

**INITIATIVE 973**

I, Sam Reed, Secretary of State of the State of Washington and custodian of its seal hereby certify that, according to the records on file in my office, the attached copy of Initiative Measure No. 973 to the People is a true and correct copy as it was received by this office.

1 AN ACT Relating to long-term care services for the elderly and  
2 people with disabilities; amending RCW 74.39A.009, 74.39A.050,  
3 74.39A.270, 74.39A.300, 74.39A.310, 41.56.465, and 18.130.040; adding  
4 new sections to chapter 74.39A RCW; adding a new section to chapter  
5 18.88A RCW; creating new sections; and repealing RCW 74.39A.190.

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 vulnerable elderly and  
11 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.

1           The people find that the quality of long-term care services for the  
2 elderly and persons with disabilities is dependent upon the competence  
3 of the workers who provide those services. To assure and enhance the  
4 quality of long-term care services for the elderly and persons with  
5 disabilities, the people recognize the need for federal criminal  
6 background checks, increased training requirements, mentoring and on-  
7 the-job training opportunities, and a formal process to certify  
8 long-term care workers and allow them to obtain certificates of  
9 apprenticeship. Their establishment should protect vulnerable elderly  
10 and persons with disabilities, bring about a more stabilized workforce,  
11 improve the quality of long-term care services, and provide a valuable  
12 resource for recruitment into long-term care services for the elderly  
13 and persons with disabilities.

14           **Sec. 2.** RCW 74.39A.009 and 2004 c 142 s 14 are each amended to  
15 read as follows:

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

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

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

24           (3) "Assisted living services" means services provided by a  
25 boarding home that has a contract with the department under RCW  
26 74.39A.010 to provide personal care services, intermittent nursing  
27 services, and medication administration services, and the resident is  
28 housed in a private apartment-like unit.

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

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

1 (6) "Department" means the department of social and health  
2 services.

3 (7) "Direct care worker" means paid caregivers who provide direct,  
4 hands-on personal care and other assistance services to the elderly or  
5 persons with disabilities requiring long-term care. Personal care  
6 services include assistance with eating, bathing, dressing, and other  
7 activities of daily living.

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

13 ((+8)) (9) "Functionally disabled person" or "person who is  
14 functionally disabled" is synonymous with chronic functionally disabled  
15 and means a person who because of a recognized chronic physical or  
16 mental condition or disease, including chemical dependency, is impaired  
17 to the extent of being dependent upon others for direct care, support,  
18 supervision, or monitoring to perform activities of daily living.  
19 "Activities of daily living", in this context, means self-care  
20 abilities related to personal care such as bathing, eating, using the  
21 toilet, dressing, and transfer. Instrumental activities of daily  
22 living may also be used to assess a person's functional abilities as  
23 they are related to the mental capacity to perform activities in the  
24 home and the community such as cooking, shopping, house cleaning, doing  
25 laundry, working, and managing personal finances.

26 ((+9)) (10) "Home and community services" means adult family  
27 homes, in-home services, and other services administered or provided by  
28 contract by the department directly or through contract with area  
29 agencies on aging or similar services provided by facilities and  
30 agencies licensed by the department.

31 ((+10)) (11) "Individual provider" means a person under contract  
32 with the department to provide services in the home under chapter 74.09  
33 RCW or this chapter.

34 (12) "Long-term care" is synonymous with chronic care and means  
35 care and supports delivered indefinitely, intermittently, or over a  
36 sustained time to persons of any age disabled by chronic mental or  
37 physical illness, disease, chemical dependency, or a medical condition  
38 that is permanent, not reversible or curable, or is long-lasting and  
39 severely limits their mental or physical capacity for self-care. The

1 use of this definition is not intended to expand the scope of services,  
2 care, or assistance by any individuals, groups, residential care  
3 settings, or professions unless otherwise expressed by law.

4 ~~((+11+))~~ (13) "Long-term care workers for the elderly or persons  
5 with disabilities" includes all persons who are long-term care workers  
6 for the elderly or persons with disabilities, including but not limited  
7 to individual providers of home care services, direct care employees of  
8 home care agencies, adult day care providers, providers of home care  
9 services to persons with developmental disabilities under Title 71 RCW,  
10 all direct care workers in state licensed boarding homes, assisted  
11 living facilities, and adult family homes, respite care providers,  
12 community residential service providers, and any other direct care  
13 worker providing home or community-based services to the elderly or  
14 persons with functional disabilities or developmental disabilities.  
15 Persons employed in nursing homes subject to chapter 18.51 RCW,  
16 hospitals or other acute care settings, hospice agencies subject to  
17 chapter 70.127 RCW, and adult day health care centers are not within  
18 the definition of long-term care workers for the elderly or persons  
19 with disabilities.

20 (14) "Nursing home" means a facility licensed under chapter 18.51  
21 RCW.

22 ~~((+12+))~~ (15) "Secretary" means the secretary of social and health  
23 services.

24 ~~((+13+))~~ (16) "Training partnership" means a joint partnership or  
25 trust established pursuant to section 302(c)(5) of the Taft-Hartley Act  
26 to provide training, mentoring, and examinations required under this  
27 chapter, and educational, workforce development, or other services to  
28 those long-term care workers for the elderly or persons with  
29 disabilities represented by an exclusive bargaining representative  
30 under RCW 74.39A.270 and 74.39A.300.

31 (17) "Tribally licensed boarding home" means a boarding home  
32 licensed by a federally recognized Indian tribe which home provides  
33 services similar to boarding homes licensed under chapter 18.20 RCW.

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

36 CRIMINAL BACKGROUND CHECKS. All long-term care workers for the  
37 elderly or persons with disabilities hired after January 1, 2009, shall  
38 be screened through state and federal background checks in a uniform

1 and timely manner to ensure that they do not have a criminal history  
2 that would disqualify them from working with vulnerable persons. These  
3 background checks shall include checking against the federal bureau of  
4 investigation fingerprint identification records system and against the  
5 national sex offenders registry or their successor programs. The  
6 department shall not pass on the cost of these criminal background  
7 checks to the workers or their employers. The department shall adopt  
8 rules to implement the provisions of this section.

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

11 TRAINING REQUIREMENTS. (1) Effective January 1, 2009, the  
12 department shall require that all persons employed as long-term care  
13 workers for the elderly or persons with disabilities meet the minimum  
14 training requirements in this section.

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

18 (i) Two hours of orientation training in the role of the caregiver  
19 and the terms of employment to be completed within fourteen calendar  
20 days of employment;

21 (ii) At least three hours of safety training including basic safety  
22 precautions, emergency procedures, and infection control to be  
23 completed within fourteen calendar days of employment;

24 (iii) Eighty hours of long-term care core competencies training  
25 including but not limited to the following training topics: The role  
26 of the caregiver; consumer rights and confidentiality; communication  
27 and problem-solving skills; personal care skills; health-related tasks  
28 training; in-home and nutritional support; body systems; disease and  
29 disability training; self-care training; and other training topics  
30 specific to consumer care needs. This training requirement must be  
31 completed within one hundred eighty calendar days of employment.  
32 Training required under RCW 18.20.270(5) or 70.128.230(5) counts  
33 towards the eighty hours of training required under this subsection.

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

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

4 (ii) Have at least one year of documented paid or unpaid caregiving  
5 experience and pass a challenge test developed by the department.

6 (c) The requirements of this subsection do not apply to persons  
7 already employed prior to January 1, 2009, as long-term care workers  
8 for the elderly or persons with disabilities.

9 (d) Long-term care workers for the elderly or persons with  
10 disabilities employed prior to January 1, 2009, must complete all  
11 training requirements in effect prior to that date.

12 (3) Only training curriculum approved by the department may be used  
13 to fulfill the training requirements specified in this section. The  
14 department shall approve training curriculum that: (a) Has been  
15 developed with input from consumer and worker representatives; (b)  
16 allows for comprehensive instruction by qualified instructors on the  
17 competencies and training topics in this section; and (c) encourages  
18 direct participation by consumers and workers.

19 (4) The department shall adopt rules to implement the provisions of  
20 this section.

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

23 CONTINUING EDUCATION. Effective January 1, 2009, the department  
24 shall require that all long-term care workers for the elderly or  
25 persons with disabilities obtain twelve hours of continuing education  
26 training on topics relevant to the care needs of clients each year  
27 beginning on the date of certification completion or by January 1,  
28 2010, for existing workers. The department shall adopt rules to  
29 implement the provisions of this section.

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

32 PEER MENTORING. Effective January 1, 2010, the department shall  
33 require that all long-term care workers for the elderly or persons with  
34 disabilities shall be assigned a peer mentor who shall provide  
35 mentorship or on-the-job training either in person or remotely for at  
36 least one hour a week for the first ninety days of work. The training  
37 or mentoring shall be provided by a long-term care worker who has

1 completed a twelve-hour mentor training course and is mentoring no more  
2 than ten other workers at any given time.

3 NEW SECTION. Sec. 7. A new section is added to chapter 74.39A RCW  
4 to read as follows:

5 ADVANCED TRAINING. Effective January 1, 2011, the department shall  
6 require that all long-term care workers for the elderly or persons with  
7 disabilities shall be offered or made available sixty-five hours of  
8 advanced training including but not limited to topics such as: Client  
9 rights; personal care; mental illness; dementia; developmental  
10 disabilities; depression; medication assistance; advanced communication  
11 skills; positive client behavior support; developing or improving  
12 client centered activities; dealing with wandering or aggressive client  
13 behaviors; medical conditions; nurse delegation core training; peer  
14 mentor training; and advocacy for quality care.

15 NEW SECTION. Sec. 8. A new section is added to chapter 74.39A RCW  
16 to read as follows:

17 CERTIFICATION. (1) After January 1, 2009, all long-term care  
18 workers for the elderly or persons with disabilities must obtain  
19 certification by the department as a home care aide within one hundred  
20 eighty days of employment. This requirement does not apply to persons  
21 already employed as long-term care workers for the elderly or persons  
22 with disabilities prior to January 1, 2009.

23 (2) The department has the authority to:

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

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

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

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

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

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

36 (3) The department shall develop a home care aide certification  
37 examination to evaluate whether applicants possess the minimum skills

1 and knowledge necessary to practice competently. Only those who have  
2 completed the training requirements or have had those requirements  
3 waived pursuant to section 4(2)(b) of this act shall be eligible to sit  
4 for this examination. The examination shall include both a skills  
5 demonstration and a written or oral knowledge test. Examinations shall  
6 be limited to the purpose of determining whether the applicant  
7 possesses the minimum skill and knowledge necessary to practice  
8 competently. The examination papers, all grading of the papers, and  
9 the grading of skills demonstration shall be preserved for a period of  
10 not less than one year. All examinations shall be conducted under fair  
11 and wholly impartial methods. The certification exam shall be  
12 administered and evaluated by the department or by contractor to the  
13 department that is neither an employer of long-term care workers for  
14 the elderly or persons with disabilities or private contractors  
15 providing training services under this act.

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

20 (5) The department shall adopt rules to implement the provisions of  
21 this section.

22 NEW SECTION. **Sec. 9.** A new section is added to chapter 74.39A RCW  
23 to read as follows:

24 APPRENTICESHIP. Certified home care aides who complete the  
25 training requirements in section 4 of this act, the peer mentoring in  
26 section 6 of this act, and the advanced and specialty training of  
27 section 7 of this act, and who complete at least two thousand hours of  
28 work are eligible to receive a certificate of apprenticeship from the  
29 Washington state apprenticeship and training council in accordance with  
30 the standards of apprenticeship established by local apprenticeship  
31 committees.

32 NEW SECTION. **Sec. 10.** A new section is added to chapter 74.39A  
33 RCW to read as follows:

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



1 (2) By January 1, 2009, the department shall adopt rules to enforce  
2 the training and certification requirements of this chapter for all  
3 long-term care workers for the elderly or persons with disabilities.  
4 The enforcement may be accomplished by licensure actions or by  
5 contract, and may include other enforcement measures deemed appropriate  
6 by the department.

7 (3) Chapter 34.05 RCW applies to department actions under  
8 subsection (2) of this section, except that orders of the department  
9 imposing license or certificate suspension or conditions for  
10 continuation of a license or certificate are effective immediately upon  
11 notice and shall continue in effect pending any hearing.

12 NEW SECTION. **Sec. 11.** A new section is added to chapter 74.39A  
13 RCW to read as follows:

14 TRAINING PARTNERSHIPS. For all long-term care workers for the  
15 elderly or persons with disabilities represented by an exclusive  
16 bargaining representative under RCW 74.39A.270 and 74.39A.300, all  
17 training, peer mentoring, and challenge tests required or allowed in  
18 this chapter shall be provided by a training partnership. The training  
19 partnership shall provide reports as required by the department  
20 verifying that all long-term care workers for the elderly or persons  
21 with disabilities have complied with all training requirements.  
22 Employer contributions to the training partnership are a mandatory  
23 subject of the collective bargaining agreement and shall be fixed at a  
24 level sufficient to meet the cost of the training, peer mentoring, and  
25 certification requirements and to contribute towards the cost of other  
26 services such as adult education, caregiver support, and career  
27 development services necessary to recruit and retain a high quality  
28 direct care workforce. The certified exclusive bargaining  
29 representative identified under RCW 74.39A.270 and 74.39A.300 shall  
30 designate the training partnership.

31 **Sec. 12.** RCW 74.39A.050 and 2004 c 140 s 6 are each amended to  
32 read as follows:

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

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

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

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

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

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

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

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

38 (8) No provider or staff, or prospective provider or staff, with a  
39 stipulated finding of fact, conclusion of law, an agreed order, or

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

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

17 ~~((The department shall by rule develop training requirements~~  
18 ~~for individual providers and home care agency providers. Effective~~  
19 ~~March 1, 2002, individual providers and home care agency providers must~~  
20 ~~satisfactorily complete department-approved orientation, basic~~  
21 ~~training, and continuing education within the time period specified by~~  
22 ~~the department in rule. The department shall adopt rules by March 1,~~  
23 ~~2002, for the implementation of this section based on the~~  
24 ~~recommendations of the community long-term care training and education~~  
25 ~~steering committee established in RCW 74.39A.190. The department shall~~  
26 ~~deny payment to an individual provider or a home care provider who does~~  
27 ~~not complete the training requirements within the time limit specified~~  
28 ~~by the department by rule.~~

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

36 ~~((12) The department shall create an approval system by March 1,~~  
37 ~~2002, for those seeking to conduct department-approved training. In~~  
38 ~~the rule-making process, the department shall adopt rules based on the~~

1 ~~recommendations of the community long-term care training and education~~  
2 ~~steering committee established in RCW 74.39A.190.~~

3 ~~—((13))~~ (11) The department shall establish, by rule, ~~((training,))~~  
4 background checks~~((7))~~ and other quality assurance requirements for  
5 personal aides who provide in-home services funded by medicaid personal  
6 care as described in RCW 74.09.520, community options program entry  
7 system waiver services as described in RCW 74.39A.030, or chore  
8 services as described in RCW 74.39A.110 that are equivalent to  
9 requirements for individual providers.

10 ~~((14))~~ (12) Under existing funds the department shall establish  
11 internally a quality improvement standards committee to monitor the  
12 development of standards and to suggest modifications.

13 ~~((15) Within existing funds, the department shall design, develop,~~  
14 ~~and implement a long-term care training program that is flexible,~~  
15 ~~relevant, and qualifies towards the requirements for a nursing~~  
16 ~~assistant certificate as established under chapter 18.88A RCW. This~~  
17 ~~subsection does not require completion of the nursing assistant~~  
18 ~~certificate training program by providers or their staff. The long-~~  
19 ~~term care teaching curriculum must consist of a fundamental module, or~~  
20 ~~modules, and a range of other available relevant training modules that~~  
21 ~~provide the caregiver with appropriate options that assist in meeting~~  
22 ~~the resident's care needs. Some of the training modules may include,~~  
23 ~~but are not limited to, specific training on the special care needs of~~  
24 ~~persons with developmental disabilities, dementia, mental illness, and~~  
25 ~~the care needs of the elderly. No less than one training module must~~  
26 ~~be dedicated to workplace violence prevention. The nursing care~~  
27 ~~quality assurance commission shall work together with the department to~~  
28 ~~develop the curriculum modules. The nursing care quality assurance~~  
29 ~~commission shall direct the nursing assistant training programs to~~  
30 ~~accept some or all of the skills and competencies from the curriculum~~  
31 ~~modules towards meeting the requirements for a nursing assistant~~  
32 ~~certificate as defined in chapter 18.88A RCW. A process may be~~  
33 ~~developed to test persons completing modules from a caregiver's class~~  
34 ~~to verify that they have the transferable skills and competencies for~~  
35 ~~entry into a nursing assistant training program. The department may~~  
36 ~~review whether facilities can develop their own related long-term care~~  
37 ~~training programs. The department may develop a review process for~~  
38 ~~determining what previous experience and training may be used to waive~~  
39 ~~some or all of the mandatory training. The department of social and~~

1 ~~health services and the nursing care quality assurance commission shall~~  
2 ~~work together to develop an implementation plan by December 12, 1998.)~~)

3 **Sec. 13.** RCW 74.39A.270 and 2006 c 106 s 1 are each amended to  
4 read as follows:

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

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

32 (a) The only unit appropriate for the purpose of collective  
33 bargaining under RCW 41.56.060 is a statewide unit of all individual  
34 providers;

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

1 (c) The mediation and interest arbitration provisions of RCW  
2 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

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

7 (ii) With respect to factors to be taken into consideration by an  
8 interest arbitration panel, the panel shall consider the financial  
9 ability of the state to pay for the compensation and fringe benefit  
10 provisions of a collective bargaining agreement; and

11 (iii) The decision of the arbitration panel is not binding on the  
12 legislature and, if the legislature does not approve the request for  
13 funds necessary to implement the compensation and fringe benefit  
14 provisions of the arbitrated collective bargaining agreement, is not  
15 binding on the authority or the state;

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

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

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

27 (4) Consumers and prospective consumers retain the right to select,  
28 hire, supervise the work of, and terminate any individual provider  
29 providing services to them. Consumers may elect to receive long-term  
30 in-home care services from individual providers who are not referred to  
31 them by the authority.

32 (5) In implementing and administering this chapter, neither the  
33 authority nor any of its contractors may reduce or increase the hours  
34 of service for any consumer below or above the amount determined to be  
35 necessary under any assessment prepared by the department or an area  
36 agency on aging.

37 (6) Except as expressly limited in this section and RCW 74.39A.300,  
38 the wages, hours, and working conditions of individual providers are  
39 determined solely through collective bargaining as provided in this

1 chapter. No agency or department of the state may establish policies  
2 or rules governing the wages or hours of individual providers.  
3 However, this subsection does not modify:

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

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

18 (c) The consumer's right to assign hours to one or more individual  
19 providers selected by the consumer within the maximum hours determined  
20 by his or her plan of care;

21 (d) The consumer's right to select, hire, terminate, supervise the  
22 work of, and determine the conditions of employment for each individual  
23 provider providing services to the consumer under this chapter;

24 (e) The department's obligation to comply with the federal medicaid  
25 statute and regulations and the terms of any community-based waiver  
26 granted by the federal department of health and human services and to  
27 ensure federal financial participation in the provision of the  
28 services; and

29 (f) The legislature's right to make programmatic modifications to  
30 the delivery of state services under this title, including standards of  
31 eligibility of consumers and individual providers participating in the  
32 programs under this title, and the nature of services provided. The  
33 governor shall not enter into, extend, or renew any agreement under  
34 this chapter that does not expressly reserve the legislative rights  
35 described in this subsection (6)(f).

36 (7) At the request of the exclusive bargaining representative, the  
37 governor or the governor's designee appointed under chapter 41.80 RCW  
38 shall engage in collective bargaining, as defined in RCW 41.56.030(4),  
39 with the exclusive bargaining representative over employer

1 contributions for the cost of meeting the training, advanced training,  
2 continuing education, peer mentorship, challenge test, and  
3 certification provisions of this act and providing such other programs  
4 and services necessary to establish and promote the education,  
5 training, career development, career ladders, caregiver support,  
6 certification, and licensing of a stable, professionally trained long-  
7 term care workforce.

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

21 (b) The members of the board are immune from any liability  
22 resulting from implementation of this chapter.

23 ~~((+8))~~ (9) Nothing in this section affects the state's  
24 responsibility with respect to unemployment insurance for individual  
25 providers. However, individual providers are not to be considered, as  
26 a result of the state assuming this responsibility, employees of the  
27 state.

28 **Sec. 14.** RCW 74.39A.300 and 2004 c 3 s 2 are each amended to read  
29 as follows:

30 (1) Upon meeting the requirements of subsection (2) of this  
31 section, the governor must submit, as a part of the proposed biennial  
32 or supplemental operating budget submitted to the legislature under RCW  
33 43.88.030, a request for funds necessary to administer chapter 3, Laws  
34 of 2002 and to implement the compensation and fringe benefits  
35 provisions of a collective bargaining agreement entered into under RCW  
36 74.39A.270 or for legislation necessary to implement such agreement.

37 (2) Except as provided in subsection (3) of this section, a request  
38 for funds necessary to implement the compensation and fringe benefits



1 provisions of a collective bargaining agreement entered into under RCW  
2 74.39A.270 shall not be submitted by the governor to the legislature  
3 unless such request:

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

7 (b) Has been certified by the director of financial management as  
8 being feasible financially for the state or reflects the binding  
9 decision of an arbitration panel reached under RCW 74.39A.270(2)(c).

10 (3) The governor must submit to the first available legislative  
11 session a request for funds necessary to implement the training  
12 contributions provisions of a collective bargaining agreement entered  
13 into under RCW 74.39A.270 as a part of the proposed biennial or  
14 supplemental operating budget submitted to the legislature under RCW  
15 43.88.030.

16 (4) The legislature must approve or reject the submission of the  
17 request for funds as a whole. If the legislature rejects or fails to  
18 act on the submission, any such agreement will be reopened solely for  
19 the purpose of renegotiating the funds necessary to implement the  
20 agreement.

21 ((+4)) (5) When any increase in individual provider wages or  
22 benefits is negotiated or agreed to, no increase in wages or benefits  
23 negotiated or agreed to under this chapter will take effect unless and  
24 until, before its implementation, the department has determined that  
25 the increase is consistent with federal law and federal financial  
26 participation in the provision of services under Title XIX of the  
27 federal social security act.

28 ((+5)) (6) The governor shall periodically consult with the joint  
29 committee on employment relations established by RCW 41.80.010  
30 regarding appropriations necessary to implement the compensation and  
31 fringe benefits provisions of any collective bargaining agreement and,  
32 upon completion of negotiations, advise the committee on the elements  
33 of the agreement and on any legislation necessary to implement such  
34 agreement.

35 ((+6)) (7) After the expiration date of any collective bargaining  
36 agreement entered into under RCW 74.39A.270, all of the terms and  
37 conditions specified in any such agreement remain in effect until the  
38 effective date of a subsequent agreement, not to exceed one year from

1 the expiration date stated in the agreement, except as provided in RCW  
2 74.39A.270(6)(f).

3 ~~((7))~~ (8) If, after the compensation and benefit provisions of an  
4 agreement are approved by the legislature, a significant revenue  
5 shortfall occurs resulting in reduced appropriations, as declared by  
6 proclamation of the governor or by resolution of the legislature, both  
7 parties shall immediately enter into collective bargaining for a  
8 mutually agreed upon modification of the agreement.

9 **Sec. 15.** RCW 74.39A.310 and 2006 c 9 s 1 are each amended to read  
10 as follows:

11 (1) The department shall create a formula that converts the cost of  
12 the increase in wages and benefits negotiated and funded in the  
13 contract for individual providers of home care services pursuant to RCW  
14 74.39A.270 and 74.39A.300, into a per-hour amount, excluding those  
15 benefits defined in subsection (2) of this section. That per-hour  
16 amount shall be added to the statewide home care agency vendor rate and  
17 shall be used exclusively for improving the wages and benefits of home  
18 care agency workers who provide direct care. The formula shall account  
19 for:

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

- 22 (i) Regular wages;
- 23 (ii) Benefit pay, such as vacation, sick, and holiday pay;
- 24 (iii) Taxes on wages/benefit pay; ~~((and))~~
- 25 (iv) Mileage; and
- 26 (v) Contributions to a training partnership pursuant to section 11  
27 of this act; and

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

33 (2) The contribution rate for health care benefits, including but  
34 not limited to medical, dental, and vision benefits, for eligible  
35 agency home care workers shall be paid by the department to home care  
36 agencies at the same rate as negotiated and funded in the collective  
37 bargaining agreement for individual providers of home care services.

1        NEW SECTION.    **Sec. 16.**    A new section is added to chapter 18.88A  
2    RCW to read as follows:

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

8        **Sec. 17.**    RCW 41.56.465 and 1995 c 273 s 2 are each amended to read  
9    as follows:

10       (1) In making its determination, the panel shall be mindful of the  
11    legislative purpose enumerated in RCW 41.56.430 and, as additional  
12    standards or guidelines to aid it in reaching a decision, it shall take  
13    into consideration the following factors:

14       (a) The constitutional and statutory authority of the employer;

15       (b) Stipulations of the parties;

16       (c)(i) For employees listed in RCW 41.56.030(7) (a) through (d),  
17    comparison of the wages, hours, and conditions of employment of  
18    personnel involved in the proceedings with the wages, hours, and  
19    conditions of employment of like personnel of like employers of similar  
20    size on the west coast of the United States;

21       (ii) For employees listed in RCW 41.56.030(7) (e) through (h),  
22    comparison of the wages, hours, and conditions of employment of  
23    personnel involved in the proceedings with the wages, hours, and  
24    conditions of employment of like personnel of public fire departments  
25    of similar size on the west coast of the United States. However, when  
26    an adequate number of comparable employers exists within the state of  
27    Washington, other west coast employers may not be considered;

28       (iii) For employees listed in RCW 41.56.026 and 41.56.028, the cost  
29    of meeting the training, continuing education, advanced training, peer  
30    mentorship, and certification provisions of this act and providing  
31    other such programs and services necessary to protect the quality of  
32    long-term health services;

33       (d) The average consumer prices for goods and services, commonly  
34    known as the cost of living;

35       (e) Changes in any of the circumstances under (a) through (d) of  
36    this subsection during the pendency of the proceedings; and

37       (f) Such other factors, not confined to the factors under (a)  
38    through (e) of this subsection, that are normally or traditionally

1 taken into consideration in the determination of wages, hours, and  
2 conditions of employment. For those employees listed in RCW  
3 41.56.030(7)(a) who are employed by the governing body of a city or  
4 town with a population of less than fifteen thousand, or a county with  
5 a population of less than seventy thousand, consideration must also be  
6 given to regional differences in the cost of living.

7 (2) Subsection (1)(c) of this section may not be construed to  
8 authorize the panel to require the employer to pay, directly or  
9 indirectly, the increased employee contributions resulting from chapter  
10 502, Laws of 1993 or chapter 517, Laws of 1993 as required under  
11 chapter 41.26 RCW.

12 **Sec. 18.** RCW 18.130.040 and 2004 c 38 s 2 are each amended to read  
13 as follows:

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

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

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

23 (ii) Naturopaths licensed under chapter 18.36A RCW;

24 (iii) Midwives licensed under chapter 18.50 RCW;

25 (iv) Ocularists licensed under chapter 18.55 RCW;

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

28 (vi) Dental hygienists licensed under chapter 18.29 RCW;

29 (vii) Acupuncturists licensed under chapter 18.06 RCW;

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

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

34 (x) Persons registered under chapter 18.19 RCW;

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

37 (xii) Persons registered as nursing pool operators under chapter  
38 18.52C RCW;

1 (xiii) Nursing assistants registered or certified under chapter  
2 18.88A RCW;

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

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

6 (xvi) Chemical dependency professionals certified under chapter  
7 18.205 RCW;

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

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

12 (xix) Denturists licensed under chapter 18.30 RCW;

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

14 (xxi) Surgical technologists registered under chapter 18.215 RCW;

15 ((and))

16 (xxii) Recreational therapists; and

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

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

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

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

24 (iii) The dental quality assurance commission as established in  
25 chapter 18.32 RCW;

26 (iv) The board of hearing and speech as established in chapter  
27 18.35 RCW;

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

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

32 (vii) The board of osteopathic medicine and surgery as established  
33 in chapter 18.57 RCW governing licenses issued under chapters 18.57 and  
34 18.57A RCW;

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

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

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

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

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

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

10 (xiv) The veterinary board of governors as established in chapter  
11 18.92 RCW.

12 (3) In addition to the authority to discipline license holders, the  
13 disciplining authority has the authority to grant or deny licenses  
14 based on the conditions and criteria established in this chapter and  
15 the chapters specified in subsection (2) of this section. This chapter  
16 also governs any investigation, hearing, or proceeding relating to  
17 denial of licensure or issuance of a license conditioned on the  
18 applicant's compliance with an order entered pursuant to RCW 18.130.160  
19 by the disciplining authority.

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

24 NEW SECTION. **Sec. 19.** RCW 74.39A.190 (Community long-term care  
25 training and education steering committee) and 2002 c 233 s 4 & 2000 c  
26 121 s 8 are each repealed.

27 NEW SECTION. **Sec. 20.** The provisions of this act are to be  
28 liberally construed to effectuate the intent, policies, and purposes of  
29 this act.

30 NEW SECTION. **Sec. 21.** If any provision of this act or its  
31 application to any person or circumstance is held invalid, the  
32 remainder of the act or the application of the provision to other  
33 persons or circumstances is not affected.

34 NEW SECTION. **Sec. 22.** Captions used in this act are not part of  
35 the law.

1        NEW SECTION.    **Sec. 23.**    This act may be known and cited as the  
2 criminal background checks, training requirements, mentoring,  
3 certification, and apprenticeship for long-term care workers for the  
4 elderly and persons with disabilities initiative of 2007.

--- END ---