
SUBSTITUTE HOUSE BILL 2068

State of Washington 61st Legislature 2009 Regular Session

By House Health Care & Wellness (originally sponsored by Representatives Goodman, Hurst, Priest, O'Brien, Miloscia, Sequist, Cody, Appleton, Roberts, Campbell, and Morrell)

READ FIRST TIME 02/23/09.

1 AN ACT Relating to criminal background checks; and amending RCW
2 74.39A.055, 18.20.125, 18.88B.030, 43.20A.710, 43.43.837, 74.39A.050,
3 74.39A.095, and 74.39A.260.

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

5 **Sec. 1.** RCW 74.39A.055 and 2009 c 2 s 3 (Initiative Measure No.
6 1029) are each amended to read as follows:

7 (1) All long-term care workers for the elderly or persons with
8 disabilities hired after January 1, 2010, shall be screened through
9 state and federal background checks in a uniform and timely manner to
10 ensure that they do not have a criminal history that would disqualify
11 them from working with vulnerable persons. These background checks
12 shall include checking against the federal bureau of investigation
13 fingerprint identification records system and against the national sex
14 offenders registry or their successor programs. The department shall
15 require these long-term care workers to submit fingerprints for the
16 purpose of investigating conviction records through both the Washington
17 state patrol and the federal bureau of investigation.

18 (2) To allow the department of health to satisfy its certification
19 responsibilities under chapter 18.88B RCW, the department shall share

1 ((~~this information~~)) state and federal background check results with
2 the department of health. Neither department may share the federal
3 background check results with any other state agency or person.

4 (3) The department shall not pass on the cost of these criminal
5 background checks to the workers or their employers.

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

8 **Sec. 2.** RCW 18.20.125 and 2004 c 140 s 4 are each amended to read
9 as follows:

10 (1) Inspections must be outcome based and responsive to resident
11 complaints and based on a clear set of health, quality of care, and
12 safety standards that are easily understandable and have been made
13 available to facilities, residents, and other interested parties. This
14 includes that when conducting licensing inspections, the department
15 shall interview an appropriate percentage of residents, family members,
16 and advocates in addition to interviewing appropriate staff.

17 (2) Prompt and specific enforcement remedies shall also be
18 implemented without delay, consistent with RCW 18.20.190, for
19 facilities found to have delivered care or failed to deliver care
20 resulting in problems that are serious, recurring, or uncorrected, or
21 that create a hazard that is causing or likely to cause death or
22 serious harm to one or more residents. These enforcement remedies may
23 also include, when appropriate, reasonable conditions on a license. In
24 the selection of remedies, the safety, health, and well-being of
25 residents shall be of paramount importance.

26 (3)(a) To the extent funding is available, the licensee,
27 administrator, and their staff should be screened through background
28 checks in a uniform and timely manner to ensure that they do not have
29 a criminal history that would disqualify them from working with
30 vulnerable adults. Employees may be provisionally hired pending the
31 results of the background check if they have been given three positive
32 references.

33 (b) Long-term care workers, as defined in RCW 74.39A.009, who are
34 hired after January 1, 2010, are subject to background checks under RCW
35 74.39A.055.

36 (4) No licensee, administrator, or staff, or prospective licensee,
37 administrator, or staff, with a stipulated finding of fact, conclusion

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

7 **Sec. 3.** RCW 18.88B.030 and 2009 c 2 s 6 (Initiative Measure No.
8 1029) are each amended to read as follows:

9 (1) Effective January 1, 2010, except as provided in RCW
10 18.88B.040, the department of health shall require that all long-term
11 care workers successfully complete a certification examination. Any
12 long-term care worker failing to make the required grade for the
13 examination will not be certified as a home care aide.

14 (2) The department of health, in consultation with consumer and
15 worker representatives, shall develop a home care aide certification
16 examination to evaluate whether an applicant possesses the skills and
17 knowledge necessary to practice competently. Unless excluded by RCW
18 18.88B.040 (1) and (2), only those who have completed the training
19 requirements in RCW 74.39A.073 shall be eligible to sit for this
20 examination.

21 (3) The examination shall include both a skills demonstration and
22 a written or oral knowledge test. The examination papers, all grading
23 of the papers, and records related to the grading of skills
24 demonstration shall be preserved for a period of not less than one
25 year. The department of health shall establish rules governing the
26 number of times and under what circumstances individuals who have
27 failed the examination may sit for the examination, including whether
28 any intermediate remedial steps should be required.

29 (4) All examinations shall be conducted by fair and wholly
30 impartial methods. The certification examination shall be administered
31 and evaluated by the department of health or by a contractor to the
32 department of health that is neither an employer of long-term care
33 workers or private contractors providing training services under this
34 chapter.

35 (5) The department of health has the authority to:

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

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

3 (c) Issue certification as a home care aide to any applicant who
4 has successfully completed the home care aide examination;

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

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

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

11 (6) The department of health shall adopt rules by August 1, 2009,
12 that establish the procedures, including criteria for reviewing an
13 applicant's state and federal background checks, and examinations
14 necessary to carry this section into effect.

15 **Sec. 4.** RCW 43.20A.710 and 2001 c 296 s 5 are each amended to read
16 as follows:

17 (1) The secretary shall investigate the conviction records, pending
18 charges and disciplinary board final decisions of:

19 (a) Any current employee or applicant seeking or being considered
20 for any position with the department who will or may have unsupervised
21 access to children, vulnerable adults, or individuals with mental
22 illness or developmental disabilities. This includes, but is not
23 limited to, positions conducting comprehensive assessments, financial
24 eligibility determinations, licensing and certification activities,
25 investigations, surveys, or case management; or for state positions
26 otherwise required by federal law to meet employment standards;

27 (b) Individual providers who are paid by the state and providers
28 who are paid by home care agencies to provide in-home services
29 involving unsupervised access to persons with physical, mental, or
30 developmental disabilities or mental illness, or to vulnerable adults
31 as defined in chapter 74.34 RCW, including but not limited to services
32 provided under chapter 74.39 or 74.39A RCW; and

33 (c) Individuals or businesses or organizations for the care,
34 supervision, case management, or treatment of children,
35 (~~developmentally disabled~~) persons with developmental disabilities,
36 or vulnerable adults, including but not limited to services contracted

1 for under chapter 18.20, (~~(18.48)~~) 70.127, 70.128, 72.36, or 74.39A
2 RCW or Title 71A RCW.

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

7 (3) Except as provided in subsection (4) of this section, an
8 individual provider or home care agency provider who has resided in the
9 state less than three years before applying for employment involving
10 unsupervised access to a vulnerable adult as defined in chapter 74.34
11 RCW must be fingerprinted for the purpose of investigating conviction
12 records (~~(both)~~) through both the Washington state patrol and the
13 federal bureau of investigation. This subsection applies only with
14 respect to the provision of in-home services funded by medicaid
15 personal care under RCW 74.09.520, community options program entry
16 system waiver services under RCW 74.39A.030, or chore services under
17 RCW 74.39A.110. However, this subsection does not supersede RCW
18 74.15.030(2)(b).

19 (4) Long-term care workers, as defined in RCW 74.39A.009, who are
20 hired after January 1, 2010, are subject to background checks under RCW
21 74.39A.055, except that the department may require a background check
22 at any time under RCW 43.43.837. For the purposes of this subsection,
23 "background check" includes, but is not limited to, a fingerprint check
24 submitted for the purpose of investigating conviction records through
25 both the Washington state patrol and the federal bureau of
26 investigation.

27 (5) An individual provider or home care agency provider hired to
28 provide in-home care for and having unsupervised access to a vulnerable
29 adult as defined in chapter 74.34 RCW must have no conviction for a
30 disqualifying crime under RCW 43.43.830 and 43.43.842. An individual
31 or home care agency provider must also have no conviction for a crime
32 relating to drugs as defined in RCW 43.43.830. This subsection applies
33 only with respect to the provision of in-home services funded by
34 medicaid personal care under RCW 74.09.520, community options program
35 entry system waiver services under RCW 74.39A.030, or chore services
36 under RCW 74.39A.110.

37 (~~(+5)~~) (6) The secretary shall provide the results of the state
38 background check on long-term care workers, including individual

1 providers, to the persons hiring them or to their legal guardians, if
2 any, for their determination of the character, suitability, and
3 competence of the applicants. If the person elects to hire or retain
4 an individual provider after receiving notice from the department that
5 the applicant has a conviction for an offense that would disqualify the
6 applicant from having unsupervised access to persons with physical,
7 mental, or developmental disabilities or mental illness, or to
8 vulnerable adults as defined in chapter 74.34 RCW, then the secretary
9 shall deny payment for any subsequent services rendered by the
10 disqualified individual provider.

11 ~~((+6+))~~ (7) Criminal justice agencies shall provide the secretary
12 such information as they may have and that the secretary may require
13 for such purpose.

14 **Sec. 5.** RCW 43.43.837 and 2007 c 387 s 1 are each amended to read
15 as follows:

16 (1) Except as provided in subsection (2) of this section, in order
17 to determine the character, competence, and suitability of any
18 applicant or service provider to have unsupervised access, the
19 secretary may require a fingerprint-based background check through both
20 the Washington state patrol and the federal bureau of investigation at
21 any time, but shall require a fingerprint-based background check when
22 the applicant or service provider has resided in the state less than
23 three consecutive years before application, and:

24 (a) Is an applicant or service provider providing services to
25 children or people with developmental disabilities under RCW 74.15.030;

26 (b) Is an individual residing in an applicant or service provider's
27 home, facility, entity, agency, or business or who is authorized by the
28 department to provide services to children or people with developmental
29 disabilities under RCW 74.15.030; or

30 (c) Is an applicant or service provider providing in-home services
31 funded by:

32 (i) Medicaid personal care under RCW 74.09.520;

33 (ii) Community options program entry system waiver services under
34 RCW 74.39A.030;

35 (iii) Chore services under RCW 74.39A.110; or

36 (iv) Other home and community long-term care programs, established

1 pursuant to chapters 74.39 and 74.39A RCW, administered by the
2 department.

3 (2) Long-term care workers, as defined in RCW 74.39A.009, who are
4 hired after January 1, 2010, are subject to background checks under RCW
5 74.39A.055.

6 (3) The secretary shall require a fingerprint-based background
7 check through the Washington state patrol identification and criminal
8 history section and the federal bureau of investigation when the
9 department seeks to approve an applicant or service provider for a
10 foster or adoptive placement of children in accordance with federal and
11 state law.

12 (~~(+3)~~) (4) Any secure facility operated by the department under
13 chapter 71.09 RCW shall require applicants and service providers to
14 undergo a fingerprint-based background check through the Washington
15 state patrol identification and criminal history section and the
16 federal bureau of investigation.

17 (~~(+4)~~) (5) Service providers and service provider applicants who
18 are required to complete a fingerprint-based background check may be
19 hired for a one hundred twenty-day provisional period as allowed under
20 law or program rules when:

- 21 (a) A fingerprint-based background check is pending; and
- 22 (b) The applicant or service provider is not disqualified based on
23 the immediate result of the background check.

24 (~~(+5)~~) (6) Fees charged by the Washington state patrol and the
25 federal bureau of investigation for fingerprint-based background checks
26 shall be paid by the department for applicants or service providers
27 providing:

28 (a) Services to people with a developmental disability under RCW
29 74.15.030;

30 (b) In-home services funded by medicaid personal care under RCW
31 74.09.520;

32 (c) Community options program entry system waiver services under
33 RCW 74.39A.030;

34 (d) Chore services under RCW 74.39A.110;

35 (e) Services under other home and community long-term care
36 programs, established pursuant to chapters 74.39 and 74.39A RCW,
37 administered by the department;

1 (f) Services in, or to residents of, a secure facility under RCW
2 71.09.115; and

3 (g) Foster care as required under RCW 74.15.030.

4 (~~(+6)~~) (7) Service providers licensed under RCW 74.15.030 must pay
5 fees charged by the Washington state patrol and the federal bureau of
6 investigation for conducting fingerprint-based background checks.

7 (~~(+7)~~) (8) Children's administration service providers licensed
8 under RCW 74.15.030 may not pass on the cost of the background check
9 fees to their applicants unless the individual is determined to be
10 disqualified due to the background information.

11 (~~(+8)~~) (9) The department shall develop rules identifying the
12 financial responsibility of service providers, applicants, and the
13 department for paying the fees charged by law enforcement to roll,
14 print, or scan fingerprints-based for the purpose of a Washington state
15 patrol or federal bureau of investigation fingerprint-based background
16 check.

17 (~~(+9)~~) (10) For purposes of this section, unless the context
18 plainly indicates otherwise:

19 (a) "Applicant" means a current or prospective department or
20 service provider employee, volunteer, student, intern, researcher,
21 contractor, or any other individual who will or may have unsupervised
22 access because of the nature of the work or services he or she
23 provides. "Applicant" includes but is not limited to any individual
24 who will or may have unsupervised access and is:

25 (i) Applying for a license or certification from the department;

26 (ii) Seeking a contract with the department or a service provider;

27 (iii) Applying for employment, promotion, reallocation, or
28 transfer;

29 (iv) An individual that a department client or guardian of a
30 department client chooses to hire or engage to provide services to
31 himself or herself or another vulnerable adult, juvenile, or child and
32 who might be eligible to receive payment from the department for
33 services rendered; or

34 (v) A department applicant who will or may work in a department-
35 covered position.

36 (b) "Authorized" means the department grants an applicant, home, or
37 facility permission to:

38 (i) Conduct licensing, certification, or contracting activities;

1 (ii) Have unsupervised access to vulnerable adults, juveniles, and
2 children;

3 (iii) Receive payments from a department program; or

4 (iv) Work or serve in a department-covered position.

5 (c) "Department" means the department of social and health
6 services.

7 (d) "Secretary" means the secretary of the department of social and
8 health services.

9 (e) "Secure facility" has the meaning provided in RCW 71.09.020.

10 (f) "Service provider" means entities, facilities, agencies,
11 businesses, or individuals who are licensed, certified, authorized, or
12 regulated by, receive payment from, or have contracts or agreements
13 with the department to provide services to vulnerable adults,
14 juveniles, or children. "Service provider" includes individuals whom
15 a department client or guardian of a department client may choose to
16 hire or engage to provide services to himself or herself or another
17 vulnerable adult, juvenile, or child and who might be eligible to
18 receive payment from the department for services rendered. "Service
19 provider" does not include those certified under chapter 70.96A RCW.

20 **Sec. 6.** RCW 74.39A.050 and 2009 c 2 s 14 (Initiative Measure No.
21 1029) are each amended to read as follows:

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

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

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

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

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

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

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

17 (7) All long-term care workers shall be screened through background
18 checks in a uniform and timely manner to ensure that they do not have
19 a criminal history that would disqualify them from working with
20 vulnerable persons. This information will be shared with the
21 department of health in accordance with RCW 74.39A.055 to advance the
22 purposes of chapter 2, Laws of 2009.

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

32 (9) The department shall establish, by rule, a state registry which
33 contains identifying information about long-term care workers
34 identified under this chapter who have substantiated findings of abuse,
35 neglect, financial exploitation, or abandonment of a vulnerable adult
36 as defined in RCW 74.34.020. The rule must include disclosure,
37 disposition of findings, notification, findings of fact, appeal rights,
38 and fair hearing requirements. The department shall disclose, upon

1 request, substantiated findings of abuse, neglect, financial
2 exploitation, or abandonment to any person so requesting this
3 information. This information will also be shared with the department
4 of health to advance the purposes of chapter 2, Laws of 2009.

5 (10) Until December 31, 2009, individual providers and home care
6 agency providers must satisfactorily complete department-approved
7 orientation, basic training, and continuing education within the time
8 period specified by the department in rule. The department shall adopt
9 rules by March 1, 2002, for the implementation of this section. The
10 department shall deny payment to an individual provider or a home care
11 provider who does not complete the training requirements within the
12 time limit specified by the department by rule.

13 (11) Until December 31, 2009, in an effort to improve access to
14 training and education and reduce costs, especially for rural
15 communities, the coordinated system of long-term care training and
16 education must include the use of innovative types of learning
17 strategies such as internet resources, videotapes, and distance
18 learning using satellite technology coordinated through community
19 colleges or other entities, as defined by the department.

20 (12) The department shall create an approval system by March 1,
21 2002, for those seeking to conduct department-approved training.

22 (13) The department shall establish, by rule, background checks and
23 other quality assurance requirements for long-term care workers who
24 provide in-home services funded by medicaid personal care as described
25 in RCW 74.09.520, community options program entry system waiver
26 services as described in RCW 74.39A.030, or chore services as described
27 in RCW 74.39A.110 that are equivalent to requirements for individual
28 providers. Long-term care workers who are hired after January 1, 2010,
29 are subject to background checks under RCW 74.39A.055.

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

33 (15) Within existing funds, the department shall design, develop,
34 and implement a long-term care training program that is flexible,
35 relevant, and qualifies towards the requirements for a nursing
36 assistant certificate as established under chapter 18.88A RCW. This
37 subsection does not require completion of the nursing assistant
38 certificate training program by providers or their staff. The long-

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

24 **Sec. 7.** RCW 74.39A.095 and 2004 c 141 s 1 are each amended to read
25 as follows:

26 (1) In carrying out case management responsibilities established
27 under RCW 74.39A.090 for consumers who are receiving services under the
28 medicaid personal care, community options programs entry system or
29 chore services program through an individual provider, each area agency
30 on aging shall provide oversight of the care being provided to
31 consumers receiving services under this section to the extent of
32 available funding. Case management responsibilities incorporate this
33 oversight, and include, but are not limited to:

34 (a) Verification that any individual provider who has not been
35 referred to a consumer by the authority (~~established under chapter 3,~~
36 ~~Laws of 2002~~) has met any training requirements established by the
37 department;

1 (b) Verification of a sample of worker time sheets;

2 (c) Monitoring the consumer's plan of care to verify that it
3 adequately meets the needs of the consumer, through activities such as
4 home visits, telephone contacts, and responses to information received
5 by the area agency on aging indicating that a consumer may be
6 experiencing problems relating to his or her home care;

7 (~~(d) ((Reassessment and reauthorization of))~~) Reassessing and
8 reauthorizing services;

9 (e) Monitoring of individual provider performance. If, in the
10 course of its case management activities, the area agency on aging
11 identifies concerns regarding the care being provided by an individual
12 provider who was referred by the authority, the area agency on aging
13 must notify the authority regarding its concerns; and

14 (f) Conducting criminal background checks or verifying that
15 criminal background checks have been conducted for any individual
16 provider who has not been referred to a consumer by the authority.
17 Individual providers who are hired after January 1, 2010, are subject
18 to background checks under RCW 74.39A.055.

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

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

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

33 (c) A clear description of the roles and responsibilities of the
34 area agency on aging case manager and the consumer receiving services
35 under this section;

36 (d) The duties and tasks to be performed by the area agency on
37 aging case manager and the consumer receiving services under this
38 section;

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

3 (f) The terms of compensation of the individual provider;

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

7 (h)(i) Except as provided in (h)(ii) of this subsection, a clear
8 statement indicating that a consumer receiving services under this
9 section has the right to waive any of the case management services
10 offered by the area agency on aging under this section, and a clear
11 indication of whether the consumer has, in fact, waived any of these
12 services.

13 (ii) The consumer's right to waive case management services does
14 not include the right to waive reassessment or reauthorization of
15 services, or verification that services are being provided in
16 accordance with the plan of care.

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

19 (4) Each consumer has the right to direct and participate in the
20 development of their plan of care to the maximum practicable extent of
21 their abilities and desires, and to be provided with the time and
22 support necessary to facilitate that participation.

23 (5) A copy of the plan of care must be distributed to the
24 consumer's primary care provider, individual provider, and other
25 relevant providers with whom the consumer has frequent contact, as
26 authorized by the consumer.

27 (6) The consumer's plan of care shall be an attachment to the
28 contract between the department, or their designee, and the individual
29 provider.

30 (7) If the department or area agency on aging case manager finds
31 that an individual provider's inadequate performance or inability to
32 deliver quality care is jeopardizing the health, safety, or well-being
33 of a consumer receiving service under this section, the department or
34 the area agency on aging may take action to terminate the contract
35 between the department and the individual provider. If the department
36 or the area agency on aging has a reasonable, good faith belief that
37 the health, safety, or well-being of a consumer is in imminent
38 jeopardy, the department or area agency on aging may summarily suspend

1 the contract pending a fair hearing. The consumer may request a fair
2 hearing to contest the planned action of the case manager, as provided
3 in chapter 34.05 RCW. When the department or area agency on aging
4 terminates or summarily suspends a contract under this subsection, it
5 must provide oral and written notice of the action taken to the
6 authority. The department may by rule adopt guidelines for
7 implementing this subsection.

8 (8) The department or area agency on aging may reject a request by
9 a consumer receiving services under this section to have a family
10 member or other person serve as his or her individual provider if the
11 case manager has a reasonable, good faith belief that the family member
12 or other person will be unable to appropriately meet the care needs of
13 the consumer. The consumer may request a fair hearing to contest the
14 decision of the case manager, as provided in chapter 34.05 RCW. The
15 department may by rule adopt guidelines for implementing this
16 subsection.

17 **Sec. 8.** RCW 74.39A.260 and 2002 c 3 s 5 are each amended to read
18 as follows:

19 The department must perform criminal background checks for
20 individual providers and prospective individual providers and ensure
21 that the authority has ready access to any long-term care abuse and
22 neglect registry used by the department. Individual providers who are
23 hired after January 1, 2010, are subject to background checks under RCW
24 74.39A.055.

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