

# HOUSE BILL REPORT

## ESHB 2314

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### As Amended by the Senate

**Title:** An act relating to implementing revisions to long-term care services without delaying the start of the long-term care worker minimum training or certification requirements in Initiative Measure No. 1163 beyond January 7, 2012, reducing those requirements, or, except for long-term care workers employed by community residential service businesses, exempting additional workers from those requirements

**Brief Description:** Concerning long-term care workers.

**Sponsors:** House Committee on Health Care & Wellness (originally sponsored by Representatives Cody and Green).

#### **Brief History:**

##### **Committee Activity:**

Health Care & Wellness: 1/19/12, 1/26/12, 1/30/12 [DPS].

##### **Floor Activity:**

Passed House: 2/8/12, 94-4.

Senate Amended.

Passed Senate: 2/29/12, 45-2.

#### **Brief Summary of Engrossed Substitute Bill**

- Makes changes to Initiative 1163, relating to long-term care workers and long-term care services, including clarifying that various provisions begin on January 7, 2012, and making performance audits of in-home care programs biennial rather than biannual.
- Adds provisions governing delegation of nursing care tasks to certified home care aides.

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### HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Cody, Chair; Jenkins, Vice Chair; Schmick, Ranking Minority Member; Hinkle, Assistant Ranking Minority Member; Bailey, Clibborn, Green, Harris, Kelley, Moeller and Van De Wege.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

**Staff:** Chris Cordes (786-7103).

## **Background:**

### Long-term Care Worker Overview.

Long-term care workers provide care to elderly and disabled clients, many of whom are eligible for publicly funded services through the Department of Social and Health Services' (DSHS) Aging and Disabilities Services Administration. These workers provide their clients personal care assistance with various tasks such as bathing, eating, toileting, dressing, ambulating, meal preparation, and household chores.

The services may be provided: (1) in various regulated residential settings by long-term care workers employed in those settings; or (2) in the client's home by individual providers who contract directly with the DSHS or by agency providers who are employees of a licensed home care agency. A paid individual provider may be a relative or a household member, although the parent of a client who is a minor or the client's spouse may not be a paid individual provider under most programs.

The term "long-term care worker" does not include persons employed in nursing homes, hospitals, hospice agencies, or adult day care or day health care centers.

### Training and Certification Requirements for Long-term Care Workers.

*Requirements prior to Initiative 1163.* Legislation enacted in 2000 broadened existing training requirements to cover direct care workers in boarding homes and adult family homes, in-home care providers, and other long-term care workers. These training requirements, implemented through rules adopted by the DSHS, determined the hours of training, continuing education, and other requirements.

Initiative 1029 (I-1029), approved by the voters in November 2008, increased the hours of mandatory training for long-term care workers. For example, training for certain categories of long-term care workers increased from 34 hours to 75 hours of training. It also required home care aide certification for certain long-term care workers beginning with those hired in 2010. Some long-term care workers were exempted from the new requirements, including certain workers hired prior to January 1, 2010.

Initiative 1029 was amended twice, in 2009 and 2011, delaying the start of the enhanced training and certification program until 2014 and exempting certain workers hired before January 1, 2014.

*Initiative 1163.* Initiative 1163 (I-1163), approved by the voters in November 2011, modifies the law governing training and home care aide certification for long-term care workers by reinstating dates originally enacted in 2009. This resulted in the following date changes:

- Effective January 1, 2011, instead of January 1, 2014, all non-exempt long-term care workers must complete enhanced training within 120 days of employment. Peer mentorship and on-the-job training must be offered to long-term care workers

beginning July 1, 2011, instead of January 1, 2014. Advanced training must be offered beginning January 1, 2012, instead of January 1, 2014.

- Beginning July 1, 2011, instead of July 1, 2014, long-term care workers must complete additional hours of continuing education.
- Effective January 1, 2011, instead of January 1, 2014, home care aide certification is required within 150 days of a long-term care worker's hire date. Those already employed as long-term care workers prior to January 1, 2011, instead of January 1, 2014, who completed all required training are exempt from certification.

The initiative's changes apply to all long-term care workers as defined by law on April 1, 2011, except that long-term care workers employed as community residential service providers are covered beginning January 1, 2016.

#### Background Checks for Long-term Care Workers.

Under various laws, the DSHS is responsible for investigating the suitability of applicants or service providers who provide in-home services under DSHS programs. These investigations include an examination of state criminal history record information, and under some statutes applicants must be fingerprinted through both the Washington State Patrol and the Federal Bureau of Investigation (FBI).

The passage of I-1029 in 2008, as amended in 2009 and 2011, required all long-term care workers hired after January 1, 2014, to be screened through both state and federal background checks, including checking against the FBI fingerprint identification records system and the National Sex Offenders Registry. Under I-1163, the enhanced federal and state background checks generally begin sooner, with all long-term care workers hired after January 1, 2012, subject to these requirements, except that long-term care workers employed as community residential service providers are covered beginning January 1, 2016.

#### Delegation of Nursing Care Tasks.

Registered nurses may delegate nursing care tasks that are within the nurse's scope of practice to other individuals where the nurse finds it to be in the patient's best interest. Before delegating a nursing care task, the registered nurse must determine the competency of the person to perform the delegated task and evaluate the appropriateness of the delegation. The registered nurse must supervise the person performing the delegated task.

Nursing care tasks requiring substantial skill or the administration of medications generally may not be delegated unless the delegation is to a registered or certified nursing assistant working in a community-based or in-home care setting. Nursing assistants receiving delegation of nursing care tasks must first complete the required core nurse delegation training and, if administering insulin, must complete specialized diabetes nurse delegation training.

#### Performance Audits of Long-term Care In-home Care Program.

The State Auditor is required, under I-1163, to conduct biannual performance audits of the long-term in-home care program, beginning by January 7, 2013.

## **Summary of Engrossed Substitute Bill:**

### Training and Certification Requirements for Long-term Care Workers.

The requirements in I-1163 related to enhanced training and home care aide certification begin on January 7, 2012 (instead of January 1, 2011). Long-term care workers are allowed 120 days after hire or after the bill's effective date to meet the new training requirements and 150 days to become certified.

The permanent exemption from certification for supported living providers is clarified by changing the reference to long-term care workers employed by community residential service businesses. The exemption from enhanced training, continuing education, peer mentoring, and advanced training for these long-term care workers is clarified by adding, in each relevant provision, that the exemption is until January 1, 2016.

The Department of Health must, by January 1, 2013, adopt a rule establishing a scope of practice for certified home care aides and long-term care workers. The requirement for long-term care workers to be certified does not prohibit other credentialed health care professionals or long-term care workers exempt from certification from providing services as long-term care workers.

Provisions are added that govern the delegation of nursing care tasks to certified home care aides. Certified home care aides wishing to perform a nurse delegated task must successfully complete the nurse delegation training required for nursing assistants.

### Background Checks for Long-term Care Workers.

Several provisions addressing background check requirements for long-term care workers are consolidated, and the starting date of January 7, 2012, is provided for all related provisions. Long-term care workers are required to meet the enhanced background check requirement as a condition of being certified as a home care aide. The exemption from enhanced background checks for long-term care workers employed by community residential service business is clarified by adding that the exemption is until January 1, 2016.

### Definitions.

A definition is added for "community residential service businesses." These are businesses (1) that are certified by, and contracting with, the DSHS to provide certain services to individuals with developmental disabilities, and (2) in which all of the business's long-term care workers are subject to training requirements for providing the services to individuals with developmental disabilities. All the statutory and regulatory training requirements for long-term care workers providing these services must be reflected in rules adopted by the DSHS by September 1, 2012.

### Performance Audits of Long-term In-home Care Program.

The State Auditor's performance audits of the long-term in-home care program are required biennially, instead of biannually.

Other Provisions.

Various technical, reorganizing, and clarifying changes are made to provisions addressing long-term care workers and home and community-based services.

**EFFECT OF SENATE AMENDMENT(S):**

The Senate amendment (1) clarifies that a long-term care worker who is disqualified from working with vulnerable persons may not maintain home care aide certification (as well as not be certified); and (2) adds that the DSHS may specify in rule any exceptions to the requirement that an adult family home have a qualified caregiver on-site whenever a resident is at the home.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony:**

(In support) This bill is intended to align the various initiatives on this topic and straighten out the problems caused by errors.

(Opposed) None.

**Persons Testifying:** Representative Cody, prime sponsor.

**Persons Signed In To Testify But Not Testifying:** None.