department unless such disclosure would reveal the identity of  
32 a complainant, witness, or resident who chooses to remain anonymous.  
33 Neither the substance of the complaint provided to the licensee or  
34 contractor nor any copy of the complaint or related report published,  
35 released, or made otherwise available shall disclose, or reasonably  
36 lead to the disclosure of, the name, title, or identity of any  
37 complainant, or other person mentioned in the complaint, except that  
38 the name of the provider and the name or names of any officer,  
39 employee, or agent of the department conducting the investigation  
40 shall be disclosed after the investigation has been closed and the

1 complaint has been substantiated. The department may disclose the  
2 identity of the complainant if such disclosure is requested in  
3 writing by the complainant. Nothing in this subsection shall be  
4 construed to interfere with the obligation of the long-term care  
5 ombuds program or department staff to monitor the department's  
6 licensing, contract, and complaint investigation files for long-term  
7 care facilities.

8 (7) The resident has the right to be free of interference,  
9 coercion, discrimination, and reprisal from a facility in exercising  
10 his or her rights, including the right to voice grievances about  
11 treatment furnished or not furnished. A facility that provides long-  
12 term care services shall not discriminate or retaliate in any manner  
13 against a resident, employee, or any other person on the basis or for  
14 the reason that such resident or any other person made a complaint to  
15 the department, the attorney general, law enforcement agencies, or  
16 the long-term care ombuds, provided information, or otherwise  
17 cooperated with the investigation of such a complaint. Any attempt to  
18 discharge a resident against the resident's wishes, or any type of  
19 retaliatory treatment of a resident by whom or upon whose behalf a  
20 complaint substantiated by the department has been made to the  
21 department, the attorney general, law enforcement agencies, or the  
22 long-term care ombuds, within one year of the filing of the  
23 complaint, raises a rebuttable presumption that such action was in  
24 retaliation for the filing of the complaint. "Retaliatory treatment"  
25 means, but is not limited to, monitoring a resident's phone, mail, or  
26 visits; involuntary seclusion or isolation; transferring a resident  
27 to a different room unless requested or based upon legitimate  
28 management reasons; withholding or threatening to withhold food or  
29 treatment unless authorized by a terminally ill resident or his or  
30 her representative pursuant to law; or persistently delaying  
31 responses to a resident's request for service or assistance. A  
32 facility that provides long-term care services shall not willfully  
33 interfere with the performance of official duties by a long-term care  
34 ombuds. The department shall sanction and may impose a civil penalty  
35 of not more than three thousand dollars for a violation of this  
36 subsection.

37 **Sec. 10.** RCW 74.39A.086 and 2012 c 164 s 602 are each amended to  
38 read as follows:

39 (1) (~~The department~~;

1 ~~(a) Shall deny payment to any individual provider of home care~~  
2 ~~services who has not been certified as a home care aide as required~~  
3 ~~under chapter 18.88B RCW or whose certification is revoked or, if~~  
4 ~~exempted from certification under RCW 18.88B.041, who has not~~  
5 ~~completed his or her required training pursuant to RCW 74.39A.074.~~

6 ~~(b) May terminate the contract of any individual provider of home~~  
7 ~~care services, or take any other enforcement measure deemed~~  
8 ~~appropriate by the department if the individual provider has not been~~  
9 ~~certified or the individual provider's certification is revoked under~~  
10 ~~chapter 18.88B RCW or, if exempted from certification by RCW~~  
11 ~~18.88B.041, the individual provider has not completed his or her~~  
12 ~~required training pursuant to RCW 74.39A.074.~~

13 ~~(2))~~ The department shall take appropriate enforcement action  
14 related to the contract of ~~((a))~~ an individual provider employment  
15 administrator or a licensed or certified private agency or facility  
16 ~~((licensed by the state to provide personal care))~~ that provides  
17 long-term care services~~((, other than an individual provider, who))~~  
18 and knowingly employs a long-term care worker who is not a certified  
19 home care aide as required under chapter 18.88B RCW ~~((or whose~~  
20 ~~certification is revoked))~~ or, if exempted from certification under  
21 RCW 18.88B.041, who has not completed his or her required training  
22 ~~((pursuant to))~~ under RCW 74.39A.074.

23 (2) The department shall deny payment to individual providers who  
24 provided services under a contract with the department if they have  
25 been notified that they are no longer permitted to work because they:

26 (a) Were not certified as home care aides as required under  
27 chapter 18.88B RCW; or

28 (b) Had not completed the training required under RCW 74.39A.074.

29 (3) The department may terminate the contract of any individual  
30 provider under contract with the department who:

31 (a) Is not certified as a home care aide as required under  
32 chapter 18.88B RCW; or

33 (b) Has not completed the training required under RCW 74.39A.074.

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

36 ~~((4))~~ (5) The department shall adopt rules to implement this  
37 section.

38 **Sec. 11.** RCW 74.39A.090 and 2013 c 320 s 10 are each amended to  
39 read as follows:

1           (1) (~~The legislature intends that any staff reassigned by the~~  
2 ~~department as a result of shifting of the reauthorization~~  
3 ~~responsibilities by contract outlined in this section shall be~~  
4 ~~dedicated for discharge planning and assisting with discharge~~  
5 ~~planning and information on existing discharge planning cases.))  
6 Discharge planning, as directed in this section, is intended for  
7 residents and patients identified for discharge to long-term (~~care~~  
8 ~~pursuant to~~) services under RCW 70.41.320, 74.39A.040, (~~and~~) or  
9 74.42.058. The purpose of discharge planning is to protect residents  
10 and patients from the financial incentives inherent in keeping  
11 residents or patients in a more expensive higher level of care and  
12 shall focus on care options that are in the best interest of the  
13 patient or resident.~~

14           (2) The department shall, consistent with the intent of this  
15 section, contract with area agencies on aging:

16           (a) To provide case management services to consumers receiving  
17 home and community services in their own home; and

18           (b) To reassess and reauthorize home and community services in  
19 home or in other settings for consumers (~~consistent with the intent~~  
20 ~~of this section~~):

21           (i) Who have been initially authorized by the department to  
22 receive home and community services; and

23           (ii) Who, at the time of reassessment and reauthorization, are  
24 receiving home and community services in their own home.

25           (3) In the event that an area agency on aging is unwilling to  
26 enter into or satisfactorily fulfill a contract or an individual  
27 consumer's need for case management services will be met through an  
28 alternative delivery system, the department is authorized to:

29           (a) Obtain the services through competitive bid; and

30           (b) Provide the services directly until a qualified contractor  
31 can be found.

32           (4)(a) The department shall include, in its oversight and  
33 monitoring of area agency on aging performance, assessment of case  
34 management roles undertaken by area agencies on aging in this  
35 section. The scope of oversight and monitoring includes, but is not  
36 limited to, assessing the degree and quality of the case management  
37 performed by area agency on aging staff for elderly and persons with  
38 disabilities in the community.

39           (b) The department shall incorporate the expected outcomes and  
40 criteria to measure the performance of service coordination

1 organizations into contracts with area agencies on aging as provided  
2 in chapter 70.320 RCW.

3 (5) Area agencies on aging shall assess the quality of the in-  
4 home care services provided to consumers who are receiving services  
5 under (~~the medicaid personal care, community options programs entry~~  
6 ~~system or chore services program~~) programs authorized through the  
7 medicaid state plan, medicaid waiver authorities, or similar state-  
8 funded in-home care programs through an individual provider or home  
9 care agency. Quality indicators may include, but are not limited to,  
10 home care consumers satisfaction surveys, how quickly home care  
11 consumers are linked with home care workers, and whether the plan of  
12 care under RCW 74.39A.095 has been honored by the agency or the  
13 individual provider.

14 (6) The department shall develop model language for the plan of  
15 care established in RCW 74.39A.095. The plan of care shall be in  
16 clear language, and written at a reading level that will ensure the  
17 ability of consumers to understand the rights and responsibilities  
18 expressed in the plan of care.

19 **Sec. 12.** RCW 74.39A.095 and 2014 c 40 s 1 are each amended to  
20 read as follows:

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

31 ~~(a) Verification that any individual provider has met any~~  
32 ~~training requirements established by the department;~~

33 ~~(b) Verification of a sample of worker time sheets until the~~  
34 ~~state electronic payment system is available for individual providers~~  
35 ~~to record their hours at which time a verification of worker time~~  
36 ~~sheets may be done electronically;~~

37 ~~(c) Monitoring the consumer's plan of care to verify that it~~  
38 ~~adequately meets the needs of the consumer, through activities such~~  
39 ~~as home visits, telephone contacts, and responses to information~~

1 received by the area agency on aging indicating that a consumer may  
2 be experiencing problems relating to his or her home care;

3 (d) Reassessing and reauthorizing services;

4 (e) Monitoring of individual provider performance; and

5 (f) Conducting criminal background checks or verifying that  
6 criminal background checks have been conducted for any individual  
7 provider. Individual providers who are hired after January 7, 2012,  
8 are subject to background checks under RCW 74.39A.056)), each area  
9 agency on aging shall:

10 (a) Work with each client to develop a plan of care under this  
11 section that identifies and ensures coordination of health and long-  
12 term care services and supports. In developing the plan, the area  
13 agency on aging shall use and modify as needed any comprehensive plan  
14 of care developed by the department as provided in RCW 74.39A.040;

15 (b) Monitor the implementation of the consumer's plan of care to  
16 verify that it adequately meets the needs of the consumer through  
17 activities such as home visits, telephone contacts, and responses to  
18 information received by the area agency on aging indicating that a  
19 consumer may be experiencing problems relating to his or her home  
20 care;

21 (c) Reassess and reauthorize services;

22 (d) Explain to the consumer that consumers have the right to  
23 waive case management services offered by the area agency on aging,  
24 except consumers may not waive the area agency on aging's  
25 reassessment or reauthorization of services, or verification that  
26 services are being provided in accordance with the plan of care; and

27 (e) Document the waiver of any case management services by the  
28 consumer.

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

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

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

4       ~~(c) A clear description of the roles and responsibilities of the~~  
5 ~~area agency on aging case manager and the consumer receiving services~~  
6 ~~under this section;~~

7       ~~(d) The duties and tasks to be performed by the area agency on~~  
8 ~~aging case manager and the consumer receiving services under this~~  
9 ~~section;~~

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

12       ~~(f) The terms of compensation of the individual provider;~~

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

16       ~~(h)(i) Except as provided in (h)(ii) of this subsection, a clear~~  
17 ~~statement indicating that a consumer receiving services under this~~  
18 ~~section has the right to waive any of the case management services~~  
19 ~~offered by the area agency on aging under this section, and a clear~~  
20 ~~indication of whether the consumer has, in fact, waived any of these~~  
21 ~~services.~~

22       ~~(ii) The consumer's right to waive case management services does~~  
23 ~~not include the right to waive reassessment or reauthorization of~~  
24 ~~services, or verification that services are being provided in~~  
25 ~~accordance with the plan of care.~~

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

28       ~~(4))~~ Each consumer has the right to direct and participate in  
29 the development of their plan of care to the maximum extent  
30 practicable (~~(extent of their abilities and desires)~~), and to be  
31 provided with the time and support necessary to facilitate that  
32 participation.

33       ~~((+5))~~ (3) As authorized by the consumer, a copy of the plan of  
34 care ((must)) may be distributed to: (a) The consumer's ((primary  
35 care provider,)) individual provider((,)) contracted with the  
36 department; (b) the entity contracted with the department to provide  
37 personal care services; and (c) other relevant providers with whom  
38 the consumer has frequent contact((, as authorized by the consumer)).

1       ~~((6) The consumer's plan of care shall be an attachment to the~~  
2 ~~contract between the department, or their designee, and the~~  
3 ~~individual provider.~~

4       ~~(7) If the department or area agency on aging case manager finds~~  
5 ~~that an individual provider's inadequate performance or inability to~~  
6 ~~deliver quality care is jeopardizing the health, safety, or well-~~  
7 ~~being of a consumer receiving service under this section, the~~  
8 ~~department or the area agency on aging may take action to terminate~~  
9 ~~the contract between the department and the individual provider. If~~  
10 ~~the department or the area agency on aging has a reasonable, good~~  
11 ~~faith belief that the health, safety, or well-being of a consumer is~~  
12 ~~in imminent jeopardy, the department or area agency on aging may~~  
13 ~~summarily suspend the contract pending a fair hearing. The consumer~~  
14 ~~may request a fair hearing to contest the planned action of the case~~  
15 ~~manager, as provided in chapter 34.05 RCW. The department may by rule~~  
16 ~~adopt guidelines for implementing this subsection.~~

17       ~~(8) The department or area agency on aging may reject a request~~  
18 ~~by a consumer receiving services under this section to have a family~~  
19 ~~member or other person serve as his or her individual provider if the~~  
20 ~~case manager has a reasonable, good faith belief that the family~~  
21 ~~member or other person will be unable to appropriately meet the care~~  
22 ~~needs of the consumer. The consumer may request a fair hearing to~~  
23 ~~contest the decision of the case manager, as provided in chapter~~  
24 ~~34.05 RCW. The department may by rule adopt guidelines for~~  
25 ~~implementing this subsection.))~~

26       (4) If an individual provider is employed by an individual  
27 provider employment administrator, the department or area agency on  
28 aging must notify the individual provider employment administrator  
29 if:

30       (a) There is reason to believe that an individual provider or  
31 prospective individual provider is not delivering or will not be able  
32 to deliver the services identified in the consumer's plan of care; or

33       (b) The individual provider's performance is jeopardizing the  
34 health, safety, or well-being of a consumer receiving services under  
35 this section.

36       NEW SECTION. Sec. 13. A new section is added to chapter 74.39A  
37 RCW to read as follows:



1 (1) If an individual provider employment administrator employs  
2 individual providers, then the individual provider employment  
3 administrator shall:

4 (a) Verify that each individual provider has met any training  
5 requirements established under this chapter and rules adopted under  
6 this chapter;

7 (b) Conduct background checks on individual providers as required  
8 under this chapter, RCW 43.43.830 through 43.43.842, 43.20A.710, and  
9 the rules adopted by the department; or verify that a background  
10 check has been conducted for each individual provider and that the  
11 background check is still valid in accordance with department rules;

12 (c) Implement an electronic visit verification system that  
13 complies with federal requirements, or in the absence of an  
14 electronic visit verification system, monitor a statistically valid  
15 sample of individual provider's claims to the receipt of services by  
16 the consumer;

17 (d) Monitor individual provider compliance with employment  
18 requirements;

19 (e) As authorized and determined by the consumer, provide a copy  
20 of the consumer's plan of care to the individual provider who has  
21 been selected by the consumer;

22 (f) Verify the individual provider is able and willing to carry  
23 out his or her responsibilities under the plan of care;

24 (g) Take into account information provided by the consumer or the  
25 consumer's case manager about the consumer's specific needs;

26 (h) Discontinue the individual provider's assignment to a  
27 consumer when the individual provider employment administrator has  
28 reason to believe, or the department or area agency on aging has  
29 reported, that the health, safety, or well-being of a consumer is in  
30 imminent jeopardy due to the performance of the individual provider;

31 (i) Reject a request by a consumer to assign a specific person as  
32 his or her individual provider, if the individual provider employment  
33 administrator has reason to believe that the individual will be  
34 unable to appropriately meet the care needs of the consumer; and

35 (j) Establish a dispute resolution process for consumers who wish  
36 to dispute decisions made under (h) and (i) of this subsection.

37 (2) If any individual providers are contracted with the  
38 department to provide services under this chapter, the area agency on  
39 aging case management responsibilities shall include:

1 (a) Verifying that each individual provider has met all training  
2 requirements under this chapter and department rules;

3 (b) Conducting background checks on individual providers as  
4 required under this chapter, RCW 43.43.830 through 43.43.842,  
5 43.20A.710, and department rules; or verifying that background checks  
6 have been conducted for each individual provider and that the  
7 background check is still valid in accordance with department rules;

8 (c) Monitoring that the individual provider is providing services  
9 as outlined in the consumer's plan of care;

10 (d) Attaching the consumer's plan of care to the contract with  
11 the individual provider;

12 (e) Verifying with the individual provider that he or she is able  
13 and willing to carry out his or her responsibilities under the plan  
14 of care;

15 (f) Terminating the contract between the department and the  
16 individual provider if the department or area agency on aging finds  
17 that an individual provider's inadequate performance or inability to  
18 deliver quality care is jeopardizing the health, safety, or well-  
19 being of a consumer receiving service under this section;

20 (g) Summarily suspending the contract pending a fair hearing, if  
21 there is reason to believe the health, safety, or well-being of a  
22 consumer is in imminent jeopardy; and

23 (h) Rejecting a request by a consumer receiving services under  
24 this section to have a family member or other person serve as his or  
25 her individual provider if the case manager has reason to believe  
26 that the family member or other person will be unable to  
27 appropriately meet the care needs of the consumer.

28 (3) The consumer may request a fair hearing under chapter 34.05  
29 RCW to contest a planned action of the case manager under subsection  
30 (2)(g) and (h) of this section.

31 (4) The department may adopt rules to implement this section.

32 **Sec. 14.** RCW 74.39A.155 and 2008 c 146 s 8 are each amended to  
33 read as follows:

34 Within funds appropriated for this purpose, the department shall  
35 provide additional support for residents in community settings who  
36 exhibit challenging behaviors that put them at risk for institutional  
37 placement. The residents must be receiving services under ~~((the~~  
38 ~~community options program entry system waiver or the medically needy~~  
39 ~~residential facility waiver under section 1905(c) of the federal~~

1 ~~social security act~~) programs authorized through the medicaid state  
2 plan, medicaid waiver authorities, or similar state-funded in-home  
3 care programs, and must have been evaluated under the individual  
4 comprehensive assessment reporting and evaluation process.

5 **Sec. 15.** RCW 74.39A.210 and 2001 c 319 s 13 are each amended to  
6 read as follows:

7 An employer providing home and community services, including  
8 facilities licensed under chapters 18.51, 18.20, 70.97, and 70.128  
9 RCW, an employer of a program (~~authorized~~) operating under RCW  
10 71A.12.040(10), an individual provider employment administrator, or  
11 an in-home services agency employer licensed under chapter 70.127  
12 RCW, who discloses information about a former or current employee to  
13 a prospective home and community services employer, nursing home  
14 employer, individual provider employment administrator, or (~~are an~~)  
15 in-home services agency employer, is presumed to be acting in good  
16 faith and is immune from civil and criminal liability for such  
17 disclosure or its consequences if the disclosed information relates  
18 to: (1) The employee's ability to perform his or her job; (2) the  
19 diligence, skill, or reliability with which the employee carried out  
20 the duties of his or her job; or (3) any illegal or wrongful act  
21 committed by the employee when related to his or her ability to care  
22 for a vulnerable adult. For purposes of this section, the presumption  
23 of good faith may only be rebutted upon a showing by clear and  
24 convincing evidence that the information disclosed by the employer  
25 was knowingly false or made with reckless disregard for the truth of  
26 the information disclosed. (~~Should~~) If the employee successfully  
27 (~~rebut~~) rebuts the presumption of good faith standard in a court of  
28 competent jurisdiction, (~~and therefore be~~) as the prevailing party,  
29 the (~~prevailing party~~) employee shall be entitled to recover  
30 reasonable attorneys' fees against the employer. Nothing in this  
31 section shall affect or limit any other state, federal, or  
32 constitutional right otherwise available.

33 **Sec. 16.** RCW 74.39A.250 and 2012 c 164 s 708 are each amended to  
34 read as follows:

35 (1) (~~The department~~) If an individual provider employment  
36 administrator employs individual providers, the individual provider  
37 employment administrator shall:

1       (a) Provide assistance to consumers and prospective consumers in  
2 finding individual providers and prospective individual providers  
3 through the ~~((establishment))~~ operation of a referral registry of  
4 individual providers and prospective individual providers.

5       (b) Before placing an individual provider or prospective  
6 individual provider on the referral registry, ~~((the department  
7 shall))~~ determine that~~((~~

8       ~~(a))~~ the individual provider or prospective individual provider:

9       (i) Has met the minimum requirements for training ((set forth  
10 in)) under RCW 74.39A.051 and 74.39A.074;

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

15       ~~((c) The individual provider or prospective individual  
16 provider))~~ (iii) Is not listed on any ((long-term care abuse and  
17 neglect)) state or federal registry ((used)) described in RCW  
18 74.39A.056 or on other registries maintained by the department.

19       ~~((2) The department shall))~~ (c) Remove from the referral  
20 registry any individual provider or prospective individual provider  
21 ((that)) who does not meet the qualifications set forth in this  
22 subsection (1) ((of this section or to have committed misfeasance or  
23 malfeasance in the performance of his or her duties)) or whose  
24 employment as an individual provider has been terminated based on  
25 good cause. ((The individual provider or prospective individual  
26 provider, or the consumer to which the individual provider is  
27 providing services, may request a fair hearing to contest the removal  
28 from the referral registry, as provided in chapter 34.05 RCW.

29       ~~(3) The department shall))~~ (d) Provide routine, emergency, and  
30 respite referrals of individual providers and prospective individual  
31 providers to consumers and prospective consumers who are authorized  
32 to receive long-term in-home care services through an individual  
33 provider.

34       ~~((4))~~ (e) Not allow an individual provider to provide services  
35 to a consumer without the consumer's consent.

36       (2) The department shall ((give preference in the recruiting,  
37 training, referral, and employment of individual providers and  
38 prospective individual providers to recipients of public assistance  
39 or other low-income persons who would qualify for public assistance  
40 in the absence of such employment)) perform the activities under

1 subsection (1) of this section if the department has not transitioned  
2 the responsibilities under this section to an individual provider  
3 employment administrator.

4 **Sec. 17.** RCW 74.39A.261 and 2012 c 164 s 502 are each amended to  
5 read as follows:

6 If the department contracts with individual providers, the  
7 department must perform ((eriminal)) background checks for individual  
8 providers and prospective individual providers under RCW 74.39A.056.

9 **Sec. 18.** RCW 74.39A.270 and 2017 3rd sp.s. c 24 s 1 are each  
10 amended to read as follows:

11 The following provisions apply only to individual providers who  
12 are contracted with the department to provide personal care or  
13 respite care services:

14 (1) Solely for the purposes of collective bargaining and as  
15 expressly limited under subsections (2) and (3) of this section, the  
16 governor is the public employer, as defined in chapter 41.56 RCW, of  
17 individual providers, who, solely for the purposes of collective  
18 bargaining, are public employees as defined in chapter 41.56 RCW. To  
19 accommodate the role of the state as payor for the community-based  
20 services provided under this chapter and to ensure coordination with  
21 state employee collective bargaining under chapter 41.80 RCW and the  
22 coordination necessary to implement RCW 74.39A.300, the public  
23 employer shall be represented for bargaining purposes by the governor  
24 or the governor's designee appointed under chapter 41.80 RCW. ~~((The~~  
25 ~~governor or governor's designee shall periodically consult with the~~  
26 ~~authority during the collective bargaining process to allow the~~  
27 ~~authority to communicate issues relating to the long-term in-home~~  
28 ~~care services received by consumers.))~~ The department shall solicit  
29 input from the developmental disabilities council, the governor's  
30 committee on disability issues and employment, the state council on  
31 aging, and other consumer advocacy organizations to obtain informed  
32 input from consumers on their interests, including impacts on  
33 consumer choice, for all issues proposed for collective bargaining  
34 under subsections (5) and ~~((+6+))~~ (7) of this section.

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

1 (a) The only unit appropriate for the purpose of collective  
2 bargaining under RCW 41.56.060 is a statewide unit of all individual  
3 providers;

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

7 (c) The mediation and interest arbitration provisions of RCW  
8 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

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

14 (ii) The decision of the (~~arbitration panel~~) arbitrator is not  
15 binding on the legislature and, if the legislature does not approve  
16 the request for funds necessary to implement the compensation and  
17 fringe benefit provisions of the arbitrated collective bargaining  
18 agreement, is not binding on the authority or the state;

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

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

23 (3) Individual providers who are public employees solely for the  
24 purposes of collective bargaining under subsection (1) of this  
25 section are not, for that reason, employees of the state, its  
26 political subdivisions, or an area agency on aging for any purpose.  
27 Chapter 41.56 RCW applies only to the governance of the collective  
28 bargaining relationship between the employer and individual providers  
29 as provided in subsections (1) and (2) of this section.

30 (4) Consumers and prospective consumers retain the right to  
31 select, hire, supervise the work of, and terminate any individual  
32 provider providing services to them. Consumers may elect to receive  
33 long-term in-home care services from individual providers who are not  
34 referred to them by the (~~authority~~) department or a department  
35 contractor.

36 (5) Except as expressly limited in this section and RCW  
37 74.39A.300, the wages, hours, and working conditions of individual  
38 providers are determined solely through collective bargaining as  
39 provided in this chapter. Except as described in (~~subsection (9) of~~  
40 ~~this~~) section 25 of this act, no agency or department of the state

1 may establish policies or rules governing the wages or hours of  
2 individual providers. (~~This subsection does not modify:~~

3 ~~(a) The department's authority to establish a plan of care for~~  
4 ~~each consumer or its core responsibility to manage long term in-home~~  
5 ~~care services under this chapter, including determination of the~~  
6 ~~level of care that each consumer is eligible to receive. However, at~~  
7 ~~the request of the exclusive bargaining representative, the governor~~  
8 ~~or the governor's designee appointed under chapter 41.80 RCW shall~~  
9 ~~engage in collective bargaining, as defined in RCW 41.56.030(4), with~~  
10 ~~the exclusive bargaining representative over how the department's~~  
11 ~~core responsibility affects hours of work for individual providers.~~  
12 ~~This subsection shall not be interpreted to require collective~~  
13 ~~bargaining over an individual consumer's plan of care;~~

14 ~~(b)(i) The requirement that the number of hours the department~~  
15 ~~may pay any single individual provider is limited to:~~

16 ~~(A) Sixty hours each workweek if the individual provider was~~  
17 ~~working an average number of hours in excess of forty hours for the~~  
18 ~~workweeks during January 2016, except for fiscal years 2016, 2017,~~  
19 ~~and 2018, the limit is sixty five hours each workweek; or~~

20 ~~(B) Forty hours each workweek if the individual provider was not~~  
21 ~~working an average number of hours in excess of forty hours for the~~  
22 ~~workweeks during January 2016, or had no reported hours for the month~~  
23 ~~of January 2016.~~

24 ~~(ii) Additional hours may be authorized under criteria~~  
25 ~~established by rules adopted by the department under subsection (9)~~  
26 ~~of this section.~~

27 ~~(iii) Additional hours may be authorized for required training~~  
28 ~~under RCW 74.39A.074, 74.39A.076, and 74.39A.341.~~

29 ~~(iv) An individual provider may appeal to the department for~~  
30 ~~qualification for the hour limitation in (b)(i)(A) of this subsection~~  
31 ~~if the average weekly hours the individual provider was working in~~  
32 ~~January 2016 materially underrepresent the average weekly hours~~  
33 ~~worked by the individual provider during the first three months of~~  
34 ~~2016.~~

35 ~~(v) No individual provider is subject to the hour limitations in~~  
36 ~~(b)(i)(A) of this subsection until the department has conducted a~~  
37 ~~review of the plan of care for the consumers served by the individual~~  
38 ~~provider. The department shall review plans of care expeditiously,~~  
39 ~~starting with consumers connected with the most individual provider~~  
40 ~~overtime;~~

1 ~~(c) The requirement that the total number of additional hours in~~  
2 ~~excess of forty hours authorized under (b) of this subsection and~~  
3 ~~subsection (9) of this section are limited by the total hours as~~  
4 ~~provided in subsection (10) of this section;~~

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

8 ~~(e) The consumer's right to assign hours to one or more~~  
9 ~~individual providers consistent with the rules adopted under this~~  
10 ~~chapter and his or her plan of care;~~

11 ~~(f) The consumer's right to select, hire, terminate, supervise~~  
12 ~~the work of, and determine the conditions of employment for each~~  
13 ~~individual provider providing services to the consumer under this~~  
14 ~~chapter;~~

15 ~~(g) The department's obligation to comply with the federal~~  
16 ~~medicaid statute and regulations and the terms of any community-based~~  
17 ~~waiver granted by the federal department of health and human services~~  
18 ~~and to ensure federal financial participation in the provision of the~~  
19 ~~services; and~~

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

27 (6) Nothing in this section modifies:

28 (a) The department's authority to deny individual provider  
29 contracts to individuals who will not be able to meet the needs of a  
30 consumer or to terminate contracts of individual providers who are  
31 not adequately meeting the needs of a particular consumer; or

32 (b) The consumer's right to: (i) Assign hours to one or more  
33 individual providers consistent with the rules adopted under this  
34 chapter and his or her plan of care; and (ii) select, hire,  
35 terminate, supervise the work of, and determine the conditions of  
36 employment for each individual provider providing services to the  
37 consumer under this chapter.

38 (7) At the request of the exclusive bargaining representative,  
39 the governor or the governor's designee appointed under chapter 41.80  
40 RCW shall engage in collective bargaining, as defined in RCW



1 41.56.030(4), with the exclusive bargaining representative over  
2 (~~employer contributions to the training partnership for the costs~~  
3 ~~of: (a) Meeting all training and peer mentoring required under this~~  
4 ~~chapter; and (b) other training intended to promote the career~~  
5 ~~development of individual providers)) the following issues:~~

6 (a) Employer contributions to the training partnership for the  
7 costs of: (i) Meeting all training and peer mentoring requirements  
8 under this chapter; and (ii) other training intended to promote the  
9 career development of individual providers; and

10 (b) How the department's core responsibility affects hours of  
11 work for individual providers; this subsection shall not be  
12 interpreted to require collective bargaining over an individual  
13 consumer's plan of care.

14 ~~((7))~~ (8) The state, the department, the area agencies on  
15 aging, or their contractors under this chapter may not be held  
16 vicariously or jointly liable for the action or inaction of any  
17 individual provider or prospective individual provider, whether or  
18 not that individual provider or prospective individual provider was  
19 included on the referral registry or referred to a consumer or  
20 prospective consumer. The existence of a collective bargaining  
21 agreement, the placement of an individual provider on the referral  
22 registry, or the development or approval of a plan of care for a  
23 consumer who chooses to use the services of an individual provider  
24 and the provision of case management services to that consumer, by  
25 the department or an area agency on aging, does not constitute a  
26 special relationship with the consumer.

27 ~~((8))~~ (9) Nothing in this section affects the state's  
28 responsibility with respect to unemployment insurance for individual  
29 providers. However, individual providers are not to be considered, as  
30 a result of the state assuming this responsibility, employees of the  
31 state.

32 ~~((9) The department may not pay any single individual provider~~  
33 ~~more than the hours listed in subsection (5)(b) of this section~~  
34 ~~unless the department authorizes additional hours under criteria~~  
35 ~~established by rule. The criteria must be limited in scope to reduce~~  
36 ~~the state's exposure to payment of overtime, address travel time from~~  
37 ~~worksite to worksite, and address the following needs of consumers:~~

38 ~~(a) Ensuring that consumers are not at increased risk for~~  
39 ~~institutionalization;~~

1 ~~(b) When there is a limited number of individual providers within~~  
2 ~~the geographic region of the consumer;~~

3 ~~(c) When there is a limited number of individual providers~~  
4 ~~available to support a consumer with complex medical and behavioral~~  
5 ~~needs or specific language needs;~~

6 ~~(d) Emergencies that could pose a health and safety risk for~~  
7 ~~consumers; and~~

8 ~~(e) Instances where the cost of the allowed hour is less than~~  
9 ~~other alternatives to provide care to a consumer, distinct from any~~  
10 ~~increased risk of institutionalization.~~

11 ~~(10)(a) Each fiscal year, the department shall establish a~~  
12 ~~spending plan and a system to monitor the authorization and cost of~~  
13 ~~hours in excess of forty hours each workweek from subsections (5)(b)~~  
14 ~~and (9) of this section beginning July 1, 2016, and each fiscal year~~  
15 ~~thereafter. Expenditures for hours in excess of forty hours each~~  
16 ~~workweek under subsections (5)(b) and (9) of this section shall not~~  
17 ~~exceed 8.75 percent of the total average authorized personal care~~  
18 ~~hours for the fiscal year as projected by the caseload forecast~~  
19 ~~council. The caseload forecast council may adopt a temporary~~  
20 ~~adjustment to the 8.75 percent of the total average hours projection~~  
21 ~~for that fiscal year, up to a maximum of 10.0 percent, if it finds a~~  
22 ~~higher percentage of overtime hours is necessitated by a shortage of~~  
23 ~~individual providers to provide adequate client care, taking into~~  
24 ~~consideration factors including the criteria in subsection (9) of~~  
25 ~~this section. If the council elects to temporarily increase the~~  
26 ~~limit, it may do so only upon a majority vote of the council.~~

27 ~~(b) The department also shall provide expenditure reports~~  
28 ~~beginning September 1, 2016, and on a quarterly basis thereafter. If~~  
29 ~~the department determines, based upon quarterly expenditure reports,~~  
30 ~~that the annual expenditures will exceed the limitation established~~  
31 ~~in (a) of this subsection, the department shall take those actions~~  
32 ~~necessary to ensure compliance with the limitation.~~

33 ~~(c) The spending plan and expenditure reports must be submitted~~  
34 ~~to the legislative fiscal committees and the joint legislative-~~  
35 ~~executive overtime oversight task force. The joint legislative-~~  
36 ~~executive overtime oversight task force members are as follows:~~

37 ~~(i) Two members from each of the two largest caucuses of the~~  
38 ~~senate, appointed by the respective caucus leaders.~~

1       ~~(ii) The speaker of the house of representatives shall appoint~~  
2 ~~two members from each of the two largest caucuses of the house of~~  
3 ~~representatives.~~

4       ~~(iii) The governor shall appoint members representing the~~  
5 ~~department of social and health services and the office of financial~~  
6 ~~management.~~

7       ~~(iv) The governor shall appoint two members representing~~  
8 ~~individual providers and two members representing consumers receiving~~  
9 ~~personal care or respite care services from an individual provider.~~

10       ~~(d) The task force shall meet at least annually, but may meet~~  
11 ~~more frequently as desired by the task force. The task force shall~~  
12 ~~choose cochairs, one from among the legislative members and one from~~  
13 ~~among the executive branch members.~~

14       ~~(e) The department is authorized to adopt rules, including~~  
15 ~~emergency rules under RCW 34.05.350, to implement this subsection.))~~

16       NEW SECTION.   **Sec. 19.**   A new section is added to chapter 74.39A  
17 RCW to read as follows:

18       The following provisions apply only if individual providers are  
19 employed by an individual provider employment administrator:

20       (1) Consumers and prospective consumers have the right to select,  
21 schedule, supervise the work of, and dismiss any individual provider  
22 providing services to them consistent with the consumer's plan of  
23 care.

24       (2) Nothing in this section modifies:

25       (a) The individual provider employment administrator's authority  
26 to:

27       (i) Refuse to employ an individual provider who may not be able  
28 to meet the needs of a particular consumer;

29       (ii) Assign an individual provider who has been dismissed by a  
30 consumer to a different consumer who has selected the individual  
31 provider;

32       (iii) Provide information to a consumer about an individual  
33 provider's work history as an employee of the individual provider  
34 employment administrator; or

35       (iv) Terminate the provider's employment when the individual is  
36 not meeting the needs of the consumer.

37       (b) The consumer's right to:

1 (i) Assign hours to one or more individual providers consistent  
2 with this chapter, the rules adopted under this chapter, and his or  
3 her plan of care; or

4 (ii) Dismiss an individual provider.

5 **Sec. 20.** RCW 74.39A.275 and 2016 sp.s. c 30 s 3 are each amended  
6 to read as follows:

7 In order to monitor quality of care and safety of consumers,  
8 employment conditions of individual providers, and compliance with  
9 the provisions of payment of hours in excess of forty hours each  
10 workweek for any single (~~(individual)~~) individual provider, the  
11 department must provide (~~(quarterly)~~) annual expenditure reports to  
12 the legislative fiscal committees and joint legislative-executive  
13 overtime oversight task force created (~~(in RCW 74.39A.270(10))~~) under  
14 section 25 of this act. The report must contain the following  
15 information:

16 (1) The number of (~~(individual)~~) individual providers receiving  
17 payment for more than forty hours in a workweek, specifying how many  
18 of those (~~(individual)~~) individual providers were eligible for  
19 those hours due to meeting the conditions of (~~(RCW 74.39A.270~~  
20 ~~(5)(b)(i)(A), (b)(ii), (b)(iii), and (9))~~) section 25 of this act.

21 (2) The number of hours paid and the amount paid for hours in  
22 excess of forty hours in a workweek, specifying how many of those  
23 hours and payments were for (~~(individual)~~) individual providers  
24 eligible for those hours and payments due to meeting the conditions  
25 of (~~(RCW 74.39A.270 (5)(b)(i)(A), (b)(ii), (b)(iii), and (9))~~)  
26 section 25 (1) or (2) of this act.

27 (3) In reporting the information required in subsections (1) and  
28 (2) of this section, the department must provide total amounts,  
29 averages, and a display of the distribution of the amounts.

30 (4) The information required must be provided by department  
31 region and county of client, department program, and must be  
32 specified for (~~(individual)~~) individual providers by the number of  
33 clients they serve.

34 (5) Any personally identifiable information of consumers and  
35 individual providers used to develop this report is confidential  
36 under RCW 43.17.410 and exempt from public disclosure, inspection, or  
37 copying (~~(under)~~) in accordance with chapter 42.56 RCW. However,  
38 information may be released in aggregate form, with any personally

1 identifiable information redacted, for the purpose of statistical  
2 analysis and oversight of agency performance and actions.

3 **Sec. 21.** RCW 74.39A.300 and 2004 c 3 s 2 are each amended to  
4 read as follows:

5 If the department contracts with any individual providers for  
6 personal care services, funding will be determined in accordance with  
7 the following process:

8 (1) Upon meeting the requirements of subsection (2) of this  
9 section, the governor must submit, as a part of the proposed biennial  
10 or supplemental operating budget submitted to the legislature under  
11 RCW 43.88.030, a request for funds necessary to administer (~~chapter~~  
12 ~~3, Laws of 2002~~) in-home care programs under this chapter and to  
13 implement the compensation and fringe benefits provisions of a  
14 collective bargaining agreement entered into under RCW 74.39A.270 or  
15 for legislation necessary to implement such agreement.

16 (2) A request for funds necessary to implement the compensation  
17 and fringe benefits provisions of a collective bargaining agreement  
18 entered into under RCW 74.39A.270 shall not be submitted by the  
19 governor to the legislature unless such request:

20 (a) Has been submitted to the director of financial management by  
21 October 1st prior to the legislative session at which the request is  
22 to be considered; and

23 (b) Has been certified by the director of financial management as  
24 being feasible financially for the state or reflects the binding  
25 decision of an (~~arbitration panel~~) arbitrator reached under RCW  
26 74.39A.270(2)(c).

27 (3) The legislature must approve or reject the submission of the  
28 request for funds as a whole. If the legislature rejects or fails to  
29 act on the submission, any such agreement will be reopened solely for  
30 the purpose of renegotiating the funds necessary to implement the  
31 agreement.

32 (4) When any increase in individual provider wages or benefits is  
33 negotiated or agreed to, no increase in wages or benefits negotiated  
34 or agreed to under this chapter will take effect unless and until,  
35 before its implementation, the department has determined that the  
36 increase is consistent with federal law and federal financial  
37 participation in the provision of services under Title XIX of the  
38 federal social security act.

1 (5) The governor shall periodically consult with the joint  
2 committee on employment relations established by RCW 41.80.010  
3 regarding appropriations necessary to implement the compensation and  
4 fringe benefits provisions of any collective bargaining agreement  
5 and, upon completion of negotiations, advise the committee on the  
6 elements of the agreement and on any legislation necessary to  
7 implement such agreement.

8 (6) After the expiration date of any collective bargaining  
9 agreement entered into under RCW 74.39A.270, all of the terms and  
10 conditions specified in any such agreement remain in effect until the  
11 effective date of a subsequent agreement, not to exceed one year from  
12 the expiration date stated in the agreement, except as provided in  
13 RCW 74.39A.270(~~((6)(f))~~).

14 (7) If, after the compensation and benefit provisions of an  
15 agreement are approved by the legislature, a significant revenue  
16 shortfall occurs resulting in reduced appropriations, as declared by  
17 proclamation of the governor or by resolution of the legislature,  
18 both parties shall immediately enter into collective bargaining for a  
19 mutually agreed upon modification of the agreement.

20 **Sec. 22.** RCW 74.39A.310 and 2007 c 361 s 8 are each amended to  
21 read as follows:

22 (1) The department shall create a formula that converts into a  
23 per-hour amount, excluding those benefits defined in subsection (3)  
24 of this section, the cost of the increase in:

25 (a) Wages and benefits negotiated and funded in the contract for  
26 individual providers of home care services pursuant to RCW 74.39A.270  
27 and 74.39A.300(~~(, into a per-hour amount, excluding those benefits~~  
28 defined in subsection (2) of this section)); or

29 (b) The labor rates established under section 26 of this act.

30 (~~That~~) (2) The per-hour amount from subsection (1) of this  
31 section shall be added to the statewide home care agency vendor rate  
32 and shall be used exclusively for improving the wages and benefits of  
33 home care agency workers who provide direct care. The formula shall  
34 account for:

35 (a) All types of wages, benefits, and compensation negotiated and  
36 funded each biennium, including but not limited to:

37 (i) Regular wages;

38 (ii) Benefit pay, such as vacation, sick, and holiday pay;

39 (iii) Taxes on wages/benefit pay;

1 (iv) Mileage; and

2 (v) Contributions to a training partnership; and

3 (b) The increase in the average cost of worker's compensation for  
4 home care agencies and application of the increases identified in (a)  
5 of this subsection to all hours required to be paid, including travel  
6 time, of direct service workers under the wage and hour laws and  
7 associated employer taxes.

8 ~~((+2))~~ (3) The contribution rate for health care benefits,  
9 including but not limited to medical, dental, and vision benefits,  
10 for eligible agency home care workers shall be paid by the department  
11 to home care agencies at the same rate as negotiated and funded in  
12 the collective bargaining agreement for individual providers of home  
13 care services.

14 **Sec. 23.** RCW 74.39A.351 and 2012 c 164 s 404 are each amended to  
15 read as follows:

16 (1) The department shall offer, directly or through contract,  
17 training opportunities sufficient for a long-term care worker to  
18 accumulate seventy hours of training within a reasonable time period.  
19 For individual providers represented by an exclusive bargaining  
20 representative (~~under RCW 74.39A.270~~), the training opportunities  
21 shall be offered through the training partnership established under  
22 RCW 74.39A.360.

23 (2) Training topics offered under this section shall include, but  
24 are not limited to: Client rights; personal care; mental illness;  
25 dementia; developmental disabilities; depression; medication  
26 assistance; advanced communication skills; positive client behavior  
27 support; developing or improving client-centered activities; dealing  
28 with wandering or aggressive client behaviors; medical conditions;  
29 nurse delegation core training; peer mentor training; and advocacy  
30 for quality care training.

31 (3) The department may not require long-term care workers to  
32 obtain the training described in this section.

33 ~~((4) The requirement to offer advanced training applies  
34 beginning January 1, 2013, except that it does not apply to long-term  
35 care workers employed by community residential service businesses  
36 until January 1, 2016.))~~

37 **Sec. 24.** RCW 74.39A.360 and 2007 c 361 s 6 are each amended to  
38 read as follows:

1       (~~Beginning January 1, 2010, for~~) (1) If the department has any  
2 contracts for personal care services with any individual providers  
3 represented by an exclusive bargaining representative (~~under RCW~~  
4 74.39A.270,));

5       (a) All training and peer mentoring required under this chapter  
6 shall be provided by a training partnership(~~(-)~~);

7       (b) Contributions to the partnership (~~pursuant to~~) shall be  
8 made under a collective bargaining agreement negotiated under this  
9 chapter (~~shall be made beginning July 1, 2009.~~);

10       (c) The training partnership shall provide reports as required by  
11 the department verifying that all individual providers have complied  
12 with all training requirements(~~(-)~~); and

13       (d) The exclusive bargaining representative shall designate the  
14 training partnership.

15       (2) When individual providers are employed by an individual  
16 provider employment administrator, funding for training shall be  
17 included in the labor rate component paid to the individual provider  
18 employment administrator as determined and funded under section 26 of  
19 this act.

20       NEW SECTION. Sec. 25. A new section is added to chapter 74.39A  
21 RCW to read as follows:

22       (1) Except as authorized by subsection (3) or (4) of this section  
23 or otherwise required by law, the department may not permit a client  
24 to use a single department-contracted individual provider for more  
25 than forty hours in one workweek.

26       (2) An individual provider employment administrator that employs  
27 individual providers:

28       (a) Must permit a client to use a single individual provider more  
29 than forty hours in a workweek if required by rules adopted under  
30 subsection (3) of this section;

31       (b) May permit an individual provider to work additional hours in  
32 accordance with subsection (4) of this section; and

33       (c) May permit an individual provider to work more than forty  
34 hours per workweek.

35       (3) The department shall adopt rules describing criteria under  
36 which a consumer may be permitted to use a single individual provider  
37 for more than forty hours per week. At a minimum, the criteria shall  
38 limit the state's exposure to exceeding the expenditure limits  
39 established in this section, require consumers to use good faith



1 efforts to locate additional providers, address travel time from  
2 worksite to worksite, and address the following needs of consumers:

3 (a) Emergencies that could pose a health and safety risk for  
4 consumers; and

5 (b) Circumstances that could increase the risk of  
6 institutionalization without the use of overtime.

7 (4) An individual provider may be authorized to work more than  
8 forty hours in a workweek:

9 (a) If the department established a permanent workweek limit  
10 between forty and one-quarter hours and sixty-five hours for an  
11 individual provider, based upon work performed by the individual  
12 provider in January 2016, as modified by an appeal, if any; or

13 (b) For required training under RCW 74.39A.074, 74.39A.076, and  
14 74.39A.341, and for required travel time between clients.

15 (5) The cost of overtime incurred under subsections (2)(a) and  
16 (b) and (4) of this section shall be included in an individual  
17 provider employment administrator labor rate determined in accordance  
18 with section 26 of this act. The following overtime costs shall not  
19 be included in the labor rate under section 26 of this act:

20 (a) Costs incurred under subsection (2)(c) of this section;

21 (b) Costs incurred by an individual provider employment  
22 administrator employee for services provided to an individual who is  
23 not a consumer;

24 (c) Costs for services not authorized under this chapter; and

25 (d) Overtime costs incurred because an individual provider  
26 employment administrator employee performed work:

27 (i) For both a consumer and an individual who is not a consumer;  
28 or

29 (ii) Worked as both an individual provider and as an employee of  
30 the licensed home care agency affiliated with the individual provider  
31 employment administrator.

32 (6) Expenditures for hours in excess of forty hours each workweek  
33 under subsections (1) and (2) of this section shall not exceed eight  
34 and one-fourth percent of the total average authorized personal care  
35 hours for the fiscal year as projected by the caseload forecast  
36 council.

37 (7) The caseload forecast council may adopt a temporary  
38 adjustment to the eight and one-fourth percent of the total average  
39 in-home personal care hours projection for that fiscal year, up to a  
40 maximum of ten percent, if it finds a higher percentage of overtime

1 hours is necessitated by a shortage of individual providers to  
2 provide adequate client care, taking into consideration factors  
3 including the criteria in subsection (1) of this section and rules  
4 adopted by the department. If the council elects to temporarily  
5 increase the limit, it may do so only upon a majority vote of the  
6 council.

7 (8) The department shall prepare expenditure reports beginning  
8 September 1, 2018, and on September 1st every year thereafter. The  
9 report shall include the results of the department's monitoring of  
10 authorizations and costs of hours in excess of forty hours each  
11 workweek. If the department determines that the annual expenditures  
12 will exceed the limitation established in subsection (3) of this  
13 section, the department shall take those actions necessary to ensure  
14 compliance with the limitation.

15 (9) The expenditure reports must be submitted to the legislative  
16 fiscal committees and the joint legislative-executive overtime  
17 oversight task force. The joint legislative-executive overtime  
18 oversight task force members are as follows:

19 (a) Two members from each of the two largest caucuses of the  
20 senate, appointed by the respective caucus leaders.

21 (b) Two members from each of the two largest caucuses of the  
22 house of representatives, appointed by the speaker of the house of  
23 representatives.

24 (c) The governor shall appoint members representing the  
25 department of social and health services and the office of financial  
26 management.

27 (d) The governor shall appoint two members representing  
28 individual providers and two members representing consumers receiving  
29 personal care or respite care services from an individual provider.

30 (10) The task force shall meet when the department determines  
31 that it is projected to or is exceeding the expenditure limits  
32 established in subsection (6) of this section but may meet more  
33 frequently as desired by the task force. The task force shall choose  
34 cochairs, one from among the legislative members and one from among  
35 the executive branch members.

36 (11) The department may take appropriate corrective action, up to  
37 and including termination of an individual provider's contract, when  
38 the individual provider works more than his or her workweek limit in  
39 any given workweek.

1        NEW SECTION.    **Sec. 26.**    A new section is added to chapter 74.39A  
2    RCW to read as follows:

3        If the department contracts with an individual provider  
4    employment administrator:

5        (1) In addition to overtime and compensable travel time set forth  
6    in section 25 of this act, the initial labor rates shall be paid as  
7    described in the most recent collective bargaining agreement between  
8    the governor and the service employees international union 775, plus  
9    the hourly roll-up costs of any additional legally required benefits  
10   or labor costs, until subsequent rates can be established in  
11   accordance with this section.

12       (2) A fourteen person rate-setting board is established to  
13   evaluate and propose changes in the rates paid to the individual  
14   provider employment administrator.

15       (a) The following four members shall be voting members:

16       (i) One representative from the governor's office;

17       (ii) One representative from the department;

18       (iii) One representative from the individual provider employment  
19   administrator; and

20       (iv) One designee from the exclusive bargaining representative of  
21   individual providers or, in the absence of an exclusive bargaining  
22   representative, a designee from the individual provider employment  
23   administrator workforce chosen by the employees of the individual  
24   provider employment administrator.

25       (b) The following nine members of the board shall be nonvoting  
26   advisory members:

27       (i) Four legislators, one member from each caucus of the house of  
28   representatives and the senate;

29       (ii) One representative from the state council on aging,  
30   appointed by the governor;

31       (iii) One representative of an organization representing people  
32   with intellectual or developmental disabilities appointed by the  
33   governor;

34       (iv) One representative of an organization representing people  
35   with physical disabilities appointed by the governor;

36       (v) One representative from the licensed home care agency  
37   industry chosen by the state's largest association of home care  
38   agencies that primarily serves state-funded clients; and

39       (vi) One home care worker chosen by the state's largest  
40   organization of home care workers.

1 (c) The governor's appointments shall be made by April 1st in  
2 even-numbered years.

3 (3) Beginning in the year following the establishment of the  
4 initial rate under subsection (1) of this section, and in every even-  
5 numbered year thereafter, the rate-setting board shall attempt to  
6 determine a proposed labor rate, including a specific amount for  
7 health benefits by considering the factors listed in RCW  
8 41.56.465(5). In addition, the rate-setting board shall attempt to  
9 determine an administrative rate for the individual provider  
10 employment administrator.

11 (4) At the commencement of the board's rate-setting activities,  
12 the four voting members must first attempt to select a fifth voting  
13 member, who will chair the rate-setting panel and will cast a tie-  
14 breaking vote if the four voting members identified in subsection (2)  
15 of this section are unable to reach an agreement on the labor rate.

16 (a) On the first occasion that the four voting members fail to  
17 select a tie-breaking member by a majority vote, the fifth member  
18 will be selected as follows:

19 (i) The panel member representing the governor's office shall  
20 request a list of five qualified arbitrators from the federal  
21 mediation and conciliation service.

22 (ii) If a majority of the voting members of the panel cannot  
23 agree on the selection of a neutral arbitrator from the list, the  
24 representative from the individual provider employment administrator  
25 will strike a name from the list first. The representative from the  
26 governor's office shall then strike a name from the list, the  
27 designee from the exclusive bargaining representative or, in the  
28 absence of an exclusive bargaining representative, the designee from  
29 the individual provider employment administrator workforce shall  
30 strike a name from the list, and finally the representative from the  
31 department shall strike a name from the list.

32 (iii) The name of the arbitrator remaining after the final strike  
33 shall be the fifth member of the panel.

34 (iv) If that person is not willing or available to be the fifth  
35 panel member, the second to last person remaining on the list shall  
36 be asked to be the fifth panel member. If the second to last person  
37 is not willing or available, the third to last person shall be asked  
38 to be the fifth member. This process of selecting an arbitrator shall  
39 be continued until a fifth member of the panel is appointed.

1 (b) On the next occasion that the four voting members fail to  
2 select a fifth tie-breaking member by a majority vote, the fifth  
3 member will be selected using the method described in (a) of this  
4 subsection except that the order of panel members striking names from  
5 the list, described in (a)(ii) of this subsection, shall be reversed.

6 (c) On each successive occasion that the four voting members fail  
7 to select a fifth tie-breaking member by a majority vote, the order  
8 of panel members striking names from the list will continue to  
9 alternate between the order described in (a)(ii) and (b) of this  
10 subsection.

11 (5) If an agreement on a proposed labor rate, an administrative  
12 rate, or both, is not reached by a majority of the voting members of  
13 the rate-setting board prior to July 1st, then:

14 (a) The labor rate shall be determined by the vote of the fifth  
15 member, who was selected in accordance with subsections (2) and (4)  
16 of this section; and

17 (b) The administrative rate shall be determined by the  
18 department.

19 (6) After the rates have been determined in accordance with  
20 subsections (3) through (5) of this section, they shall be submitted  
21 to the director of the office of financial management by October 1st  
22 prior to the legislative session during which the requests are to be  
23 considered for review. If the director of the office of financial  
24 management certifies them as being feasible financially for the  
25 state, the governor shall include a request for funds necessary to  
26 implement the proposed rates as part of the governor's budget  
27 document submitted under RCW 43.88.030 and 43.88.060. The legislature  
28 shall approve or reject the request for funds as a whole.

29 (7) If the legislature rejects the request under subsection (5)  
30 of this section, the matter shall return to the rate-setting board  
31 established under this section for further consideration. Until the  
32 legislature approves a request for funds under this section, the  
33 current labor rate shall stay in effect.

34 (8) The labor rate approved by the legislature shall be an hourly  
35 rate paid to the individual provider employment administrator. The  
36 labor rate shall be used exclusively for paying the wages, associated  
37 taxes, and benefits of individual providers. The individual provider  
38 employment administrator shall have full discretion to set wages and  
39 benefits for individual providers, except as provided in: (a)  
40 Subsection (9) of this section; (b) any specific legislative

1 appropriation requirement; or (c) a collective bargaining agreement,  
2 if applicable.

3 (9) The labor rate shall include a specific hourly amount that  
4 the individual provider employment administrator may use only for  
5 health benefits for individual providers.

6 (10) For the purpose of this section:

7 (a) "Labor rate" is defined as that portion of the individual  
8 provider employment administrator's hourly rate that is to be used by  
9 the individual provider employment administrator to compensate its  
10 workers, including wages, benefits, and any associated taxes.

11 (b) "Administrative rate" is defined as that portion of the  
12 individual provider employment administrator's hourly rate that is to  
13 be used by the individual provider employment administrator to  
14 perform its administrative duties.

15 **Sec. 27.** RCW 41.56.026 and 2002 c 3 s 12 are each amended to  
16 read as follows:

17 In addition to the entities listed in RCW 41.56.020, this chapter  
18 applies to individual providers who have contracts with the  
19 department under chapter 74.39A RCW (~~(74.39A.270 and 74.39A.300)~~).

20 **Sec. 28.** RCW 41.56.113 and 2010 c 296 s 4 are each amended to  
21 read as follows:

22 (1) This subsection (1) applies only if the state makes the  
23 payments directly to a provider.

24 (a) Upon the written authorization of an individual provider who  
25 contracts with the department of social and health services, a family  
26 child care provider, an adult family home provider, or a language  
27 access provider within the bargaining unit and after the  
28 certification or recognition of the bargaining unit's exclusive  
29 bargaining representative, the state as payor, but not as the  
30 employer, shall, subject to (c) of this subsection, deduct from the  
31 payments to an individual provider who contracts with the department  
32 of social and health services, a family child care provider, an adult  
33 family home provider, or a language access provider the monthly  
34 amount of dues as certified by the secretary of the exclusive  
35 bargaining representative and shall transmit the same to the  
36 treasurer of the exclusive bargaining representative.

37 (b) If the governor and the exclusive bargaining representative  
38 of a bargaining unit of individual providers who contract with the

1 department of social and health services, family child care  
2 providers, adult family home providers, or language access providers  
3 enter into a collective bargaining agreement that:

4 (i) Includes a union security provision authorized in RCW  
5 41.56.122, the state as payor, but not as the employer, shall,  
6 subject to (c) of this subsection, enforce the agreement by deducting  
7 from the payments to bargaining unit members the dues required for  
8 membership in the exclusive bargaining representative, or, for  
9 nonmembers thereof, a fee equivalent to the dues; or

10 (ii) Includes requirements for deductions of payments other than  
11 the deduction under ~~((a))~~ (b)(i) of this subsection, the state, as  
12 payor, but not as the employer, shall, subject to (c) of this  
13 subsection, make such deductions upon written authorization of the  
14 individual provider, family child care provider, adult family home  
15 provider, or language access provider.

16 (c)(i) The initial additional costs to the state in making  
17 deductions from the payments to individual providers, family child  
18 care providers, adult family home providers, and language access  
19 providers under this section shall be negotiated, agreed upon in  
20 advance, and reimbursed to the state by the exclusive bargaining  
21 representative.

22 (ii) The allocation of ongoing additional costs to the state in  
23 making deductions from the payments to individual providers, family  
24 child care providers, adult family home providers, or language access  
25 providers under this section shall be an appropriate subject of  
26 collective bargaining between the exclusive bargaining representative  
27 and the governor unless prohibited by another statute. If no  
28 collective bargaining agreement containing a provision allocating the  
29 ongoing additional cost is entered into between the exclusive  
30 bargaining representative and the governor, or if the legislature  
31 does not approve funding for the collective bargaining agreement as  
32 provided in RCW 74.39A.300, 41.56.028, 41.56.029, or 41.56.510, as  
33 applicable, the ongoing additional costs to the state in making  
34 deductions from the payments to individual providers, family child  
35 care providers, adult family home providers, or language access  
36 providers under this section shall be negotiated, agreed upon in  
37 advance, and reimbursed to the state by the exclusive bargaining  
38 representative.

39 (d) The governor and the exclusive bargaining representative of a  
40 bargaining unit of family child care providers may not enter into a

1 collective bargaining agreement that contains a union security  
2 provision unless the agreement contains a process, to be administered  
3 by the exclusive bargaining representative of a bargaining unit of  
4 family child care providers, for hardship dispensation for license-  
5 exempt family child care providers who are also temporary assistance  
6 for needy families recipients or WorkFirst participants.

7 (2) This subsection (2) applies only if the state does not make  
8 the payments directly to a language access provider.

9 (a) Upon the written authorization of a language access provider  
10 within the bargaining unit and after the certification or recognition  
11 of the bargaining unit's exclusive bargaining representative, the  
12 state shall require through its contracts with third parties that:

13 (i) The monthly amount of dues as certified by the secretary of  
14 the exclusive bargaining representative be deducted from the payments  
15 to the language access provider and transmitted to the treasurer of  
16 the exclusive bargaining representative; and

17 (ii) A record showing that dues have been deducted as specified  
18 in (a)(i) of this subsection be provided to the state.

19 (b) If the governor and the exclusive bargaining representative  
20 of the bargaining unit of language access providers enter into a  
21 collective bargaining agreement that includes a union security  
22 provision authorized in RCW 41.56.122, the state shall enforce the  
23 agreement by requiring through its contracts with third parties that:

24 (i) The monthly amount of dues required for membership in the  
25 exclusive bargaining representative as certified by the secretary of  
26 the exclusive bargaining representative, or, for nonmembers thereof,  
27 a fee equivalent to the dues, be deducted from the payments to the  
28 language access provider and transmitted to the treasurer of the  
29 exclusive bargaining representative; and

30 (ii) A record showing that dues or fees have been deducted as  
31 specified in (a)(i) of this subsection be provided to the state.

32 (3) This subsection (3) applies only to individual providers who  
33 contract with the department of social and health services. If the  
34 governor and the exclusive bargaining representative of a bargaining  
35 unit of individual providers enter into a collective bargaining  
36 agreement that meets the requirements in subsection (1)(b)(i) or (ii)  
37 of this section, and the state as payor, but not as the employer,  
38 contracts with a third-party entity to perform its obligations as set  
39 forth in those subsections, and that third-party contracts with the  
40 exclusive bargaining representative to perform voluntary deductions



1 for individual providers, the exclusive bargaining representative may  
2 direct the third-party to make the deductions required by the  
3 collective bargaining agreement, at the expense of the exclusive  
4 bargaining representative, so long as such deductions by the  
5 exclusive bargaining representative do not conflict with any federal  
6 or state law.

7 NEW SECTION. **Sec. 29.** Upon the governor's signature of this act  
8 into law, the department of social and health services may begin the  
9 procurement process to select an individual provider employment  
10 administrator. The department shall initiate the transition of  
11 individual providers to the individual provider employment  
12 administrator no later than January 1, 2021, when it determines it is  
13 ready to do so based upon a readiness review conducted by the  
14 department.

15 NEW SECTION. **Sec. 30.** If any provision of this act or its  
16 application to any person or circumstance is held invalid, the  
17 remainder of the act or the application of the provision to other  
18 persons or circumstances is not affected.

19 NEW SECTION. **Sec. 31.** The following acts or parts of acts are  
20 each repealed:

21 (1) RCW 74.39A.220 (Findings) and 2011 1st sp.s. c 21 s 6 & 2002  
22 c 3 s 1; and

23 (2) RCW 74.39A.240 (Definitions) and 2011 1st sp.s. c 21 s 7 &  
24 2002 c 3 s 3.

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