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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

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A N A C T

RELATING TO HUMAN SERVICES -- PERSONAL CARE ATTENDANT PROGRAM

Introduced By: Representatives Naughton, Fellela, Shekarchi, and Diaz

Date Introduced: February 12, 2014

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 93

14 PERSONAL CARE ASSISTANT SERVICES

15 **23-93-1. 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" 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 assistant care
7 services, including, a participant in personal care assistant services provided pursuant to § 40-8.1-
8 2 or a person who receives personal care assistant services through Medicaid, a third-party payor,
9 or paid for by the individual and/or his/her family. Consumer shall not include an individual who
10 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 includes, but is 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 provides
20 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 certificate of registration as a personal care
31 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 **23-93-2. Rights of consumers.** -- The department shall develop a document of rights to
4 be distributed to the consumer within five (5) calendar days of the initiation of services to the
5 consumer and 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 **23-93-3. 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 **23-93-4. 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 national criminal records check in accordance with § 23-93-8 and
28 successfully completed the training program in accordance with § 23-93-7.

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 of the certificate that
32 shall be established by rules and regulations promulgated pursuant to § 23-93-15.

33 **23-93-5. 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 § 23-93-7. The department shall not automatically renew the certificate of registration
4 if the department finds that the registrant has acted or failed to act in a manner under the
5 circumstances that would constitute grounds for suspension or revocation of a certificate of
6 registration.

7 **23-93-6. Grandfather clause.** -- After January 1, 2015 and at any time prior to March
8 31, 2015, 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 national criminal
11 records check in accordance with § 23-93-8.

12 **23-93-7. Personal care assistant training.** -- (a) The department shall be responsible for
13 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 § 23-93-6, are required to complete the
18 process of training within thirty (30) days from the date of initiation of training. If the applicant
19 fails to successfully complete the training within ninety (90) days, they must successfully repeat
20 the training program.

21 **23-93-8. National criminal records check.** -- (a) Any person applying for a certificate of
22 registration as a personal care assistant shall undergo a national criminal records check to be
23 initiated 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 records check that shall be supported by fingerprints submitted to the Federal Bureau of
26 Investigation ("FBI"). Upon the discovery of any disqualifying information as defined in § 23-93-
27 10, the bureau of criminal identification shall inform the applicant, in writing, of the nature of the
28 disqualifying information; and, without disclosing the nature of the disqualifying information,
29 will notify the department, in writing, that disqualifying information has been discovered.

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

32 (d) It shall be the responsibility of the applicant to pay for the national criminal records
33 check.

34 **23-93-9. Prior criminal records checks.** -- If an applicant has undergone a national

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

6 **23-93-10. Disqualifying information.** – (a) Information produced by a national criminal
7 records check pertaining to a conviction, for the following crimes, shall result in a letter to the
8 applicant and the department disqualifying the applicant from a certificate of registration: murder,
9 manslaughter, first degree sexual assault, second degree sexual assault, third degree sexual
10 assault, assault on persons sixty (60) years of age or older, assault with intent to commit specified
11 felonies (murder, robbery, rape, burglary, or the abominable and detestable crime against nature),
12 felony assault, patient abuse, neglect or mistreatment of patients, first degree arson, robbery,
13 felony drug offenses, larceny, abuse, neglect and/or exploitation of adults with severe
14 impairments, fraud and false dealing, theft, embezzlement, false pretenses, misappropriation,
15 impersonation and identity fraud, exploitation of elders, or felony banking law violations.

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

21 **23-93-11. Denial, suspension, or revocation of a certificate of registration.** – The
22 department, after notice and opportunity for a hearing to the applicant or registrant, is authorized
23 to deny, suspend, or revoke a certificate of registration in any case in which it finds that there has
24 been failure to comply with the requirements under this chapter and the rules and regulations
25 promulgated thereto or the registrant has been convicted of a disqualifying offense provided in §
26 23-93-10. The notice shall be effected by registered or certified mail or by personal service,
27 setting forth the particular reasons for the proposed action and fixing a date not less than thirty
28 (30) days from the date of the mailing or service, at which time the applicant or registrant shall be
29 given an opportunity for a prompt and fair hearing. On the basis of the hearing, or upon the
30 failure of the applicant or registrant to appear, the department shall make a determination
31 specifying its findings of fact and conclusions of law. A copy of the determination shall be sent
32 by registered or certified mail or served personally upon the applicant or registrant. The decision
33 denying, suspending, or revoking the certificate of registration shall become final thirty (30) days
34 after it is so mailed or served, unless the applicant or registrant, within the thirty (30) day period,

1 appeals the decision pursuant to § 42-35-15. The procedure governing hearings authorized by this
2 section shall be in accordance with §§ 42-35-9 and 42-35-13 as stipulated in § 42-35-14. A full
3 and complete record shall be kept of all proceedings, and all testimony shall be reported but need
4 not be transcribed unless the decision is appealed pursuant to § 42-35-15. A copy or copies of the
5 transcript may be obtained by an interested party on payment of the cost of preparing the copy or
6 copies. Witnesses may be subpoenaed by either party.

7 **23-93-12. Judicial review of certificate of registration action.** – Any person who has
8 exhausted all administrative remedies available to him or her within the department, and who is
9 aggrieved by a final decision of the department, is entitled to judicial review in accordance with
10 the provisions of §§ 42-35-15 and 42-35-16.

11 **23-93-13. Immunity from liability .** – No person who disqualifies an individual from
12 employment or continued employment within thirty (30) days of receipt of a letter containing
13 disqualifying information as defined in § 23-93-10 or of a national criminal records check relating
14 to that information shall be liable for civil damages or subject to any claim, cause of action, or
15 proceeding of any nature as a result of the disqualification.

16 **23-93-14. Inspection and investigations.** – The department may conduct any such
17 investigation or inspection as it deems necessary to assess compliance with this chapter and the
18 rules and regulations promulgated thereto. Wherever possible and practical, on-site reviews shall
19 be scheduled, in an effort so as to reduce the number of visits and the disruption to the personal
20 care assistant services. Investigations and inspections may occur when the consumer gives
21 consent including the direct observation of the provision of personal care assistant services.
22 Registrants shall make available to the department all books, records, policies and procedures, or
23 any other materials requested during the course of an investigation or inspection. Refusal to make
24 such materials available to the department shall be grounds for certificate of registration
25 revocation, or the imposition of any other penalty provided in the chapter.

26 **23-93-15. Rules and regulations.** – The department shall promulgate rules and
27 regulations to carry out the intent of this chapter.

28 **23-93-16. Penalties of violations.** – It shall be a misdemeanor punishable by a fine of not
29 more than one thousand dollars (\$1,000), by imprisonment for not more than one year, or both,
30 for any person to:

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

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

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

3 **23-93-17. Severability.** – If any provision of this chapter or the application of any
4 provision of this chapter to any person or circumstance shall be held invalid, the invalidity shall
5 not affect the provisions or application of this chapter which can be given effect without the
6 invalid provisions or application, and to this end the provisions of this chapter are declared
7 severable.

8 SECTION 3. This act shall take effect on January 1, 2015.

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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 that persons who provide personal care assistant services to
2 consumers register with the department of health and obtain certificates of registration after
3 meeting various criteria.

4 This act would take effect on January 1, 2015.

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