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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO HUMAN SERVICES - PERSONAL CARE ATTENDANT PROGRAM

Introduced By: Senator Michael J. McCaffrey

Date Introduced: April 26, 2012

Referred To: Senate Judiciary

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. Chapter 40-8.1 of the General Laws entitled "Personal Care Attendant
12 Program" is hereby amended by adding thereto the following section:

13 **40-8.1-6. Definitions.** -- As used in this chapter:

14 (1) "Administrator" means a state agency or nonprofit organization under contract with
15 the department to administer a personal care attendant services program.

16 (2) "Applicant" means a person applying with the department for a certificate of
17 registration as a personal care attendant.

18 (3) "Consumer" means an individual who receives self directed personal attendant care
19 services, including, a participant in personal care attendant services provided pursuant to section

1 40-8.1-2 or a person who receives personal care attendant services through Medicaid, a third-
2 party payor, or paid for by the individual and/or his/her family. Consumer shall not include an
3 individual who receives services similar to personal care attendant services for no compensation.

4 (4) "Department" means the department of human services.

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

7 (6) "Participant" means an individual approved by the department to receive self directed
8 personal attendant care services.

9 (7) "Personal care attendant" means an individual with appropriate training who provides
10 personal care attendant services to a consumer.

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

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

20 (10) "Registrant" means the lawful holder of a certification of registration as a personal
21 care attendant with the department.

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

27 **40-8.1-7. Rights of consumers.--** The department shall develop rights to be distributed to
28 the consumer within five (5) calendar days of the initiation of services to the consumer and
29 thereafter, on an annual basis. These rights include:

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

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

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

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

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

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

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

8 **40-8.1-8. Complaint Process.--** The department shall investigate complaints made by a
9 consumer, the consumer's family, or the personal representative regarding services that are or
10 have failed to be furnished or lack of respect for the consumer's property by the personal care
11 attendant. The department shall document the existence of the complaint and the resolution of the
12 complaint in accordance with the department's rules and regulations.

13 **40-8.1-9. Registration. --** (a) Every person being employed as a personal care attendant
14 or offering services as a personal care attendant must obtain a certificate of registration issued by
15 the department within their initial thirty (30) days of employment or of offering services.

16 (b) The department shall verify, prior to issuing a certificate of registration that the
17 applicant underwent a criminal background check in accordance with section 40.8.1-13 and
18 successfully completed the training program in accordance with section 40.8.1-12.

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

21 (d) The department may charge a fee for registration or renewal that shall be established
22 by rules and regulations promulgated pursuant to section 40-8.1-19 of this chapter.

23 **40-8.1-10. Renewal of certificate of registration. --** Every registrant shall renew their
24 certificate of registration biennially by making application to the department. Such forms shall be
25 provided by the department. The renewals shall be granted as a matter of course provided that the
26 registrant has proof of successful completion of the continuing education requirements as
27 required by section 40.8.1-12. The department shall not automatically renew the certificate of
28 registration if the department finds that the registrant has acted or failed to act in a manner under
29 the circumstances that would constitute grounds for suspension or revocation of a certificate of
30 registration.

31 **40-8.1-11. Grandfather clause. --** After October 30, 2012 and at any time prior to
32 January 31, 2013, the department shall issue a certificate of registration to any applicant who
33 shall present satisfactory evidence that he or she has been employed as a personal care attendant
34 in Rhode Island for a period of at least three hundred (300) hours and has undergone a criminal

1 background check in accordance with section 40.8.1-13.

2 **40-8.1-12. Personal Care Attendant Training.--** (a) The department or each
3 administrator shall be responsible for ensuring that all registrants have completed four (4) hours
4 of initial training on personal attendant care responsibilities and practices and two (2) hours of
5 continued education biannually thereafter, as prescribed by the department or the administrator.
6 In addition to the four (4) hours of initial training, each registrant shall receive individualized
7 training on how to assist their consumers' needs.

8 (b) All applicants not otherwise exempted, under section 40-8.1-11, are required to
9 complete the process of training within thirty (30) days from the date of initiation of training. If
10 the applicant fails to successfully complete the training within ninety (90) days, they must
11 successfully repeat the training program.

12 **40-8.1-13. Criminal background check. --** (a) Any person applying for a certificate of
13 registration as a personal care attendant shall undergo a criminal background check to be initiated
14 prior to applying for a certificate of registration.

15 (b) The applicant shall apply to the bureau of criminal identification of the department of
16 attorney general for a national criminal background check that shall be supported by fingerprints
17 submitted to the federal bureau of investigation ("FBI"). Upon the discovery of any disqualifying
18 information as defined in section 40-8.1-15, the bureau of criminal identification of the
19 department of attorney general shall inform the applicant, in writing, of the nature of the
20 disqualifying information; and, without disclosing the nature of the disqualifying information,
21 will notify the employer and the department, in writing, that disqualifying information has been
22 discovered.

23 (c) In those situations in which no disqualifying information has been found, the bureau
24 of criminal identification of the department of attorney general shall inform the applicant, the
25 employer and the department, in writing, of this fact.

26 (d) It shall be the responsibility of the applicant to pay for the criminal background check
27 fees.

28 **40-8.1-14. Prior criminal records checks.--** If an applicant has undergone a national
29 criminal records check within eighteen (18) months of an application for a certificate of
30 registration, then an applicant may request from the bureau of criminal identification of the
31 department of attorney general a letter indicating if any disqualifying information was discovered.
32 The bureau of criminal identification shall respond without disclosing the nature of the
33 disqualifying information. The letter may be maintained on file to satisfy the requirements of this
34 chapter.

1 **40-81-15. Disqualifying information.--** (a) Information produced by a criminal
2 background check pertaining to a conviction, for the following crimes, shall result in a letter to
3 the applicant and the department disqualifying the applicant from a certificate of registration:
4 murder, manslaughter, first degree sexual assault, second degree sexual assault, third degree
5 sexual assault, assault on persons sixty (60) years of age or older, assault with intent to commit
6 specified felonies (murder, robbery, rape, burglary, or the abominable and detestable crime
7 against nature), felony assault, patient abuse, neglect or mistreatment of patients, first degree
8 arson, robbery, felony drug offenses, larceny, abuse, neglect and/or exploitation of adults with
9 severe impairments, fraud and false dealing, theft, embezzlement, false pretenses, and
10 misappropriation, impersonation and identity fraud, exploitation of elders, or felony banking law
11 violations.

12 (b) For purposes of this section “conviction” means, in addition to judgments of
13 conviction entered by a court subsequent to a finding of guilty or a plea of guilty, those instances
14 where the defendant has entered a plea of nolo contendere and has received a sentence of
15 probation and those instances where a defendant has entered into a deferred sentence agreement
16 with the attorney general.

17 **40-8.1-16. Denial, suspension, or revocation of a certificate of registration.--** The
18 department, after notice and opportunity for a hearing to the applicant or registrant, is authorized
19 to deny, suspend, or revoke a certificate of registration in any case in which it finds that there has
20 been failure to comply with the requirements under this chapter and the rules and regulations
21 promulgated thereto or the registrant has been convicted of a disqualifying offense provided in
22 section 40-8.1-15. The notice shall be effected by registered or certified mail or by personal
23 service, setting forth the particular reasons for the proposed action and fixing a date not less than
24 thirty (30) days from the date of the mailing or service, at which time the applicant or registrant
25 shall be given an opportunity for a prompt and fair hearing. On the basis of the hearing, or upon
26 the failure of the applicant or registrant to appear, the department shall make a determination
27 specifying its findings of fact and conclusions of law. A copy of the determination shall be sent
28 by registered or certified mail or served personally upon the applicant or registrant. The decision
29 denying, suspending, or revoking the certificate of registration or application shall become final
30 thirty (30) days after it is so mailed or served, unless the applicant or registrant, within the thirty
31 (30) day period, appeals the decision pursuant to section 42-35-15. The procedure governing
32 hearings authorized by this section shall be in accordance with sections 42-35-9 and 42-35-13 as
33 stipulated in section 42-35-14. A full and complete record shall be kept of all proceedings, and all
34 testimony shall be reported but need not be transcribed unless the decision is appealed pursuant to

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

4 **40-8.1-17. 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 sections 42-35-15 and 42-35-16.

8 **40-8.1-18. Immunity from liability.**-- Anyone who disqualifies an individual from
9 employment or continued employment within thirty (30) days of receipt of a letter containing
10 disqualifying information as defined in section 40-8.1-15 or of a criminal background check
11 relating to that information shall be liable for civil damages or subject to any claim, cause of
12 action, or proceeding of any nature as a result of the disqualification.

13 **40-8.1-19. Inspections and Investigations.**-- The department may conduct any such
14 investigation and 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 an 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 Personal care attendants registered under the chapter shall make available to the department all
20 books, records, policies and procedures, or any other materials requested during the course of an
21 investigation or inspection. Refusal to make such materials available to the department shall be
22 grounds for certificate of registration revocation, or the imposition of any other penalty provided
23 in the chapter.

24 **40-8.1-20. Rules and regulations.**-- The department shall promulgate regulations to
25 carry out the intent of this chapter.

26 **40-8.1-21. Penalties for violations.** -- It shall be a misdemeanor punishable by a fine of
27 not more than one thousand dollars (\$1,000) and/or by imprisonment for not more than one year
28 for any person to:

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

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

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

1 **40-8.1-22. Severability.--** If any provision of this chapter or the application of any
2 provision of this chapter to any person or circumstance shall be held invalid, the invalidity shall
3 not affect the provisions or application of this chapter which can be given effect without the
4 invalid provisions or application, and to this end the provisions of this chapter are declared
5 severable.

6 SECTION 3. This act shall take effect on January 1, 2013.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

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, 2013.

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