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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

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A N A C T

RELATING TO HEALTH AND SAFETY - PERSONAL CARE ASSISTANT SERVICES

Introduced By: Representatives Naughton, O`Grady, Maldonado, Diaz, and O'Brien

Date Introduced: January 28, 2016

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 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.** -- The department of
4 attorney general may establish and maintain an automated fingerprint identification system
5 database that would allow the department to store and maintain all fingerprints submitted in
6 accordance with the national criminal records check system. The automated fingerprint
7 identification system database would provide for an automatic notification if, and when, a
8 subsequent criminal arrest fingerprint card is submitted to the system that matches a set of
9 fingerprints previously submitted in accordance with a national criminal records check. If the
10 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.** -- The department of attorney general shall
16 maintain an electronic, web-based system to assist facilities, licensed under chapters 17, 17.4,
17 17.7.1, [and 94](#) of title 23 or § 23-1-52, required to check relevant registries and conduct national
18 criminal records checks of routine contact patient employees. The department of attorney general
19 shall provide for an automated notice, as authorized in § 12-1.6-1, to those facilities if a routine-

1 contact patient employee is subsequently convicted of a disqualifying offense, as described in the
2 relevant licensing statute. The department of attorney general may charge a facility a one-time,
3 set-up fee of up to one hundred dollars (\$100) for access to the electronic web-based system
4 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.** -- Services available under this chapter may be
8 provided to any person who meets the following criteria:

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

11 (2) Has a severe physical disability that caused the person to be unduly dependent, the
12 disability to be certified by the ~~division of vocational rehabilitation~~ office of rehabilitation
13 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. Short title.** -- This chapter shall be known and may be cited as the "Personal
21 Care Assistant Services Act".

22 **23-94-2. Definitions.** -- As used in this chapter, the following words and terms shall have
23 the following meanings:

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

26 (2) "Applicant" means a person applying with the department for a certificate of
27 registration as a personal care assistant.

28 (3) "Bureau of criminal identification" means the bureau of criminal identification of the
29 department of attorney general.

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

33 (5) "Consumer" means an individual who receives self-directed personal assistant care
34 services, including a participant in personal care assistant services provided pursuant to §40-8.1-2

1 or a person who receives personal care assistant services through Medicaid, a third-party payor,
2 or paid for by the individual and/or their family. "Consumer" shall not include an individual who
3 receives services similar to personal care assistant services for no compensation.

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

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

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

20 (9) "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 (10) "Participant" means an individual approved by the department to receive self-
24 directed personal care assistant services.

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

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

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

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

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

10 **23-94-3. Rights of consumers.** -- The department shall develop rights to be distributed to
11 the consumer within five (5) calendar days of the initiation of services to the consumer and
12 thereafter, on an annual basis. These rights shall include:

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

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

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

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

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

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

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

25 **23-94-4. Complaint process.** -- The department shall investigate complaints made by a
26 consumer, the consumer's family, or the personal representative regarding services that are or
27 have failed to be furnished or lack of respect for the consumer's property by the personal care
28 assistant. The department shall document the existence of the complaint and the resolution of the
29 complaint in accordance with the department's rules and regulations.

30 **23-94-5. Registration.** -- (a) Every person being employed as a personal care assistant or
31 offering services as a personal care assistant must obtain a certificate of registration issued by the
32 department within their initial thirty (30) days of employment or of offering services.

33 (b) The department shall verify, prior to issuing a certificate of registration, that the
34 applicant underwent a national criminal records check in accordance with §23-94-9 and

1 successfully completed the training program in accordance with §23-94-8.

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

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

6 **23-94-6. Renewal of certificate of registration.** -- Every registrant shall renew their
7 certificate of registration biennially by making application to the department. Such forms shall be
8 provided by the department. The renewals shall be granted as a matter of course provided that the
9 registrant has proof of successful completion of the continuing education requirements as
10 required by §23-94-8. The department shall not automatically renew the certificate of registration
11 if the department finds that the registrant has acted or failed to act in a manner under the
12 circumstances that would constitute grounds for suspension or revocation of a certificate of
13 registration.

14 **23-94-7. Grandfather rights.** -- After January 1, 2017 and at any time prior to March 31,
15 2017, the department shall issue a certificate of registration to any applicant who shall present
16 satisfactory evidence that they have been employed as a personal care assistant in Rhode Island
17 for a period of at least three hundred (300) hours and have undergone a national criminal records
18 check in accordance with §23-94-9.

19 **23-94-8. Personal care assistant training.** -- (a) The department shall be responsible for
20 ensuring that all registrants have completed four (4) hours of initial training on personal care
21 assistant responsibilities and practices and two (2) hours of continuing education biennially
22 thereafter, as prescribed by the department. In addition to the four (4) hours of initial training,
23 each registrant shall receive individualized training on how to assist their consumer's needs.

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

28 **23-94-9. National criminal records check.** -- (a) Any person applying for a certificate of
29 registration as a personal care assistant shall undergo a national criminal records check to be
30 initiated prior to applying for a certificate of registration.

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

34 (1) Upon the discovery of any disqualifying information, the bureau of criminal

1 identification shall inform the applicant, in writing, of the nature of the disqualifying information;
2 and, without disclosing the nature of the disqualifying information, will notify the department, in
3 writing, that disqualifying information has been discovered. An employee against whom
4 disqualifying information has been found may provide a copy of the national criminal records
5 check to the department. The department shall make a judgment regarding the issuance of the
6 certificate of registration.

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

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

11 **23-94-10. Denial, suspension, or revocation of a certificate of registration. --** The
12 department, after notice and opportunity for a hearing to the applicant or registrant, is authorized
13 to deny, suspend, or revoke a certificate of registration in any case in which it finds that there has
14 been failure to comply with the requirements under this chapter and the rules and regulations
15 promulgated thereto or the registrant has been convicted of an offense that is considered
16 disqualifying information. The notice shall be effected by registered or certified mail or by
17 personal service, setting forth the particular reasons for the proposed action and fixing a date not
18 less than thirty (30) days from the date of the mailing or service, at which time the applicant or
19 registrant shall be given an opportunity for a prompt and fair hearing. On the basis of the hearing,
20 or upon the failure of the applicant or registrant to appear, the department shall make a
21 determination specifying its findings of fact and conclusions of law. A copy of the determination
22 shall be sent by registered or certified mail or served personally upon the applicant or registrant.
23 The decision denying, suspending, or revoking the certificate of registration shall become final
24 thirty (30) days after it is so mailed or served, unless the applicant or registrant, within the thirty
25 (30) day period, appeals the decision pursuant to §42-35-15. The procedure governing hearings
26 authorized by this section shall be in accordance with §§42-35-9 and 42-35-13 as stipulated in
27 §42-35-14. A full and complete record shall be kept of all proceedings, and all testimony shall be
28 reported but need not be transcribed unless the decision is appealed pursuant to §42-35-15. A
29 copy or copies of the transcript may be obtained by an interested party on payment of the cost of
30 preparing the copy or copies. Witnesses may be subpoenaed by either party.

31 **23-94-11. Judicial review of certificate of registration action. --** Any person who has
32 exhausted all administrative remedies available to them within the department, and who is
33 aggrieved by a final decision of the department, is entitled to judicial review in accordance with
34 the provisions of §§42-35-15 and 42-35-16.

1 **23-94-12. Immunity from liability.** -- No person who disqualifies an individual from
2 employment or continued employment within thirty (30) days of receipt of a letter containing
3 disqualifying information or of a national criminal records check relating to that information shall
4 be liable for civil damages or subject to any claim, cause of action, or proceeding of any nature as
5 a result of the disqualification.

6 **23-94-13. Inspections and investigations.** -- The department may conduct any such
7 investigation or inspection as it deems necessary to assess compliance with this chapter and the
8 rules and regulations promulgated thereto. Wherever possible and practical, on-site reviews shall
9 be scheduled, in an effort to reduce the number of visits and the disruption to the personal care
10 assistant services. Investigations and inspections may occur when the consumer gives consent
11 including the direct observation of the provision of personal care assistant services. Registrants
12 shall make available to the department all books, records, policies and procedures, or any other
13 materials requested during the course of an investigation or inspection. Refusal to make such
14 materials available to the department shall be grounds for certificate of registration revocation, or
15 the imposition of any other penalty provided in the chapter.

16 **23-94-14. Rules and regulations.** -- The department shall promulgate rules and
17 regulations to carry out the intent of this chapter.

18 **23-94-15. Penalties for violations.** -- It shall be a misdemeanor punishable by a fine of
19 not more than one thousand dollars (\$1,000), by imprisonment for not more than one year, or
20 both, for any person to:

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

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

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

27 **23-94-16. Severability.** -- If any provision of this chapter or the application of any
28 provision of this chapter to any person or circumstance shall be held invalid, the invalidity shall
29 not affect the provisions or application of this chapter which can be given effect without the
30 invalid provisions or application, and to this end the provisions of this chapter are declared
31 severable.

32 SECTION 4. This act shall take effect on January 1, 2017.

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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, 2017.

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