Governor's Commission on Disabilities

Executive Committee

Monday February 22, 2016 4 PM - 5:00 PM

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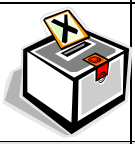
Attendees: Timothy Flynn (Chair.); Rosemary Carmody, (Vice Chair.); Judi Drew; Sarah Everhart Skeels; Casey Gartland; Jack Ringland; Linda Ward; & Gary Witman
Absentees: Andrew Argenbright; & Harvey Salvas

Guests: Ronald Recine & Laurie DiOrio (ORS), Meredith Sheehan (MS), & Lorna Ricci (OSCIL)

Staff: Bob Cooper, Executive Secretary & Alyssa Gleason, Public Education Aide

4:00 Call to Order and Acceptance of the Minutes, Timothy Flynn, Chair

Chair calls the meeting to order at 4:05 PM
Introductions of Commissioners and guests



MOTION: To accept the minutes of the previous meeting as presented
Motion moved by JR, seconded by CG, passed unanimously

Action Items:

Purpose/Goal: To consider becoming the Designated State Entity for federal independent living Title VII Part B funding in Federal Fiscal Year 2017

Chair Flynn Recuse from the discussion
The Chair on behalf of the Statewide Independent Living Council made an inform request that the Commission become their Designated State Entity. Currently the Office of Rehabilitation Services has been their Designated State Unit. The Workforce Innovation and Opportunity Act of 2014 changed to "designated state entity (DSE)" that would act on behalf of the State for Title VII Part B programs.

Independent Living Part B Designated State Entity's Responsibilities:

"§ 1329.12 Role of the designated State entity.
(a) A DSE that applies for and receives assistance must:
(1) Receive, account for, and disburse funds received by the State under Part B and Part C in a State under section 723 of the Act based on the state plan;
(2) Provide administrative support services for a program under Part B and for CILs[1] under Part C when administered by the State under section 723 of the Act, 29 U.S.C. 796f-2;
(3) Keep such records and afford such access to such records as the Administrator finds to be necessary with respect to the programs;
(4) Submit such additional information or provide such assurances as the Administrator may require with respect to the programs; and

[1] Centers for Independent Living

	(5) Retain not more than 5 percent of the funds received by the State for any fiscal year under Part B, for the performance of the services outlined in paragraphs (a)(1) through (4) of this section. For purposes of these regulations, the 5 percent cap on funds for administrative expenses applies only to the Part B funds allocated to the State and to the State's required 10 percent Part B match. It does not apply to other program income funds, including, but not limited to, payments provided to a State from the Social Security Administration for assisting Social Security beneficiaries and recipients to achieve employment outcomes, any other federal funds, or to other funds allocated by the State for IL[2] purposes. (b) The DSE must also carry out its other responsibilities under the Act, including, but not limited to, arranging for the delivery of IL services under Part B of the Act, and for the necessary and sufficient resources needed by the SILC[3] to fulfill its statutory duties and authorities, as authorized in the approved State Plan. (c) Fiscal and accounting requirements: The DSE must adopt fiscal control and fund accounting procedures as may be necessary to ensure the proper disbursement of and accounting for federal funds provided to CILs, SILCs, and/or other services providers under the ILS program. The DSE must comply with all applicable federal and state laws and regulations, including those in 45 CFR parts 75."
	Questions Sent on January 13, 2016 to: Elizabeth Roberts, Secretary of Health and Human Services, Melba Depeña Affigne, Department of Human Services Director, Ronald Racine, ORS Assistant Director, Matthew Appenfeller, Governor's Policy Office, Thomas Mullaney, Budget Officer, Lorna Ricci, Ocean State Center for Independent Living Executive Director, and Raymond Bandusky, RI Disability Law Center Executive Director 1. The Office of Rehabilitation Services (ORS) is currently the Designated State Unit (DSU), the Commission would not consider taking on this responsibility, if ORS wants to become the Designated State Entity (DSE). 2. There is a ten (10%) percent State matching fund obligation. a. Would the current State matching funds be transferred from ORS to the Commission if it takes on this responsibility? 3. What has been the DSU employee(s) workload (FTE) during the most recent federal fiscal year? a. Receive, account for, and disburse funds? b. Provide administrative support services? c. Does the SIL Council or the DSU provide staff support to the council for: i. Filing of open meeting notices; ii. Preparing and filing council minutes; iii. Developing the State Plan for Independent Living(SPIL) and SPIL Amendments, iv. Advertising the public hearing

[2] Independent living services

[3] Statewide Independent Living Council

v. Arranging for interpreters/readers/other accommodations
vi. Typesetting/printing the SPIL; and
vii. Submitting the SPIL;

4. How much was disbursed by the DSU in the last federal fiscal year?
5. Would the Commission acting as the DSE be responsible for receiving, accounting for, and disbursing IL funds only to the SILC or also to the Center(s) for Independent Living and other entities?
6. Does the Governor designate the DSE? If not who does?

Office of Rehabilitation Services Response to questions.

1. Yes – ORS supports the GCD serving at the new DSE. We encourage the collaboration.
2. Lastly, it is outside the scope of my authority to opine about transferring ORS state funds to the GCD to cover 10% state match.
3. The FTE allocation at present is .15 of my time for contract/program management.
   a. The administrative support provided by the DSU at present is limited mostly to this and to attendance at RISILC meetings and related duties.
   b. As contract manager – I develop the contract deliverables in conjunction with the CIL/SILC account for the funds, review reports and authorize contract payments. Periodic audits for risk management and program integrity are recommended at least once per contact period- (which is 3 years) - but certainly more often if possible or warranted.
   c. ORS does not currently provide direct staffing services to the SILC because SILC has two paid staff under the current SPIL cycle as well as an office and so forth. They are meant to handle logistics to meet their mandate such as scheduling meetings, public forums, filing agendas and minutes, securing rooms, creating reports, entering SPIL information, entering and assimilating annual 704 report info… arranging for ASL or CART are also handled by SILC Staff.
      i. (That is not to say that a DSE could not provide these services to the SILC – in fact they can- for example- hire a part time assistant, who works solely for the SILC as needed, or fund an independent contractor to do so. Also- the CIL (OSCIL) could also do this for the SILC- provide a mechanism and a person to handle their affairs- provide a space to work from or meet in.
      ii. The SPIL is not formally typeset, bound or printed- it is filed with the ACL via an electronic portal and a record of such maintained of course with the DSE and the SILC as well as the CIL. Costs associated with SPIL development are again those related to the Council functions and the cost of the public forums and a power point referencing key points. These funds are generally allocated to the 'SILC resource plan" since they are responsible to carry out the functions. Currently a SILC STAFFER completes the data entry for the SPIL (and annual 704 report) but again this could default to whomever is hired to do it. I have done my sections personally in the past.
4. Funds under PART B are allocated and disbursed to both the SILC and OSCIL.
   a. Both under- 3 year contract- with quarterly (Or as frequently as agreed upon) invoicing and payments.
   b. The current IL Part B contract with OSCIL is $745,000.00 for the entire period 2014-2016. The prior 4 year's annual awards have ranged from $295,000 to $312, 000.

	i. We disbursed $269,000.00 to OSCIL in 2015. The funds to OSCIL go toward home modification, nursing home deferment and transition, assistive tech as well as youth transition. ii. And will disburse $82,000 to RISILC in its final contract year under this cycle. SILCS are limited to 30% of the Part B funds under the new regulations. The funds to SILC are primarily overhead such as payroll and associated staff costs and space costs….which they may need to reassess this year because I understand that they are not happy with their current office space and wish to use more funds for council development and forums etc. The SILC currently holds an informal lease with the Corliss Center for its 'office' which terminates at the end of this SPIL period 9/30/2016. iii. There are a number of ways a SILC can function, either as a 501C non- profit, a corporation (or not) - they can be housed at the DSE or the CIL (or not); they can rely on the DSE or the CIL for admin support and fiscal management of their resource funds (or not); the DSE could initiate on their behalf an RFP for these services. There is considerable variance among SILCs Nationally as to how this is all accomplished. The key distinction about the SILC is that they must function autonomously in their decision making processes. The do not work for the DSE or report to the DSE, they are however beholden to the DSE as the funds manager- as prescribed in the Act. 5. As to whether the Governor must designate the DSE- the rule is not all that clear outside of the guidance regarding the designation of the DSE with the new SPIL. That likely requires further research.
	Ocean State Center for Independent Living's response: Re: 1329.12 Rhode Island is a 722 State, not a 723 State, and receives Title VII: C funds directly from Washington. These funds do not pass through the State (the DSU or now DSE). The State Plan for IL includes language as to IL Center services (mainly the core IL services); however all funding is direct from DC. As a 722 State, only part B funds are administered through the DSU - DSE. At present, the DSU is very involved in the activity of the SILC (must have representation on the SILC) and is responsible for contracts and monitoring of the funds. Require quarterly reports.
	No other responses received by 02-09-16
	Statewide Independent Living Council's Bi-Monthly Council Meeting Wednesday, February 17, 2016 1:00 – 3:00 p.m. Draft Minutes, filed 02-22-16 "3. **DSE Selection:** A letter from the Office of Rehabilitation Services (ORS) was read aloud stating that the ORS was not interested in being the Council's Designated State Entity (DSE) for the FY 2017-19 State Plan for Independent Living (SPIL). ORS offered their support to the Council in reaching out to agencies and providing information to prospective DSEs. Ron Racine stated that ORS's legal counsel had contacted the Governor's office concerning the Executive Order. Laurie DiOrio suggested that the Council investigate the mechanism to transfer funds from the ACL to the new DSE. Lorna Ricci made a motion to ratify the course of action already in place with the GCD. Motion was not seconded.

	Barbara Henry made a motion seconded by Margie Molloy to authorize the State Plan Committee to explore eligible state agencies including the GCD. For: Barbara Henry; Kathy Kindelan; Siera Leone; Margaret Molloy; Lorna Ricci; Jack Ringland. Against: none. Motion passed unanimously. The State Plan Committee will report back to the Council in April."
	Items for Discussion at Commission's Executive Committee Meeting 1. Legal a. Status of the civil or criminal misconduct investigation regarding the Council's Chairperson initiated at the June 4, 2014 Executive Committee meeting - completed b. Status of the civil or criminal misconduct investigation regarding the Council's the Assistant to the Executive Coordinator subject of the November 5, 2014 Executive Committee meeting- completed c. Status of the civil or criminal misconduct investigation regarding the Council's the Executive Coordinator – subject of the 10-21-15 Executive Committee meeting - completed d. Status of Open Meeting Act Complaint: Costa[4], et al v. Rhode Island Statewide Independent Living Council Sept. 29, 2015 – pending at the Attorney General's Office e. Documentation of the Ethics' Commission's ruling that the Council was not a 'state agency' as defined by the Ethics Commission, and is therefore, not under their jurisdiction. The Ethic's Commission's website listing of advisory opinions and rulings does not contain any reference the Statewide Independent Living Council. It does contain an advisory opinion issued to the Office of Rehabilitation Services that the Assistive Technology Access Partnership's Advisory Committee is a state agency and its members are subject to the Ethic's Code. f. Are there any other legal actions being taken by, on behalf of, or against the Council 2. Status of Council's two employees/contractors a. Are there any current employees/contractors? Yes b. Are there written job descriptions? c. Are there contracts for the two employee/contractor? i. Are the contracts for a set period? ii. Is there a contract renewal procedure? iii. The Council's employees current work week is: 1. Executive Coordinator 12 hours/week @ $22.50/hour 2. Assistant to the Executive Coordinator 18 hours/week @ $20.50/hour 3. Status of the Council's lease a. It terminates on 9/30/2016 4. Where will the $35,200 State Match come from? a. Would DHS/ORS support moving the state match appropriation to the Commission for FFY 2017 (Oct. 2016 – June 2017) – ORS would support transfer of the general funds state match to the Commission. 5. Who has to make the designation of the Designated State Entity?

[4] Complainant is the Council's Executive Coordinator

a. What is the State Independent Living Council's role in designation of the DSE? – DHS in consultation with the Governor's Office.
b. What is the Ocean State Center for Independent Living's role?
c. There will be a short timeline – decisions will have to be made before the House Finance Committee votes out the budget in early June.

Time Line for Deciding

February Commission's Executive Committee meets with Office of Rehabilitation Services

March a) Office of Rehabilitation Services advises the State Independent Living Council that it is recommending the Governor' Commission on Disabilities to become the Designated State Entity
b) State Independent Living Council decides whether to ask the Governor's Commission on Disabilities if they would accept the designation as the State Entity

April Commission's Vice Chair and Executive Secretary meet with the State Independent Living Council to:
a) Discuss what support services the Commission could provide the SILC
b) SILC decides whether to recommend the Governor designate the GCD

April 18th Governor's Commission on Disabilities Meeting will be asked to:
Decide whether to accept the designation and if so,
Request modification of the Commission's FY 2017 Budget

May Governor recommends the General Assembly revise the Commission's FY 2017 General Revenue and Federal Funds appropriations

June General Assembly revised the Commission's FY 2017 General Revenue and Federal Funds appropriations

Commission's FY 2017 Resource Allocation

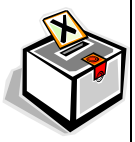
HAVA funding expires on September 30, 2016. In the FY 16 HAVA is paying for:
$10,308 of personnel expenses
$454 for interpreters/captioners
$5,419 operating expenses
$5,000 polling place access grants and voter support grants
$21,181 HAVA Grant Total

HAVA Funding in FY 17 will be paying for:
$9,127 of personnel expenses
$135 operating expenses
$1,035 polling place access grants and voter support grants
$10,297 HAVA Grant Total

The Commission could have a budget shortfall in FY 2018, of up to **$10,000.**

Governor's FY 17 Title VII Part B Independent Living Budget

Funding	Account #	Account Title	FY 2017	75%	5% Admin.
State	10.069 2270111.01	Independent Living Services	$35,200	$26,400	$1,320
Federal	10.069 2275115.02	Independent Living Services	$305,000	$228,750	$11,437.50
Total			$340,200	$255,150	$12,757.50

	MOTIONS: A. To arrange a meeting between the Executive Committee and the SILC to discuss the potential of the Commission on becoming the DSE. LW & CG passed, recused JR & TF. To direct staff and the VC, Sarah & Judy to develop a plan for becoming the DSE, LW & SES passed, recused JR & TF.
	4:40 Disability Related Legislation
	16 S __ RI Livable Home Tax Credit Act
	Purpose/Goal: To consider becoming the state certification agency for the 16 S __ RI Livable Home Tax Credit Act
	The MS Society has asked if the Commission would be willing to be named in their bill "The RI Livable Home Tax Credit Act" as the entity that directly or through a contractor determines of the accessibility renovations related to the tax credit were properly constructed. This would be a new program, modeled after several other states efforts. A taxpayer who purchases a new residence or retrofits or hires someone to retrofit an existing residence, provided that such new residence or the retrofitting of such existing residence is designed to improve accessibility, provide universal visitability, and meets the eligibility requirements established by guidelines developed by the corporation, shall be allowed a credit against the tax imposed pursuant to § 44-30-1 of an amount equal to five thousand dollars ($5,000) for such new residence, or fifty percent (50%) of the total amount spent for the retrofitting of such existing residence, not to exceed five thousand dollars ($5,000). The credit shall be allowed for the taxable year in which the residence has been purchased or construction, retrofitting, or renovation of the residence or residential structure or unit has been completed. The 2015 version is below.

SECTION 1. Title 44 of the General Laws entitled "TAXATION" is hereby amended by adding there to the following chapter:

CHAPTER 70

RHODE ISLAND LIVABLE HOME TAX CREDIT ACT

44-70-1. Short title. -- This chapter shall be known and may be cited as the "Rhode Island Livable Home Tax Credit Act."

44-70-2. Tax credits. -- For taxable years beginning on and after January 1, 2017, any taxpayer who purchases a new residence or retrofits or hires someone to retrofit an existing residence, provided that such new residence or the retrofitting of such existing residence is designed to improve accessibility or provide universal visitability, and meets the eligibility requirements established by guidelines developed by the Governor's Commission on Disabilities, shall be allowed a credit against the tax imposed pursuant to § 44-30-1 of an amount equal to five thousand dollars ($5,000) for such new residence, or fifty percent (50%) of the total amount spent for the retrofitting of such existing residence, not to exceed five thousand dollars ($5,000). The credit shall be allowed for the taxable year in which the residence has been purchased or construction, retrofitting, or renovation of the residence or residential structure or unit has been completed. Such a credit shall require application by the taxpayer as provided in § 44-70-4.

44-70-4. Applications. -- Eligible taxpayers shall apply for the credit by making application to the Governor's Commission on Disabilities, which shall issue a certification for an approved application

to the taxpayer. The taxpayer shall attach the certification to the applicable income tax return. The total amount of tax credits granted under this section for any fiscal year shall not exceed five hundred thousand dollars {$500,000). In the event applications for the tax credit exceed the amount allocated by the Governor's Commission on Disabilities for the fiscal year, the Governor's Commission on Disabilities shall issue the tax credits pro rata based upon the amount of tax credit approved for each taxpayer and the amount of tax credits allocated by the Governor's Commission on Disabilities.

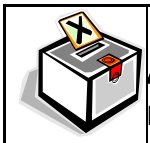
44-70-5. ~~Limitations~~ Eligibility. (a) ~~No~~ Credit shall be allowed under this chapter for the ~~**purchase, construction,**~~ retrofitting, or renovation of residential rental property **provided that the owner agreed to maintained access for 10 years. Excluded from the tax credits are entities that are 1) eligible for the federal Disabled access credit established under Section 44 of the Internal Revenue Code and RIGL 44-54-1 Disabled Access Credit For Small Businesses; 2) Limited Liability Company or Foreign limited liability company, as defined in § 7-16-2[5]; 3) S Corporations established under Subchapter S of Chapter 1 of the Internal Revenue Code, 4) Cooperative housing corporations, as defined in § 7-6.1-4(3)[6]; or 4) Corporations or Foreign corporations, as defined in § 7-1.2-106[7]. No credit shall be allowed under this chapter for the purchase or construction of residential rental property.**

(b) In no case shall the Governor's Commission on Disabilities issue any tax credit relating to transactions or dealings between affiliated entities. In no case shall the Governor's Commission on Disabilities issue any tax credit more than once to the same or different persons relating to the same retrofitting, renovation, or construction project.

(c) In no case shall the amount of credit taken by a taxpayer pursuant to this chapter exceed the taxpayer's income tax liability for the taxable year. If the amount of credit allowed for the taxable year in which the residence has been purchased or construction, retrofitting, or renovation of the residence or residential structure or unit has been completed exceeds the taxpayer's income tax liability imposed for such taxable year, then the amount that exceeds the tax liability may be carried over for credit against the income taxes of such taxpayer in the next seven (7) taxable years or until the total amount of the tax credit issued has been taken, whichever is sooner.

44-70-6. Reporting. By August 15th of each year, the division of taxation shall report the number of tax credits issued to qualifying individuals; the number of applicants who did not qualify, the total dollar amount of tax credits issued; and the average tax credits issued.

SECTION 2. This act shall take effect upon passage

	MOTION: To support if amended on **2016 S _ RI Livable Home Tax Credit Act,** provided that eligibility include retrofitting or renovation of residential rental property provided that the owner agreed to maintained access for 10 years. Excluded from the tax credits are entities that 1) are eligible for the federal & RI small business access tax credit, 2) Limited Liability Corporations; 3) S-Corporations, 4) Community Development Corporations, or 4) Corporations. Motion moved by JD seconded by LW, passed unanimously

[5]RIGL 7.16 The Rhode Island Limited Liability Company Act
[6]RIGL 7-6.1 Cooperative Housing Corporations
[7]RIGL 7-1.2 Rhode Island Business Corporation Act

	MOTION: To recommend the Commission becoming the state certification agency for **2016 S __ RI Livable Home Tax Credit Act.** Motion moved by LW, seconded by JR, passed unanimously
	16 H 7361 An Act Relating To Health And Safety - Personal Care Assistant Services
	Purpose/Goal: To reconsider the Commission's position on 16 H 7361 Personal Care Assistance
	16 H 7361 An Act Relating To Health And Safety - Personal Care Assistant Services (Attorney General) Rep. Naughton referred to the House Health, Education, and Welfare Committee This act would require registration of those individuals who provide personal care assistant services to a consumer. This act would authorize the department of health to supervise and investigate compliance with such issues as, consumer rights, the registration process, national criminal records checks and training for applicants. This act would take effect on January 1, 2017. **In 2015 Legislation Committee finds this bill Beneficial if amended - below:** "Personal care assistants do not need continuing education. Initial training in independent living and consumer directed care, should be followed by specific consumer directed training - tailored to that consumer's needs. The consumer should determine any "refresher" training, as that person's needs change, not according to the calendar. Requiring personal care assistants to attend two (2) hours of continuing education training, biennially, is not needed. These are very low paying jobs, requiring registration and renewal fees will reduce the hours of service available. Fees whether for registration or the criminal records check will ultimately come from the recipient of the services? On page 4 strike all the language between lines 11 - 12. On page 4 line 28 strike the words "and two (2) hours of continuing education biennially" On page 4 line 29 strike the word "thereafter"." **In 2016 the Legislation Committee after hearing from a representative of OSCIL found the bill harmful.** There may have been a miscommunication regarding OSCIL's position. The Executive Director, in an email prior to the Legislation Committee meeting indicated that OSCIL supported our 2015 position regarding amending the bill.

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

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

12-1.6-2. Long-term healthcare workers. -- The department of attorney general shall maintain an electronic, web-based system to assist facilities, licensed under chapters 17, 17.4,

17.7.1{add}, and 94{add} of title 23 or § 23-1-52, required to check relevant registries and conduct national criminal records checks of routine contact patient employees. The department of attorney general shall provide for an automated notice, as authorized in § 12-1.6-1, to those facilities if a routine-

contact patient employee is subsequently convicted of a disqualifying offense, as described in the relevant licensing statute. The department of attorney general may charge a facility a one-time, set-up fee of up to one hundred dollars ($100) for access to the electronic web-based system under this section.

SECTION 2. Section 40-8.1-3 of the General Laws in Chapter 40-8.1 entitled "Personal Care Attendant Program" is hereby amended to read as follows:

40-8.1-3. Eligibility for services. -- Services available under this chapter may be provided to any person who meets the following criteria:

(1) Has made application therefor to the director of the department of human services in a manner prescribed by the director;

(2) Has a severe physical disability that caused the person to be unduly dependent, the disability to be certified by the {delete}~~division of vocational rehabilitation~~{delete}{add}office of rehabilitation services{add}; and

(3) Has not sufficient income or resources to meet the cost of home care services, a determination of insufficiency to be made by the division of vocational rehabilitation.

SECTION 3. Title 23 of the General Laws entitled "HEALTH AND SAFETY" is hereby amended by adding thereto the following chapter:

{add}CHAPTER 94

PERSONAL CARE ASSISTANT SERVICES

23-94-1. Short title. -- This chapter shall be known and may be cited as the "Personal Care Assistant Services Act".

23-94-2. Definitions. -- As used in this chapter, the following words and terms shall have the following meanings:

(1) "Activities of daily living" means hands on assistance with activities of daily living including, but not limited to, ambulation, transferring, toileting, and grooming.

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

(3) "Bureau of criminal identification" means the bureau of criminal identification of the department of attorney general.

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

(5) "Consumer" means an individual who receives self-directed personal assistant care services, including a participant in personal care assistant services provided pursuant to §40-8.1-2

or a person who receives personal care assistant services through Medicaid, a third-party payor, or paid for by the individual and/or their family. "Consumer" shall not include an individual who receives services similar to personal care assistant services for no compensation.

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

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

nolo contendere and has received a sentence of probation and those instances where a defendant has entered into a deferred sentence agreement with the attorney general.

(8) "Employer" means the consumer unless the personal care assistant is employed by a third party; in such cases the third party is the employer.

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

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

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

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

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

(14) "Registrant" means the lawful holder of a certificate of registration as a personal care assistant with the department.

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

23-94-3. Rights of consumers. -- The department shall develop rights to be distributed to the consumer within five (5) calendar days of the initiation of services to the consumer and thereafter, on an annual basis. These rights shall include:

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

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

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

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

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

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

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

23-94-4. Complaint process. -- The department shall investigate complaints made by a consumer, the consumer's family, or the personal representative regarding services that are or have failed to be furnished or lack of respect for the consumer's property by the personal care assistant. The department shall document the existence of the complaint and the resolution of the complaint in accordance with the department's rules and regulations.

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

(b) The department shall verify, prior to issuing a certificate of registration, that the applicant underwent a national criminal records check in accordance with §23-94-9 and

successfully completed the training program in accordance with §23-94-8.

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

~~**(d) The department may charge a fee for registration or renewal of the certificate that shall be established by rules and regulations promulgated pursuant to §23-94-14.**~~

23-94-6. Renewal of certificate of registration. -- Every registrant shall renew their certificate of registration biennially by making application to the department. Such forms shall be provided by the department. The renewals shall be granted as a matter of course provided that the registrant has proof of successful completion of the continuing education requirements as required by §23-94-8. The department shall not automatically renew the certificate of registration if the department finds that the registrant has acted or failed to act in a manner under the circumstances that would constitute grounds for suspension or revocation of a certificate of registration.

23-94-7. Grandfather rights. -- After January 1, 2017 and at any time prior to March 31, 2017, the department shall issue a certificate of registration to any applicant who shall present satisfactory evidence that they have been employed as a personal care assistant in Rhode Island for a period of at least three hundred (300) hours and have undergone a national criminal records check in accordance with §23-94-9.

23-94-8. Personal care assistant training. -- (a) The department shall be responsible for ensuring that all registrants have completed ~~**four (4)**~~ **two (2)** hours of initial training on personal care assistant responsibilities and practices ~~and two (2) hours of continuing education biennially thereafter~~, as prescribed by the department. In addition to the four (4) hours of initial training, each registrant shall receive individualized training on how to assist their consumer's needs.

(b) All applicants not otherwise exempted, under §23-94-7, shall be required to complete the process of training within thirty (30) days from the date of initiation of training. If the applicant fails to successfully complete the training within ninety (90) days, they must successfully repeat the training program.

23-94-9. National criminal records check. -- (a) Any person applying for a certificate of registration as a personal care assistant shall undergo a national criminal records check to be initiated prior to applying for a certificate of registration.

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

(1) Upon the discovery of any disqualifying information, the bureau of criminal

identification shall inform the applicant, in writing, of the nature of the disqualifying information; and, without disclosing the nature of the disqualifying information, will notify the **employer** ~~**department**~~, in writing, that disqualifying information has been discovered. An employee against whom disqualifying information has been found may provide a copy of the national criminal records check to the **employer** ~~**department**~~. ~~**The department shall make a judgment regarding the issuance of the certificate of registration.**~~ **The employer shall make a judgment regarding the continued employment of the employee.**

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

(c) It shall be the responsibility of the ~~**applicant**~~ **attorney general to** pay for the national criminal records check.

23-94-10. Denial, suspension, or revocation of a certificate of registration. -- The department, after notice and opportunity for a hearing to the applicant or registrant, is authorized to deny, suspend, or revoke a certificate of registration in any case in which it finds that there has been failure to comply with the requirements under this chapter and the rules and regulations promulgated thereto or the registrant has been convicted of an offense that is considered disqualifying information. The notice shall be effected by registered or certified mail or by

personal service, setting forth the particular reasons for the proposed action and fixing a date not less than thirty (30) days from the date of the mailing or service, at which time the applicant or registrant shall be given an opportunity for a prompt and fair hearing. On the basis of the hearing, or upon the failure of the applicant or registrant to appear, the department shall make a determination specifying its findings of fact and conclusions of law. A copy of the determination shall be sent by registered or certified mail or served personally upon the applicant or registrant. The decision denying, suspending, or revoking the certificate of registration shall become final thirty (30) days after it is so mailed or served, unless the applicant or registrant, within the thirty (30) day period, appeals the decision pursuant to §42-35-15. The procedure governing hearings authorized by this section shall be in accordance with §§42-35-9 and 42-35-13 as stipulated in §42-35-14. A full and complete record shall be kept of all proceedings, and all testimony shall be reported but need not be transcribed unless the decision is appealed pursuant to §42-35-15. A copy or copies of the transcript may be obtained by an interested party on payment of the cost of preparing the copy or copies. Witnesses may be subpoenaed by either party.

23-94-11. Judicial review of certificate of registration action. -- Any person who has exhausted all administrative remedies available to them within the department, and who is aggrieved by a final decision of the department, is entitled to judicial review in accordance with the provisions of §§42-35-15 and 42-35-16.

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

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

23-94-14. Rules and regulations. -- The department shall promulgate rules and regulations to carry out the intent of this chapter.

23-94-15. Penalties for violations. -- It shall be a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000), by imprisonment for not more than one year, or both, for any person to:

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

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

(3) Obtain their certification of registration by means of fraud, misrepresentation, or concealment of material facts.

23-94-16. Severability. -- If any provision of this chapter or the application of any provision of this chapter to any person or circumstance shall be held invalid, the invalidity shall not affect the provisions or application of this chapter which can be given effect without the invalid provisions or application, and to this end the provisions of this chapter are declared severable. {add}

SECTION 4. This act shall take effect on January 1, 2017.

	MOTION: To opposed **2016 H 7361 An Act Relating To Health And Safety - Personal Care Assistant Services** Motion moved by LW, seconded by CG passed unanimously
Status Reports:	
	4:50 Commission Operations and Budget, Bob Cooper, Executive Secretary
	Purpose/Goal: To brief the committee on Commission operations and budget since the last meeting
	Discussion: Governor's 2016 Revised and 2017 Budget is identical to the version the Budget Office presented to and accepted by the Commission last fall.
	4:55 Agenda for the Next Meeting, Timothy Flynn
	Purpose/Goal: To set the agenda for the next meeting.
	Discussion: We have already received 1 application for the summer Mary Brennan Policy Fellowship. Executive Committee meeting are on the 3rd Mondays 4 - 5 PM: 03/28th (summer & fall fellowship interviews); 08/14th and 12/05th (winter fellowship interviews). 1. Interview and selection of fellowships
	MOTION: To move the summer/fall fellowship interviews to Monday March 29th. Motion moved by RC seconded by SKS, passed unanimously
	5:00 Adjournment, Timothy Flynn MOTION: To adjourn at 6:10 PM Motion moved by CG, seconded by RC, passed unanimously