

2 SHB 1880 - S COMM AMD

3 By Committee on Health & Long-Term Care

4 ADOPTED 4/13/99

5 Strike everything after the enacting clause and insert the  
6 following:

7 NEW SECTION. **Sec. 1.** (1) The legislature finds that certain  
8 aspects of health licensure laws have the unintended consequence of  
9 limiting the right of persons with functional disabilities to care for  
10 themselves in their own home, and of securing assistance from other  
11 persons in performing routine health-related tasks that persons without  
12 these disabilities customarily perform.

13 (2) It is the intent of the legislature to clarify the right of  
14 adults with functional disabilities to choose to self-direct their own  
15 health-related tasks through personal aides, and to describe the  
16 circumstances under which self-directed care may take place in the home  
17 setting. The legislature declares that it is in the public interest to  
18 preserve the autonomy and dignity of persons with functional  
19 disabilities to care for themselves in their own homes, among the  
20 continuum of options for health care services where the judgment and  
21 control over the care rests with the individual.

22 NEW SECTION. **Sec. 2.** The definitions in this section apply  
23 throughout sections 1 through 4 and 8 of this act and RCW 43.190.060  
24 unless the context clearly requires otherwise.

25 (1) "Self-directed care" means the process in which an adult  
26 person, who is prevented by a functional disability from performing a  
27 manual function related to health care that an individual would  
28 otherwise perform for himself or herself, chooses to direct and  
29 supervise a paid personal aide to perform those tasks.

30 (2) "Personal aide" means an individual, working privately or as an  
31 individual provider under contract or agreement with the department of  
32 social and health services, who acts at the direction of an adult  
33 person with a functional disability living in his or her own home and  
34 provides that person with health care services that a person without a  
35 functional disability can perform.

1        NEW SECTION.    **Sec. 3.**    (1) An adult person with a functional  
2 disability living in his or her own home may direct and supervise a  
3 paid personal aide in the performance of a health care task.

4        (2) The following requirements shall guide the provision of self-  
5 directed care under this act:

6        (a) Health care tasks are those medical, nursing, or home health  
7 services that enable the person to maintain independence, personal  
8 hygiene, and safety in his or her own home, and that are services that  
9 a person without a functional disability would customarily and  
10 personally perform without the assistance of a licensed health care  
11 provider.

12        (b) The individual who chooses to self-direct a health care task is  
13 responsible for initiating self-direction by informing the health care  
14 professional who has ordered the treatment which involves that task of  
15 the individual's intent to perform that task through self-direction.

16        (c) When state funds are used to pay for self-directed tasks, a  
17 description of those tasks will be included in the client's  
18 comprehensive assessment, and subject to review with each annual  
19 reassessment.

20        (d) When a licensed health care provider orders treatment involving  
21 a health care task to be performed through self-directed care, the  
22 responsibility to ascertain that the patient understands the treatment  
23 and will be able to follow through on the self-directed care task is  
24 the same as it would be for a patient who performs the health care task  
25 for himself or herself, and the licensed health care provider incurs no  
26 additional liability when ordering a health care task which is to be  
27 performed through self-directed care.

28        (e) The role of the personal aide in self-directed care is limited  
29 to performing the physical aspect of health care tasks under the  
30 direction of the person for whom the tasks are being done. This shall  
31 not affect the ability of a personal aide to provide other home care  
32 services, such as personal care or homemaker services, which enable the  
33 client to remain at home.

34        (f) The responsibility to initiate self-directed health care tasks,  
35 to possess the necessary knowledge and training for those tasks, and to  
36 exercise judgment regarding the manner of their performance rests and  
37 remains with the person who has chosen to self-direct those tasks,  
38 including the decision to employ and dismiss a personal aide.

1        NEW SECTION.    **Sec. 4.** Any individual who, for compensation, serves  
2 as a personal aide provider under contract or agreement with the  
3 department of social and health services, to a person who self-directs  
4 his or her own care in his or her own home, shall register with the  
5 department of social and health services.

6        **Sec. 5.** RCW 74.39A.050 and 1998 c 85 s 1 are each amended to read  
7 as follows:

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

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

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

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

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

25        (5) Monitoring should be outcome based and responsive to consumer  
26 complaints and a clear set of health, quality of care, and safety  
27 standards that are easily understandable and have been made available  
28 to providers.

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

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

10 (8) No provider or staff, or prospective provider or staff, with a  
11 stipulated finding of fact, conclusion of law, an agreed order, or  
12 finding of fact, conclusion of law, or final order issued by a  
13 disciplining authority, a court of law, or entered into a state  
14 registry finding him or her guilty of abuse, neglect, exploitation, or  
15 abandonment of a minor or a vulnerable adult as defined in chapter  
16 74.34 RCW shall be employed in the care of and have unsupervised access  
17 to vulnerable adults.

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

27 (10) The department shall by rule develop training requirements for  
28 individual providers and home care agency providers. The department  
29 shall deny payment to an individual provider or a home care provider  
30 who does not complete the training requirement within the time limit  
31 specified by the department by rule.

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

1       (12) Under existing funds the department shall establish internally  
2 a quality improvement standards committee to monitor the development of  
3 standards and to suggest modifications.

4       (~~(10)~~) (13) Within existing funds, the department shall design,  
5 develop, and implement a long-term care training program that is  
6 flexible, relevant, and qualifies towards the requirements for a  
7 nursing assistant certificate as established under chapter 18.88A RCW.  
8 This subsection does not require completion of the nursing assistant  
9 certificate training program by providers or their staff. The long-  
10 term care teaching curriculum must consist of a fundamental module, or  
11 modules, and a range of other available relevant training modules that  
12 provide the caregiver with appropriate options that assist in meeting  
13 the resident's care needs. Some of the training modules may include,  
14 but are not limited to, specific training on the special care needs of  
15 persons with developmental disabilities, dementia, mental illness, and  
16 the care needs of the elderly. No less than one training module must  
17 be dedicated to workplace violence prevention. The nursing care  
18 quality assurance commission shall work together with the department to  
19 develop the curriculum modules. The nursing care quality assurance  
20 commission shall direct the nursing assistant training programs to  
21 accept some or all of the skills and competencies from the curriculum  
22 modules towards meeting the requirements for a nursing assistant  
23 certificate as defined in chapter 18.88A RCW. A process may be  
24 developed to test persons completing modules from a caregiver's class  
25 to verify that they have the transferable skills and competencies for  
26 entry into a nursing assistant training program. The department may  
27 review whether facilities can develop their own related long-term care  
28 training programs. The department may develop a review process for  
29 determining what previous experience and training may be used to waive  
30 some or all of the mandatory training. The department of social and  
31 health services and the nursing care quality assurance commission shall  
32 work together to develop an implementation plan by December 12, 1998.

33       NEW SECTION. **Sec. 6.** A new section is added to chapter 74.34 RCW  
34 to read as follows:

35       For the purposes of this chapter, the term "vulnerable adult"  
36 includes persons receiving services from any individual who for  
37 compensation serves as a personal aide to a person who self-directs his  
38 or her own care in his or her home under this act.

1       **Sec. 7.** RCW 43.20A.710 and 1997 c 392 s 525 are each amended to  
2 read as follows:

3       (1) The secretary shall investigate the conviction records, pending  
4 charges or disciplinary board final decisions of:

5       (a) Persons being considered for state employment in positions  
6 directly responsible for the supervision, care, or treatment of  
7 children or individuals with mental illness or developmental  
8 disabilities; and

9       (b) Individual providers who are paid by the state for in-home  
10 services and hired by individuals with physical disabilities,  
11 developmental disabilities, mental illness, or mental impairment,  
12 including but not limited to services provided under chapter 74.39A  
13 RCW.

14       (2) The investigation may include an examination of state and  
15 national criminal identification data. The secretary shall use the  
16 information solely for the purpose of determining the character,  
17 suitability, and competence of these applicants.

18       (3) The secretary shall provide the results of the state background  
19 check on individual providers to the individuals with physical  
20 disabilities, developmental disabilities, mental illness, or mental  
21 impairment or to their legal guardians, if any, for their determination  
22 of the character, suitability, and competence of the applicants. If an  
23 individual elects to hire or retain an individual provider after  
24 receiving notice from the department that the applicant has a  
25 conviction for an offense that would disqualify the applicant from  
26 employment with the department, then the secretary (~~may~~) shall deny  
27 payment for any subsequent services rendered by the disqualified  
28 individual provider.

29       (4) Criminal justice agencies shall provide the secretary such  
30 information as they may have and that the secretary may require for  
31 such purpose.

32       NEW SECTION. **Sec. 8.** A personal aide, in the performance of a  
33 health care task, who is directed and supervised by a person with a  
34 functional disability in his or her own home, is exempt from any legal  
35 requirement to qualify and be credentialed by the department of health  
36 as a health care provider under Title 18 RCW to the extent of the  
37 responsibilities provided and health care tasks performed under this  
38 act.

1        NEW SECTION.        **Sec. 9.**        (1) To the extent that funds are  
2 appropriated for this purpose, the University of Washington school of  
3 nursing shall study the implementation of this act as it relates to  
4 self-directed care performed for persons receiving services through  
5 department of social and health services' programs, and submit a report  
6 to the legislature by November 1, 2001, to include findings as well as  
7 any recommendations for improvements to this act. If there are not  
8 sufficient numbers of consumers who have elected self-directed care in  
9 order for the study to be completed by November 1, 2001, the study  
10 deadline shall be extended as necessary, but not to exceed one year.

11        (2) The study shall be performed in consultation with the  
12 governor's committee on disability issues and employment, and the  
13 departments of health and social and health services. The report shall  
14 include data, to the extent reasonably available, on the following:

15        (a) Consumer satisfaction with self-directed care, including  
16 consumer perception of the degree of autonomy, self-determination, and  
17 choice afforded;

18        (b) Service quality and consumer safety, as determined by consumers  
19 and quantifiable outcomes such as rate of hospitalization or other  
20 facility placement;

21        (c) Number of personal aides who have been found to have abused or  
22 neglected consumers;

23        (d) Consumer outcomes in emergency situations such as abandonment,  
24 abuse, neglect, or exploitation by personal aide; and

25        (e) Whether coercion is a factor in consumers requesting self-  
26 directed care, or with personal aides performing self-directed care  
27 tasks.

28        NEW SECTION.        **Sec. 10.** Sections 2 through 4 and 8 of this act are  
29 each added to chapter 74.39 RCW."

30 **SHB 1880** - S COMM AMD  
31 By Committee on Health & Long-Term Care

32 ADOPTED 4/13/99

33 On page 1, line 2 of the title, after "disabilities;" strike the  
34 remainder of the title and insert "amending RCW 74.39A.050 and

1 43.20A.710; adding new sections to chapter 74.39 RCW; adding a new  
2 section to chapter 74.34 RCW; and creating new sections."

--- **END** ---