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LC02403/SUB A  
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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. Title 23 of the General Laws entitled "Health and Safety" is hereby  
12 amended by adding thereto the following chapter:

13 CHAPTER 87

14 PERSONAL CARE SERVICES

15 **23-87-1. 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 assistant.

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

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

11           (6) “Department” means the department of health.

12           (7) “Employer” means the consumer unless the personal care assistant is employed by a  
13 third-party, in such cases the third-party is the employer.

14           (8) “Homemaking” means performing household chores that include, but are not limited  
15 to, housekeeping, meal planning and preparation, shopping assistance, and routine household  
16 activities for a consumer.

17           (9) “Participant” means an individual approved by the department to receive self directed  
18 personal care assistant services.

19           (10) “Personal care assistant” means an individual with appropriate training who  
20 provides personal care assistant services to a consumer.

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

28           (12) “Personal representative” means a person who, under applicable state law, has the  
29 authority to act on behalf of the consumer with regard to an action to be taken.

30           (13) “Registrant” means the lawful holder of a certification of registration as a personal  
31 care assistant with the department.

32           (14) “Service plan” means a written list of the types and schedule of personal care  
33 assistant services prepared by the personal care assistant, or his or her designee, updated to reflect  
34 changes in needs or services as appropriate, but at least annually, that states the services to be

1 provided to the consumer subject to the consumer's right to temporarily suspend, permanently  
2 terminate, temporarily add, or permanently add the provision of any such service.

3 **23-87-2. Rights of consumers.--** The department shall develop rights to be distributed to  
4 the consumer within five (5) calendar days of the initiation of services to the consumer and  
5 thereafter, on an annual basis. These rights include:

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

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

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

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

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

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

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

18 **23-87-3. Complaint Process.--** The department shall investigate complaints made by a  
19 consumer, the consumer's family, or the personal representative regarding services that are or  
20 have failed to be furnished or lack of respect for the consumer's property by the personal care  
21 assistant. The department shall document the existence of the complaint and the resolution of the  
22 complaint in accordance with the department's rules and regulations.

23 **23-87-4. Registration. --** (a) Every person being employed as a personal care assistant or  
24 offering services as a personal care assistant must obtain a certificate of registration issued by the  
25 department within their initial thirty (30) days of employment or of offering services.

26 (b) The department shall verify, prior to issuing a certificate of registration that the  
27 applicant underwent a criminal background check in accordance with section 23-87-8 and  
28 successfully completed the training program in accordance with section 23-87-7.

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

31 (d) The department may charge a fee for registration or renewal that shall be established  
32 by rules and regulations promulgated pursuant to section 23-87-15 of this chapter.

33 **23-87-5. Renewal of certificate of registration. --** Every registrant shall renew their  
34 certificate of registration biennially by making application to the department. Such forms shall be

1 provided by the department. The renewals shall be granted as a matter of course provided that the  
2 registrant has proof of successful completion of the continuing education requirements as  
3 required by section 23-87-7. The department shall not automatically renew the certificate of  
4 registration if the department finds that the registrant has acted or failed to act in a manner under  
5 the circumstances that would constitute grounds for suspension or revocation of a certificate of  
6 registration.

7 **23-87-6. Grandfather clause.** -- After January 1, 2013 and at any time prior to March  
8 31, 2013, the department shall issue a certificate of registration to any applicant who shall present  
9 satisfactory evidence that he or she has been employed as a personal care assistant in Rhode  
10 Island for a period of at least three hundred (300) hours and has undergone a criminal background  
11 check in accordance with section 23-87-8.

12 **23-87-7. Personal Care Assistant Training.**-- (a) The department shall be responsible  
13 for ensuring that all registrants have completed four (4) hours of initial training on personal care  
14 assistant responsibilities and practices and two (2) hours of continuing education biennially  
15 thereafter, as prescribed by the department. In addition to the four (4) hours of initial training,  
16 each registrant shall receive individualized training on how to assist their consumer's needs.

17 (b) All applicants not otherwise exempted, under section 23-87-6, are required to  
18 complete the process of training within thirty (30) days from the date of initiation of training. If  
19 the applicant fails to successfully complete the training within ninety (90) days, they must  
20 successfully repeat the training program.

21 **23-87-8. Criminal background check.** -- (a) Any person applying for a certificate of  
22 registration as a personal care assistant shall undergo a criminal background check to be initiated  
23 prior to applying for a certificate of registration.

24 (b) The applicant shall apply to the bureau of criminal identification for a national  
25 criminal background check that shall be supported by fingerprints submitted to the federal bureau  
26 of investigation ("FBI"). Upon the discovery of any disqualifying information as defined in  
27 section 23-87-10, the bureau of criminal identification shall inform the applicant, in writing, of  
28 the nature of the disqualifying information; and, without disclosing the nature of the disqualifying  
29 information, will notify the department, in writing, that disqualifying information has been  
30 discovered.

31 (c) In those situations in which no disqualifying information has been found, the bureau  
32 of criminal identification of the department of attorney general shall inform the applicant and the  
33 department, in writing.

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

1           **23-87-9. Prior criminal records checks.--** If an applicant has undergone a national  
2 criminal records check within eighteen (18) months of an application for a certificate of  
3 registration, then an applicant may request from the bureau of criminal identification a letter  
4 indicating if any disqualifying information was discovered. The bureau of criminal identification  
5 shall respond without disclosing the nature of the disqualifying information. The letter may be  
6 maintained on file to satisfy the requirements of this chapter.

7           **23-87-10. Disqualifying information.--** (a) Information produced by a criminal  
8 background check pertaining to a conviction, for the following crimes, shall result in a letter to  
9 the applicant and the department disqualifying the applicant from a certificate of registration:  
10 murder, manslaughter, first degree sexual assault, second degree sexual assault, third degree  
11 sexual assault, assault on persons sixty (60) years of age or older, assault with intent to commit  
12 specified felonies (murder, robbery, rape, burglary, or the abominable and detestable crime  
13 against nature), felony assault, patient abuse, neglect or mistreatment of patients, first degree  
14 arson, robbery, felony drug offenses, larceny, abuse, neglect and/or exploitation of adults with  
15 severe impairments, fraud and false dealing, theft, embezzlement, false pretenses, and  
16 misappropriation, impersonation and identity fraud, exploitation of elders, or felony banking law  
17 violations.

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

23           **23-87-11. Denial, suspension, or revocation of a certificate of registration.--** The  
24 department, after notice and opportunity for a hearing to the applicant or registrant, is authorized  
25 to deny, suspend, or revoke a certificate of registration in any case in which it finds that there has  
26 been failure to comply with the requirements under this chapter and the rules and regulations  
27 promulgated thereto or the registrant has been convicted of a disqualifying offense provided in  
28 section 23-87-10. The notice shall be effected by registered or certified mail or by personal  
29 service, setting forth the particular reasons for the proposed action and fixing a date not less than  
30 thirty (30) days from the date of the mailing or service, at which time the applicant or registrant  
31 shall be given an opportunity for a prompt and fair hearing, On the basis of the hearing, or upon  
32 the failure of the applicant or registrant to appear, the department shall make a determination  
33 specifying its findings of fact and conclusions of law. A copy of the determination shall be sent  
34 by registered or certified mail or served personally upon the applicant or registrant. The decision

1 denying, suspending, or revoking the certificate of registration or application shall become final  
2 thirty (30) days after it is so mailed or served, unless the applicant or registrant, within the thirty  
3 (30) day period, appeals the decision pursuant to section 42-35-15. The procedure governing  
4 hearings authorized by this section shall be in accordance with sections 42-35-9 and 42-35-13 as  
5 stipulated in section 42-35-14. A full and complete record shall be kept of all proceedings, and all  
6 testimony shall be reported but need not be transcribed unless the decision is appealed pursuant to  
7 section 42-35-15. A copy or copies of the transcript may be obtained by an interested party on  
8 payment of the cost of preparing the copy or copies. Witnesses may be subpoenaed by either  
9 party.

10 **23-87-12. Judicial review of certificate of registration action.** -- Any person who has  
11 exhausted all administrative remedies available to him or her within the department, and who is  
12 aggrieved by a final decision of the department, is entitled to judicial review in accordance with  
13 the provisions of sections 42-35-15 and 42-35-16.

14 **23-87-13. Immunity from liability.** -- No person who disqualifies an individual from  
15 employment or continued employment within thirty (30) days of receipt of a letter containing  
16 disqualifying information as defined in section 23-87-10 or of a criminal background check  
17 relating to that information shall be liable for civil damages or subject to any claim, cause of  
18 action, or proceeding of any nature as a result of the disqualification.

19 **23-87-14. Inspections and Investigations.**-- The department may conduct any such  
20 investigation and inspection as it deems necessary to assess compliance with this chapter and the  
21 rules and regulations promulgated thereto. Wherever possible and practical, on-site reviews shall  
22 be scheduled, in an effort so as to reduce the number of visits and the disruption to the personal  
23 care assistant services. Investigations and inspections may occur when the consumer gives  
24 consent including the direct observation of the provision of personal care assistant services.  
25 Personal care assistants registered under the chapter shall make available to the department all  
26 books, records, policies and procedures, or any other materials requested during the course of an  
27 investigation or inspection. Refusal to make such materials available to the department shall be  
28 grounds for certificate of registration revocation, or the imposition of any other penalty provided  
29 in the chapter.

30 **23-87-15. Rules and regulations.**-- The department shall promulgate rules and  
31 regulations to carry out the intent of this chapter.

32 **23-87-16. Penalties for violations.** -- It shall be a misdemeanor punishable by a fine of  
33 not more than one thousand dollars (\$1,000) and/or by imprisonment for not more than one year  
34 for any person to:

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

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

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

7           **23-87-17. Severability.--** If any provision of this chapter or the application of any  
8 provision of this chapter to any person or circumstance shall be held invalid, the invalidity shall  
9 not affect the provisions or application of this chapter which can be given effect without the  
10 invalid provisions or application, and to this end the provisions of this chapter are declared  
11 severable.

12           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

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

3           This act would take effect on January 1, 2013.

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