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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 - PERSONAL CARE ASSISTANT SERVICES

Introduced By: Senators Lombardi, Lynch Prata, McCaffrey, Lombardo, and Jabour

Date Introduced: January 18, 2017

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 12-1.6-1 and 12-1.6-2 of the General Laws in Chapter 12-1.6
2 entitled "National 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 rehabilitation~~ office of rehabilitation
14 services; and

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

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

19 CHAPTER 94

20 PERSONAL CARE ASSISTANT SERVICES

21 **23-94-1. Short title.**

22 This chapter shall be known and may be cited as the "Personal Care Assistant Services
23 Act".

24 **23-94-2. Definitions.**

25 As used in this chapter, the following words and terms shall have the following
26 meanings:

27 (1) "Activities of daily living" means hands on assistance with activities of daily living
28 including, but not limited to, ambulation, transferring, toileting, and grooming.

29 (2) "Applicant" means a person applying to the department for a certificate of registration
30 as a personal care assistant.

31 (3) "Bureau of criminal identification" means the bureau of criminal identification of the
32 department of attorney general.

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

1 transportation to a consumer.

2 (5) "Consumer" means an individual who receives self-directed personal assistant care
3 services, including a participant in personal care assistant services provided pursuant to §40-8.1-2
4 or a person who receives personal care assistant services through Medicaid, a third-party payor,
5 or paid for by the individual and/or their family. "Consumer" shall not include an individual who
6 receives services similar to personal care assistant services for no compensation.

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

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

21 (8) "Employer" means the consumer unless the personal care assistant is employed by a
22 third party; in such cases the third party is the employer.

23 (9) "Homemaking" means performing household chores that includes, but is not limited
24 to, housekeeping, meal planning and preparation, shopping assistance, and routine household
25 activities for a consumer.

26 (10) "Participant" means an individual approved by the department to receive self-
27 directed personal care assistant services.

28 (11) "Personal care assistant" means an individual with appropriate training who provides
29 personal care assistant services to a consumer.

30 (12) "Personal care assistant services" means assistance with activities of daily living,
31 homemaking, and companionship provided to a consumer that are intended to enable the
32 consumer to remain safely and comfortably in their residence. Personal care assistant services
33 does not include services provided by entities required to be licensed under the general laws
34 including, but not limited to: title 16 (education facilities); chapter 17 of title 23 (health care

1 facilities); chapter 17.4 of title 23 (assisted living residences); chapter 17.7.1 of title 23 (nursing
2 service agencies); and/or chapter 25.1 of title 40.1 (behavioral healthcare, developmental
3 disabilities and hospitals facilities).

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

6 (14) "Registrant" means the lawful holder of a certificate of registration as a personal care
7 assistant with the department.

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

13 **23-94-3. Rights of consumers.**

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

16 These rights shall include:

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

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

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

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

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

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

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

29 **23-94-4. Complaint process.**

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

1 **23-94-5. Registration.**

2 (a) Every person being employed as a personal care assistant or offering services as a
3 personal care assistant must obtain a certificate of registration issued by the department within
4 their initial thirty (30) days of employment or of offering services.

5 (b) The department shall verify, prior to issuing a certificate of registration, that the
6 applicant underwent a national criminal records check in accordance with §23-94-9 and
7 successfully completed the training program in accordance with §23-94-8.

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

10 (d) The department may charge a fee for registration or renewal of the certificate that
11 shall be established by rules and regulations promulgated pursuant to §23-94-14.

12 **23-94-6. Renewal of certificate of registration.**

13 Every registrant shall renew their certificate of registration biennially by making
14 application to the department. Such forms shall be provided by the department. The renewals
15 shall be granted as a matter of course provided that the registrant has proof of successful
16 completion of the continuing education requirements as required by §23-94-8. The department
17 shall not automatically renew the certificate of registration if the department finds that the
18 registrant has acted or failed to act in a manner under the circumstances that would constitute
19 grounds for suspension or revocation of a certificate of registration.

20 **23-94-7. Grandfather rights.**

21 After January 1, 2018 and at any time prior to March 31, 2018, the department shall issue
22 a certificate of registration to any applicant who shall present satisfactory evidence that they have
23 been employed as a personal care assistant in Rhode Island for a period of at least three hundred
24 (300) hours and have undergone a national criminal records check in accordance with §23-94-9.

25 **23-94-8. Personal care assistant training.**

26 (a) The department shall be responsible for ensuring that all registrants have completed
27 four (4) hours of initial training on personal care assistant responsibilities and practices and two
28 (2) hours of continuing education biennially thereafter, as prescribed by the department. In
29 addition to the four (4) hours of initial training, each registrant shall receive individualized
30 training on how to assist their consumer's needs.

31 (b) All applicants not otherwise exempted, under §23-94-7, shall be required to complete
32 the process of training within thirty (30) days from the date of initiation of training. If the
33 applicant fails to successfully complete the training within ninety (90) days, they must
34 successfully repeat the training program.

1 **23-94-9. National criminal records check.**

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

5 (b) The applicant shall apply to the bureau of criminal identification for a national
6 criminal records check that shall be supported by fingerprints submitted to the Federal Bureau of
7 Investigation ("FBI").

8 (1) Upon the discovery of any disqualifying information, the bureau of criminal
9 identification shall inform the applicant, in writing, of the nature of the disqualifying information;
10 and, without disclosing the nature of the disqualifying information, will notify the department, in
11 writing, that disqualifying information has been discovered. An employee against whom
12 disqualifying information has been found may provide a copy of the national criminal records
13 check to the department. The department shall make a judgment regarding the issuance of the
14 certificate of registration.

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

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

19 **23-94-10. Denial, suspension, or revocation of a certificate of registration.**

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

1 13 as stipulated in §42-35-14. A full and complete record shall be kept of all proceedings, and all
2 testimony shall be reported but need not be transcribed unless the decision is appealed pursuant to
3 §42-35-15. A copy or copies of the transcript may be obtained by an interested party on payment
4 of the cost of preparing the copy or copies. Witnesses may be subpoenaed by either party.

5 **23-94-11. Judicial review of certificate of registration action.**

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

9 **23-94-12. Immunity from liability.**

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

14 **23-94-13. Inspections and investigations.**

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

25 **23-94-14. Rules and regulations.**

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

28 **23-94-15. Penalties for violations.**

29 It shall be a misdemeanor punishable by a fine of not more than one thousand dollars
30 (\$1,000), by imprisonment for not more than one year, or both, for any person to:

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

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

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

3 **23-94-16. Severability.**

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

8 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 - PERSONAL CARE ASSISTANT SERVICES

1 This act would require registration of those individuals who provide personal care
2 assistant services to a consumer. This act would authorize the department of health to supervise
3 and investigate compliance with such issues as, consumer rights, the registration process, national
4 criminal records checks and training for applicants.

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

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