

2013 -- S 0461

=====
LC01204
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

—————
A N A C T

RELATING TO HUMAN SERVICES - PERSONAL CARE ATTENDANTS

Introduced By: Senators McCaffrey, Felag, and Walaska

Date Introduced: February 28, 2013

Referred To: Senate Judiciary

(Attorney General)

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 40-8.1-3 of the General Laws in Chapter 40-8.1 entitled "Personal
2 Care Attendant Program" is hereby amended to read as follows:

3 **40-8.1-3. Eligibility for services.** -- Services available under this chapter may be
4 provided to any person who meets the following criteria:

5 (1) Has made application therefor to the director of the department of human services in
6 a manner prescribed by the director;

7 (2) Has a severe physical disability that caused the person to be unduly dependent, the
8 disability to be certified by the ~~division of vocational~~ office of rehabilitation services; and

9 (3) Has not sufficient income or resources to meet the cost of home care services, a
10 determination of insufficiency to be made by the division of vocational rehabilitation.

11 SECTION 2. Title 23 of the General Laws entitled "HEALTH AND SAFETY" is hereby
12 amended by adding thereto the following chapter:

13 CHAPTER 88

14 PERSONAL CARE SERVICES

15 **23-88-1. Definitions.** – As used in this chapter:

16 (1) "Applicant" means a person applying with the department for a certificate of
17 registration as a personal care assistant.

18 (2) "Activities of daily living" means hands on assistance with activities of daily living
19 including, but not limited to, ambulation, transfer, toileting, and grooming.

1 (3) “Bureau of Criminal Identification” means the bureau of criminal identification of the
2 department of attorney general.

3 (4) “Companionship” includes, but is not limited to, spending time with or caring for a
4 consumer, accompanying a consumer on trips and outings, and providing necessary transportation
5 to a consumer.

6 (5) “Consumer” means an individual who receives self-directed personal assistant care
7 services, including, a participant in personal care assistant services provided pursuant to section
8 40-8.1-2 or a person who receives personal care assistant services through Medicaid, a third-party
9 payor, or paid for by the individual and/or his/her family. “Consumer” shall not include an
10 individual who receives services similar to personal care assistant services for no compensation.

11 (6) “Department” means the department of health.

12 (7) “Employer” means the consumer unless the personal care assistant is employed by a
13 third party, in such cases the third party is the employer.

14 (8) “Homemaking” means performing household chores that includes, but is not limited
15 to, housekeeping, meal planning and preparation, shopping assistance, and routine household
16 activities for a consumer.

17 (9) “Participant” means an individual approved by the department to receive self-directed
18 personal care assistant services.

19 (10) “Personal care assistant” means an individual with appropriate training who provides
20 personal care assistant services to a consumer.

21 (11) “Personal care assistant services” means assistance with activities of daily living,
22 homemaking, and companionship provided to a consumer that are intended to enable the
23 consumer to remain safely and comfortably in their residence. Personal care assistant services
24 does not include services provided by entities required to be licensed under the general laws
25 including, but not limited to: education facilities, title 16; health care facilities, chapter 23-17;
26 assisted living residences, chapter 23-17.4; nursing service agencies, chapter 23-17.7.1; and/or
27 behavioral healthcare, developmental disabilities and hospitals facilities, chapter 40.1-25.1.

28 (12) “Personal representative” means a person who, under applicable state law, has the
29 authority to act on behalf of the consumer with regard to an action to be taken.

30 (13) “Registrant” means the lawful holder of a certificate of registration as a personal
31 care assistant with the department.

32 (14) “Service plan” means a written list of the types and schedule of personal care
33 assistant services prepared by the personal care assistant, or his or her designee, updated to reflect
34 changes in needs or services as appropriate, but at least annually, that states the services to be

1 provided to the consumer subject to the consumer's right to temporarily suspend, permanently
2 terminate, temporarily add, or permanently add the provision of any such service.

3 **23-88-2. Rights of consumers.** – The department shall develop rights to be distributed to
4 the consumer within five (5) calendar days of the initiation of services to the consumer and
5 thereafter, on an annual basis. These rights include:

6 (1) The consumer's right to be free from verbal, physical and psychological abuse and to
7 be treated with dignity;

8 (2) The consumer's right to temporarily or permanently suspend, terminate, or add the
9 provision of any services stated in the service plan;

10 (3) The consumer's right to have property treated with respect;

11 (4) The consumer's right to voice grievances regarding services furnished or regarding
12 the lack of respect for property by anyone who is furnishing services and that the consumer must
13 not be subject to discrimination or reprisal for doing so;

14 (5) A statement that it is not within the scope of the services to manage the medical and
15 health conditions of the consumers;

16 (6) The charges for services provided by the personal care assistant; and

17 (7) The procedure and contact information to file a complaint with the department.

18 **23-88-3. Complaint Process.--** The department shall investigate complaints made by a
19 consumer, the consumer's family, or the personal representative regarding services that are or
20 have failed to be furnished or lack of respect for the consumer's property by the personal care
21 assistant. The department shall document the existence of the complaint and the resolution of the
22 complaint in accordance with the department's rules and regulations.

23 **23-88-4. Registration.--** (a) Every person being employed as a personal care assistant or
24 offering services as a personal care assistant must obtain a certificate of registration issued by the
25 department within their initial thirty (30) days of employment or of offering services.

26 (b) The department shall verify, prior to issuing a certificate of registration, that the
27 applicant underwent a national criminal records check in accordance with section 23-88-8 and
28 successfully completed the training program in accordance with section 23-88-7.

29 (c) The department shall register all those individuals issued a certificate of registration
30 and the register shall be open to public inspection.

31 (d) The department may charge a fee for registration or renewal of the certificate that
32 shall be established by rules and regulations promulgated pursuant to section 23-88-15 of this
33 chapter.

34 **23-88-5. Renewal of certificate of registration.** -- Every registrant shall renew their

1 certificate of registration biennially by making application to the department. Such forms shall be
2 provided by the department. The renewals shall be granted as a matter of course provided that the
3 registrant has proof of successful completion of the continuing education requirements as
4 required by section 23-88-7. The department shall not automatically renew the certificate of
5 registration if the department finds that the registrant has acted or failed to act in a manner under
6 the circumstances that would constitute grounds for suspension or revocation of a certificate of
7 registration.

8 **23-88-6. Grandfather clause.** -- After January 1, 2014 and at any time prior to March
9 31, 2014, the department shall issue a certificate of registration to any applicant who shall present
10 satisfactory evidence that he or she has been employed as a personal care assistant in Rhode
11 Island for a period of at least three hundred (300) hours and has undergone a national criminal
12 records check in accordance with section 23-88-8.

13 **23-88-7. Personal Care Assistant Training.**-- (a) The department shall be responsible
14 for ensuring that all registrants have completed four (4) hours of initial training on personal care
15 assistant responsibilities and practices and two (2) hours of continuing education biennially
16 thereafter, as prescribed by the department. In addition to the four (4) hours of initial training,
17 each registrant shall receive individualized training on how to assist their consumer's needs.

18 (b) All applicants not otherwise exempted, under section 23-88-6, are required to
19 complete the process of training within thirty (30) days from the date of initiation of training. If
20 the applicant fails to successfully complete the training within ninety (90) days, he or she must
21 successfully repeat the training program.

22 **23-88-8. National Criminal Records Check.** -- (a) Any person applying for a certificate
23 of registration as a personal care assistant shall undergo a national criminal records check to be
24 initiated prior to applying for a certificate of registration.

25 (b) The applicant shall apply to the bureau of criminal identification for a national
26 criminal records check that shall be supported by fingerprints submitted to the federal bureau of
27 investigation ("FBI"). Upon the discovery of any disqualifying information as defined in section
28 23-88-10, the bureau of criminal identification shall inform the applicant, in writing, of the nature
29 of the disqualifying information; and, without disclosing the nature of the disqualifying
30 information, will notify the department, in writing, that disqualifying information has been
31 discovered.

32 (c) In those situations in which no disqualifying information has been found, the bureau
33 of criminal identification shall inform the applicant and the department, in writing.

34 (d) It shall be the responsibility of the applicant to pay for the national criminal records

1 check.

2 **23-88-9. Prior criminal records checks.--** If an applicant has undergone a national
3 criminal records check within eighteen (18) months of an application for a certificate of
4 registration, then an applicant may request from the bureau of criminal identification a letter
5 indicating if any disqualifying information was discovered. The bureau of criminal identification
6 shall respond without disclosing the nature of the disqualifying information. The letter may be
7 maintained on file to satisfy the requirements of this chapter.

8 **23-88-10. Disqualifying information.--** (a) Information produced by a national criminal
9 records check pertaining to a conviction, for the following crimes, shall result in a letter to the
10 applicant and the department disqualifying the applicant from a certificate of registration: murder,
11 manslaughter, first degree sexual assault, second degree sexual assault, third degree sexual
12 assault, assault on persons sixty (60) years of age or older, assault with intent to commit specified
13 felonies (murder, robbery, rape, burglary, or the abominable and detestable crime against nature),
14 felony assault, patient abuse, neglect or mistreatment of patients, first degree arson, robbery,
15 felony drug offenses, larceny, abuse, neglect and/or exploitation of adults with severe
16 impairments, fraud and false dealing, theft, embezzlement, false pretenses, misappropriation,
17 impersonation and identity fraud, exploitation of elders, or felony banking law violations.

18 (b) For purposes of this section “conviction” means, in addition to judgments of
19 conviction entered by a court subsequent to a finding of guilty or a plea of guilty, those instances
20 where the defendant has entered a plea of nolo contendere and has received a sentence of
21 probation and those instances where a defendant has entered into a deferred sentence agreement
22 with the attorney general.

23 **23-88-11. Denial, suspension, or revocation of a certificate of registration.--** The
24 department, after notice and opportunity for a hearing to the applicant or registrant, is authorized
25 to deny, suspend, or revoke a certificate of registration in any case in which it finds that there has
26 been failure to comply with the requirements under this chapter and the rules and regulations
27 promulgated thereto or the registrant has been convicted of a disqualifying offense provided in
28 section 23-88-10. The notice shall be effected by registered or certified mail or by personal
29 service, setting forth the particular reasons for the proposed action and fixing a date not less than
30 thirty (30) days from the date of the mailing or service, at which time the applicant or registrant
31 shall be given an opportunity for a prompt and fair hearing. On the basis of the hearing, or upon
32 the failure of the applicant or registrant to appear, the department shall make a determination
33 specifying its findings of fact and conclusions of law. A copy of the determination shall be sent
34 by registered or certified mail or served personally upon the applicant or registrant. The decision

1 denying, suspending, or revoking the certificate of registration shall become final thirty (30) days
2 after it is so mailed or served, unless the applicant or registrant, within the thirty (30) day period,
3 appeals the decision pursuant to section 42-35-15. The procedure governing hearings authorized
4 by this section shall be in accordance with sections 42-35-9 and 42-35-13 as contained in section
5 42-35-14. A full and complete record shall be kept of all proceedings, and all testimony shall be
6 reported but need not be transcribed unless the decision is appealed pursuant to section 42-35-15.
7 A copy or copies of the transcript may be obtained by an interested party on payment of the cost
8 of preparing the copy or copies. Witnesses may be subpoenaed by either party.

9 **23-88-12. Judicial review of certificate of registration action.** -- Any person who has
10 exhausted all administrative remedies available to him or her within the department, and who is
11 aggrieved by a final decision of the department, is entitled to judicial review in accordance with
12 the provisions of sections 42-35-15 and 42-35-16.

13 **23-88-13. Immunity from liability.**-- No person who disqualifies an individual from
14 employment or continued employment within thirty (30) days of receipt of a letter containing
15 disqualifying information as defined in section 23-88-10 or of a national criminal records check
16 relating to that information shall be liable for civil damages or subject to any claim, cause of
17 action, or proceeding of any nature as a result of the disqualification.

18 **23-88-14. Inspections and Investigations.**-- The department may conduct any such
19 investigation and inspection as it deems necessary to assess compliance with this chapter and the
20 rules and regulations promulgated thereto. Wherever possible and practical, on-site reviews shall
21 be scheduled, in an effort so as to reduce the number of visits and the disruption to the personal
22 care assistant services. Investigations and inspections may occur when the consumer gives
23 consent including the direct observation of the provision of personal care assistant services.
24 Registrants shall make available to the department all books, records, policies and procedures, or
25 any other materials requested during the course of an investigation or inspection. Refusal to make
26 such materials available to the department shall be grounds for certificate of registration
27 revocation, or the imposition of any other penalty provided in the chapter.

28 **23-88-15. Rules and regulations.**-- The department shall promulgate rules and
29 regulations to carry out the intent and purpose of this chapter.

30 **23-88-16. Penalties for violations.** -- It shall be a misdemeanor punishable by a fine of
31 not more than one thousand dollars (\$1,000) and/or by imprisonment for not more than one year
32 for any person to:

33 (1) Be employed as a personal care assistant or offer services as a personal care assistant
34 without a certificate of registration as required by this chapter;

1 (2) Practice as a personal care assistant during the time his or her certification of
2 registration issued under the provisions of this chapter is suspended or revoked; or

3 (3) Obtain his or her certification of registration by means of fraud, misrepresentation, or
4 concealment of material facts.

5 **23-88-17. Severability.--** If any provision of this chapter or the application of any
6 provision of this chapter to any person or circumstance shall be held invalid, the invalidity shall
7 not affect the provisions or application of this chapter which can be given effect without the
8 invalid provisions or application, and to this end the provisions of this chapter are declared
9 severable.

10 SECTION 3. This act shall take effect on January 1, 2014.

=====
LC01204
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO HUMAN SERVICES - PERSONAL CARE ATTENDANTS

1 This act would require registration of those individuals who provide personal care
2 assistant services to a consumer.

3 This act would take effect on January 1, 2014.

=====
LC01204
=====