
SUBSTITUTE SENATE BILL 6199

State of Washington

65th Legislature

2018 Regular Session

By Senate Health & Long Term Care (originally sponsored by Senators Cleveland, Conway, Miloscia, Keiser, and Fortunato; by request of Department of Social and Health Services)

READ FIRST TIME 01/30/18.

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.240, 74.39A.250, 74.39A.261, 74.39A.270, 74.39A.275,
5 74.39A.300, 74.39A.310, 74.39A.351, 74.39A.360, 41.56.026, and
6 41.56.113; reenacting and amending RCW 74.39A.009; adding new
7 sections to chapter 74.39A RCW; creating new sections; and repealing
8 RCW 74.39A.220.

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

20 The legislature does not intend for the consumer directed
21 employer program to replace the consumers' option to select a
22 qualified home care agency to provide authorized in-home care.

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

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

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

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

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

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

1 residents who are living in ((a)) private apartment-like ((unit))
2 units.

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

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

8 (i) Group home services;

9 (ii) Group training home services;

10 (iii) Supported living services; or

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

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

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

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

22 (7) "Consumer directed employer" is a private entity that
23 contracts with the department to be the legal employer of individual
24 providers for purposes of performing administrative functions. The
25 consumer directed employer is patterned after the agency with choice
26 model, recognized by the federal centers for medicare and medicaid
27 services for financial management in consumer directed programs. The
28 entity's responsibilities are described in section 13 of this act and
29 throughout this chapter and include: (a) Coordination with the
30 consumer, who is the individual provider's managing employer; (b)
31 withholding, filing, and paying income and employment taxes,
32 including workers' compensation premiums and unemployment taxes, for
33 individual providers; (c) verifying an individual provider's
34 qualifications; and (d) providing other administrative and
35 employment-related supports. The consumer directed employer is a
36 social service agency and its employees are mandated reporters as
37 defined in RCW 74.34.020.

38 (8) "Core competencies" means basic training topics, including
39 but not limited to, communication skills, worker self-care, problem
40 solving, maintaining dignity, consumer directed care, cultural

1 sensitivity, body mechanics, fall prevention, skin and body care,
2 long-term care worker roles and boundaries, supporting activities of
3 daily living, and food preparation and handling.

4 ~~((7))~~ (9) "Cost-effective care" means care provided in a
5 setting of an individual's choice that is necessary to promote the
6 most appropriate level of physical, mental, and psychosocial well-
7 being consistent with client choice, in an environment that is
8 appropriate to the care and safety needs of the individual, and such
9 care cannot be provided at a lower cost in any other setting. But
10 this in no way precludes an individual from choosing a different
11 residential setting to achieve his or her desired quality of life.

12 ~~((8))~~ (10) "Department" means the department of social and
13 health services.

14 ~~((9))~~ (11) "Developmental disability" has the same meaning as
15 defined in RCW 71A.10.020.

16 ~~((10))~~ (12) "Direct care worker" means a paid caregiver who
17 provides direct, hands-on personal care services to persons with
18 disabilities or the elderly requiring long-term care.

19 ~~((11))~~ (13) "Enhanced adult residential care" means services
20 provided by an assisted living facility that is licensed under
21 chapter 18.20 RCW and that has a contract with the department under
22 RCW 74.39A.010 to provide personal care services, intermittent
23 nursing services, and medication administration services.

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

38 ~~(13))~~ (14) "Facility" means an adult family home, an assisted
39 living facility, a nursing home, an enhanced services facility
40 licensed under chapter 70.97 RCW, or a facility certified to provide

1 medicare or medicaid services in nursing facilities or intermediate
2 care facilities for individuals with intellectual disabilities under
3 42 C.F.R. Part 483.

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

10 ~~((14))~~ (16) "Home care aide" means a long-term care worker who
11 ~~((has obtained certification))~~ is certified as a home care aide by
12 the department of health under chapter 18.88B RCW.

13 ~~((15))~~ (17) "Individual provider" is defined according to RCW
14 74.39A.240.

15 (18) "Legal employer" means the consumer directed employer, which
16 along with the consumer, coemploys individual providers. The legal
17 employer is responsible for setting wages and benefits for individual
18 providers and must comply with applicable laws including, but not
19 limited to, workers compensation and unemployment insurance laws.

20 ~~((16))~~ (19) "Long-term care" ((is synonymous with chronic care
21 and)) means care and supports delivered indefinitely, intermittently,
22 or over a sustained time to persons of any age who are functionally
23 disabled ((by)) due to chronic mental or physical illness, disease,
24 chemical dependency, or a medical condition that is permanent, not
25 ((reversible or)) curable, or is long-lasting and severely limits
26 their mental or physical capacity for self-care. The use of this
27 definition is not intended to expand the scope of services, care, or
28 assistance provided by any individuals, groups, residential care
29 settings, or professions unless otherwise ((expressed)) required by
30 law.

31 ~~((17))~~ (20)(a) "Long-term care workers" include all persons who
32 provide paid, hands-on personal care services for the elderly or
33 persons with disabilities, including but not limited to individual
34 providers of home care services, direct care workers employed by home
35 care agencies or a consumer directed employer, providers of home care
36 services to persons with developmental disabilities under Title 71A
37 RCW, all direct care workers in state-licensed assisted living
38 facilities, enhanced services facilities, and adult family homes,
39 respite care providers, direct care workers employed by community
40 residential service businesses, and any other direct care worker

1 providing home or community-based services to the elderly or persons
2 with functional disabilities or developmental disabilities.

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

12 (~~(+18+)~~) (21) "Managing employer" means a consumer who coemploys
13 one or more individual providers and whose responsibilities include
14 (a) choosing potential individual providers and referring them to the
15 consumer directed employer; (b) overseeing the day-to-day management
16 and scheduling of the individual provider's tasks consistent with the
17 plan of care; and (c) dismissing the individual provider when
18 desired.

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

22 (~~(+19+)~~) (23) "Person who is functionally disabled" means a
23 person who because of a recognized chronic physical or mental
24 condition or disease, including chemical dependency or developmental
25 disability, is dependent upon others for direct care, support,
26 supervision, or monitoring to perform activities of daily living.
27 "Activities of daily living," in this context, means self-care
28 abilities related to personal care such as bathing, eating, using the
29 toilet, dressing, and transfer. Instrumental activities of daily
30 living such as cooking, shopping, house cleaning, doing laundry,
31 working, and managing personal finances may also be considered when
32 assessing a person's functional abilities to perform activities in
33 the home and the community.

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

37 (~~(+20+)~~) (25) "Population specific competencies" means basic
38 training topics unique to the care needs of the population the long-
39 term care worker is serving, including but not limited to, mental

1 health, dementia, developmental disabilities, young adults with
2 physical disabilities, and older adults.

3 ~~((+21+))~~ (26) "Qualified instructor" means a registered nurse or
4 other person with specific knowledge, training, and work experience
5 in the provision of direct, hands-on personal care and other
6 assistance services to the elderly or persons with disabilities
7 requiring long-term care.

8 ~~((+22+))~~ (27) "Secretary" means the secretary of social and
9 health services.

10 ~~((+23) "Secretary of health" means the secretary of health or the
11 secretary's designee.~~

12 ~~(+24+))~~ (28) "Training partnership" means a joint partnership or
13 trust that includes the office of the governor and the exclusive
14 bargaining representative of individual providers under RCW
15 74.39A.270 with the capacity to provide training, peer mentoring, and
16 workforce development, or other services to individual providers.

17 ~~((+25+))~~ (29) "Tribally licensed assisted living facility" means
18 an assisted living facility licensed by a federally recognized Indian
19 tribe in which a facility provides services similar to services
20 provided by assisted living facilities licensed under chapter 18.20
21 RCW.

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

24 (1) The department may establish and implement a consumer
25 directed employer program to provide personal care, respite care, and
26 similar services to individuals with functional impairments under
27 programs authorized through the medicaid state plan or medicaid
28 waiver authorities and similar state-funded in-home care programs.

29 (a) The consumer directed employer program is a consumer directed
30 program and must be operated in a manner consistent with federal
31 medicaid requirements. The consumer directed employer is the legal
32 employer of individual providers for administrative purposes.

33 (b) Under the consumer directed employer program, the consumer is
34 the managing employer of individual providers and retains the primary
35 right to select, dismiss, assign hours, and supervise the work of one
36 or more individual providers, as long as the consumer's actions are
37 consistent with the consumer's plan of care, this chapter, and state
38 and federal law.

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

9 (a) When contracting with a consumer directed employer, the
10 department should seek to contract with a vendor that demonstrates:

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

13 (ii) A commitment to recruiting and retaining a high quality and
14 diverse workforce and working with a broad coalition of stakeholders
15 in an effort to understand the changing needs of the workforce and
16 consumer needs and preferences.

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

19 (i) Ability to provide maximum support to consumers to focus on
20 directing their own services through a model that recognizes that the
21 provision of employer responsibility and human resource
22 administration support is integral to successful self-directed home
23 care programs;

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

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

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

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

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

37 (vii) Commitment to involving its home care workforce in decision
38 making;

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

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

6 (c) In order to be qualified as a consumer directed employer, an
7 entity must meet the requirements in: (i) Its contract with the
8 department; (ii) the medicaid state plan; (iii) rules adopted under
9 this chapter, if any; and (iv) this section.

10 (d) Any qualified and willing individual may apply to become an
11 employee of a consumer directed employer and may work as an
12 individual provider when selected by a consumer.

13 (e) A consumer directed employer that holds a contract with the
14 department to provide medicaid services through the employment of
15 individual providers is deemed to be a certified medicaid provider.

16 (f) A consumer directed employer is not a home care agency under
17 chapter 70.127 RCW.

18 (g) A consumer directed employer that also provides home care
19 services under chapter 70.127 RCW must demonstrate to the
20 department's satisfaction that it operates the programs under
21 separate business units, and that its business structures, policies,
22 and procedures will prevent any conflicts of interest.

23 (3) If the department selects and contracts with a consumer
24 directed employer, the department shall determine when to terminate
25 the department's contracts with individual providers.

26 (a) Until the department determines the transition to the
27 consumer directed employer program is complete, the state shall
28 continue to administer the individual provider program for the
29 remaining contracted individual providers and to act as the public
30 employer solely for the purpose of collective bargaining under RCW
31 74.39A.270 for those directly contracted individual providers.

32 (b) Once the department determines that the transition to the
33 consumer directed employer is complete, the department may no longer
34 contract with individual providers, unless there are not any
35 contracted consumer directed employers available.

36 (4) The department shall convene a stakeholder group to make
37 recommendations to the legislature on the establishment of a separate
38 licensure or certification category for a consumer directed employer.
39 The stakeholder group shall make their recommendations by October 1,
40 2018.

1 (5) The department of labor and industries shall initially place
2 individual providers employed by a consumer directed employer in the
3 classification for the home care services and home care referral
4 registry. After the department determines that the transition to the
5 consumer directed employer program is complete, the department of
6 labor and industries may, if necessary, adjust the classification and
7 rate in accordance with chapter 51.16 RCW.

8 (6) After the date on which the department enters into a contract
9 with the consumer directed employer and determines the transition to
10 the consumer directed employer program is complete, biennial funding
11 in the next ensuing biennium for case management and social work
12 shall be reduced by no more than: Two million nine hundred eight
13 thousand dollars for area agencies on aging; one million three
14 hundred sixty-one thousand dollars for home and community services;
15 and one million two hundred eighty-nine thousand dollars for
16 developmental disabilities.

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

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

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

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

24 (a) Authority to establish a plan of care for each consumer,
25 including establishing the number of hours in a week a consumer may
26 assign to any one provider consistent with section 26 of this act;

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

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

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

1 (3) Nothing in this chapter shall cause individuals who were
2 hired as long-term care workers prior to January 7, 2012, to lose
3 their exemption from certification requirements under RCW 18.88B.041
4 solely because they became employees of a consumer directed employer.

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

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

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

33 (3)(a) The department shall by rule establish payment rates for
34 home and community services that support the provision of cost-
35 effective care. In the event of any conflict between any such rule
36 and a collective bargaining agreement entered into under RCW
37 74.39A.270 and 74.39A.300, the collective bargaining agreement
38 prevails.

1 (b) The department may authorize an enhanced adult residential
2 care rate for nursing homes that temporarily or permanently convert
3 their bed use for the purpose of providing enhanced adult residential
4 care under chapter 70.38 RCW, when the department determines that
5 payment of an enhanced rate is cost-effective and necessary to foster
6 expansion of contracted enhanced adult residential care services. As
7 an incentive for nursing homes to permanently convert a portion of
8 its nursing home bed capacity for the purpose of providing enhanced
9 adult residential care, the department may authorize a supplemental
10 add-on to the enhanced adult residential care rate.

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

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

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

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

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

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

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

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

1 (6) Prompt and specific enforcement remedies shall also be
2 implemented without delay, pursuant to RCW 70.97.110, 71A.12.300,
3 74.39A.080, or 70.128.160, or chapter 18.51 or 74.42 RCW, for
4 providers found to have delivered care or failed to deliver care
5 resulting in problems that are serious, recurring, or uncorrected, or
6 that create a hazard that is causing or likely to cause death or
7 serious harm to one or more residents. These enforcement remedies may
8 also include, when appropriate, reasonable conditions on a contract
9 or license. In the selection of remedies, the safety, health, and
10 well-being of residents shall be of paramount importance.

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

13 (8) Except as provided in RCW 74.39A.074 and 74.39A.076,
14 individual providers and home care agency providers must
15 satisfactorily complete department-approved orientation, basic
16 training, and continuing education within the time period specified
17 by the department in rule. The department shall adopt rules ~~((for the~~
18 ~~implementation of))~~ to implement this section. The department shall
19 deny payment to ~~((an individual provider))~~ a consumer directed
20 employer or a home care ~~((provider))~~ agency for services provided by
21 employees who ~~((does))~~ have not ~~((complete))~~ completed the training
22 requirements within the time limit specified by ~~((the))~~ department
23 ~~((by rule))~~ rules. The department shall deny payment to any
24 individual providers who provide services under a contract with the
25 department if they have been notified that they are no longer
26 permitted to work because they have not completed the training
27 requirements within the time period required by department rules.

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

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

33 (1)(a) All long-term care workers shall be screened through state
34 and federal background checks in a uniform and timely manner to
35 verify that they do not have a ~~((criminal))~~ history that would
36 disqualify them from working with vulnerable persons. The department
37 must ~~((perform criminal))~~ process background checks for ~~((individual~~
38 ~~providers and prospective individual providers))~~ long-term care

1 workers and make the information available to employers, prospective
2 employers, and others as ((provided)) authorized by law.

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

14 (ii) This subsection does not apply to long-term care workers
15 employed by community residential service businesses until January 1,
16 2016.

17 (c) The department shall share state and federal background check
18 results with the department of health in accordance with RCW
19 18.88B.080.

20 (d) Background check screening required under this section and
21 department rules is not required for an employee of a consumer
22 directed employer if all of the following circumstances apply:

23 (i) The individual has an individual provider contract with the
24 department;

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

28 (iii) Employment by the consumer directed employer is the only
29 reason a new background check would be required; and

30 (iv) The department's background check results have been shared
31 with the consumer directed employer.

32 (2) No provider, or its staff, or long-term care worker, or
33 prospective provider or long-term care worker, with a stipulated
34 finding of fact, conclusion of law, an agreed order, or finding of
35 fact, conclusion of law, or final order issued by a disciplining
36 authority or a court of law or entered into a state registry with a
37 final substantiated finding of abuse, neglect, exploitation, or
38 abandonment of a minor or a vulnerable adult as defined in chapter
39 74.34 RCW shall be employed in the care of and have unsupervised
40 access to vulnerable adults.

1 (3) The department shall establish, by rule, a state registry
2 which contains identifying information about long-term care workers
3 identified under this chapter who have final substantiated findings
4 of abuse, neglect, financial exploitation, or abandonment of a
5 vulnerable adult as defined in RCW 74.34.020. The rule must include
6 disclosure, disposition of findings, notification, findings of fact,
7 appeal rights, and fair hearing requirements. The department shall
8 disclose, upon request, final substantiated findings of abuse,
9 neglect, financial exploitation, or abandonment to any person so
10 requesting this information. This information must also be shared
11 with the department of health to advance the purposes of chapter
12 18.88B RCW.

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

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

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

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

29 (3) The aging and ~~((adult—services))~~ long-term support
30 administration shall investigate complaints ~~((if the subject of the~~
31 ~~complaint is within its authority))~~ it receives about facilities and
32 community residential services businesses unless the department
33 determines that: (a) The complaint is intended to willfully harass
34 ~~((a licensee or employee of the licensee))~~ the provider or the
35 provider's employee; or (b) there is no reasonable basis for
36 investigation; or (c) corrective action has been taken as determined
37 by the ombuds or the department.

38 (4) The aging and ~~((adult—services))~~ long-term support
39 administration shall refer complaints to appropriate state agencies,

1 law enforcement agencies, the attorney general, the long-term care
2 ombuds, or other entities if the department lacks authority to
3 investigate or if its investigation reveals that a follow-up referral
4 to one or more of these entities is appropriate.

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

7 (a) Upon receipt of a complaint, the department shall make a
8 preliminary review of the complaint, assess the severity of the
9 complaint, and assign an appropriate response time. Complaints
10 involving imminent danger to the health, safety, or well-being of a
11 resident must be responded to within two days. When appropriate, the
12 department shall make an on-site investigation within a reasonable
13 time after receipt of the complaint or otherwise ensure that
14 complaints are responded to.

15 (b) The complainant must be: Promptly contacted by the
16 department, unless anonymous or unavailable despite several attempts
17 by the department, and informed of the right to discuss the alleged
18 violations with the inspector and to provide other information the
19 complainant believes will assist the inspector; informed of the
20 department's course of action; and informed of the right to receive a
21 written copy of the investigation report.

22 (c) In conducting the investigation, the department shall
23 interview the complainant, unless anonymous, and shall use its best
24 efforts to interview the vulnerable adult or adults allegedly harmed,
25 and, consistent with the protection of the vulnerable adult shall
26 interview facility staff, any available independent sources of
27 relevant information, including if appropriate the family members of
28 the vulnerable adult.

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

34 (e) After a department finding of a violation for which a stop
35 placement has been imposed, the department shall make an on-site
36 revisit of the provider within fifteen working days from the request
37 for revisit, to ensure correction of the violation. For violations
38 that are serious or recurring or uncorrected following a previous
39 citation, and create actual or threatened harm to one or more
40 residents' well-being, including violations of residents' rights, the

1 department shall make an on-site revisit as soon as appropriate to
2 ensure correction of the violation. Verification of correction of all
3 other violations may be made by either a department on-site revisit
4 or by written or photographic documentation found by the department
5 to be credible. This subsection does not prevent the department from
6 enforcing license or contract suspensions or revocations. Nothing in
7 this subsection shall interfere with or diminish the department's
8 authority and duty to ensure that the provider adequately cares for
9 residents, including to make departmental on-site revisits as needed
10 to ensure that the provider protects residents and to enforce
11 compliance with this chapter.

12 (f) Substantiated complaints of neglect, abuse, exploitation, or
13 abandonment of residents, or suspected criminal violations, shall
14 also be referred by the department to the appropriate law enforcement
15 agencies, the attorney general, and appropriate professional
16 disciplining authority.

17 (6) The department may provide the substance of the complaint to
18 the licensee or contractor before the completion of the investigation
19 by the department unless such disclosure would reveal the identity of
20 a complainant, witness, or resident who chooses to remain anonymous.
21 Neither the substance of the complaint provided to the licensee or
22 contractor nor any copy of the complaint or related report published,
23 released, or made otherwise available shall disclose, or reasonably
24 lead to the disclosure of, the name, title, or identity of any
25 complainant, or other person mentioned in the complaint, except that
26 the name of the provider and the name or names of any officer,
27 employee, or agent of the department conducting the investigation
28 shall be disclosed after the investigation has been closed and the
29 complaint has been substantiated. The department may disclose the
30 identity of the complainant if such disclosure is requested in
31 writing by the complainant. Nothing in this subsection shall be
32 construed to interfere with the obligation of the long-term care
33 ombuds program or department staff to monitor the department's
34 licensing, contract, and complaint investigation files for long-term
35 care facilities.

36 (7) The resident has the right to be free of interference,
37 coercion, discrimination, and reprisal from a facility in exercising
38 his or her rights, including the right to voice grievances about
39 treatment furnished or not furnished. A facility that provides long-
40 term care services shall not discriminate or retaliate in any manner

1 against a resident, employee, or any other person on the basis or for
2 the reason that such resident or any other person made a complaint to
3 the department, the attorney general, law enforcement agencies, or
4 the long-term care ombuds, provided information, or otherwise
5 cooperated with the investigation of such a complaint. Any attempt to
6 discharge a resident against the resident's wishes, or any type of
7 retaliatory treatment of a resident by whom or upon whose behalf a
8 complaint substantiated by the department has been made to the
9 department, the attorney general, law enforcement agencies, or the
10 long-term care ombuds, within one year of the filing of the
11 complaint, raises a rebuttable presumption that such action was in
12 retaliation for the filing of the complaint. "Retaliatory treatment"
13 means, but is not limited to, monitoring a resident's phone, mail, or
14 visits; involuntary seclusion or isolation; transferring a resident
15 to a different room unless requested or based upon legitimate
16 management reasons; withholding or threatening to withhold food or
17 treatment unless authorized by a terminally ill resident or his or
18 her representative pursuant to law; or persistently delaying
19 responses to a resident's request for service or assistance. A
20 facility that provides long-term care services shall not willfully
21 interfere with the performance of official duties by a long-term care
22 ombuds. The department shall sanction and may impose a civil penalty
23 of not more than three thousand dollars for a violation of this
24 subsection.

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

27 (1) ~~((The department:~~

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

33 ~~(b) May terminate the contract of any individual provider of home~~
34 ~~care services, or take any other enforcement measure deemed~~
35 ~~appropriate by the department if the individual provider has not been~~
36 ~~certified or the individual provider's certification is revoked under~~
37 ~~chapter 18.88B RCW or, if exempted from certification by RCW~~
38 ~~18.88B.041, the individual provider has not completed his or her~~
39 ~~required training pursuant to RCW 74.39A.074.~~

1 ~~(2))~~ The department shall take appropriate enforcement action
2 related to the contract of a consumer directed employer or a licensed
3 or certified private agency or facility (~~licensed by the state to~~
4 ~~provide personal care~~) that provides long-term care services(~~, or~~
5 ~~other than an individual provider, who~~) and knowingly employs a
6 long-term care worker who is not a certified home care aide as
7 required under chapter 18.88B RCW (~~or whose certification is~~
8 ~~revoked~~) or, if exempted from certification under RCW 18.88B.041,
9 who has not completed his or her required training (~~pursuant to~~)
10 under RCW 74.39A.074.

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

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

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

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

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

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

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

24 ~~((4))~~ (5) The department shall adopt rules to implement this
25 section.

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

28 ~~(1) ((The legislature intends that any staff reassigned by the~~
29 ~~department as a result of shifting of the reauthorization~~
30 ~~responsibilities by contract outlined in this section shall be~~
31 ~~dedicated for discharge planning and assisting with discharge~~
32 ~~planning and information on existing discharge planning cases.))~~

33 Discharge planning, as directed in this section, is intended for
34 residents and patients identified for discharge to long-term (~~care~~
35 ~~pursuant to~~) services under RCW 70.41.320, 74.39A.040, (~~and~~) or
36 74.42.058. The purpose of discharge planning is to protect residents
37 and patients from the financial incentives inherent in keeping
38 residents or patients in a more expensive higher level of care and

1 shall focus on care options that are in the best interest of the
2 patient or resident.

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

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

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

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

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

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

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

19 (b) Provide the services directly until a qualified contractor
20 can be found.

21 (4)(a) The department shall include, in its oversight and
22 monitoring of area agency on aging performance, assessment of case
23 management roles undertaken by area agencies on aging in this
24 section. The scope of oversight and monitoring includes, but is not
25 limited to, assessing the degree and quality of the case management
26 performed by area agency on aging staff for elderly and persons with
27 disabilities in the community.

28 (b) The department shall incorporate the expected outcomes and
29 criteria to measure the performance of service coordination
30 organizations into contracts with area agencies on aging as provided
31 in chapter 70.320 RCW.

32 (5) Area agencies on aging shall assess the quality of the in-
33 home care services provided to consumers who are receiving services
34 under (~~the medicaid personal care, community options programs entry~~
35 ~~system or chore services program~~) programs authorized through the
36 medicaid state plan, medicaid waiver authorities, or similar state-
37 funded in-home care programs through an individual provider or home
38 care agency. Quality indicators may include, but are not limited to,
39 home care consumers satisfaction surveys, how quickly home care
40 consumers are linked with home care workers, and whether the plan of

1 care under RCW 74.39A.095 has been honored by the agency or the
2 individual provider.

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

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

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

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

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

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

31 ~~(d) Reassessing and reauthorizing services;~~

32 ~~(e) Monitoring of individual provider performance; and~~

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

38 (a) Work with each client to develop a plan of care under this
39 section that identifies and ensures coordination of health and long-

1 term care services and supports. In developing the plan, the area
2 agency on aging shall use and modify as needed any comprehensive plan
3 of care developed by the department as provided in RCW 74.39A.040;

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

10 (c) Reassess and reauthorize services;

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

16 (e) Document the waiver of any case management services by the
17 consumer.

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

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

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

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

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

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

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

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

4 ~~(h)(i) Except as provided in (h)(ii) of this subsection, a clear~~
5 ~~statement indicating that a consumer receiving services under this~~
6 ~~section has the right to waive any of the case management services~~
7 ~~offered by the area agency on aging under this section, and a clear~~
8 ~~indication of whether the consumer has, in fact, waived any of these~~
9 ~~services.~~

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

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

16 ~~(4))~~ Each consumer has the right to direct and participate in
17 the development of their plan of care to the maximum extent
18 practicable (~~extent of their abilities and desires~~), and to be
19 provided with the time and support necessary to facilitate that
20 participation.

21 ~~((5))~~ (3) As authorized by the consumer, a copy of the plan of
22 care (~~must~~) may be distributed to: (a) The consumer's (~~primary~~
23 ~~care provider,~~) individual provider(~~(7)~~) contracted with the
24 department; (b) the entity contracted with the department to provide
25 personal care services; and (c) other relevant providers with whom
26 the consumer has frequent contact(~~(, as authorized by the consumer)~~).

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

30 ~~(7) If the department or area agency on aging case manager finds~~
31 ~~that an individual provider's inadequate performance or inability to~~
32 ~~deliver quality care is jeopardizing the health, safety, or well-~~
33 ~~being of a consumer receiving service under this section, the~~
34 ~~department or the area agency on aging may take action to terminate~~
35 ~~the contract between the department and the individual provider. If~~
36 ~~the department or the area agency on aging has a reasonable, good~~
37 ~~faith belief that the health, safety, or well-being of a consumer is~~
38 ~~in imminent jeopardy, the department or area agency on aging may~~
39 ~~summarily suspend the contract pending a fair hearing. The consumer~~
40 ~~may request a fair hearing to contest the planned action of the case~~

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

3 ~~(8) The department or area agency on aging may reject a request
4 by a consumer receiving services under this section to have a family
5 member or other person serve as his or her individual provider if the
6 case manager has a reasonable, good faith belief that the family
7 member or other person will be unable to appropriately meet the care
8 needs of the consumer. The consumer may request a fair hearing to
9 contest the decision of the case manager, as provided in chapter
10 34.05 RCW. The department may by rule adopt guidelines for
11 implementing this subsection.)~~

12 (4) If an individual provider is employed by a consumer directed
13 employer, the department or area agency on aging must notify the
14 consumer directed employer if:

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

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

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

23 (1) If a consumer directed employer employs individual providers,
24 then the consumer directed employer shall:

25 (a) Verify that each individual provider has met any training
26 requirements established under this chapter and rules adopted under
27 this chapter;

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

33 (c) Implement an electronic visit verification system that
34 complies with federal requirements, or in the absence of an
35 electronic visit verification system, monitor a statistically valid
36 sample of individual provider's claims to the receipt of services by
37 the consumer;

38 (d) Monitor individual provider compliance with employment
39 requirements;

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

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

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

8 (h) Discontinue the individual provider's assignment to a
9 consumer when the consumer directed employer has reason to believe,
10 or the department or area agency on aging has reported, that the
11 health, safety, or well-being of a consumer is in imminent jeopardy
12 due to the performance of the individual provider;

13 (i) Reject a request by a consumer to assign a specific person as
14 his or her individual provider, if the consumer directed employer has
15 reason to believe that the individual will be unable to appropriately
16 meet the care needs of the consumer; and

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

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

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

24 (b) Conducting background checks on individual providers as
25 required under this chapter, RCW 43.43.830 through 43.43.842,
26 43.20A.710, and department rules; or verifying that background checks
27 have been conducted for each individual provider and that the
28 background check is still valid in accordance with department rules;

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

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

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

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

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

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

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

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

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

15 Within funds appropriated for this purpose, the department shall
16 provide additional support for residents in community settings who
17 exhibit challenging behaviors that put them at risk for institutional
18 placement. The residents must be receiving services under ((the
19 ~~community options program entry system waiver or the medically needy~~
20 ~~residential facility waiver under section 1905(c) of the federal~~
21 ~~social security act)) programs authorized through the medicaid state
22 plan, medicaid waiver authorities, or similar state-funded in-home
23 care programs, and must have been evaluated under the individual
24 comprehensive assessment reporting and evaluation process.~~

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

27 An employer providing home and community services, including
28 facilities licensed under chapters 18.51, 18.20, 70.97, and 70.128
29 RCW, an employer of a program ((authorized)) operating under RCW
30 71A.12.040(10), a consumer directed employer, or an in-home services
31 agency employer licensed under chapter 70.127 RCW, who discloses
32 information about a former or current employee to a prospective home
33 and community services employer, nursing home employer, consumer
34 directed employer, or ((are an)) in-home services agency employer, is
35 presumed to be acting in good faith and is immune from civil and
36 criminal liability for such disclosure or its consequences if the
37 disclosed information relates to: (1) The employee's ability to
38 perform his or her job; (2) the diligence, skill, or reliability with

1 which the employee carried out the duties of his or her job; or (3)
2 any illegal or wrongful act committed by the employee when related to
3 his or her ability to care for a vulnerable adult. For purposes of
4 this section, the presumption of good faith may only be rebutted upon
5 a showing by clear and convincing evidence that the information
6 disclosed by the employer was knowingly false or made with reckless
7 disregard for the truth of the information disclosed. (~~Should~~) If
8 the employee successfully (~~rebut~~) rebuts the presumption of good
9 faith standard in a court of competent jurisdiction, (~~and therefore~~
10 ~~be~~) as the prevailing party, the (~~prevailing party~~) employee shall
11 be entitled to recover reasonable attorneys' fees against the
12 employer. Nothing in this section shall affect or limit any other
13 state, federal, or constitutional right otherwise available.

14 **Sec. 16.** RCW 74.39A.240 and 2011 1st sp.s. c 21 s 7 are each
15 amended to read as follows:

16 The definitions in this section apply throughout RCW 74.39A.030
17 (~~and~~), 74.39A.095 (~~and~~), 74.39A.220 through 74.39A.300, and
18 41.56.026 unless the context clearly requires otherwise.

19 (1) "Consumer" means a person to whom an individual provider
20 provides any such services.

21 (2) "Department" means the department of social and health
22 services.

23 (3) "Individual provider" means a person, including a personal
24 aide, who (~~has contracted with the department to~~), under an
25 individual provider contract with the department or as an employee of
26 a consumer directed employer, provides personal care or respite care
27 services to persons who are functionally disabled (~~persons~~) or
28 otherwise eligible under (~~the medicaid personal care, community~~
29 ~~options program entry system, chore services program, or respite care~~
30 ~~program, or to provide respite care or residential services and~~
31 ~~support to persons with developmental disabilities under~~) programs
32 authorized and funded by the medicaid state plan, medicaid waiver
33 programs chapter 71A.12 RCW, (~~or to provide respite care as defined~~
34 ~~in~~) RCW 74.13.270, or similar state-funded in-home care programs.

35 **Sec. 17.** RCW 74.39A.250 and 2012 c 164 s 708 are each amended to
36 read as follows:

37 (1) (~~The department~~) If a consumer directed employer employs
38 individual providers, the consumer directed employer 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 a consumer directed
3 employer.

4 **Sec. 18.** 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. 19.** 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 26 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 subjects:~~

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 ~~worksites to worksites, 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. 20.** 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 a consumer directed employer:

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 consumer directed employer's authority to:

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

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

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

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

36 (b) The consumer's right to:

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

1 (ii) Dismiss an individual provider.

2 **Sec. 21.** RCW 74.39A.275 and 2016 sp.s. c 30 s 3 are each amended
3 to read as follows:

4 In order to monitor quality of care and safety of consumers,
5 employment conditions of individual providers, and compliance with
6 the provisions of payment of hours in excess of forty hours each
7 workweek for any single (~~{individual}~~) individual provider, the
8 department must provide (~~quarterly~~) annual expenditure reports to
9 the legislative fiscal committees and joint legislative-executive
10 overtime oversight task force created (~~in RCW 74.39A.270(10)~~) under
11 section 26 of this act. The report must contain the following
12 information:

13 (1) The number of (~~{individual}~~) individual providers receiving
14 payment for more than forty hours in a workweek, specifying how many
15 of those (~~{individual}~~) individual providers were eligible for
16 those hours due to meeting the conditions of (~~RCW 74.39A.270~~
17 ~~(5)(b)(i)(A), (b)(ii), (b)(iii), and (9)~~) section 26 of this act.

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

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

27 (4) The information required must be provided by department
28 region and county of client, department program, and must be
29 specified for (~~{individual}~~) individual providers by the number of
30 clients they serve.

31 (5) Any personally identifiable information of consumers and
32 individual providers used to develop this report is confidential
33 under RCW 43.17.410 and exempt from public disclosure, inspection, or
34 copying (~~under~~) in accordance with chapter 42.56 RCW. However,
35 information may be released in aggregate form, with any personally
36 identifiable information redacted, for the purpose of statistical
37 analysis and oversight of agency performance and actions.

1 **Sec. 22.** RCW 74.39A.300 and 2004 c 3 s 2 are each amended to
2 read as follows:

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

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

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

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

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

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

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

37 (5) The governor shall periodically consult with the joint
38 committee on employment relations established by RCW 41.80.010
39 regarding appropriations necessary to implement the compensation and
40 fringe benefits provisions of any collective bargaining agreement

1 and, upon completion of negotiations, advise the committee on the
2 elements of the agreement and on any legislation necessary to
3 implement such agreement.

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

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

16 **Sec. 23.** RCW 74.39A.310 and 2007 c 361 s 8 are each amended to
17 read as follows:

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

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

25 (b) The labor rates established under section 27 of this act.

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

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

33 (i) Regular wages;

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

35 (iii) Taxes on wages/benefit pay;

36 (iv) Mileage; and

37 (v) Contributions to a training partnership; and

38 (b) The increase in the average cost of worker's compensation for
39 home care agencies and application of the increases identified in (a)

1 of this subsection to all hours required to be paid, including travel
2 time, of direct service workers under the wage and hour laws and
3 associated employer taxes.

4 ~~((2))~~ (3) The contribution rate for health care benefits,
5 including but not limited to medical, dental, and vision benefits,
6 for eligible agency home care workers shall be paid by the department
7 to home care agencies at the same rate as negotiated and funded in
8 the collective bargaining agreement for individual providers of home
9 care services.

10 **Sec. 24.** RCW 74.39A.351 and 2012 c 164 s 404 are each amended to
11 read as follows:

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

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

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

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

33 **Sec. 25.** RCW 74.39A.360 and 2007 c 361 s 6 are each amended to
34 read as follows:

35 ~~((Beginning January 1, 2010, for))~~ (1) If the department has any
36 contracts for personal care services with any individual providers
37 represented by an exclusive bargaining representative ~~((under RCW~~
38 ~~74.39A.270,))~~;

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

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

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

9 (d) The exclusive bargaining representative shall designate the
10 training partnership.

11 (2) When individual providers are employed by a consumer directed
12 employer, funding for training shall be included in the labor rate
13 component paid to the consumer directed employer as determined and
14 funded under section 27 of this act.

15 NEW SECTION. Sec. 26. A new section is added to chapter 74.39A
16 RCW to read as follows:

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

21 (2) A consumer directed employer that employs individual
22 providers:

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

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

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

30 (3) The department shall adopt rules describing criteria under
31 which a consumer may be permitted to use a single individual provider
32 for more than forty hours per week. At a minimum, the criteria shall
33 limit the state's exposure to exceeding the expenditure limits
34 established in this section, require consumers to use good faith
35 efforts to locate additional providers, address travel time from
36 worksite to worksite, and address the following needs of consumers:

37 (a) Emergencies that could pose a health and safety risk for
38 consumers; and

1 (b) Circumstances that could increase the risk of
2 institutionalization without the use of overtime.

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

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

9 (b) For required training under RCW 74.39A.074, 74.39A.076, and
10 74.39A.341, and for required travel time between clients.

11 (5) The cost of overtime incurred under subsections (2)(a) and
12 (b) and (4) of this section shall be included in a consumer directed
13 employer labor rate determined in accordance with section 27 of this
14 act. The following overtime costs shall not be included in the labor
15 rate under section 27 of this act:

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

17 (b) Costs incurred by an employee of a consumer directed employer
18 for services provided to an individual who is not a consumer;

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

20 (d) Overtime costs incurred because an employee of a consumer
21 directed employer performed work:

22 (i) For both a consumer and an individual who is not a consumer;
23 or

24 (ii) Worked as both an individual provider and as an employee of
25 the licensed home care agency affiliated with the consumer directed
26 employer.

27 (6) Expenditures for hours in excess of forty hours each workweek
28 under subsections (1) and (2) of this section shall not exceed eight
29 and one-fourth percent of the total actual authorized personal care
30 hours for the fiscal year as projected by the caseload forecast
31 council.

32 (7) The caseload forecast council may adopt a temporary
33 adjustment to the eight and one-fourth percent of the total average
34 in-home personal care hours projection for that fiscal year, up to a
35 maximum of ten percent, if it finds a higher percentage of overtime
36 hours is necessitated by a shortage of individual providers to
37 provide adequate client care, taking into consideration factors
38 including the criteria in subsection (1) of this section and rules
39 adopted by the department. If the council elects to temporarily

1 increase the limit, it may do so only upon a majority vote of the
2 council.

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

11 (9) The expenditure reports must be submitted to the legislative
12 fiscal committees and the joint legislative-executive overtime
13 oversight task force. The joint legislative-executive overtime
14 oversight task force members are as follows:

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

17 (b) Two members from each of the two largest caucuses of the
18 house of representatives, appointed by the speaker of the house of
19 representatives.

20 (c) The governor shall appoint members representing the
21 department of social and health services and the office of financial
22 management.

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

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

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

36 NEW SECTION. **Sec. 27.** A new section is added to chapter 74.39A
37 RCW to read as follows:

38 If the department contracts with a consumer directed employer:

1 (1) In addition to overtime and compensable travel time set forth
2 in section 26 of this act, the initial labor rates shall be paid as
3 described in the most recent collective bargaining agreement between
4 the governor and the service employees international union 775, plus
5 the hourly roll-up costs of any additional legally required benefits
6 or labor costs, until subsequent rates can be established in
7 accordance with this section.

8 (2) A fourteen person rate-setting board is established to
9 evaluate and propose changes in the rates paid to the consumer
10 directed employer.

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

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

13 (ii) One representative from the department;

14 (iii) One representative from the consumer directed employer; and

15 (iv) One designee from the exclusive bargaining representative of
16 individual providers or, in the absence of an exclusive bargaining
17 representative, a designee from the consumer directed employer
18 workforce chosen by the employees of the consumer directed employer.

19 (b) The following nine members of the board shall be nonvoting
20 advisory members:

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

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

25 (iii) One representative of an organization representing people
26 with intellectual or developmental disabilities appointed by the
27 governor;

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

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

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

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

37 (3) Beginning in the year following the establishment of the
38 initial rate under subsection (1) of this section, and in every even-
39 numbered year thereafter, the rate-setting board shall attempt to
40 determine a proposed labor rate, including a specific amount for

1 health benefits by considering the factors listed in RCW
2 41.56.465(5). In addition, the rate-setting board shall attempt to
3 determine an administrative rate for the consumer directed employer.

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

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

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

15 (ii) If a majority of the voting members of the panel cannot
16 agree on the selection of a neutral arbitrator from the list, the
17 representative from the consumer directed employer will strike a name
18 from the list first. The representative from the governor's office
19 shall then strike a name from the list, the designee from the
20 exclusive bargaining representative or, in the absence of an
21 exclusive bargaining representative, the designee from the consumer
22 directed employer workforce shall strike a name from the list, and
23 finally the representative from the department shall strike a name
24 from the list.

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

27 (iv) If that person is not willing or available to be the fifth
28 panel member, the second to last person remaining on the list shall
29 be asked to be the fifth panel member. If the second to last person
30 is not willing or available, the third to last person shall be asked
31 to be the fifth member. This process of selecting an arbitrator shall
32 be continued until a fifth member of the panel is appointed.

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

38 (c) On each successive occasion that the four voting members fail
39 to select a fifth tie-breaking member by a majority vote, the order
40 of panel members striking names from the list will continue to

1 alternate between the order described in (a)(ii) and (b) of this
2 subsection.

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

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

9 (b) The administrative rate shall be determined by the
10 department.

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

21 (7) If the legislature rejects the request under subsection (5)
22 of this section, the matter shall return to the rate-setting board
23 established under this section for further consideration. Until the
24 legislature approves a request for funds under this section, the
25 current labor rate shall stay in effect.

26 (8) The labor rate approved by the legislature shall be an hourly
27 rate paid to the consumer directed employer. The labor rate shall be
28 used exclusively for paying the wages, associated taxes, and benefits
29 of individual providers. The consumer directed employer shall have
30 full discretion to set wages and benefits for individual providers,
31 except as provided in: (a) Subsection (9) of this section; (b) any
32 specific legislative appropriation requirement; or (c) a collective
33 bargaining agreement, if applicable.

34 (9) The labor rate shall include a specific hourly amount that
35 the consumer directed employer may use only for health benefits for
36 individual providers.

37 (10) For the purpose of this section:

38 (a) "Labor rate" is defined as that portion of the consumer
39 directed employer's hourly rate that is to be used by the consumer

1 directed employer to compensate its workers, including wages,
2 benefits, and any associated taxes.

3 (b) "Administrative rate" is defined as that portion of the
4 consumer directed employer's hourly rate that is to be used by the
5 consumer directed employer to perform its administrative duties.

6 **Sec. 28.** RCW 41.56.026 and 2002 c 3 s 12 are each amended to
7 read as follows:

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

11 **Sec. 29.** RCW 41.56.113 and 2010 c 296 s 4 are each amended to
12 read as follows:

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

15 (a) Upon the written authorization of an individual provider who
16 contracts with the department of social and health services, a family
17 child care provider, an adult family home provider, or a language
18 access provider within the bargaining unit and after the
19 certification or recognition of the bargaining unit's exclusive
20 bargaining representative, the state as payor, but not as the
21 employer, shall, subject to (c) of this subsection, deduct from the
22 payments to an individual provider who contracts with the department
23 of social and health services, a family child care provider, an adult
24 family home provider, or a language access provider the monthly
25 amount of dues as certified by the secretary of the exclusive
26 bargaining representative and shall transmit the same to the
27 treasurer of the exclusive bargaining representative.

28 (b) If the governor and the exclusive bargaining representative
29 of a bargaining unit of individual providers who contract with the
30 department of social and health services, family child care
31 providers, adult family home providers, or language access providers
32 enter into a collective bargaining agreement that:

33 (i) Includes a union security provision authorized in RCW
34 41.56.122, the state as payor, but not as the employer, shall,
35 subject to (c) of this subsection, enforce the agreement by deducting
36 from the payments to bargaining unit members the dues required for
37 membership in the exclusive bargaining representative, or, for
38 nonmembers thereof, a fee equivalent to the dues; or

1 (ii) Includes requirements for deductions of payments other than
2 the deduction under ~~((a))~~ (b)(i) of this subsection, the state, as
3 payor, but not as the employer, shall, subject to (c) of this
4 subsection, make such deductions upon written authorization of the
5 individual provider, family child care provider, adult family home
6 provider, or language access provider.

7 (c)(i) The initial additional costs to the state in making
8 deductions from the payments to individual providers, family child
9 care providers, adult family home providers, and language access
10 providers under this section shall be negotiated, agreed upon in
11 advance, and reimbursed to the state by the exclusive bargaining
12 representative.

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

30 (d) The governor and the exclusive bargaining representative of a
31 bargaining unit of family child care providers may not enter into a
32 collective bargaining agreement that contains a union security
33 provision unless the agreement contains a process, to be administered
34 by the exclusive bargaining representative of a bargaining unit of
35 family child care providers, for hardship dispensation for license-
36 exempt family child care providers who are also temporary assistance
37 for needy families recipients or WorkFirst participants.

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

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

5 (i) The monthly amount of dues as certified by the secretary of
6 the exclusive bargaining representative be deducted from the payments
7 to the language access provider and transmitted to the treasurer of
8 the exclusive bargaining representative; and

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

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

16 (i) The monthly amount of dues required for membership in the
17 exclusive bargaining representative as certified by the secretary of
18 the exclusive bargaining representative, or, for nonmembers thereof,
19 a fee equivalent to the dues, be deducted from the payments to the
20 language access provider and transmitted to the treasurer of the
21 exclusive bargaining representative; and

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

24 (3) This subsection (3) applies only to individual providers who
25 contract with the department of social and health services. If the
26 governor and the exclusive bargaining representative of a bargaining
27 unit of individual providers enter into a collective bargaining
28 agreement that meets the requirements in subsection (1)(b)(i) or (ii)
29 of this section, and the state as payor, but not as the employer,
30 contracts with a third-party entity to perform its obligations as set
31 forth in those subsections, and that third-party contracts with the
32 exclusive bargaining representative to perform voluntary deductions
33 for individual providers, the exclusive bargaining representative may
34 direct the third-party to make the deductions required by the
35 collective bargaining agreement, at the expense of the exclusive
36 bargaining representative, so long as such deductions by the
37 exclusive bargaining representative do not conflict with any federal
38 or state law.

1 NEW SECTION. **Sec. 30.** Upon the governor's signature of this act
2 into law, the department of social and health services may begin the
3 procurement process to select a consumer directed employer. The
4 department shall initiate the transition of individual providers to
5 the consumer directed employer no later than July 1, 2021, when it
6 determines it is ready to do so based upon a readiness review
7 conducted by the department.

8 NEW SECTION. **Sec. 31.** If any provision of this act or its
9 application to any person or circumstance is held invalid, the
10 remainder of the act or the application of the provision to other
11 persons or circumstances is not affected.

12 NEW SECTION. **Sec. 32.** RCW 74.39A.220 (Findings) and 2011 1st
13 sp.s. c 21 s 6 & 2002 c 3 s 1 are each repealed.

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