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**BILL REQUEST - CODE REVISER'S OFFICE**

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BILL REQ. #: I-2390.1/11

ATTY/TYPIST: AL:lel

BRIEF DESCRIPTION:

# Initiative Measure No. 1142

filed February 28, 2011

AN ACT Relating to long-term care services for the elderly and persons with disabilities; amending RCW 74.39A.055, 74.39A.330, 18.88B.020, 74.39A.073, 18.88B.030, 18.88B.040, 74.39A.075, 74.39A.340, 74.39A.350, 74.39A.085, 74.39A.050, 74.39A.310, and 43.88.030; adding new sections to chapter 74.39A RCW; creating new sections; repealing RCW 82.08.0273; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** It is the intent of the people through this initiative to restore access to safe, quality care for the vulnerable elderly and persons with disabilities. The people of the state of Washington find as follows:

(1) The governor and state legislature have adopted budget cuts that deprive vulnerable elderly and persons with disabilities of the long-term care that they need to remain living in their homes, rather than being forced to move into nursing homes. Providing these services is a sound investment for Washington taxpayers, who would otherwise be forced to incur much higher costs for nursing home care.

(2) To protect vulnerable elderly and persons with disabilities during this budget crisis, the people restore the cuts to the long-term care system and provide temporary funding. Taxpayers' investment will be protected by basing care decisions on objective assessments of medical need, increased fraud investigation and enforcement, providing regular audits and reporting of public costs, and capping administrative expenses.

## **PART I**

### **PROTECTING VULNERABLE ELDERLY AND PERSONS WITH DISABILITIES BY RESTORING BUDGET CUTS TO RESTORE REQUIREMENTS THAT LONG-TERM CARE WORKERS RECEIVE FEDERAL CRIMINAL BACKGROUND CHECKS AND ADEQUATE TRAINING, AND TO RESTORE MEDICALLY NECESSARY LONG-TERM IN-HOME CARE**

NEW SECTION.      **Sec. 101.**      (1) The people hereby direct the legislature to restore the budget cuts for the long-term care program to (a) restore requirement that long-term care workers obtain federal criminal background checks and adequate training and (b) restore medically necessary long-term in-home care for vulnerable elderly and persons with disabilities.

(2) The people of Washington enacted these critical protections for vulnerable elderly and persons with disabilities through a citizen initiative and hereby restore them into law. Part V of this act restores the requirements that long-term care workers obtain federal criminal background checks and adequate training.

(3) The people hereby direct the legislature to restore the budget cuts to long-term, in-home care that have reduced the hours of long-term care provided to vulnerable elderly and people with disabilities to below that called for in their approved care plans, which reflects an objective assessment of medical need.

(4) By restoring the hours of in-home care to that which are medically necessary, this act will allow vulnerable elderly and persons with disabilities to continue living in their homes with dignity rather than being institutionalized.

(5) The department of social and health services shall provide each eligible individual with the hours of in-home care that are called for in the individual's approved plan of care.

(6) The department of social and health services may reduce the hours of in-home care called for in an individual's plan of care only after reassessing the individual's medical need under the methodology of WAC 388-106-0125 and 388-106-0130 (2), (3), (4), (5), and (6), as they existed on January 1, 2011, and after an individual hearing on the amendment to the plan of care. The reduction in hours pursuant to the new plan of care does not take effect until after the individual hearing and any appeals are completed.

## **PART II**

### **RESTORING FEDERAL CRIMINAL BACKGROUND CHECKS AND TRAINING REQUIREMENTS FOR LONG-TERM CARE WORKERS**

**Sec. 201.** RCW 74.39A.055 and 2009 c 580 s 2 are each amended to read as follows:

(1) All long-term care workers for the elderly or persons with disabilities hired after January 1, 2012, shall be screened through state and federal background checks in a uniform and timely manner to ensure that they do not have a criminal history that would disqualify them from working with vulnerable persons. These background checks shall include checking against the federal bureau of investigation fingerprint identification records system and against the national sex offenders registry or their successor programs. The department shall require these long-term care workers to submit fingerprints for the purpose of investigating conviction records through both the Washington state patrol and the federal bureau of investigation.

(2) To allow the department of health to satisfy its certification responsibilities under chapter 18.88B RCW, the department shall share state and federal background check results with the department of health. Neither department may share the federal background check results with any other state agency or person.

(3) The department shall not pass on the cost of these criminal background checks to the workers or their employers.

(4) The department shall adopt rules to implement the provisions of this section (~~(by August 1, 2010)~~).

**Sec. 202.** RCW 74.39A.330 and 2009 c 478 s 1 are each amended to read as follows:

Long-term care workers shall be offered (~~(on-the-job training or)~~) peer mentorship for at least one hour per week in the first ninety days of work from a long-term care worker who has completed at least twelve hours of mentor training and is mentoring no more than ten other workers at any given time. This requirement applies to long-term care workers who begin work on or after July 1, 2011.

**Sec. 203.** RCW 18.88B.020 and 2009 c 580 s 18 are each amended to read as follows:

(1) Effective January 1, (~~(2011)~~) 2012, except as provided in RCW 18.88B.040, the department of health shall require that any person hired as a long-term care worker for the elderly or persons with disabilities must be certified as a home care aide within one hundred fifty days from the date of being hired.

(2) Except as provided in RCW 18.88B.040, certification as a home care aide requires both completion of seventy-five hours of training and successful completion of a certification examination pursuant to RCW 74.39A.073 and 18.88B.030.

(3) No person may practice or, by use of any title or description, represent himself or herself as a certified home care aide without being certified pursuant to this chapter.

(4) The department of health shall adopt rules (~~(by August 1, 2010)~~) to implement this section.

**Sec. 204.** RCW 74.39A.073 and 2009 c 580 s 10 are each amended to read as follows:

(1) Effective January 1, (~~(2011)~~) 2012, except as provided in RCW 18.88B.040, all persons employed as long-term care workers for the

elderly or persons with disabilities must meet the minimum training requirements in this section within one hundred twenty calendar days of employment.

(2) All persons employed as long-term care workers must obtain seventy-five hours of entry-level training approved by the department. A long-term care worker must accomplish five of these seventy-five hours before becoming eligible to provide care.

(3) Training required by subsection (4)(c) of this section will be applied towards training required under RCW 18.20.270 or 70.128.230 as well as any statutory or regulatory training requirements for long-term care workers employed by supportive living providers.

(4) Only training curriculum approved by the department may be used to fulfill the training requirements specified in this section. The seventy-five hours of entry-level training required shall be as follows:

(a) Before a long-term care worker is eligible to provide care, he or she must complete two hours of orientation training regarding his or her role as caregiver and the applicable terms of employment;

(b) Before a long-term care worker is eligible to provide care, he or she must complete three hours of safety training, including basic safety precautions, emergency procedures, and infection control; and

(c) All long-term care workers must complete seventy hours of long-term care basic training, including training related to core competencies and population specific competencies.

(5) The department shall only approve training curriculum that:

(a) Has been developed with input from consumer and worker representatives; and

(b) Requires comprehensive instruction by qualified instructors on the competencies and training topics in this section.

(6) Individual providers under RCW 74.39A.270 shall be compensated by the department for training time required by this section.

(7) Home care agency workers who provide direct care must be compensated for training time required by this section. Training wages to be paid pursuant to this subsection are wages under RCW 74.39A.310. Except as provided for in subsection (6) of this section,

the state may not compensate long-term care workers for training time required by this section.

~~(8) The department of health shall adopt rules ((by August 1, 2010,)) to implement ((subsections (1), (2), and (3) of)) this section.~~

~~((8) The department shall adopt rules by August 1, 2010, to implement subsections (4) and (5) of this section.))~~

NEW SECTION. Sec. 205. (1) The department's sole authority under this section is to approve training curriculum for long-term care workers based upon the criteria established in subsection (2) of this section and may not adopt rules regarding the content of any approved training curricula. The department is restricted to the curriculum areas described in subsection (2) of this section and the administrative requirements in subsections (3), (4), and (5) of this section. The department shall not develop its own curriculum.

(2) To qualify as acceptable curriculum for the purposes of RCW 74.39A.073, the curriculum must:

(a) Have been developed with input from consumer and worker representatives;

(b) Require comprehensive instruction by qualified instructors on the training required by RCW 74.39A.073;

(c) Include safety and orientation training curriculum that provides safety training such as basic safety precautions, emergency procedures, and infection control;

(d) Include curriculum concerning core competencies that comprises the following topic areas: Communication skills, problem solving, consumer directed care, respecting differences, cultural sensitivity, consumer and worker rights, maintaining client dignity, long-term care worker roles and boundaries, abuse and mandatory reporting, observation and reporting, infection control, bloodborne pathogens and HIV/AIDS, food preparation and handling, including nutrition, worker self-care, working with older adults, grief and loss, care of the home and safety, fall prevention, body mechanics, supporting activities of daily living and personal care tasks such as bathing, grooming, oral

care, dressing, toileting, assisting with eating and hydration, proper feeding techniques, skin and body care, transfers, positioning, turning, bed making, walking, using assistive devices, and medication assistance; and

(e) Include curriculum concerning population specific competencies that offers the following topic areas: Mental health care, dementia care, caring for individuals with developmental disabilities, caring for young adults with physical disabilities, or elder care.

(3) All persons seeking training curriculum approval must submit a complete application that includes:

(a) Program objectives;

(b) A curriculum content outline;

(c) A sample lesson plan;

(d) A skills checklist; and

(e) A declaration confirming compliance with the requirements of subsection (2) of this section and RCW 74.39A.073.

(4) Curriculum approval must be renewed every four years. Failure to renew with the department results in automatic withdrawal of approval.

(5) The department must be notified if for any reason a person whose curriculum is approved pursuant to this section can no longer meet the requirements of this section.

(6) Persons whose curriculum is approved under this section shall also be authorized to provide curriculum appropriate for training under RCW 74.39A.075 and 74.39A.340.

(7) The department shall adopt rules solely to establish the procedures for seeking training curriculum approval.

**Sec. 206.** RCW 18.88B.030 and 2009 c 580 s 4 are each amended to read as follows:

(1) Effective January 1, (~~2011~~) 2012, except as provided in RCW 18.88B.040, the department of health shall require that all long-term care workers successfully complete a certification examination. Any long-term care worker failing to make the required grade for the examination will not be certified as a home care aide.



(2) The department of health, in consultation with consumer and worker representatives, shall develop a home care aide certification examination to evaluate whether an applicant possesses the skills and knowledge necessary to practice competently. Unless excluded by RCW 18.88B.040 (1) and (2), only those who have completed the training requirements in RCW 74.39A.073 shall be eligible to sit for this examination.

(3) The examination shall include both a skills demonstration and a written or oral knowledge test. The examination papers, all grading of the papers, and records related to the grading of skills demonstration shall be preserved for a period of not less than one year. The department of health shall establish rules governing the number of times and under what circumstances individuals who have failed the examination may sit for the examination, including whether any intermediate remedial steps should be required.

(4) All examinations shall be conducted by fair and wholly impartial methods. The certification examination shall be administered and evaluated by the department of health or by a contractor to the department of health that is neither an employer of long-term care workers or private contractors providing training services under this chapter.

(5) The department of health has the authority to:

(a) Establish forms, procedures, and examinations necessary to certify home care aides pursuant to this chapter;

(b) Hire clerical, administrative, and investigative staff as needed to implement this section;

(c) Issue certification as a home care aide to any applicant who has successfully completed the home care aide examination;

(d) Maintain the official record of all applicants and persons with certificates;

(e) Exercise disciplinary authority as authorized in chapter 18.130 RCW; and

(f) Deny certification to applicants who do not meet training, competency examination, and conduct requirements for certification.

(6) The department of health shall adopt rules (~~(by August 1, 2010,)~~) that establish the procedures, including criteria for reviewing an applicant's state and federal background checks, and examinations necessary to carry this section into effect.

**Sec. 207.** RCW 18.88B.040 and 2010 c 169 s 11 are each amended to read as follows:

The following long-term care workers are not required to become a certified home care aide pursuant to this chapter.

(1) Registered nurses, licensed practical nurses, certified nursing assistants or persons who are in an approved training program for certified nursing assistants under chapter 18.88A RCW, medicare-certified home health aides, or other persons who hold a similar health credential, as determined by the secretary of health, or persons with special education training and an endorsement granted by the superintendent of public instruction, as described in RCW 28A.300.010, if the secretary of health determines that the circumstances do not require certification. Individuals exempted by this subsection may obtain certification as a home care aide from the department of health without fulfilling the training requirements in RCW 74.39A.073 but must successfully complete a certification examination pursuant to RCW 18.88B.030.

(2) A person already employed as a long-term care worker prior to January 1, (~~2011~~) 2012, who completes all of his or her training requirements in effect as of the date he or she was hired, is not required to obtain certification. Individuals exempted by this subsection may obtain certification as a home care aide from the department of health without fulfilling the training requirements in RCW 74.39A.073 but must successfully complete a certification examination pursuant to RCW 18.88B.030.

(3) All long-term care workers employed by supported living providers are not required to obtain certification under this chapter.

(4) An individual provider caring only for his or her biological, step, or adoptive child or parent is not required to obtain certification under this chapter.

(5) Prior to June 30, 2014, a person hired as an individual provider who provides twenty hours or less of care for one person in any calendar month is not required to obtain certification under this chapter.

(6) A long-term care worker exempted by this section from the training requirements contained in RCW 74.39A.073 may not be prohibited from enrolling in training pursuant to that section.

(7) The department of health shall adopt rules (~~by August 1, 2010,~~) to implement this section.

**Sec. 208.** RCW 74.39A.075 and 2009 c 580 s 11 are each amended to read as follows:

(1) Effective January 1, (~~2011~~) 2012, a biological, step, or adoptive parent who is the individual provider only for his or her developmentally disabled son or daughter must receive twelve hours of training relevant to the needs of adults with developmental disabilities within the first one hundred twenty days of becoming an individual provider.

(2) Effective January 1, 2011, individual providers identified in (a) and (b) of this subsection must complete thirty-five hours of training within the first one hundred twenty days of becoming an individual provider. Five of the thirty-five hours must be completed before becoming eligible to provide care. Two of these five hours shall be devoted to an orientation training regarding an individual provider's role as caregiver and the applicable terms of employment, and three hours shall be devoted to safety training, including basic safety precautions, emergency procedures, and infection control. Individual providers subject to this requirement include:

(a) An individual provider caring only for his or her biological, step, or adoptive child or parent unless covered by subsection (1) of this section; and

(b) Before January 1, 2014, a person hired as an individual provider who provides twenty hours or less of care for one person in any calendar month.

(3) Only training curriculum approved by the department may be used to fulfill the training requirements specified in this section. The department shall only approve training curriculum that:

(a) Has been developed with input from consumer and worker representatives; and

(b) Requires comprehensive instruction by qualified instructors.

(4) The department shall adopt rules (~~((by August 1, 2010,))~~) to implement this section.

**Sec. 209.** RCW 74.39A.340 and 2009 c 580 s 12 are each amended to read as follows:

(1) The department of health shall ensure that all long-term care workers shall complete twelve hours of (~~((continuing education))~~) training in (~~((advanced training))~~) continuing education topics each year. This requirement applies beginning on (~~((July 1, 2011))~~) January 1, 2012.

(2) Completion of continuing education as required in this section is a prerequisite to maintaining home care aide certification under chapter 2, Laws of 2009.

(3) Unless voluntarily certified as a home care aide under chapter 2, Laws of 2009, subsection (1) of this section does not apply to:

(a) An individual provider caring only for his or her biological, step, or adoptive child; and

(b) Before June 30, 2014, a person hired as an individual provider who provides twenty hours or less of care for one person in any calendar month.

(4) Only training curriculum approved by the department may be used to fulfill the training requirements specified in this section. The department shall only approve training curriculum that:

(a) Has been developed with input from consumer and worker representatives; and

(b) Requires comprehensive instruction by qualified instructors.

(5) Individual providers under RCW 74.39A.270 shall be compensated by the department for training time required by this section.

(6) Home care agency workers who provide direct care shall be compensated for training time required by this section. Training wages to be paid pursuant to this subsection are wages under RCW 74.39A.310.

(7) The department of health shall adopt rules ((by August 1, 2010,)) to implement ((subsections (1), (2), and (3) of)) this section.

~~((7) The department shall adopt rules by August 1, 2010, to implement subsection (4) of this section.))~~

**Sec. 210.** RCW 74.39A.350 and 2009 c 580 s 13 are each amended to read as follows:

(1) The department shall ((offer, directly or through contract,)) ensure training opportunities sufficient for a long-term care worker to accumulate seventy hours of advanced training within a reasonable time period. For individual providers represented by an exclusive bargaining representative under RCW 74.39A.270, the training opportunities shall be offered through the training partnership established under RCW 74.39A.360. Training topics shall include, but are not limited to: Client rights; personal care; mental illness; dementia; developmental disabilities; depression; medication assistance; advanced communication skills; positive client behavior support; developing or improving client-centered activities; dealing with wandering or aggressive client behaviors; medical conditions; nurse delegation core training; peer mentor training; and advocacy for quality care training. The department may not require long-term care workers to obtain the training described in this section.

(2) This requirement to offer advanced training applies beginning January 1, 2012.

**Sec. 211.** RCW 74.39A.085 and 2009 c 580 s 14 are each amended to read as follows:

(1) The department shall deny payment to any individual provider or agency home care provider of home care services working as or employing a long-term care worker who has not been certified by the

department of health as a home care aide as required under chapter 2, Laws of 2009 or, if exempted from certification by RCW 18.88B.040, has not completed his or her required training pursuant to chapter 2, Laws of 2009.

(2) The department may terminate the contract of any individual provider of home care services, or take any other enforcement measure deemed appropriate by the department if the individual provider does not complete his or her required training or receive certification within the requisite period of time, the individual provider's certification is revoked under chapter 2, Laws of 2009, or, if exempted from certification by RCW 18.88B.040, the individual provider has not completed his or her required training pursuant to chapter 2, Laws of 2009.

(3) The department shall take appropriate enforcement action related to the contract of a private agency or facility licensed by the state, to provide personal care services, other than an individual provider, who knowingly employs a long-term care worker who is not a certified home care aide as required under chapter 2, Laws of 2009, or, if exempted from certification by RCW 18.88B.040, has not completed his or her required training pursuant to chapter 2, Laws of 2009.

(4) Chapter 34.05 RCW shall govern actions by the department under this section.

(5) The department shall adopt rules (~~(by August 1, 2010,)~~) to implement this section.

**Sec. 212.** RCW 74.39A.050 and 2009 c 580 s 7 are each amended to read as follows:

The department's system of quality improvement for long-term care services shall use the following principles, consistent with applicable federal laws and regulations:

(1) The system shall be client-centered and promote privacy, independence, dignity, choice, and a home or home-like environment for consumers consistent with chapter 392, Laws of 1997.

(2) The goal of the system is continuous quality improvement with the focus on consumer satisfaction and outcomes for consumers. This includes that when conducting licensing or contract inspections, the department shall interview an appropriate percentage of residents, family members, resident case managers, and advocates in addition to interviewing providers and staff.

(3) Providers should be supported in their efforts to improve quality and address identified problems initially through training, consultation, technical assistance, and case management.

(4) The emphasis should be on problem prevention both in monitoring and in screening potential providers of service.

(5) Monitoring should be outcome based and responsive to consumer complaints and based on a clear set of health, quality of care, and safety standards that are easily understandable and have been made available to providers, residents, and other interested parties.

(6) Prompt and specific enforcement remedies shall also be implemented without delay, pursuant to RCW 74.39A.080, RCW 70.128.160, chapter 18.51 RCW, or chapter 74.42 RCW, for providers found to have delivered care or failed to deliver care resulting in problems that are serious, recurring, or uncorrected, or that create a hazard that is causing or likely to cause death or serious harm to one or more residents. These enforcement remedies may also include, when appropriate, reasonable conditions on a contract or license. In the selection of remedies, the safety, health, and well-being of residents shall be of paramount importance.

(7) All long-term care workers shall be screened through background checks in a uniform and timely manner to ensure that they do not have a criminal history that would disqualify them from working with vulnerable persons. Long-term care workers who are hired after January 1, 2012, are subject to background checks under RCW 74.39A.055. This information will be shared with the department of health in accordance with RCW 74.39A.055 to advance the purposes of chapter 2, Laws of 2009.

(8) No provider, or its staff, or long-term care worker, or prospective provider or long-term care worker, with a stipulated

finding of fact, conclusion of law, an agreed order, or finding of fact, conclusion of law, or final order issued by a disciplining authority, a court of law, or entered into a state registry finding him or her guilty of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW shall be employed in the care of and have unsupervised access to vulnerable adults.

(9) The department shall establish, by rule, a state registry which contains identifying information about long-term care workers identified under this chapter who have substantiated findings of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult as defined in RCW 74.34.020. The rule must include disclosure, disposition of findings, notification, findings of fact, appeal rights, and fair hearing requirements. The department shall disclose, upon request, substantiated findings of abuse, neglect, financial exploitation, or abandonment to any person so requesting this information. This information will also be shared with the department of health to advance the purposes of chapter 2, Laws of 2009.

(10) Until December 31, 2010, individual providers and home care agency providers must satisfactorily complete department-approved orientation, basic training, and continuing education within the time period specified by the department in rule. The department shall adopt rules by March 1, 2002, for the implementation of this section. The department shall deny payment to an individual provider or a home care provider who does not complete the training requirements within the time limit specified by the department by rule.

~~(11) ((Until December 31, 2010, in an effort to improve access to training and education and reduce costs, especially for rural communities, the coordinated system of long-term care training and education must include the use of innovative types of learning strategies such as internet resources, videotapes, and distance learning using satellite technology coordinated through community colleges or other entities, as defined by the department.~~

~~(12) The department shall create an approval system by March 1, 2002, for those seeking to conduct department-approved training.~~



~~—(13))~~) The department shall establish, by rule, background checks and other quality assurance requirements for long-term care workers who provide in-home services funded by medicaid personal care as described in RCW 74.09.520, community options program entry system waiver services as described in RCW 74.39A.030, or chore services as described in RCW 74.39A.110 that are equivalent to requirements for individual providers. Long-term care workers who are hired after January 1, 2012, are subject to background checks under RCW 74.39A.055.

~~((14))~~) (12) Under existing funds the department shall establish internally a quality improvement standards committee to monitor the development of standards and to suggest modifications.

~~((15))~~) (13) Within existing funds, the department shall design, develop, and implement a long-term care training program that is flexible, relevant, and qualifies towards the requirements for a nursing assistant certificate as established under chapter 18.88A RCW. This subsection does not require completion of the nursing assistant certificate training program by providers or their staff. The long-term care teaching curriculum must consist of a fundamental module, or modules, and a range of other available relevant training modules that provide the caregiver with appropriate options that assist in meeting the resident's care needs. Some of the training modules may include, but are not limited to, specific training on the special care needs of persons with developmental disabilities, dementia, mental illness, and the care needs of the elderly. No less than one training module must be dedicated to workplace violence prevention. The nursing care quality assurance commission shall work together with the department to develop the curriculum modules. The nursing care quality assurance commission shall direct the nursing assistant training programs to accept some or all of the skills and competencies from the curriculum modules towards meeting the requirements for a nursing assistant certificate as defined in chapter 18.88A RCW. A process may be developed to test persons completing modules from a caregiver's class to verify that they have the transferable skills and competencies for entry into a nursing assistant training program. The department may

review whether facilities can develop their own related long-term care training programs. The department may develop a review process for determining what previous experience and training may be used to waive some or all of the mandatory training. The department of social and health services and the nursing care quality assurance commission shall work together to develop an implementation plan by December 12, 1998.

**Sec. 213.** RCW 74.39A.310 and 2007 c 361 s 8 are each amended to read as follows:

(1) The department shall create a formula that converts the cost of the increase in wages and benefits negotiated and funded in the contract for individual providers of home care services pursuant to RCW 74.39A.270 and 74.39A.300, into a per-hour amount, excluding those benefits defined in subsection (2) of this section. That per-hour amount shall be added to the statewide home care agency vendor rate and shall be used exclusively for improving the wages and benefits of home care agency workers who provide direct care. The formula shall account for:

(a) All types of wages, benefits, and compensation negotiated and funded each biennium, including but not limited to:

- (i) Regular, training, and training differential wages;
- (ii) Benefit pay, such as vacation, sick, and holiday pay;
- (iii) Taxes on wages/benefit pay;
- (iv) Mileage; and
- (v) Contributions to a training partnership; and

(b) The increase in the average cost of worker's compensation for home care agencies and application of the increases identified in (a) of this subsection to all hours required to be paid, including travel time, of direct service workers under the wage and hour laws and associated employer taxes.

(2) The contribution rate for health care benefits, including but not limited to medical, dental, and vision benefits, for eligible agency home care workers shall be paid by the department to home care

agencies at the same rate as negotiated and funded in the collective bargaining agreement for individual providers of home care services.

### **PART III**

#### **PROTECTING TAXPAYERS BY REQUIRING REGULAR AUDIT AND REPORTING, INCREASING FRAUD INVESTIGATION, AND CAPPING ADMINISTRATIVE EXPENSES**

NEW SECTION. **Sec. 301.** The state auditor shall audit the long-term care program and the implementation of this act and shall report on the results of such audit to the legislature and to the public by December 31, 2014.

NEW SECTION. **Sec. 302.** The state shall spend at least ninety percent of the funding allocated to home care services on direct care to seniors and persons with disabilities.

NEW SECTION. **Sec. 303.** Within ninety days of the effective date of this section, the department shall hire five additional fraud investigators to ensure that clients receiving in-home care at taxpayers' expense are medically and financially qualified to receive such benefit and are actually receiving and appropriately utilizing such benefit.

### **PART IV**

#### **RESTORING FUNDING FOR LONG-TERM CARE THROUGH SALES TAX EXEMPTION FOR NONRESIDENTS**

NEW SECTION. **Sec. 401.** (1) The people of the state of Washington intend to restore funding for in-home long-term care by closing the sales tax exemption provided to nonresidents.

(2) The treasurer shall on a monthly basis determine the amount of additional sales tax revenue collected by closing such an exemption, to the best approximation, and shall transfer such amount to the long-

term care trust account, established by section 502 of this act by the 15th of the following month.

**PART V**

**PROTECTING TAXPAYERS BY ENSURING THAT TEMPORARY FUNDING IS HELD IN TRUST AND DEVOTED TO RESTORING LONG-TERM CARE PROGRAM BUDGET**

NEW SECTION. **Sec. 501.** The people require that funding provided for long-term care is devoted to the long-term care budget and not diverted to other purposes. The temporary funding mechanism provided by this act must be held in trust and restricted to the long-term care budget.

NEW SECTION. **Sec. 502.** The long-term care trust account is hereby created in the custody of the state treasurer. Amounts held by the long-term care trust account must be used solely to fund the costs of implementing this act to ensure quality long-term care for the elderly and persons with disabilities.

**Sec. 503.** RCW 43.88.030 and 2006 c 334 s 43 are each amended to read as follows:

(1) The director of financial management shall provide all agencies with a complete set of instructions for submitting biennial budget requests to the director at least three months before agency budget documents are due into the office of financial management. The budget document or documents shall consist of the governor's budget message which shall be explanatory of the budget and shall contain an outline of the proposed financial policies of the state for the ensuing fiscal period, as well as an outline of the proposed six-year financial policies where applicable, and shall describe in connection therewith the important features of the budget. The biennial budget document or documents shall also describe performance indicators that demonstrate measurable progress towards priority results. The message shall set forth the reasons for salient changes from the previous fiscal period in expenditure and revenue items and shall explain any

major changes in financial policy. Attached to the budget message shall be such supporting schedules, exhibits and other explanatory material in respect to both current operations and capital improvements as the governor shall deem to be useful to the legislature. The budget document or documents shall set forth a proposal for expenditures in the ensuing fiscal period, or six-year period where applicable, based upon the estimated revenues and caseloads as approved by the economic and revenue forecast council and caseload forecast council or upon the estimated revenues and caseloads of the office of financial management for those funds, accounts, sources, and programs for which the forecast councils do not prepare an official forecast. Revenues shall be estimated for such fiscal period from the source and at the rates existing by law at the time of submission of the budget document, including the supplemental budgets submitted in the even-numbered years of a biennium. However, the estimated revenues and caseloads for use in the governor's budget document may be adjusted to reflect budgetary revenue transfers and revenue and caseload estimates dependent upon budgetary assumptions of enrollments, workloads, and caseloads. All adjustments to the approved estimated revenues and caseloads must be set forth in the budget document. The governor may additionally submit, as an appendix to each supplemental, biennial, or six-year agency budget or to the budget document or documents, a proposal for expenditures in the ensuing fiscal period from revenue sources derived from proposed changes in existing statutes.

The budget document or documents shall also contain:

(a) Revenues classified by fund and source for the immediately past fiscal period, those received or anticipated for the current fiscal period, and those anticipated for the ensuing biennium;

(b) The undesignated fund balance or deficit, by fund;

(c) Such additional information dealing with expenditures, revenues, workload, performance, and personnel as the legislature may direct by law or concurrent resolution;

(d) Such additional information dealing with revenues and expenditures as the governor shall deem pertinent and useful to the legislature;

(e) Tabulations showing expenditures classified by fund, function, and agency;

(f) The expenditures that include nonbudgeted, nonappropriated accounts outside the state treasury;

(g) Identification of all proposed direct expenditures to implement the Puget Sound water quality plan under chapter 90.71 RCW, shown by agency and in total; (~~and~~)

(h) Identification of all expenditures necessary to fully fund this act and RCW 74.39A.300; and

(i) Tabulations showing each postretirement adjustment by retirement system established after fiscal year 1991, to include, but not be limited to, estimated total payments made to the end of the previous biennial period, estimated payments for the present biennium, and estimated payments for the ensuing biennium.

(2) The budget document or documents shall include detailed estimates of all anticipated revenues applicable to proposed operating or capital expenditures and shall also include all proposed operating or capital expenditures. The total of beginning undesignated fund balance and estimated revenues less working capital and other reserves shall equal or exceed the total of proposed applicable expenditures. The budget document or documents shall further include:

(a) Interest, amortization and redemption charges on the state debt;

(b) Payments of all reliefs, judgments, and claims;

(c) Other statutory expenditures;

(d) Expenditures incident to the operation for each agency;

(e) Revenues derived from agency operations;

(f) Expenditures and revenues shall be given in comparative form showing those incurred or received for the immediately past fiscal period and those anticipated for the current biennium and next ensuing biennium;

(g) A showing and explanation of amounts of general fund and other funds obligations for debt service and any transfers of moneys that otherwise would have been available for appropriation;

(h) Common school expenditures on a fiscal-year basis;

(i) A showing, by agency, of the value and purpose of financing contracts for the lease/purchase or acquisition of personal or real property for the current and ensuing fiscal periods; and

(j) A showing and explanation of anticipated amounts of general fund and other funds required to amortize the unfunded actuarial accrued liability of the retirement system specified under chapter 41.45 RCW, and the contributions to meet such amortization, stated in total dollars and as a level percentage of total compensation.

(3) The governor's operating budget document or documents shall reflect the statewide priorities as required by RCW 43.88.090.

(4) The governor's operating budget document or documents shall include full funding to comply with this act and RCW 74.39A.300, which is necessary to secure the well-being of vulnerable residents and is therefore deemed a statewide budget priority.

(5) The governor's operating budget document or documents shall identify activities that are not addressing the statewide priorities.

~~((5))~~ (6) A separate capital budget document or schedule shall be submitted that will contain the following:

(a) A statement setting forth a long-range facilities plan for the state that identifies and includes the highest priority needs within affordable spending levels;

(b) A capital program consisting of proposed capital projects for the next biennium and the two biennia succeeding the next biennium consistent with the long-range facilities plan. Inasmuch as is practical, and recognizing emergent needs, the capital program shall reflect the priorities, projects, and spending levels proposed in previously submitted capital budget documents in order to provide a reliable long-range planning tool for the legislature and state agencies;

(c) A capital plan consisting of proposed capital spending for at least four biennia succeeding the next biennium;

(d) A strategic plan for reducing backlogs of maintenance and repair projects. The plan shall include a prioritized list of specific facility deficiencies and capital projects to address the deficiencies for each agency, cost estimates for each project, a schedule for completing projects over a reasonable period of time, and identification of normal maintenance activities to reduce future backlogs;

(e) A statement of the reason or purpose for a project;

(f) Verification that a project is consistent with the provisions set forth in chapter 36.70A RCW;

(g) A statement about the proposed site, size, and estimated life of the project, if applicable;

(h) Estimated total project cost;

(i) For major projects valued over five million dollars, estimated costs for the following project components: Acquisition, consultant services, construction, equipment, project management, and other costs included as part of the project. Project component costs shall be displayed in a standard format defined by the office of financial management to allow comparisons between projects;

(j) Estimated total project cost for each phase of the project as defined by the office of financial management;

(k) Estimated ensuing biennium costs;

(l) Estimated costs beyond the ensuing biennium;

(m) Estimated construction start and completion dates;

(n) Source and type of funds proposed;

(o) Estimated ongoing operating budget costs or savings resulting from the project, including staffing and maintenance costs;

(p) For any capital appropriation requested for a state agency for the acquisition of land or the capital improvement of land in which the primary purpose of the acquisition or improvement is recreation or wildlife habitat conservation, the capital budget document, or an omnibus list of recreation and habitat acquisitions provided with the governor's budget document, shall identify the projected costs of operation and maintenance for at least the two biennia succeeding the next biennium. Omnibus lists of habitat and recreation land



acquisitions shall include individual project cost estimates for operation and maintenance as well as a total for all state projects included in the list. The document shall identify the source of funds from which the operation and maintenance costs are proposed to be funded;

(q) Such other information bearing upon capital projects as the governor deems to be useful;

(r) Standard terms, including a standard and uniform definition of normal maintenance, for all capital projects;

(s) Such other information as the legislature may direct by law or concurrent resolution.

For purposes of this subsection (~~((5))~~) (6), the term "capital project" shall be defined subsequent to the analysis, findings, and recommendations of a joint committee comprised of representatives from the house capital appropriations committee, senate ways and means committee, legislative evaluation and accountability program committee, and office of financial management.

~~((6))~~ (7) No change affecting the comparability of agency or program information relating to expenditures, revenues, workload, performance and personnel shall be made in the format of any budget document or report presented to the legislature under this section or RCW 43.88.160(1) relative to the format of the budget document or report which was presented to the previous regular session of the legislature during an odd-numbered year without prior legislative concurrence. Prior legislative concurrence shall consist of (a) a favorable majority vote on the proposal by the standing committees on ways and means of both houses if the legislature is in session or (b) a favorable majority vote on the proposal by members of the legislative evaluation and accountability program committee if the legislature is not in session.

NEW SECTION.     **Sec. 504.**     The requirements contained in RCW 74.39A.300 constitute ministerial, mandatory, and nondiscretionary duties. Failure to fully perform such duties constitutes a violation of this act. Any person may bring an action to require the governor

or other responsible persons to perform such duties. Such action may be brought in the superior court, at the petitioner's option, for (1) Thurston county, or (2) the county of petitioner's residence or principal place of business, or such action may be filed directly with the supreme court, which is hereby given original jurisdiction over such action.

## PART VI

### MISCELLANEOUS

NEW SECTION. **Sec. 601.** RCW 82.08.0273 (Exemptions--Sales to nonresidents of tangible personal property, digital goods, and digital codes for use outside the state--Proof of nonresident status--Penalties) and 2010 c 106 s 215, 2009 c 535 s 512, 2007 c 135 s 2, 2003 c 53 s 399, 1993 c 444 s 1, 1988 c 96 s 1, 1982 1st ex.s. c 5 s 1, & 1980 c 37 s 39 are each repealed.

NEW SECTION. **Sec. 601.** Sections 205, 301 through 303, 502, and 504 of this act are each added to chapter 74.39A RCW.

NEW SECTION. **Sec. 602.** The provisions of this act are to be liberally construed to effectuate the intent, policies, and purposes of this act.

NEW SECTION. **Sec. 603.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 604.** This act takes effect sixty days after the election at which it is enacted.

NEW SECTION. **Sec. 605.** This act may be known and cited as "the restoration of long-term care for the elderly and persons with disabilities initiative."