
SUBSTITUTE HOUSE BILL 2376

State of Washington 61st Legislature 2009 Regular Session

By House Ways & Means (originally sponsored by Representative Pettigrew)

READ FIRST TIME 04/25/09.

1 AN ACT Relating to delaying the implementation of Initiative
2 Measure No. 1029; amending RCW 74.39A.055, 18.88B.030, 74.39A.050,
3 74.39A.073, 74.39A.075, 74.39A.340, 74.39A.350, 74.39A.085, 18.88B.040,
4 18.88A.115, 18.88B.050, and 18.88B.020; and providing an effective
5 date.

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

7 **Sec. 1.** RCW 74.39A.055 and 2009 c 2 s 3 (Initiative Measure No.
8 1029) are each amended to read as follows:

9 All long-term care workers for the elderly or persons with
10 disabilities hired after January 1, (~~2010~~) 2012, shall be screened
11 through state and federal background checks in a uniform and timely
12 manner to ensure that they do not have a criminal history that would
13 disqualify them from working with vulnerable persons. These background
14 checks shall include checking against the federal bureau of
15 investigation fingerprint identification records system and against the
16 national sex offenders registry or their successor programs. The
17 department shall share this information with the department of health.
18 The department shall not pass on the cost of these criminal background

1 checks to the workers or their employers. The department shall adopt
2 rules to implement the provisions of this section by August 1, ((2009))
3 2010.

4 **Sec. 2.** RCW 18.88B.030 and 2009 c 2 s 6 (Initiative Measure No.
5 1029) are each amended to read as follows:

6 (1) Effective January 1, ((2010)) 2011, except as provided in RCW
7 18.88B.040, the department of health shall require that all long-term
8 care workers successfully complete a certification examination. Any
9 long-term care worker failing to make the required grade for the
10 examination will not be certified as a home care aide.

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

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

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

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

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

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

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

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

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

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

9 (6) The department of health shall adopt rules by August 1,
10 ((2009)) 2010, that establish the procedures and examinations necessary
11 to carry this section into effect.

12 **Sec. 3.** RCW 74.39A.050 and 2009 c 2 s 14 (Initiative Measure No.
13 1029) are each amended to read as follows:

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

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

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

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

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

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

35 (6) Prompt and specific enforcement remedies shall also be
36 implemented without delay, pursuant to RCW 74.39A.080, RCW 70.128.160,
37 chapter 18.51 RCW, or chapter 74.42 RCW, for providers found to have

1 delivered care or failed to deliver care resulting in problems that are
2 serious, recurring, or uncorrected, or that create a hazard that is
3 causing or likely to cause death or serious harm to one or more
4 residents. These enforcement remedies may also include, when
5 appropriate, reasonable conditions on a contract or license. In the
6 selection of remedies, the safety, health, and well-being of residents
7 shall be of paramount importance.

8 (7) All long-term care workers shall be screened through background
9 checks in a uniform and timely manner to ensure that they do not have
10 a criminal history that would disqualify them from working with
11 vulnerable persons. This information will be shared with the
12 department of health to advance the purposes of chapter 2, Laws of
13 2009.

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

22 (9) The department shall establish, by rule, a state registry which
23 contains identifying information about long-term care workers
24 identified under this chapter who have substantiated findings of abuse,
25 neglect, financial exploitation, or abandonment of a vulnerable adult
26 as defined in RCW 74.34.020. The rule must include disclosure,
27 disposition of findings, notification, findings of fact, appeal rights,
28 and fair hearing requirements. The department shall disclose, upon
29 request, substantiated findings of abuse, neglect, financial
30 exploitation, or abandonment to any person so requesting this
31 information. This information will also be shared with the department
32 of health to advance the purposes of chapter 2, Laws of 2009.

33 (10) Until December 31, (~~2009~~) 2010, individual providers and
34 home care agency providers must satisfactorily complete department-
35 approved orientation, basic training, and continuing education within
36 the time period specified by the department in rule. The department
37 shall adopt rules by March 1, 2002, for the implementation of this

1 section. The department shall deny payment to an individual provider
2 or a home care provider who does not complete the training requirements
3 within the time limit specified by the department by rule.

4 (11) Until December 31, (~~(2009)~~) 2010, in an effort to improve
5 access to training and education and reduce costs, especially for rural
6 communities, the coordinated system of long-term care training and
7 education must include the use of innovative types of learning
8 strategies such as internet resources, videotapes, and distance
9 learning using satellite technology coordinated through community
10 colleges or other entities, as defined by the department.

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

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

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

23 (15) Within existing funds, the department shall design, develop,
24 and implement a long-term care training program that is flexible,
25 relevant, and qualifies towards the requirements for a nursing
26 assistant certificate as established under chapter 18.88A RCW. This
27 subsection does not require completion of the nursing assistant
28 certificate training program by providers or their staff. The long-
29 term care teaching curriculum must consist of a fundamental module, or
30 modules, and a range of other available relevant training modules that
31 provide the caregiver with appropriate options that assist in meeting
32 the resident's care needs. Some of the training modules may include,
33 but are not limited to, specific training on the special care needs of
34 persons with developmental disabilities, dementia, mental illness, and
35 the care needs of the elderly. No less than one training module must
36 be dedicated to workplace violence prevention. The nursing care
37 quality assurance commission shall work together with the department to
38 develop the curriculum modules. The nursing care quality assurance

1 commission shall direct the nursing assistant training programs to
2 accept some or all of the skills and competencies from the curriculum
3 modules towards meeting the requirements for a nursing assistant
4 certificate as defined in chapter 18.88A RCW. A process may be
5 developed to test persons completing modules from a caregiver's class
6 to verify that they have the transferable skills and competencies for
7 entry into a nursing assistant training program. The department may
8 review whether facilities can develop their own related long-term care
9 training programs. The department may develop a review process for
10 determining what previous experience and training may be used to waive
11 some or all of the mandatory training. The department of social and
12 health services and the nursing care quality assurance commission shall
13 work together to develop an implementation plan by December 12, 1998.

14 **Sec. 4.** RCW 74.39A.073 and 2009 c 2 s 5 (Initiative Measure No.
15 1029) are each amended to read as follows:

16 (1) Effective January 1, (~~2010~~) 2011, except as provided in RCW
17 18.88B.040, all persons employed as long-term care workers for the
18 elderly or persons with disabilities must meet the minimum training
19 requirements in this section within one hundred twenty calendar days of
20 employment.

21 (2) All persons employed as long-term care workers must obtain
22 seventy-five hours of entry-level training approved by the department.
23 A long-term care worker must accomplish five of these seventy-five
24 hours before becoming eligible to provide care.

25 (3) Training required by subsection (4)(c) of this section will be
26 applied towards training required under RCW 18.20.270 or 70.128.230 as
27 well as any statutory or regulatory training requirements for long-term
28 care workers employed by supportive living providers.

29 (4) Only training curriculum approved by the department may be used
30 to fulfill the training requirements specified in this section. The
31 seventy-five hours of entry-level training required shall be as
32 follows:

33 (a) Before a long-term care worker is eligible to provide care, he
34 or she must complete two hours of orientation training regarding his or
35 her role as caregiver and the applicable terms of employment;

36 (b) Before a long-term care worker is eligible to provide care, he

1 or she must complete three hours of safety training, including basic
2 safety precautions, emergency procedures, and infection control; and

3 (c) All long-term care workers must complete seventy hours of
4 long-term care basic training, including training related to core
5 competencies and population specific competencies.

6 (5) The department shall only approve training curriculum that:

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

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

11 (6) Individual providers under RCW 74.39A.270 shall be compensated
12 for training time required by this section.

13 (7) The department of health shall adopt rules by August 1,
14 ((2009)) 2010, to implement subsections (1), (2), and (3) of this
15 section.

16 (8) The department shall adopt rules by August 1, ((2009)) 2010, to
17 implement subsections (4) and (5) of this section.

18 **Sec. 5.** RCW 74.39A.075 and 2009 c 2 s 8 (Initiative Measure No.
19 1029) are each amended to read as follows:

20 (1) Effective January 1, ((2010)) 2011, a biological, step, or
21 adoptive parent who is the individual provider only for his or her
22 developmentally disabled son or daughter must receive twelve hours of
23 training relevant to the needs of adults with developmental
24 disabilities within the first one hundred twenty days of becoming an
25 individual provider.

26 (2) Effective January 1, ((2010)) 2011, individual providers
27 identified in (a) and (b) of this subsection must complete thirty-five
28 hours of training within the first one hundred twenty days of becoming
29 an individual provider. Five of the thirty-five hours must be
30 completed before becoming eligible to provide care. Two of these five
31 hours shall be devoted to an orientation training regarding an
32 individual provider's role as caregiver and the applicable terms of
33 employment, and three hours shall be devoted to safety training,
34 including basic safety precautions, emergency procedures, and infection
35 control. Individual providers subject to this requirement include:

36 (a) An individual provider caring only for his or her biological,

1 step, or adoptive child or parent unless covered by subsection (1) of
2 this section; and

3 (b) Before January 1, 2014, a person hired as an individual
4 provider who provides twenty hours or less of care for one person in
5 any calendar month.

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

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

11 (b) Requires comprehensive instruction by qualified instructors.

12 (4) The department shall adopt rules by August 1, (~~(2009)~~) 2010, to
13 implement this section.

14 **Sec. 6.** RCW 74.39A.340 and 2009 c 2 s 9 (Initiative Measure No.
15 1029) are each amended to read as follows:

16 (1) The department of health shall ensure that all long-term care
17 workers shall complete twelve hours of continuing education training in
18 advanced training topics each year. This requirement applies beginning
19 on (~~(January)~~) July 1, (~~(2010)~~) 2011.

20 (2) Completion of continuing education as required in this section
21 is a prerequisite to maintaining home care aide certification under
22 chapter 2, Laws of 2009.

23 (3) Unless voluntarily certified as a home care aide under chapter
24 2, Laws of 2009, subsection (1) of this section does not apply to:

25 (a) An individual provider caring only for his or her biological,
26 step, or adoptive child; and

27 (b) Before June 30, 2014, a person hired as an individual provider
28 who provides twenty hours or less of care for one person in any
29 calendar month.

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

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

35 (b) Requires comprehensive instruction by qualified instructors.

36 (5) Individual providers under RCW 74.39A.270 shall be compensated
37 for training time required by this section.

1 (6) The department of health shall adopt rules by August 1,
2 ((2009)) 2010, to implement subsections (1), (2), and (3) of this
3 section.

4 (7) The department shall adopt rules by August 1, ((2009)) 2010, to
5 implement subsection (4) of this section.

6 **Sec. 7.** RCW 74.39A.350 and 2009 c 2 s 10 (Initiative Measure No.
7 1029) are each amended to read as follows:

8 The department shall offer, directly or through contract, training
9 opportunities sufficient for a long-term care worker to accumulate
10 seventy hours of training within a reasonable time period. For
11 individual providers represented by an exclusive bargaining
12 representative under RCW 74.39A.270, the training opportunities shall
13 be offered through the training partnership established under RCW
14 74.39A.360. Training topics shall include, but are not limited to:
15 Client rights; personal care; mental illness; dementia; developmental
16 disabilities; depression; medication assistance; advanced communication
17 skills; positive client behavior support; developing or improving
18 client-centered activities; dealing with wandering or aggressive client
19 behaviors; medical conditions; nurse delegation core training; peer
20 mentor training; and advocacy for quality care training. The
21 department may not require long-term care workers to obtain the
22 training described in this section. This requirement to offer advanced
23 training applies beginning January 1, ((2011)) 2012.

24 **Sec. 8.** RCW 74.39A.085 and 2009 c 2 s 12 (Initiative Measure No.
25 1029) are each amended to read as follows:

26 (1) The department shall deny payment to any individual provider of
27 home care services who has not been certified by the department of
28 health as a home care aide as required under chapter 2, Laws of 2009
29 or, if exempted from certification by RCW 18.88B.040, has not completed
30 his or her required training pursuant to chapter 2, Laws of 2009.

31 (2) The department may terminate the contract of any individual
32 provider of home care services, or take any other enforcement measure
33 deemed appropriate by the department if the individual provider's
34 certification is revoked under chapter 2, Laws of 2009 or, if exempted
35 from certification by RCW 18.88B.040, has not completed his or her
36 required training pursuant to chapter 2, Laws of 2009.

1 (3) The department shall take appropriate enforcement action
2 related to the contract of a private agency or facility licensed by the
3 state, to provide personal care services, other than an individual
4 provider, who knowingly employs a long-term care worker who is not a
5 certified home care aide as required under chapter 2, Laws of 2009 or,
6 if exempted from certification by RCW 18.88B.040, has not completed his
7 or her required training pursuant to chapter 2, Laws of 2009.

8 (4) Chapter 34.05 RCW shall govern actions by the department under
9 this section.

10 (5) The department shall adopt rules by August 1, (~~2009~~) 2010, to
11 implement this section.

12 **Sec. 9.** RCW 18.88B.040 and 2009 c 2 s 7 (Initiative Measure No.
13 1029) are each amended to read as follows:

14 The following long-term care workers are not required to become a
15 certified home care aide pursuant to this chapter.

16 (1) Registered nurses, licensed practical nurses, certified nursing
17 assistants, medicare-certified home health aides, or other persons who
18 hold a similar health credential, as determined by the secretary of
19 health, or persons with special education training and an endorsement
20 granted by the superintendent of public instruction, as described in
21 RCW 28A.300.010, if the secretary of health determines that the
22 circumstances do not require certification. Individuals exempted by
23 this subsection may obtain certification as a home care aide from the
24 department of health without fulfilling the training requirements in
25 RCW 74.39A.073 but must successfully complete a certification
26 examination pursuant to RCW 18.88B.030.

27 (2) A person already employed as a long-term care worker prior to
28 January 1, (~~2010~~) 2011, who completes all of his or her training
29 requirements in effect as of the date he or she was hired, is not
30 required to obtain certification. Individuals exempted by this
31 subsection may obtain certification as a home care aide from the
32 department of health without fulfilling the training requirements in
33 RCW 74.39A.073 but must successfully complete a certification
34 examination pursuant to RCW 18.88B.030.

35 (3) All long-term care workers employed by supported living
36 providers are not required to obtain certification under this chapter.

1 (4) An individual provider caring only for his or her biological,
2 step, or adoptive child or parent is not required to obtain
3 certification under this chapter.

4 (5) Prior to June 30, 2014, a person hired as an individual
5 provider who provides twenty hours or less of care for one person in
6 any calendar month is not required to obtain certification under this
7 chapter.

8 (6) A long-term care worker exempted by this section from the
9 training requirements contained in RCW 74.39A.073 may not be prohibited
10 from enrolling in training pursuant to that section.

11 (7) The department of health shall adopt rules by August 1,
12 ((2009)) 2010, to implement this section.

13 **Sec. 10.** RCW 18.88A.115 and 2009 c 2 s 11 (Initiative Measure No.
14 1029) are each amended to read as follows:

15 By August 1, ((2009)) 2010, the department of health shall develop,
16 in consultation with the nursing care quality assurance commission and
17 consumer and worker representatives, rules permitting reciprocity to
18 the maximum extent possible under federal law between home care aide
19 certification and nursing assistant certification.

20 **Sec. 11.** RCW 18.88B.050 and 2009 c 2 s 13 (Initiative Measure No.
21 1029) are each amended to read as follows:

22 (1) The uniform disciplinary act, chapter 18.130 RCW, governs
23 uncertified practice, issuance of certificates, and the discipline of
24 persons with certificates under this chapter. The secretary of health
25 shall be the disciplinary authority under this chapter.

26 (2) The secretary of health may take action to immediately suspend
27 the certification of a long-term care worker upon finding that conduct
28 of the long-term care worker has caused or presents an imminent threat
29 of harm to a functionally disabled person in his or her care.

30 (3) If the secretary of health imposes suspension or conditions for
31 continuation of certification, the suspension or conditions for
32 continuation are effective immediately upon notice and shall continue
33 in effect pending the outcome of any hearing.

34 (4) The department of health shall take appropriate enforcement
35 action related to the licensure of a private agency or facility
36 licensed by the state, to provide personal care services, other than an

1 individual provider, who knowingly employs a long-term care worker who
2 is not a certified home care aide as required under this chapter or, if
3 exempted from certification by RCW 18.88B.040, has not completed his or
4 her required training pursuant to this chapter.

5 (5) Chapter 34.05 RCW shall govern actions by the department of
6 health under this section.

7 (6) The department of health shall adopt rules by August 1,
8 ((2009)) 2010, to implement this section.

9 **Sec. 12.** RCW 18.88B.020 and 2009 c 2 s 4 (Initiative Measure No.
10 1029) are each amended to read as follows:

11 (1) Effective January 1, ((2010)) 2011, except as provided in RCW
12 18.88B.040, the department of health shall require that any person
13 hired as a long-term care worker for the elderly or persons with
14 disabilities must be certified as a home care aide within one hundred
15 fifty days from the date of being hired.

16 (2) Except as provided in RCW 18.88B.040, certification as a home
17 care aide requires both completion of seventy-five hours of training
18 and successful completion of a certification examination pursuant to
19 RCW 74.39A.073 and 18.88B.030.

20 (3) No person may practice or, by use of any title or description,
21 represent himself or herself as a certified home care aide without
22 being certified pursuant to this chapter.

23 (4) The department of health shall adopt rules by August 1,
24 ((2009)) 2010, to implement this section.

25 NEW SECTION. **Sec. 13.** Section 10 of this act takes effect
26 September 1, 2009.

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