
SENATE BILL 6199

State of Washington

65th Legislature

2018 Regular Session

By Senators Cleveland, Conway, Miloscia, Keiser, and Fortunato; by request of Department of Social and Health Services

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (i) Group home services;

10 (ii) Group training home services;

11 (iii) Supported living services; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (d) Reassessing and reauthorizing services;

4 (e) Monitoring of individual provider performance; and

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

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

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

21 (c) Reassess and reauthorize services;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (6) Nothing in this section modifies:

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

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

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

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

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

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

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

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

32 ~~((9) The department may not pay any single individual provider~~
33 ~~more than the hours listed in subsection (5)(b) of this section~~
34 ~~unless the department authorizes additional hours under criteria~~
35 ~~established by rule. The criteria must be limited in scope to reduce~~
36 ~~the state's exposure to payment of overtime, address travel time from~~
37 ~~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. 19.** A new section is added to chapter 74.39A
17 RCW to read as follows:

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

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

24 (2) Nothing in this section modifies:

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

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

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

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

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

37 (b) The consumer's right to:

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

4 (ii) Dismiss an individual provider.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (i) Regular wages;

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

39 (iii) Taxes on wages/benefit pay;

1 (iv) Mileage; and

2 (v) Contributions to a training partnership; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (ii) One representative from the department;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (10) For the purpose of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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