Initiative Measure No. 1021

Filed
MAR 17 2008
SECRETARY OF STATE

1 AN ACT Relating to long-term care services for the elderly and
2 people with disabilities; amending RCW 74.39A.009 and 74.39A.050;
3 reenacting and amending RCW 18.130.040; adding new sections to chapter
4 74.39A RCW; adding a new section to chapter 18.88A RCW; creating new
5 sections; and providing an effective date.

6 BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 74.39A RCW
8 to read as follows:
9 It is the intent of the people through this initiative to protect
10 the safety of and improve the quality of care to the vulnerable elderly
11 and persons with disabilities.
12 The people find and declare that current procedures to train and
13 educate long-term care workers and to protect the elderly or persons
14 with disabilities from caregivers with a criminal background are
15 insufficient. The people find and declare that long-term care workers
16 for the elderly or persons with disabilities should have a federal
17 criminal background check and a formal system of education and
18 experiential qualifications leading to a certification test.

The people find that the quality of long-term care services for the elderly and persons with disabilities is dependent upon the competence of the workers who provide those services. To assure and enhance the quality of long-term care services for the elderly and persons with disabilities, the people recognize the need for federal criminal background checks and increased training requirements. Their establishment should protect the vulnerable elderly and persons with disabilities, bring about a more stabilized workforce, improve the quality of long-term care services, and provide a valuable resource for recruitment into long-term care services for the elderly and persons with disabilities.

Sec. 2. RCW 74.39A.009 and 2007 c 361 s 2 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

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

(2) "Adult residential care" means services provided by a boarding home that is licensed under chapter 18.20 RCW and that has a contract with the department under RCW 74.39A.020 to provide personal care services.

(3) "Assisted living services" means services provided by a boarding home that has a contract with the department under RCW 74.39A.010 to provide personal care services, intermittent nursing services, and medication administration services, and the resident is housed in a private apartment-like unit.

(4) "Boarding home" means a facility licensed under chapter 18.20 RCW.

(5) <u>"Certified home care aide" means a long-term care worker who has obtained certification as a home care aide pursuant to this act.</u>

<u>(6) "Core competencies" means basic training topics including but not limited to: Respecting differences such as cultural diversity, communication skills, worker self-care, problem solving, maintaining dignity, consumer directed care, body mechanics, fall prevention, skin and body care, long-term care worker roles and boundaries, supporting activities of daily living, and food preparation and handling.</u>

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

((~~(6)~~)) (8) "Department" means the department of social and health services.

((~~(7)~~)) (9) "Developmental disability" is defined according to RCW 71A.10.020.

(10) "Direct care worker" means a paid caregiver who provides direct, hands-on personal care and other assistance services to the elderly or persons with disabilities requiring long-term care. Personal care services include assistance with eating, bathing, dressing, and other activities of daily living.

(11) "Enhanced adult residential care" means services provided by a boarding home that is licensed under chapter 18.20 RCW and that has a contract with the department under RCW 74.39A.010 to provide personal care services, intermittent nursing services, and medication administration services.

((~~(8)~~)) (12) "Functionally disabled person" or "person who is functionally disabled" is synonymous with chronic functionally disabled and means a person who because of a recognized chronic physical or mental condition or disease, including chemical dependency, is impaired to the extent of being dependent upon others for direct care, support, supervision, or monitoring to perform activities of daily living. "Activities of daily living", in this context, means self-care abilities related to personal care such as bathing, eating, using the toilet, dressing, and transfer. Instrumental activities of daily living may also be used to assess a person's functional abilities as they are related to the mental capacity to perform activities in the home and the community such as cooking, shopping, house cleaning, doing laundry, working, and managing personal finances.

((~~(9)~~)) (13) "Home and community services" means adult family homes, in-home services, and other services administered or provided by

contract by the department directly or through contract with area agencies on aging or similar services provided by facilities and agencies licensed by the department.

((~~(10)~~)) (14) "Individual provider" is defined according to RCW 74.39A.240.

(15) "Long-term care" is synonymous with chronic care and means care and supports delivered indefinitely, intermittently, or over a sustained time to persons of any age disabled by chronic mental or physical illness, disease, chemical dependency, or a medical condition that is permanent, not reversible or curable, or is long-lasting and severely limits their mental or physical capacity for self-care. The use of this definition is not intended to expand the scope of services, care, or assistance by any individuals, groups, residential care settings, or professions unless otherwise expressed by law.

((~~(11)~~)) (16)(a) "Long-term care workers for the elderly or persons with disabilities" includes all persons who are long-term care workers for the elderly or persons with disabilities, including but not limited to individual providers of home care services, direct care employees of home care agencies, providers of home care services to persons with developmental disabilities under Title 71 RCW, all direct care workers in state-licensed boarding homes, assisted living facilities, and adult family homes, respite care providers, community residential service providers, and any other direct care worker providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.

(b) "Long-term care workers for the elderly or persons with disabilities" do not include persons employed in nursing homes subject to chapter 18.51 RCW, hospitals or other acute care settings, hospice agencies subject to chapter 70.127 RCW, adult day care centers, and adult day health care centers.

((~~(12)~~)) (17) "Nursing home" means a facility licensed under chapter 18.51 RCW.

((~~(13)~~)) (18) "Population specific competencies" means basic training topics unique to the care needs of the population the long-term care worker for the elderly or persons with disabilities is serving including but not limited to: Mental health, dementia, developmental disabilities, young adults with physical disabilities, and older adults.

(19) "Secretary" means the secretary of social and health services.

((~~(14)~~)) (20) "Training partnership" means a joint partnership or trust ((~~established and maintained jointly by~~)) that includes the office of the governor and the exclusive bargaining representative of individual providers under RCW 74.39A.270 with the capacity to provide training, peer mentoring, and ((~~examinations required under this chapter, and educational, career~~)) workforce development, or other services to ((~~individual providers~~)) those long-term care workers for the elderly or persons with disabilities represented by an exclusive bargaining representative under RCW 74.39A.270.

((~~(15)~~)) (21) "Tribally licensed boarding home" means a boarding home licensed by a federally recognized Indian tribe which home provides services similar to boarding homes licensed under chapter 18.20 RCW.

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

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

All long-term care workers for the elderly or persons with disabilities hired after January 1, 2010, shall be screened through state and federal background checks in a uniform and timely manner to ensure that they do not have a criminal history that would disqualify them from working with vulnerable persons. These background checks shall include checking against the federal bureau of investigation fingerprint identification records system and against the national sex offenders registry or their successor programs. The department shall not pass on the cost of these criminal background checks to the workers or their employers. The department shall adopt rules to implement the provisions of this section by June 1, 2009.

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

(1) Effective January 1, 2010, the department shall require that

all persons employed as long-term care workers for the elderly or persons with disabilities meet the minimum training requirements in this section.

(2)(a) All persons employed as long-term care workers for the elderly or persons with disabilities shall be required to obtain one hundred twenty hours of entry-level training, as follows:

(i) Before long-term care workers for the elderly or persons with disabilities are eligible to provide care, they must complete two hours of orientation training regarding their role as caregiver and their terms of employment;

(ii) Before long-term care workers for the elderly or persons with disabilities are eligible to provide care, they must complete three hours of safety training including basic safety precautions, emergency procedures, and infection;

(iii) All long-term care workers for the elderly and persons with disabilities must complete one hundred fifteen hours of long-term care basic training including training related to core competencies and to population specific competencies. This one hundred fifteen hour training requirement must be completed within one hundred twenty calendar days of employment. Hours spent in peer mentoring under RCW 74.39A.330 may be applied towards training required under this subsection. Training required under this subsection will be applied towards training required under RCW 18.20.270(5) or 70.128.230(5). Training required under this subsection will be applied towards training requirements for long-term care workers employed by supportive living providers under rules adopted by the department.

(b) The department may waive some or all of the training described in (a)(iii) of this subsection for long-term care workers for the elderly or persons with disabilities who:

(i) Are registered nurses, licensed practical nurses, or certified nursing assistants; are medicare-certified home health aides; or hold a similar health certification, license, or degree; or

(ii) Pass a challenge test developed by the department to assess competency in basic training topics under this section.

(c) The requirements of this section do not apply to persons already employed prior to January 1, 2010, as long-term care workers for the elderly or persons with disabilities, if they have completed

all applicable training requirements in effect on January 1, 2008, and any other training requirements in effect prior to January 1, 2010.

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

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

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

(4) The department shall adopt rules by June 1, 2009, to implement the provisions of this section.

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

(1) Pursuant to the requirements and exclusions in this act, effective January 1, 2010, all long-term care workers for the elderly or persons with disabilities must obtain certification by the department as a home care aide within one hundred twenty days of employment.

(2) The department has the authority to:

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

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

(c) Issue a certification as a home care aide to any applicant who has passed a home care aide examination;

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

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

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

(3) The department shall develop a home care aide certification examination to evaluate whether applicants possess the minimum skills and knowledge necessary to practice competently. Only those who have completed the training requirements or have had those requirements waived pursuant to section 4(2)(b) of this act shall be eligible to sit for this examination. The examination shall include both a skills

demonstration and a written or oral knowledge test. Examinations shall be limited to the purpose of determining whether the applicant possesses the minimum skills and knowledge necessary to practice competently. The examination papers, all grading of the papers, and records related to the grading of skills demonstration shall be preserved for a period of not less than one year. All examinations shall be conducted under fair and wholly impartial methods. The certification exam shall be administered and evaluated by the department or by contractor to the department that is neither an employer of long-term care workers for the elderly or persons with disabilities or private contractors providing training services under this act.

(4) With input from consumer and worker representatives, the department shall adopt rules by June 1, 2009, that establish the procedures and examinations necessary to carry into effect the provisions of this chapter.

NEW SECTION. **Sec. 6.** A new section is added to chapter 74.39A RCW to read as follows:

(1) The department shall deny payment to any individual provider of home care services who does not complete the training requirements or obtain certification as a home care aide within the time limit specified in this chapter.

(2) By June 1, 2009, the department shall adopt rules to enforce the training and certification requirements of this chapter for all long-term care workers for the elderly or persons with disabilities. These rules shall address the following enforcement measures:

(a) Licensure actions pursuant to chapter 34.05 RCW;

(b) Revocation or suspension of contracts to provide services to the department; and

(c) Other enforcement measures deemed appropriate by the department.

(3) Chapter 34.05 RCW applies to department actions under subsection (2) of this section, except that upon a failure to meet the training or certification requirements of this act the department shall, in its discretion, order either a license or certificate suspension, or an imposition of conditions for the continuation of a

license or certificate. The order shall be effective immediately upon notice and shall continue in effect pending any hearing. All hearings shall be promptly instituted and determined.

Sec. 7. RCW 74.39A.050 and 2004 c 140 s 6 are each amended to read as follows:

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

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

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

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

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

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

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

(7) ((~~To the extent funding is available, all long-term care staff directly responsible for the care, supervision, or treatment of vulnerable persons should be screened through background checks in a uniform and timely manner to ensure that they do not have a criminal history that would disqualify them from working with vulnerable persons. Whenever a state conviction record check is required by state law, persons may be employed or engaged as volunteers or independent contractors on a conditional basis according to law and rules adopted by the department.~~)) All long-term care workers shall be screened through background checks in a uniform and timely manner to ensure that they do not have a criminal history that would disqualify them from working with vulnerable persons.

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

(9) The department shall establish, by rule, a state registry which contains identifying information about ((~~personal~~)) certified home care aides identified under this chapter who have substantiated findings of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult as defined in RCW 74.34.020. The rule must include disclosure, disposition of findings, notification, findings of fact, appeal rights, and fair hearing requirements. The department shall disclose, upon request, substantiated findings of abuse, neglect, financial exploitation, or abandonment to any person so requesting this information.

(10) ((~~The department shall by rule develop training requirements for individual providers and home care agency providers. Effective March 1, 2002, individual providers and home care agency providers must satisfactorily complete department-approved orientation, basic training, and continuing education within the time period specified by the department in rule. The department shall adopt rules by March 1, 2002, for the implementation of this section based on the recommendations of the community long-term care training and education~~

~~steering committee established in RCW 74.39A.190. The department shall deny payment to an individual provider or a home care provider who does not complete the training requirements within the time limit specified by the department by rule.~~

~~(11) In an effort to improve access to training and education and reduce costs, especially for rural communities, the coordinated system of long term care training and education must include the use of innovative types of learning strategies such as internet resources, videotapes, and distance learning using satellite technology coordinated through community colleges or other entities, as defined by the department.~~

~~(12) The department shall create an approval system by March 1, 2002, for those seeking to conduct department approved training. In the rule-making process, the department shall adopt rules based on the recommendations of the community long term care training and education steering committee established in RCW 74.39A.190.~~

~~(13)~~)) The department shall establish, by rule, ((~~training,~~)) background checks((~~,~~)) and other quality assurance requirements for ((~~personal aides~~)) long-term care workers who provide in-home services funded by medicaid personal care as described in RCW 74.09.520, community options program entry system waiver services as described in RCW 74.39A.030, or chore services as described in RCW 74.39A.110 that are equivalent to requirements for individual providers.

((~~(14)~~)) (11) Under existing funds the department shall establish internally a quality improvement standards committee to monitor the development of standards and to suggest modifications.

((~~(15) Within existing funds, the department shall design, develop, and implement a long term care training program that is flexible, relevant, and qualifies towards the requirements for a nursing assistant certificate as established under chapter 18.88A RCW. This subsection does not require completion of the nursing assistant certificate training program by providers or their staff. The long-term care teaching curriculum must consist of a fundamental module, or modules, and a range of other available relevant training modules that provide the caregiver with appropriate options that assist in meeting the resident's care needs. Some of the training modules may include, but are not limited to, specific training on the special care needs of persons with developmental disabilities, dementia, mental illness, and~~

~~the care needs of the elderly. No less than one training module must be dedicated to workplace violence prevention. The nursing care quality assurance commission shall work together with the department to develop the curriculum modules. The nursing care quality assurance commission shall direct the nursing assistant training programs to accept some or all of the skills and competencies from the curriculum modules towards meeting the requirements for a nursing assistant certificate as defined in chapter 18.88A RCW. A process may be developed to test persons completing modules from a caregiver's class to verify that they have the transferable skills and competencies for entry into a nursing assistant training program. The department may review whether facilities can develop their own related long-term care training programs. The department may develop a review process for determining what previous experience and training may be used to waive some or all of the mandatory training. The department of social and health services and the nursing care quality assurance commission shall work together to develop an implementation plan by December 12, 1998.~~))

NEW SECTION. **Sec. 8.** A new section is added to chapter 18.88A RCW to read as follows:

By June 1, 2009, the department shall develop, in consultation with the nursing care quality assurance commission and consumer and worker representatives, rules permitting reciprocity to the maximum extent possible under federal law between home care aide certification and nursing assistant certification.

Sec. 9. RCW 18.130.040 and 2007 c 269 s 17, 2007 c 253 s 13, and 2007 c 70 s 11 are each reenacted and amended to read as follows:

(1) This chapter applies only to the secretary and the boards and commissions having jurisdiction in relation to the professions licensed under the chapters specified in this section. This chapter does not apply to any business or profession not licensed under the chapters specified in this section.

(2)(a) The secretary has authority under this chapter in relation to the following professions:

(i) Dispensing opticians licensed and designated apprentices under chapter 18.34 RCW;

(ii) Naturopaths licensed under chapter 18.36A RCW;

(iii) Midwives licensed under chapter 18.50 RCW;

(iv) Ocularists licensed under chapter 18.55 RCW;

(v) Massage operators and businesses licensed under chapter 18.108 RCW;

(vi) Dental hygienists licensed under chapter 18.29 RCW;

(vii) Acupuncturists licensed under chapter 18.06 RCW;

(viii) Radiologic technologists certified and X-ray technicians registered under chapter 18.84 RCW;

(ix) Respiratory care practitioners licensed under chapter 18.89 RCW;

(x) Persons registered under chapter 18.19 RCW;

(xi) Persons licensed as mental health counselors, marriage and family therapists, and social workers under chapter 18.225 RCW;

(xii) Persons registered as nursing pool operators under chapter 18.52C RCW;

(xiii) Nursing assistants registered or certified under chapter 18.88A RCW;

(xiv) Health care assistants certified under chapter 18.135 RCW;

(xv) Dietitians and nutritionists certified under chapter 18.138 RCW;

(xvi) Chemical dependency professionals certified under chapter 18.205 RCW;

(xvii) Sex offender treatment providers and certified affiliate sex offender treatment providers certified under chapter 18.155 RCW;

(xviii) Persons licensed and certified under chapter 18.73 RCW or RCW 18.71.205;

(xix) Denturists licensed under chapter 18.30 RCW;

(xx) Orthotists and prosthetists licensed under chapter 18.200 RCW;

(xxi) Surgical technologists registered under chapter 18.215 RCW;

(xxii) Recreational therapists;

(xxiii) Home care aides certified under section 8 of this act;

(xxiv) Animal massage practitioners certified under chapter 18.240 RCW; and

((~~(xxiv)~~)) (xxv) Athletic trainers licensed under chapter 18.250 RCW.

(b) The boards and commissions having authority under this chapter are as follows:

(i) The podiatric medical board as established in chapter 18.22 RCW;

(ii) The chiropractic quality assurance commission as established in chapter 18.25 RCW;

(iii) The dental quality assurance commission as established in chapter 18.32 RCW governing licenses issued under chapter 18.32 RCW and licenses and registrations issued under chapter 18.260 RCW;

(iv) The board of hearing and speech as established in chapter 18.35 RCW;

(v) The board of examiners for nursing home administrators as established in chapter 18.52 RCW;

(vi) The optometry board as established in chapter 18.54 RCW governing licenses issued under chapter 18.53 RCW;

(vii) The board of osteopathic medicine and surgery as established in chapter 18.57 RCW governing licenses issued under chapters 18.57 and 18.57A RCW;

(viii) The board of pharmacy as established in chapter 18.64 RCW governing licenses issued under chapters 18.64 and 18.64A RCW;

(ix) The medical quality assurance commission as established in chapter 18.71 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW;

(x) The board of physical therapy as established in chapter 18.74 RCW;

(xi) The board of occupational therapy practice as established in chapter 18.59 RCW;

(xii) The nursing care quality assurance commission as established in chapter 18.79 RCW governing licenses and registrations issued under that chapter;

(xiii) The examining board of psychology and its disciplinary committee as established in chapter 18.83 RCW; and

(xiv) The veterinary board of governors as established in chapter 18.92 RCW.

(3) In addition to the authority to discipline license holders, the disciplining authority has the authority to grant or deny licenses based on the conditions and criteria established in this chapter and the chapters specified in subsection (2) of this section. This chapter also governs any investigation, hearing, or proceeding relating to

denial of licensure or issuance of a license conditioned on the applicant's compliance with an order entered pursuant to RCW 18.130.160 by the disciplining authority.

(4) All disciplining authorities shall adopt procedures to ensure substantially consistent application of this chapter, the Uniform Disciplinary Act, among the disciplining authorities listed in subsection (2) of this section.

NEW SECTION. **Sec. 10.** The provisions of this act are to be liberally construed to effectuate the intent, policies, and purposes of this act.

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

NEW SECTION. **Sec. 12.** This act may be known and cited as the better background checks and improved training for long-term care workers for the elderly and persons with disabilities initiative of 2008.

NEW SECTION. **Sec. 13.** Section 9 of this act takes effect July 1, 2009.

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