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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

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A N A C T

RELATING TO HUMAN SERVICES - PERSONAL CARE ATTENDANT PROGRAM

Introduced By: Representatives Naughton, Shekarchi, Serpa, and Kennedy

Date Introduced: February 12, 2015

Referred To: House Health, Education & Welfare

(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 94

14 PERSONAL CARE ATTENDANT SERVICES

15 **23-94-1. 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 attendant.

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" means and includes, but is not limited to, spending time with or
4 caring for a consumer, accompanying a consumer on trips and outings, and providing necessary
5 transportation to a consumer.

6 (5) "Consumer" means an individual who receives self-directed personal care attendant
7 services, including, a participant in personal care attendant services provided pursuant to § 40-
8 8.1-2 or a person who receives personal care attendant 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 attendant services for no compensation.

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

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

25 (8) "Employer" means the consumer unless the personal care attendant is employed by a
26 third party, in such cases the third party is the employer.

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

30 (10) "Participant" means an individual approved by the department to receive self-
31 directed personal care attendant services.

32 (11) "Personal care attendant" means an individual with appropriate training who
33 provides personal care attendant services to a consumer.

34 (12) "Personal care assistant services" means assistance with activities of daily living,

1 homemaking, and companionship provided to a consumer that are intended to enable the
2 consumer to remain safely and comfortable in their residence. Personal care attendant services
3 does not include services provided by entities required to be licensed under the general laws
4 including, but not limited to: education facilities, title 16; health care facilities, chapter 17 of title
5 23; assisted living residences, chapter 17.4 of title 23; nursing service agencies, chapter 17.7.1 of
6 title 23; and/or behavioral healthcare, developmental disabilities and hospital facilities, chapter
7 25.1 of title 40.1.

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

10 (14) "Registrant" means the lawful holder of a certificate of registration as a personal care
11 attendant with the department;

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

17 **23-94-2. Rights of consumers. --** The department shall develop rights to be distributed to
18 the consumer within five (5) calendar days of the initiation of services to the consumer and
19 thereafter, on an annual basis. These rights include:

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

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

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

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

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

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

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

32 **23-94-3. Complaint process. --** The department shall investigate complaints made by a
33 consumer, the consumer's family, or the personal representative regarding services that are or
34 have failed to be furnished or lack of respect for the consumer's property by the personal care

1 attendant. The department shall document the existence of the complaint and the resolution of the
2 complaint in accordance with the department's rules and regulations.

3 **23-94-4. Registration.** – (a) Every person being employed as a personal care attendant or
4 offering services as a personal care attendant must obtain a certificate of registration issued by the
5 department within their initial thirty (30) days of employment or of offering services.

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

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

11 (d) The department may charge a fee for registration or renewal of the certificate that
12 shall be established by rules and regulations promulgated pursuant to § 23-94-13.

13 **23-94-5. Renewal of certificate of registration.** – Every registrant shall renew their
14 certificate of registration biennially by making application to the department. Such forms shall be
15 provided by the department. The renewals shall be granted as a matter of course provided that the
16 registrant has proof of successful completion of the continuing education requirements as
17 required by § 23-94-7. The department shall not automatically renew the certificate of registration
18 if the department finds that the registrant has acted or failed to act in a manner under the
19 circumstances that would constitute grounds for suspension or revocation of a certificate of
20 registration.

21 **23-94-6. Grandfather clause.** – After January 1, 2016 and at any time prior to March 31,
22 2016, the department shall issue a certificate of registration to any applicant who shall present
23 satisfactory evidence that he or she has been employed as a personal care attendant in Rhode
24 Island for a period of at least three hundred (300) hours and has undergone a national criminal
25 records check in accordance with § 23-94-8.

26 **23-94-7. Personal care assistant training.** – (a) The department shall be responsible for
27 ensuring that all registrants have completed four (4) hours of initial training on personal care
28 assistant responsibilities and practices and two (2) hours of continuing education biennially
29 thereafter, as prescribed by the department. In addition to the four (4) hours of initial training,
30 each registrant shall receive individualized training on how to assist their consumer's needs.

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

1 **23-94-8. National criminal records check.** – (a) Any person applying for a certificate of
2 registration as a personal care attendant shall undergo a national criminal records check to be
3 initiated prior to applying for a certificate of registration.

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

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

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

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

18 **23-94-9. Denial, suspension, or revocation of a certificate of registration.** – The
19 department, after notice and opportunity for a hearing to the applicant or registrant, is authorized
20 to deny, suspend, or revoke a certificate of registration in any case in which it finds that there has
21 been failure to comply with the requirements under this chapter and the rules and regulations
22 promulgated thereto or the registrant has been convicted of an offense that is considered
23 disqualifying information. The notice shall be effected by registered or certified mail or by
24 personal service, setting forth the particular reasons for the proposed action and fixing a date not
25 less than thirty (30) days from the date of the mailing or service, at which time the applicant or
26 registrant shall be given an opportunity for a prompt and fair hearing. On the basis of the hearing,
27 or upon the failure of the applicant or registrant to appear, the department shall make a
28 determination specifying its findings of fact and conclusions of law. A copy of the determination
29 shall be sent by registered or certified mail or served personally upon the applicant or registrant.
30 The decision denying, suspending, or revoking the certificate of registration shall become final
31 thirty (30) days after it is so mailed or served, unless the applicant or registrant, within the thirty
32 (30) day period, appeals the decision pursuant to § 42-35-15. The procedure governing hearings
33 authorized by this section shall be in accordance with §§ 42-35-9 and 42-35-13 as stipulated in §
34 42-35-14. A full and complete record shall be kept of all proceedings, and all testimony shall be

1 reported but need not be transcribed unless the decision is appealed pursuant to § 42-35-15. A
2 copy or copies of the transcript may be obtained by an interested party on payment of the cost of
3 preparing the copy or copies. Witnesses may be subpoenaed by either party.

4 **23-94-10. Judicial review of certificate of registration action.** – Any person who has
5 exhausted all administrative remedies available to him or her within the department, and who is
6 aggrieved by a final decision of the department, is entitled to judicial review in accordance with
7 the provisions of §§ 42-35-15 and 42-35-16.

8 **23-94-11. Immunity from liability.** – No person who disqualifies an individual from
9 employment or continued employment within thirty (30) days of receipt of a letter containing
10 disqualifying information or of a national criminal records check relating to that information shall
11 be liable for civil damages or subject to any claim, cause of action, or proceeding of any nature as
12 a result of the disqualification.

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

23 **23-94-13. Rules and regulations.** – The department shall promulgate rules and
24 regulations to carry out the intent of this chapter.

25 **23-94-14. Penalties for violations.** – It shall be a misdemeanor punishable by a fine of
26 not more than one thousand dollars (\$1,000), by imprisonment for not more than one year, or
27 both, for any person to:

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

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

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

34 **23-94-15. Severability.** – If any provision of this chapter or the application of any

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

5 SECTION 3. Sections 12-1.6-1 and 12-1.6-2 of the General Laws in Chapter 12-1.6
6 entitled "National Criminal Records Check System" are hereby amended to read as follows:

7 **12-1.6-1. Automated fingerprint identification system database.** -- The department of
8 attorney general may establish and maintain an automated fingerprint identification system
9 database that would allow the department to store and maintain all fingerprints submitted in
10 accordance with the national criminal records check system. The automated fingerprint
11 identification system database would provide for an automatic notification if, and when, a
12 subsequent criminal arrest fingerprint card is submitted to the system that matches a set of
13 fingerprints previously submitted in accordance with a national criminal records check. If the
14 aforementioned arrest results in a conviction, the department shall immediately notify those
15 individuals and entities with which that individual is associated and who are required to be
16 notified of disqualifying information concerning national criminal records checks as provided in
17 chapters 17, 17.4, 17.7.1 [and 94](#) of title 23 or § 23-1-52. The information in the database
18 established under this section is confidential and not subject to disclosure under chapter 38-2.

19 **12-1.6-2. Long-term healthcare workers.** -- The department of attorney general shall
20 maintain an electronic, web-based system to assist facilities, licensed under chapters 17, 17.4,
21 17.7.1 [and 94](#) of title 23 or § 23-1-52, required to check relevant registries and conduct national
22 criminal records checks of routine contact patient employees. The department of attorney general
23 shall provide for an automated notice, as authorized in § 12-1.6-1, to those facilities if a routine-
24 contact patient employee is subsequently convicted of a disqualifying offense, as described in the
25 relevant licensing statute. The department of attorney general may charge a facility a one-time,
26 set-up fee of up to one hundred dollars (\$100) for access to the electronic web-based system
27 under this section.

28 SECTION 4. This act shall take effect on January 1, 2016.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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RELATING TO HUMAN SERVICES - PERSONAL CARE ATTENDANT PROGRAM

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

3 This act would take effect on January 1, 2016.

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