
SENATE BILL 5473

State of Washington

62nd Legislature

2011 Regular Session

By Senators Murray and Shin; by request of Department of Social and Health Services

Read first time 01/26/11. Referred to Committee on Ways & Means.

1 AN ACT Relating to implementation of long-term care worker
2 requirements regarding background checks and training; amending RCW
3 18.88B.020, 18.88B.030, 18.88B.040, 18.88B.050, 74.39A.050, 74.39A.055,
4 74.39A.073, 74.39A.075, 74.39A.085, 74.39A.260, 74.39A.330, 74.39A.340,
5 and 74.39A.350; and declaring an emergency.

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

7 **Sec. 1.** RCW 18.88B.020 and 2009 c 580 s 18 are each amended to
8 read as follows:

9 (1) Effective January 1, (~~2011~~) 2014, except as provided in RCW
10 18.88B.040, the department of health shall require that any person
11 hired as a long-term care worker for the elderly or persons with
12 disabilities must be certified as a home care aide within one hundred
13 fifty days from the date of being hired.

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

18 (3) No person may practice or, by use of any title or description,

1 represent himself or herself as a certified home care aide without
2 being certified pursuant to this chapter.

3 (4) The department of health shall adopt rules by August 1,
4 (~~2010~~) 2013, to implement this section.

5 **Sec. 2.** RCW 18.88B.030 and 2009 c 580 s 4 are each amended to read
6 as follows:

7 (1) Effective January 1, (~~2011~~) 2014, except as provided in RCW
8 18.88B.040, the department of health shall require that all long-term
9 care workers successfully complete a certification examination. Any
10 long-term care worker failing to make the required grade for the
11 examination will not be certified as a home care aide.

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

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

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

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

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

36 (b) Hire clerical, administrative, and investigative staff as
37 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 (~~2010~~) 2013, that establish the procedures, including criteria for
11 reviewing an applicant's state and federal background checks, and
12 examinations necessary to carry this section into effect.

13 **Sec. 3.** RCW 18.88B.040 and 2010 c 169 s 11 are each amended to
14 read as follows:

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

17 (1) Registered nurses, licensed practical nurses, certified nursing
18 assistants or persons who are in an approved training program for
19 certified nursing assistants under chapter 18.88A RCW, medicare-
20 certified home health aides, or other persons who hold a similar health
21 credential, as determined by the secretary of health, or persons with
22 special education training and an endorsement granted by the
23 superintendent of public instruction, as described in RCW 28A.300.010,
24 if the secretary of health determines that the circumstances do not
25 require certification. After December 31, 2013, individuals exempted
26 by this subsection may obtain certification as a home care aide from
27 the department of health without fulfilling the training requirements
28 in RCW 74.39A.073 but must successfully complete a certification
29 examination pursuant to RCW 18.88B.030.

30 (2) A person already employed as a long-term care worker prior to
31 January 1, (~~2011~~) 2014, who completes all of his or her training
32 requirements in effect as of the date he or she was hired, is not
33 required to obtain certification. After December 31, 2013, individuals
34 exempted by this subsection may obtain certification as a home care
35 aide from the department of health without fulfilling the training
36 requirements in RCW 74.39A.073 but must successfully complete a
37 certification examination pursuant to RCW 18.88B.030.

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

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

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

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

13 ~~((7))~~ (6) The department of health shall adopt rules by August 1,
14 ~~((2010))~~ 2013, to implement this section.

15 **Sec. 4.** RCW 18.88B.050 and 2009 c 580 s 17 are each amended to
16 read as follows:

17 (1) The uniform disciplinary act, chapter 18.130 RCW, governs
18 uncertified practice, issuance of certificates, and the discipline of
19 persons with certificates under this chapter. The secretary of health
20 shall be the disciplinary authority under this chapter.

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

25 (3) If the secretary of health imposes suspension or conditions for
26 continuation of certification, the suspension or conditions for
27 continuation are effective immediately upon notice and shall continue
28 in effect pending the outcome of any hearing.

29 (4) The department of health shall take appropriate enforcement
30 action related to the licensure of a private agency or facility
31 licensed by the state, to provide personal care services, other than an
32 individual provider, who knowingly employs a long-term care worker who
33 is not a certified home care aide as required under this chapter or, if
34 exempted from certification by RCW 18.88B.040, has not completed his or
35 her required training pursuant to this chapter.

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

1 (6) The department of health shall adopt rules by August 1,
2 ((2010)) 2013, to implement this section.

3 **Sec. 5.** RCW 74.39A.050 and 2009 c 580 s 7 are each amended to read
4 as follows:

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

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

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

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

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

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

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

36 (7) All long-term care workers shall be screened through background
37 checks in a uniform and timely manner to ensure that they do not have

1 a criminal history that would disqualify them from working with
2 vulnerable persons. Long-term care workers who are hired after January
3 1, (~~2012~~) 2014, are subject to background checks under RCW
4 74.39A.055. This information will be shared with the department of
5 health in accordance with RCW 74.39A.055 to advance the purposes of
6 chapter 2, Laws of 2009.

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

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

27 (10) Until December 31, (~~2010~~) 2013, individual providers and
28 home care agency providers must satisfactorily complete department-
29 approved orientation, basic training, and continuing education within
30 the time period specified by the department in rule. The department
31 shall adopt rules by March 1, 2002, for the implementation of this
32 section. The department shall deny payment to an individual provider
33 or a home care provider who does not complete the training requirements
34 within the time limit specified by the department by rule.

35 (11) Until December 31, (~~2010~~) 2013, in an effort to improve
36 access to training and education and reduce costs, especially for rural
37 communities, the coordinated system of long-term care training and
38 education must include the use of innovative types of learning

1 strategies such as internet resources, videotapes, and distance
2 learning using satellite technology coordinated through community
3 colleges or other entities, as defined by the department.

4 (12) The department shall create an approval system by March 1,
5 2002, for those seeking to conduct department-approved training.

6 (13) The department shall establish, by rule, background checks and
7 other quality assurance requirements for long-term care workers who
8 provide in-home services funded by medicaid personal care as described
9 in RCW 74.09.520, community options program entry system waiver
10 services as described in RCW 74.39A.030, or chore services as described
11 in RCW 74.39A.110 that are equivalent to requirements for individual
12 providers. Long-term care workers who are hired after January 1,
13 (~~2012~~) 2014, are subject to background checks under RCW 74.39A.055.

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

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

1 entry into a nursing assistant training program. The department may
2 review whether facilities can develop their own related long-term care
3 training programs. The department may develop a review process for
4 determining what previous experience and training may be used to waive
5 some or all of the mandatory training. The department of social and
6 health services and the nursing care quality assurance commission shall
7 work together to develop an implementation plan by December 12, 1998.

8 **Sec. 6.** RCW 74.39A.055 and 2009 c 580 s 2 are each amended to read
9 as follows:

10 (1) All long-term care workers for the elderly or persons with
11 disabilities hired after January 1, (~~2012~~) 2014, shall be screened
12 through state and federal background checks in a uniform and timely
13 manner to ensure that they do not have a criminal history that would
14 disqualify them from working with vulnerable persons. These background
15 checks shall include checking against the federal bureau of
16 investigation fingerprint identification records system and against the
17 national sex offenders registry or their successor programs. The
18 department shall require these long-term care workers to submit
19 fingerprints for the purpose of investigating conviction records
20 through both the Washington state patrol and the federal bureau of
21 investigation.

22 (2) To allow the department of health to satisfy its certification
23 responsibilities under chapter 18.88B RCW, the department shall share
24 state and federal background check results with the department of
25 health. Neither department may share the federal background check
26 results with any other state agency or person.

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

29 (4) The department shall adopt rules to implement the provisions of
30 this section by August 1, (~~2010~~) 2013.

31 **Sec. 7.** RCW 74.39A.073 and 2009 c 580 s 10 are each amended to
32 read as follows:

33 (1) Effective January 1, (~~2011~~) 2014, except as provided in RCW
34 18.88B.040, all persons employed as long-term care workers for the
35 elderly or persons with disabilities must meet the minimum training

1 requirements in this section within one hundred twenty calendar days of
2 employment.

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

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

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

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

18 (b) Before a long-term care worker is eligible to provide care, he
19 or she must complete three hours of safety training, including basic
20 safety precautions, emergency procedures, and infection control; and

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

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

25 (a) Has been developed with input from consumer and worker
26 representatives; and

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

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

31 (7) The department of health shall adopt rules by August 1,
32 ((2010)) 2013, to implement subsections (1), (2), and (3) of this
33 section.

34 (8) The department shall adopt rules by August 1, ((2010)) 2013, to
35 implement subsections (4) and (5) of this section.

36 **Sec. 8.** RCW 74.39A.075 and 2009 c 580 s 11 are each amended to
37 read as follows:

1 (1) Effective January 1, (~~(2011)~~) 2014, a biological, step, or
2 adoptive parent who is the individual provider only for his or her
3 developmentally disabled son or daughter must receive twelve hours of
4 training relevant to the needs of adults with developmental
5 disabilities within the first one hundred twenty days of becoming an
6 individual provider.

7 (2) Effective January 1, (~~(2011)~~) 2014, individual providers
8 identified in (~~((a) and (b) of~~) this subsection must complete
9 thirty-five hours of training within the first one hundred twenty days
10 of becoming an individual provider. Five of the thirty-five hours must
11 be completed before becoming eligible to provide care. Two of these
12 five hours shall be devoted to an orientation training regarding an
13 individual provider's role as caregiver and the applicable terms of
14 employment, and three hours shall be devoted to safety training,
15 including basic safety precautions, emergency procedures, and infection
16 control. Individual providers subject to this requirement include(~~(+~~

17 ~~(a))~~ an individual provider caring only for his or her biological,
18 step, or adoptive child or parent unless covered by subsection (1) of
19 this section(~~(+ and~~

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

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

26 (a) Has been developed with input from consumer and worker
27 representatives; and

28 (b) Requires comprehensive instruction by qualified instructors.

29 (4) The department shall adopt rules by August 1, (~~(2010)~~) 2013, to
30 implement this section.

31 **Sec. 9.** RCW 74.39A.085 and 2009 c 580 s 14 are each amended to
32 read as follows:

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

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

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

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

16 (5) The department shall adopt rules by August 1, (~~2010~~) 2013, to
17 implement this section.

18 **Sec. 10.** RCW 74.39A.260 and 2009 c 580 s 9 are each amended to
19 read as follows:

20 The department must perform criminal background checks for
21 individual providers and prospective individual providers and ensure
22 that the authority has ready access to any long-term care abuse and
23 neglect registry used by the department. Individual providers who are
24 hired after January 1, (~~2012~~) 2014, are subject to background checks
25 under RCW 74.39A.055.

26 **Sec. 11.** RCW 74.39A.330 and 2009 c 478 s 1 are each amended to
27 read as follows:

28 Long-term care workers shall be offered on-the-job training or peer
29 mentorship for at least one hour per week in the first ninety days of
30 work from a long-term care worker who has completed at least twelve
31 hours of mentor training and is mentoring no more than ten other
32 workers at any given time. This requirement applies to long-term care
33 workers who begin work on or after (~~July 1, 2011~~) January 1, 2014.

34 **Sec. 12.** RCW 74.39A.340 and 2009 c 580 s 12 are each amended to
35 read as follows:

1 (1) The department of health shall ensure that all long-term care
2 workers shall complete twelve hours of continuing education training in
3 advanced training topics each year. This requirement applies beginning
4 on July 1, (~~2011~~) 2014.

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

8 (3) Unless voluntarily certified as a home care aide under chapter
9 2, Laws of 2009, subsection (1) of this section does not apply to(~~(+~~

10 ~~(a))~~ an individual provider caring only for his or her biological,
11 step, or adoptive child(~~(+ and~~

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

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

18 (a) Has been developed with input from consumer and worker
19 representatives; and

20 (b) Requires comprehensive instruction by qualified instructors.

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

23 (6) The department of health shall adopt rules by August 1,
24 (~~2010~~) 2013, to implement subsections (1), (2), and (3) of this
25 section.

26 (7) The department shall adopt rules by August 1, (~~2010~~) 2013, to
27 implement subsection (4) of this section.

28 **Sec. 13.** RCW 74.39A.350 and 2009 c 580 s 13 are each amended to
29 read as follows:

30 The department shall offer, directly or through contract, training
31 opportunities sufficient for a long-term care worker to accumulate
32 seventy hours of training within a reasonable time period. For
33 individual providers represented by an exclusive bargaining
34 representative under RCW 74.39A.270, the training opportunities shall
35 be offered through the training partnership established under RCW
36 74.39A.360. Training topics shall include, but are not limited to:
37 Client rights; personal care; mental illness; dementia; developmental

1 disabilities; depression; medication assistance; advanced communication
2 skills; positive client behavior support; developing or improving
3 client-centered activities; dealing with wandering or aggressive client
4 behaviors; medical conditions; nurse delegation core training; peer
5 mentor training; and advocacy for quality care training. The
6 department may not require long-term care workers to obtain the
7 training described in this section. This requirement to offer advanced
8 training applies beginning January 1, ((2012)) 2014.

9 NEW SECTION. **Sec. 14.** This act is necessary for the immediate
10 preservation of the public peace, health, or safety, or support of the
11 state government and its existing public institutions, and takes effect
12 immediately.

--- END ---