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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

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A N A C T

RELATING TO HEALTH AND SAFETY

Introduced By: Representatives O'Grady, Serpa, Kennedy, and Bennett

Date Introduced: March 01, 2017

Referred To: House Health, Education & Welfare

(Attorney General)

It is enacted by the General Assembly as follows:

1           SECTION 1. Sections 12-1.6-1 of the General Laws in Chapter 12-1.6 entitled "National  
2 Criminal Records Check System" are hereby amended to read as follows:

3           **12-1.6-1. Automated fingerprint identification system database.**

4           The department of attorney general may establish and maintain an automated fingerprint  
5 identification system database that would allow the department to store and maintain all  
6 fingerprints submitted in accordance with the national criminal records check system. The  
7 automated fingerprint identification system database would provide for an automatic notification  
8 if, and when, a subsequent criminal arrest fingerprint card is submitted to the system that matches  
9 a set of fingerprints previously submitted in accordance with a national criminal records check. If  
10 the aforementioned arrest results in a conviction, the department shall immediately notify those  
11 individuals and entities with which that individual is associated and who are required to be  
12 notified of disqualifying information concerning national criminal records checks as provided in  
13 chapters 17, 17.4, 17.7.1, [and 94](#) of title 23 or § 23-1-52. The information in the database  
14 established under this section is confidential and not subject to disclosure under chapter 38-2.

15           **12-1.6-2. Long-term healthcare workers.**

16           The department of attorney general shall maintain an electronic, web-based system to  
17 assist facilities, licensed under chapters 17, 17.4, 17.7.1, [and 94](#) of title 23 or § 23-1-52, required  
18 to check relevant registries and conduct national criminal records checks of routine contact  
19 patient employees. The department of attorney general shall provide for an automated notice, as

1 authorized in § 12-1.6-1, to those facilities if a routine-contact patient employee is subsequently  
2 convicted of a disqualifying offense, as described in the relevant licensing statute. The  
3 department of attorney general may charge a facility a one-time, set-up fee of up to one hundred  
4 dollars (\$100) for access to the electronic web-based system under this section.

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

7 **40-8.1-3. Eligibility for services.**

8 Services available under this chapter may be provided to any person who meets the  
9 following criteria:

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

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

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

16 SECTION 3. Title 23 of the General Laws entitled "HEALTH AND SAFETY" is hereby  
17 amended by adding thereto the following chapter:

18 CHAPTER 94

19 PERSONAL CARE ASSISTANT SERVICES

20 **23-94-1. Definitions.**

21 As used in this chapter:

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

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

26 (3) "Bureau of criminal identification" means the bureau of criminal identification of the  
27 department of attorney general.

28 (4) "Companionship" means and includes, but is not limited to, spending time with or  
29 caring for a consumer, accompanying a consumer on trips and outings, and providing necessary  
30 transportation to a consumer.

31 (5) "Consumer" means an individual who receives self-directed personal assistant care  
32 services, including, a participant in personal care attendant services provided pursuant to §40-8.1-  
33 2 or a person who receives personal care assistant services through Medicaid, a third-party payor,  
34 or paid for by the individual and/or their family. Consumer shall not include an individual who

1 receives services similar to personal care assistant services for no compensation.

2 (6) "Department" means the department of health.

3 (7) "Disqualifying information" means information produced by a national criminal  
4 records check pertaining to a conviction for the following crimes: murder, manslaughter, first  
5 degree sexual assault, second degree sexual assault, third degree sexual assault, assault on persons  
6 sixty (60) years of age or older, assault with intent to commit specified felonies (murder, robbery,  
7 rape, burglary, or the abominable and detestable crime against nature), felony assault, patient  
8 abuse, neglect or mistreatment of patients, first degree arson, robbery, felony drug offenses,  
9 larceny, abuse, neglect and/or exploitation of adults with severe impairments, fraud and false  
10 dealing, theft, embezzlement, false pretenses, misappropriation, impersonation and identity fraud,  
11 exploitation of elders, or felony banking law violations. For purposes of this subsection  
12 "conviction" means, in addition to judgments of conviction entered by a court subsequent to a  
13 finding of guilty or a plea of guilty, those instances where the defendant has entered a plea of  
14 nolo contendere and has received a sentence of probation and those instances where a defendant  
15 has entered into a deferred sentence agreement with the attorney general.

16 (8) "Employer" means the consumer unless the personal care assistant is employed by a  
17 third party, in such cases the third party is the employer.

18 (9) "Family caregiver" means any relative or partner providing personal care assistant  
19 services, whether financially compensated or not.

20 (10) "Homemaking" means performing household chores that includes, but is not limited  
21 to, housekeeping, meal planning and preparation, shopping assistance, and routine household  
22 activities for a consumer.

23 (11) "Participant" means an individual approved by the department to receive self-  
24 directed personal care assistant services.

25 (12) "Personal care assistant" means an individual with appropriate training who receives  
26 financial compensation to provide personal care assistant services to a consumer and is not a  
27 family caregiver.

28 (13) "Personal care assistant services" means assistance with activities of daily living,  
29 homemaking, and companionship provided to a consumer that are intended to enable the  
30 consumer to remain safely and comfortably in their residence. Personal care assistant services  
31 does not include services provided by entities required to be licensed under the general laws  
32 including, but not limited to: education facilities (title 16); health care facilities (chapter 17 of title  
33 23); assisted living residences (chapter 17.4 of title 23); nursing service agencies (chapter 17.7.1  
34 of title 23); and/or behavioral healthcare, developmental disabilities and hospitals facilities

1 (chapter 40.1-25.1).

2 (14) "Personal representative" means a person who, under applicable state law, has the  
3 authority to act on behalf of the consumer with regard to an action to be taken.

4 (15) "Registrant" means the lawful holder of a certificate of registration as a personal care  
5 assistant with the department.

6 (16) "Service plan" means a written list of the types and schedule of personal care  
7 assistant services prepared by the personal care assistant, or their designee, updated to reflect  
8 changes in needs or services as appropriate, but at least annually, that states the services to be  
9 provided to the consumer subject to the consumer's right to temporarily suspend, permanently  
10 terminate, temporarily add, or permanently add the provision of any such service.

11 **23-94-2. Rights of consumers.**

12 The department shall develop rights to be distributed to the consumer within five (5)  
13 calendar days of the initiation of services to the consumer and thereafter, on an annual basis.

14 These rights include:

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

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

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

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

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

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

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

27 **23-94-3. Complaint process.**

28 The department shall investigate complaints made by a consumer, the consumer's family,  
29 or the personal representative regarding services that are or have failed to be furnished or lack of  
30 respect for the consumer's property by the personal care assistant. The department shall document  
31 the existence of the complaint and the resolution of the complaint in accordance with the  
32 department's rules and regulations.

33 **23-94-4. Registration.**

34 (a) Every person being employed as a personal care assistant or offering services as a

1 personal care assistant must obtain a certificate of registration issued by the department within  
2 their initial thirty (30) days of employment or of offering services.

3 (b) The department shall verify, prior to issuing a certificate of registration, that the  
4 applicant underwent a national criminal records check in accordance with §23-94-8 and  
5 successfully completed the training program in accordance with §23-94-7.

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

8 **23-94-5. Renewal of certificate of registration.**

9 Every registrant shall renew their certificate of registration biennially by making  
10 application to the department. Such forms shall be provided by the department. The renewals  
11 shall be granted as a matter of course provided that the registrant has proof of successful  
12 completion of the continuing education requirements as required by §23-94-7. The department  
13 shall not automatically renew the certificate of registration if the department finds that the  
14 registrant has acted or failed to act in a manner under the circumstances that would constitute  
15 grounds for suspension or revocation of a certificate of registration.

16 **23-94-6. Grandfather clause.**

17 After January 1, 2018 and at any time prior to March 31, 2018, the department shall issue  
18 a certificate of registration to any applicant who shall present satisfactory evidence that they have  
19 been employed as a personal care assistant in Rhode Island for a period of at least three hundred  
20 (300) hours and has undergone a national criminal records check in accordance with §23-94-8.

21 **23-94-7. Personal care assistant training.**

22 (a) The department shall be responsible for ensuring that all registrants have completed  
23 two (2) hours of initial training on personal care assistant responsibilities and practices, as  
24 prescribed by the department. In addition to the two (2) hours of initial training, each registrant  
25 shall receive individualized training on how to assist their consumer's needs.

26 (b) All applicants not otherwise exempted, under §23-94-6, are required to complete the  
27 process of training within thirty (30) days from the date of initiation of training. If the applicant  
28 fails to successfully complete the training within ninety (90) days, they must successfully repeat  
29 the training program.

30 **23-94-8. National criminal records check.**

31 (a) Any person applying for a certificate of registration as a personal care assistant shall  
32 undergo a national criminal records check to be initiated prior to applying for a certificate of  
33 registration.

34 (b) The applicant shall apply to the bureau of criminal identification for a national

1 criminal records check that shall be supported by fingerprints submitted to the federal bureau of  
2 investigation ("FBI").

3 (1) Upon the discovery of any disqualifying information, the bureau of criminal  
4 identification shall inform the applicant, in writing, of the nature of the disqualifying information;  
5 and, without disclosing the nature of the disqualifying information, will notify the department, in  
6 writing, that disqualifying information has been discovered. The department may not deny a  
7 certificate of registration based on the existence of disqualifying information. However, the  
8 department shall alert the hiring consumer that disqualifying information has been discovered on  
9 a registrant's national criminal records check. The registrant about whom disqualifying  
10 information has been found may provide the consumer a copy of the national criminal records  
11 check. The consumer shall make a judgment regarding the employment or continued employment  
12 of a registrant.

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

15 (c) It shall be the responsibility of the applicant to pay for the national criminal records  
16 check.

17 **23-94-9. Denial, suspension, or revocation of a certificate of registration.**

18 The department, after notice and opportunity for a hearing to the applicant or registrant, is  
19 authorized to deny, suspend, or revoke a certificate of registration in any case in which it finds  
20 that there has been failure to comply with the requirements under this chapter and the rules and  
21 regulations promulgated thereto or the registrant has been convicted of an offense that is  
22 considered disqualifying information. The notice shall be effected by registered or certified mail  
23 or by personal service, setting forth the particular reasons for the proposed action and fixing a  
24 date not less than thirty (30) days from the date of the mailing or service, at which time the  
25 applicant or registrant shall be given an opportunity for a prompt and fair hearing. On the basis of  
26 the hearing, or upon the failure of the applicant or registrant to appear, the department shall make  
27 a determination specifying its findings of fact and conclusions of law. A copy of the  
28 determination shall be sent by registered or certified mail or served personally upon the applicant  
29 or registrant. The decision denying, suspending, or revoking the certificate of registration shall  
30 become final thirty (30) days after it is so mailed or served, unless the applicant or registrant,  
31 within the thirty (30) day period, appeals the decision pursuant to §42-35-15. The procedure  
32 governing hearings authorized by this section shall be in accordance with §§42-35-9 and 42-35-  
33 13 as stipulated in §42-35-14. A full and complete record shall be kept of all proceedings, and all  
34 testimony shall be reported but need not be transcribed unless the decision is appealed pursuant to

1 §42-35-15. A copy or copies of the transcript may be obtained by an interested party on payment  
2 of the cost of preparing the copy or copies. Witnesses may be subpoenaed by either party.

3 **23-94-10. Judicial review of certificate of registration action.**

4 Any person who has exhausted all administrative remedies available to them within the  
5 department, and who is aggrieved by a final decision of the department, is entitled to judicial  
6 review in accordance with the provisions of §§42-35-15 and 42-35-16.

7 **23-94-11. Immunity from liability.**

8 No person who disqualifies an individual from employment or continued employment  
9 within thirty (30) days of receipt of a letter containing disqualifying information or of a national  
10 criminal records check relating to that information shall be liable for civil damages or subject to  
11 any claim, cause of action, or proceeding of any nature as a result of the disqualification.

12 **23-94-12. Inspections and investigations.**

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

22 **23-94-13. Rules and regulations.**

23 The department shall promulgate rules and regulations to carry out the intent of this  
24 chapter.

25 **23-94-14. Penalties of violations.**

26 It shall be a misdemeanor punishable by a fine of not more than one thousand dollars  
27 (\$1,000), by imprisonment for not more than one year, or both, for any person to:

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

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

32 (3) Obtain their certification of registration by means of fraud, misrepresentation, or  
33 concealment of material facts.

34 **23-94-15. Severability.**

1           If any provision of this chapter or the application of any provision of this chapter to any  
2 person or circumstance shall be held invalid, the invalidity shall not affect the provisions or  
3 application of this chapter which can be given effect without the invalid provisions or application,  
4 and to this end the provisions of this chapter are declared severable.

5           SECTION 4. This act shall take effect on January 1, 2018.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO HEALTH AND SAFETY

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1           This act would require registration and criminal background checks of individuals who  
2 provide personal care assistant services.

3           This act would take effect on January 1, 2018.

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