

2SHB 2284 - H AMD
By Representative

ADOPTED AS AMENDED 04/20/2007

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. 2005 c 276 s 1 (uncodified) is amended to read as
4 follows:

5 (1) The governor shall establish a joint legislative and executive
6 task force on long-term care financing and chronic care management.
7 The joint task force consists of eight members, as follows: The
8 secretary of the department of social and health services; the
9 secretary of the department of health; the administrator of the health
10 care authority; a representative from the governor's office; two
11 members of the senate appointed by the president of the senate, one of
12 whom shall be a member of the majority caucus and one of whom shall be
13 a member of the minority caucus; and two members of the house of
14 representatives appointed by the speaker of the house of
15 representatives, one of whom shall be a member of the majority caucus
16 and one of whom shall be a member of the minority caucus.

17 (2) The joint task force shall elect a member of the joint task
18 force to serve as chair of the joint task force.

19 (3) Consistent with funds appropriated specifically for this
20 purpose, the joint task force shall contract for professional services.
21 State agencies, the senate, and the house of representatives may
22 provide staff support upon request of the joint task force.

23 (4) The joint task force shall create advisory committees to assist
24 the joint task force in its work. The task force shall actively
25 consult with and solicit recommendations from the advisory committee or
26 committees regarding issues under consideration by the task force.

27 (5) Joint task force members may be reimbursed for travel expenses
28 as authorized under RCW 43.03.050 and 43.03.060, and chapter 44.04 RCW
29 as appropriate. Advisory committee members, if appointed, may not
30 receive compensation or reimbursement for travel or expenses.

1 (6) The joint task force shall review public and private mechanisms
2 for financing long-term care and make recommendations related to:

3 (a) The composition of a long-term care system that is adequate to
4 meet the needs of persons of all ages with functional limitations,
5 including appropriate services to be offered in the continuum of care
6 ranging from services to support persons residing at home through
7 residential care. This shall be accomplished by first determining
8 capacity in each level of care in the long-term care continuum and
9 assessing the impact, by geographic region, of increasing or decreasing
10 capacity in each level of care;

11 (b) Efficient payment models that will effectively sustain public
12 funding of long-term care and maximize the use of financial resources
13 to directly meet the needs of persons of all ages with functional
14 limitations;

15 (c) State laws and regulations that should be revised and/or
16 eliminated in order to reduce or contain long-term care costs to
17 individuals and the state;

18 (d) The feasibility of private options for realistically enabling
19 individuals to pay for long-term care and the most effective tools for
20 implementing these options. The assessment of options should include
21 but not be limited to: (i) Adequacy of personal savings and pensions;
22 (ii) availability of family care, including incentives and supports for
23 families to provide care or pay for care; (iii) creative
24 community-based strategies or partnerships for funding quality
25 long-term care; (iv) enhanced health insurance options; (v) long-term
26 care insurance options, including incentives to purchase long-term care
27 insurance through individual or group-based products; (vi) life
28 insurance annuities; and (vii) reverse mortgage and other products that
29 draw on home equity; and

30 (e) Options that will support long-term care needs of rural
31 communities.

32 (7) The joint task force shall recommend chronic care management
33 and disability prevention interventions that will reduce health care
34 and long-term care costs to individuals and the state, improve the
35 health of individuals over their life span, and encourage patient
36 self-management of chronic care needs.

37 (8)(a) The joint task force shall establish a home and community
38 long-term care workforce development workgroup.

- 1 (b) The workgroup shall consist of:
- 2 (i) The chair of the joint task force;
- 3 (ii) The executive director of the home care quality authority;
- 4 (iii) The assistant secretary of the department of social and
5 health services for aging and disability services;
- 6 (iv) A representative of the department of labor and industries
7 with personal knowledge of and expertise in apprenticeship programs, to
8 be designated by the director of the department;
- 9 (v) A representative of the office of financial management with
10 personal knowledge of and expertise in the fields of long-term care or
11 workforce development, to be designated by the director of the office;
- 12 (vi) A representative of a labor or employee organization
13 representing at least twenty thousand home and community-based
14 long-term care workers, to be designated by the principal officer of
15 the labor or employee organization, the governor, and the cochairs of
16 the workgroup;
- 17 (vii) A representative of a not-for-profit provider of home and
18 community-based long-term care services providing at least one million
19 hours of long-term care services annually, to be designated by the
20 governor and the cochairs of the workgroup;
- 21 (viii) A representative of a for-profit provider of home and
22 community-based long-term care services providing at least five hundred
23 thousand hours of long-term care services annually, to be designated by
24 the governor and the cochairs of the workgroup;
- 25 (ix) A representative of adult family home providers;
- 26 (x) A representative of boarding homes;
- 27 (xi) A representative of an organization representing the interests
28 of home and community-based long-term care consumers, to be designated
29 by the governor and the cochairs of the workgroup;
- 30 (xii) A person with expertise in long-term care or workforce
31 development issues to be named jointly by the speaker of the house of
32 representatives and the majority leader of the senate;
- 33 (xiii) A person representing a public policy organization
34 specializing in long-term care workforce issues, to be designated by
35 the governor and the cochairs of the workgroup;
- 36 (xiv) A representative from the Washington long-term care ombudsman
37 office; and

1 (xv) A representative from the Washington developmental
2 disabilities council.

3 (c) The workgroup shall be cochaired by the chair of the joint task
4 force and the executive director of the home care quality authority.

5 (d) The workgroup shall evaluate current training requirements for
6 long-term care workers with respect to the quality of care provided to
7 vulnerable people across all home and community-based long-term care
8 settings. The workgroup shall make recommendations relating to the
9 appropriate number of basic training hours, the content of basic
10 training curricula, and the development of criteria associated with
11 certification of new long-term care workers. In doing so, the
12 workgroup shall examine cited deficiencies of care in various long-term
13 care settings, and shall evaluate training needs based on medical
14 versus social models. Any training standards recommended by the
15 workgroup shall: (i) Be applied uniformly to all basic training
16 required of all long-term care workers; (ii) take into consideration
17 the training standards for workers providing similar care in nursing
18 homes; (iii) be evidence-based and informed by existing research; (iv)
19 be based on the care needs of clients; (v) be developed with input from
20 worker representatives; (vi) be structured in a manner to articulate
21 with certification and apprenticeship programs; and (vii) be informed
22 by broader workforce development and long-term care delivery needs.

23 (9) The joint task force shall incorporate a process designed to
24 facilitate an open dialog with the public on findings and
25 recommendations.

26 ((+9)) (10) With respect to subsections (6) and (7) of this
27 section, the joint task force shall: (a) Report its initial findings
28 to the governor and appropriate committees of the legislature by
29 January 1, 2006; (b) report its recommendations to the governor and
30 appropriate committees of the legislature by January 1, 2007; and (c)
31 submit a final report to the governor and appropriate committees of the
32 legislature by ((June)) December 30, 2007.

33 (11) With respect to subsection (8) of this section, the workgroup
34 shall report its findings and recommendations to the joint task force,
35 the governor, and appropriate legislative committees by December 1,
36 2007. The joint task force shall include the workgroup's findings and
37 recommendations in the joint task force's final report required under
38 subsection (10) of this section.

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

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

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

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

11 (3) "Assisted living services" means services provided by a
12 boarding home that has a contract with the department under RCW
13 74.39A.010 to provide personal care services, intermittent nursing
14 services, and medication administration services, and the resident is
15 housed in a private apartment-like unit.

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

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

26 (6) "Department" means the department of social and health
27 services.

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

33 (8) "Functionally disabled person" or "person who is functionally
34 disabled" is synonymous with chronic functionally disabled and means a
35 person who because of a recognized chronic physical or mental condition
36 or disease, including chemical dependency, is impaired to the extent of
37 being dependent upon others for direct care, support, supervision, or
38 monitoring to perform activities of daily living. "Activities of daily

1 living", in this context, means self-care abilities related to personal
2 care such as bathing, eating, using the toilet, dressing, and transfer.
3 Instrumental activities of daily living may also be used to assess a
4 person's functional abilities as they are related to the mental
5 capacity to perform activities in the home and the community such as
6 cooking, shopping, house cleaning, doing laundry, working, and managing
7 personal finances.

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

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

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

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

37 (12) "Nursing home" means a facility licensed under chapter 18.51
38 RCW.

1 medication assistance; advanced communication skills; positive client
2 behavior support; developing or improving client-centered activities;
3 dealing with wandering or aggressive client behaviors; medical
4 conditions; nurse delegation core training; peer mentor training; and
5 advocacy for quality care training. The department may not require
6 long-term care workers to obtain the training described in this
7 section. This requirement to offer advanced training applies beginning
8 January 1, 2010.

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

11 TRAINING PARTNERSHIP. Beginning January 1, 2010, for individual
12 providers represented by an exclusive bargaining representative under
13 RCW 74.39A.270, all training and peer mentoring required under this
14 chapter shall be provided by a training partnership. Contributions to
15 the partnership pursuant to a collective bargaining agreement
16 negotiated under this chapter shall be made beginning July 1, 2009.
17 The training partnership shall provide reports as required by the
18 department verifying that all individual providers have complied with
19 all training requirements. The exclusive bargaining representative
20 shall designate the training partnership.

21 **Sec. 7.** RCW 74.39A.270 and 2006 c 106 s 1 are each amended to read
22 as follows:

23 COLLECTIVE BARGAINING--CIRCUMSTANCES IN WHICH INDIVIDUAL PROVIDERS
24 ARE CONSIDERED PUBLIC EMPLOYEES--EXCEPTIONS. (1) Solely for the
25 purposes of collective bargaining and as expressly limited under
26 subsections (2) and (3) of this section, the governor is the public
27 employer, as defined in chapter 41.56 RCW, of individual providers,
28 who, solely for the purposes of collective bargaining, are public
29 employees as defined in chapter 41.56 RCW. To accommodate the role of
30 the state as payor for the community-based services provided under this
31 chapter and to ensure coordination with state employee collective
32 bargaining under chapter 41.80 RCW and the coordination necessary to
33 implement RCW 74.39A.300, the public employer shall be represented for
34 bargaining purposes by the governor or the governor's designee
35 appointed under chapter 41.80 RCW. The governor or governor's designee
36 shall periodically consult with the authority during the collective

1 bargaining process to allow the authority to communicate issues
2 relating to the long-term in-home care services received by consumers.
3 The governor or the governor's designee shall consult the authority on
4 all issues for which the exclusive bargaining representative requests
5 to engage in collective bargaining under subsections (6) and (7) of
6 this section. The authority shall work with the developmental
7 disabilities council, the governor's committee on disability issues and
8 employment, the state council on aging, and other consumer advocacy
9 organizations to obtain informed input from consumers on their
10 interests, including impacts on consumer choice, for all issues
11 proposed for collective bargaining under subsections (6) and (7) of
12 this section.

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

16 (a) The only unit appropriate for the purpose of collective
17 bargaining under RCW 41.56.060 is a statewide unit of all individual
18 providers;

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

22 (c) The mediation and interest arbitration provisions of RCW
23 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

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

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

32 (iii) The decision of the arbitration panel is not binding on the
33 legislature and, if the legislature does not approve the request for
34 funds necessary to implement the compensation and fringe benefit
35 provisions of the arbitrated collective bargaining agreement, is not
36 binding on the authority or the state;

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

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

4 (3) Individual providers who are public employees solely for the
5 purposes of collective bargaining under subsection (1) of this section
6 are not, for that reason, employees of the state, its political
7 subdivisions, or an area agency on aging for any purpose. Chapter
8 41.56 RCW applies only to the governance of the collective bargaining
9 relationship between the employer and individual providers as provided
10 in subsections (1) and (2) of this section.

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

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

21 (6) Except as expressly limited in this section and RCW 74.39A.300,
22 the wages, hours, and working conditions of individual providers are
23 determined solely through collective bargaining as provided in this
24 chapter. No agency or department of the state may establish policies
25 or rules governing the wages or hours of individual providers.
26 However, this subsection does not modify:

27 (a) The department's authority to establish a plan of care for each
28 consumer or its core responsibility to manage long-term in-home care
29 services under this chapter, including determination of the level of
30 care that each consumer is eligible to receive. However, at the
31 request of the exclusive bargaining representative, the governor or the
32 governor's designee appointed under chapter 41.80 RCW shall engage in
33 collective bargaining, as defined in RCW 41.56.030(4), with the
34 exclusive bargaining representative over how the department's core
35 responsibility affects hours of work for individual providers. This
36 subsection shall not be interpreted to require collective bargaining
37 over an individual consumer's plan of care;

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

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

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

10 (e) The department's obligation to comply with the federal medicaid
11 statute and regulations and the terms of any community-based waiver
12 granted by the federal department of health and human services and to
13 ensure federal financial participation in the provision of the
14 services; and

15 (f) The legislature's right to make programmatic modifications to
16 the delivery of state services under this title, including standards of
17 eligibility of consumers and individual providers participating in the
18 programs under this title, and the nature of services provided. The
19 governor shall not enter into, extend, or renew any agreement under
20 this chapter that does not expressly reserve the legislative rights
21 described in this subsection (6)(f).

22 (7) At the request of the exclusive bargaining representative, the
23 governor or the governor's designee appointed under chapter 41.80 RCW
24 shall engage in collective bargaining, as defined in RCW 41.56.030(4),
25 with the exclusive bargaining representative over employer
26 contributions to the training partnership for the costs of: (a)
27 Meeting all training and peer mentoring required under this chapter;
28 and (b) other training intended to promote the career development of
29 individual providers.

30 (8)(a) The state, the department, the authority, the area agencies
31 on aging, or their contractors under this chapter may not be held
32 vicariously or jointly liable for the action or inaction of any
33 individual provider or prospective individual provider, whether or not
34 that individual provider or prospective individual provider was
35 included on the authority's referral registry or referred to a consumer
36 or prospective consumer. The existence of a collective bargaining
37 agreement, the placement of an individual provider on the referral
38 registry, or the development or approval of a plan of care for a

1 consumer who chooses to use the services of an individual provider and
2 the provision of case management services to that consumer, by the
3 department or an area agency on aging, does not constitute a special
4 relationship with the consumer.

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

7 ~~((8))~~ (9) Nothing in this section affects the state's
8 responsibility with respect to unemployment insurance for individual
9 providers. However, individual providers are not to be considered, as
10 a result of the state assuming this responsibility, employees of the
11 state.

12 **Sec. 8.** RCW 74.39A.310 and 2006 c 9 s 1 are each amended to read
13 as follows:

14 CONTRACT FOR INDIVIDUAL HOME CARE SERVICE PROVIDERS--COST OF
15 INCREASE IN WAGES AND BENEFITS FUNDED--FORMULA. (1) The department
16 shall create a formula that converts the cost of the increase in wages
17 and benefits negotiated and funded in the contract for individual
18 providers of home care services pursuant to RCW 74.39A.270 and
19 74.39A.300, into a per-hour amount, excluding those benefits defined in
20 subsection (2) of this section. That per-hour amount shall be added to
21 the statewide home care agency vendor rate and shall be used
22 exclusively for improving the wages and benefits of home care agency
23 workers who provide direct care. The formula shall account for:

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

- 26 (i) Regular wages;
- 27 (ii) Benefit pay, such as vacation, sick, and holiday pay;
- 28 (iii) Taxes on wages/benefit pay; ~~((and))~~
- 29 (iv) Mileage; and
- 30 (v) Contributions to a training partnership; and

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

36 (2) The contribution rate for health care benefits, including but
37 not limited to medical, dental, and vision benefits, for eligible

1 agency home care workers shall be paid by the department to home care
2 agencies at the same rate as negotiated and funded in the collective
3 bargaining agreement for individual providers of home care services.

4 **Sec. 9.** RCW 18.88A.085 and 1994 sp.s. c 9 s 712 are each amended
5 to read as follows:

6 NURSING ASSISTANTS--CERTIFICATION REQUIREMENTS. (1) After January
7 1, 1990, the secretary shall issue a certificate to any applicant who
8 demonstrates to the secretary's satisfaction that the following
9 requirements have been met:

10 (a) Completion of an approved training program or successful
11 completion of alternate training meeting established criteria approved
12 by the commission; and

13 (b) Successful completion of a competency evaluation.

14 (2) The secretary may permit all or a portion of the training hours
15 earned under chapter 74.39A RCW to be applied toward certification
16 under this section.

17 (3) In addition, applicants shall be subject to the grounds for
18 denial of certification under chapter 18.130 RCW.

19 NEW SECTION. **Sec. 10.** REPEALER. RCW 74.39A.190 (Community long-
20 term care training and education steering committee) and 2002 c 233 s
21 4 & 2000 c 121 s 8 are each repealed.

22 NEW SECTION. **Sec. 11.** LIBERAL CONSTRUCTION. The provisions of
23 this act are to be liberally construed to effectuate the intent,
24 policies, and purposes of this act.

25 NEW SECTION. **Sec. 12.** SEVERABILITY. If any provision of this act
26 or its application to any person or circumstance is held invalid, the
27 remainder of the act or the application of the provision to other
28 persons or circumstances is not affected.

29 NEW SECTION. **Sec. 13.** EMERGENCY CLAUSE. Section 1 of this act is
30 necessary for the immediate preservation of the public peace, health,
31 or safety, or support of the state government and its existing public
32 institutions, and takes effect immediately.

1 NEW SECTION. **Sec. 14.** EFFECTIVE DATE. Sections 7 and 8 of this
2 act take effect July 1, 2008.

3 NEW SECTION. **Sec. 15.** CAPTIONS. Captions used in this act are
4 not any part of the law.

5 NEW SECTION. **Sec. 16.** SHORT TITLE. This act may be known and
6 cited as the establishing quality in long-term care services act."

7 Correct the title.

EFFECT: Removes the requirement that the Department of Social and Health Services increase minimum training requirements and establish a home care aide certification process.

Directs the Joint Legislative and Executive Task Force on Long-Term Care Financing and Chronic Care Management to establish a Home and Community Long-Term Care Workforce Development Workgroup. Changes the due date for the task force's final report from June 30, 2007, to December 30, 2007.

Directs the workgroup to evaluate current training requirements. Specifies the members of the workgroup. Requires the workgroup to make recommendations for any changes to the Governor and legislative committees by December 1, 2007, and requires the joint task force to include the workgroup's findings and recommendations in the joint task force's final report.

Defines "long-term care workers" and "training partnership."

Clarifies that the training partnership is maintained by the Office of the Governor and the exclusive bargaining representative of individual providers (instead of as a Taft-Hartley trust).

Requires peer mentoring of at least one hour per week in the first ninety days of work (instead of the first 120 days of work) for long-term care workers who begin work on or after January 1, 2010.

Specifies that the Department of Social and Health Services is required to offer advanced training beginning January 1, 2010.

Narrows the scope of collective bargaining over training costs to refer to other training intended to promote the career development of individual providers (instead of providing programs and services necessary to establish and promote the education, training, career development, career ladders, certification, and licensing of a stable, professionally trained long-term care workforce).

Strikes the interest arbitration section.

Clarifies that the Secretary of the Department of Social and Health Services may permit all or a portion (instead of some) of the training hours to be applied to certification as a nursing assistant.

Adds an emergency clause applicable only to the section relating to the joint task force and the work group.

Makes the short title the "Establishing Quality in Long-Term Care Services Act."

--- END ---