

# HOUSE BILL REPORT

## ESHB 1120

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### As Amended by the Senate

**Title:** An act relating to state of emergency operations impacting long-term services and supports.

**Brief Description:** Concerning state of emergency operations impacting long-term services and supports.

**Sponsors:** House Committee on Health Care & Wellness (originally sponsored by Representatives Tharinger, Harris, Cody, Riccelli, Stonier and Macri; by request of Department of Social and Health Services).

#### **Brief History:**

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

Health Care & Wellness: 1/18/21, 1/27/21 [DPS].

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

Passed House: 2/5/21, 58-38.

Senate Amended.

Passed Senate: 4/19/21, 49-0.

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

- Changes requirements relating to background checks for long-term care workers.
- Alters certain regulatory requirements relating to long-term care facilities in the event of a pandemic, natural disaster, or other declared state of emergency.
- Changes licensing requirements for nursing assistants.

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### HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass.

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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 part of the legislation nor does it constitute a statement of legislative intent.*

Signed by 13 members: Representatives Cody, Chair; Bateman, Vice Chair; Caldier, Assistant Ranking Minority Member; Bronoske, Davis, Harris, Macri, Riccelli, Rude, Simmons, Stonier, Tharinger and Ybarra.

**Minority Report:** Without recommendation. Signed by 2 members: Representatives Schmick, Ranking Minority Member; Maycumber.

**Staff:** Jim Morishima (786-7191).

## **Background:**

### I. Long-Term Care Workers.

A long-term care worker is any person who provides paid, hands-on personal care services for the elderly or persons with disabilities, including individual providers of home care services, direct care workers employed by home care agencies, providers of home care services to people with developmental disabilities, direct care workers in assisted-living facilities and adult family homes, and respite care providers.

#### A. Background Checks.

All long-term care workers must be screened through state and federal background checks to verify that they do not have a history that would disqualify them from working with vulnerable persons. The background checks include a check against the National Sex Offender Registry (to which the state does not have access) and fingerprint checks through the Washington State Patrol and the Federal Bureau of Investigation (FBI).

#### B. Training Standards.

Most long-term care workers must meet minimum training requirements within 120 days of their hiring date. The training must be at least 75 hours in length, at least five of which must be completed before the worker may provide care.

#### C. Home Care Aide Certification.

Most long-term care workers must become certified as home care aides within 200 days of being hired. To become certified as a home care aide, a long-term care worker must complete 75 hours of training, pass a certification examination, and pass state and federal background checks.

### II. Long-Term Care Facilities.

The Department of Social and Health Services (DSHS) licenses four primary types of residential long-term care settings: nursing homes (sometimes referred to as skilled nursing

facilities); assisted living facilities; adult family homes; and enhanced services facilities. These facilities are subject to a variety of requirements, including requirements relating to staffing, training, and inspections.

### III. Nursing Assistants.

A nursing assistant is a person who assists in the delivery of nursing and nursing-related activities to patients in a health care facility. Nursing assistants work under the direction and supervision of registered nurses or licensed practical nurses.

A nursing assistant working in a nursing home must either be certified through an approved training program within four months of the date of employment or complete alternative training and a competency evaluation prior to employment. A nursing assistant must be allowed to take the competency evaluation if he or she is a home care aide or a medical assistant and successfully completed 24 hours of training approved by the Nursing Care Quality Assurance Commission.

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

#### I. Long-Term Care Workers.

##### A. Background Checks.

The DSHS may require a Washington State Patrol or FBI background check at any time. The DSHS must adopt rules regarding long-term care workers employed on a conditional basis pending the completion of a background check. A long-term care worker who has not been disqualified by the state background check may continue to work and have unsupervised access to vulnerable adults pending completion of the FBI fingerprint check.

The requirement that the DSHS check a long-term care worker against the National Sex Offender Registry, to which the DSHS does not have access, is eliminated.

##### B. Training Standards.

If a pandemic, natural disaster, or other declared state of emergency impacts the ability of long-term care workers to complete required training, the DSHS may adopt rules allowing the workers additional time to complete the training. The DSHS may adopt the rules as emergency rules and may make the rules retroactively effective. The rules are effective until the termination of the pandemic, disaster, or emergency or until there is adequate access to complete the required training, whichever is later. Once the rules are no longer necessary, they must be repealed using the expedited rulemaking process.

The DSHS must review training requirements 12 months after the termination of the pandemic, natural disaster, or other declared state of emergency and provide the Legislature

with a report.

### C. Home Care Aides.

The Department of Health (DOH) may adopt rules determining under which circumstances a long-term care worker may have more than one hire date, restarting the worker's 200-day period to be certified as a home care aide.

If a pandemic, natural disaster, or other declared state of emergency impacts the ability of long-term care workers to become certified as home care aides, the DOH may adopt rules allowing the workers additional time to become certified. The DOH may adopt the rules as emergency rules and may make the rules retroactively effective. The rules are effective until the termination of the pandemic, disaster, or emergency or until additional time for certification is no longer necessary, whichever is later. Once the rules are no longer necessary, they must be repealed using the expedited rulemaking process.

The DOH must review home care aide certification compliance 12 months after the termination of the pandemic, natural disaster, or other declared state of emergency and provide the Legislature with a report.

## II. Long-Term Care Facilities.

Certain regulatory requirements are altered during a pandemic, natural disaster, or other declared state of emergency:

- Inspection Periods: If the pandemic, disaster, or emergency prevents the DSHS from completing required inspections of long-term care facilities, the DSHS must adopt rules to reestablish inspection timelines based on the length of time since the last inspection, compliance history, immediate health or safety concerns, and federal Centers for Medicare and Medicaid Services requirements. The DSHS may adopt the rules as emergency rules and may make the rules retroactively effective. The rules are effective until the termination of the pandemic, disaster, or emergency or until reestablishment of normal inspection timelines, whichever is later. Once the rules are no longer necessary, they must be repealed using the expedited rulemaking process.
- Staffing Standards: If the pandemic, disaster, or emergency prevents a nursing home from complying with minimum staffing standards, the DSHS may adopt rules to grant exceptions, waive penalties, and suspend oversight requirements. The exceptions, waivers, and suspensions do not apply to the requirement that the nursing home have staff on duty 24 hours daily in sufficient numbers and qualifications to carry out its legal responsibilities. The DSHS may adopt the rules as emergency rules and may make the rules retroactively effective. The rules are effective until 18 months after the termination of the pandemic, disaster, or emergency or until the rules are no longer necessary, whichever occurs first. Once the rules are no longer necessary, they must be repealed using the expedited rulemaking process.
- Training Requirements: If the pandemic, disaster, or emergency creates a state of

emergency that makes specialty training unavailable, the DSHS may adopt rules allowing an adult family home or assisted living facility where the staff have not completed specialty training to admit or care for a resident with special needs relating to mental illness, dementia, or a developmental disability. The rules must include information on how to complete the training once it is available. The DSHS may adopt the rules as emergency rules and may make the rules retroactively effective. The rules are effective until the termination of the pandemic, disaster, or emergency or until there is adequate access to complete the required training, whichever is later. Once the rules are no longer necessary, they must be repealed using the expedited rulemaking process.

The DSHS must review compliance with inspection periods, staffing standards, and training requirements 12 months after the termination of the pandemic, natural disaster, or other declared state of emergency and provide the Legislature with a report.

### III. Nursing Assistants.

A nursing assistant who has not completed alternative training and a competency evaluation prior to employment, must complete approved training and a competency evaluation within a period of time determined in rule by the Nursing Care Quality Assurance Commission (NCQAC), instead of within four months after the date of employment.

The amount of alternative training a nursing assistant must complete is changed from 24 hours to at least 24 hours.

### IV. Retroactivity.

The provisions of the act are made retroactive to February 29, 2020, to include the period of the state of emergency created by the COVID-19 outbreak.

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

The Senate amendment: (1) clarifies that the ability of a long-term care worker to continue working pending the completion of the federal background check is not an exception to the requirement that both the state and federal background checks must be completed; (2) reduces the duration of nursing home staffing rules adopted by the Department of Social and Health Services (DSHS) from 18 months after the state of emergency to 12 months after the state of emergency; and (3) removes the requirement that the DSHS provide the Legislature with a report on nursing home direct care staffing adequacy.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) Long-term care facilities were disproportionately impacted by COVID-19. The facilities therefore could not operate as usual. This caused challenges relating to training, staff retention, inspections, and background checks. Staff are having difficulty accessing required training and continued education and do not have time to do it remotely because of increased workloads. This bill provides long-term care facilities with the flexibility they need to meet the needs of residents. The additional flexibility in this bill is dependent on an emergency declaration and would apply if another emergency were to occur. The bill provides flexibility with training requirements, inspection periods, training requirements, long-term care worker licensing requirements, and nursing requirements. The bill also provides more flexibility with the background check process, which is necessary because COVID-19 closed or limited the businesses that perform the checks. This bill will allow the state move quickly to do everything it can to help facilities manage the spread of COVID-19 and address any future emergencies. The state currently does not have access to the federal sex offender registry, but the crimes would get picked up by the federal background check. This bill puts a lot of the protections provided by the Governor's proclamations in statute.

This bill adds needed flexibility for nursing practice. There is currently a large backlog of nursing assistants to take the examination, which was caused by the closure of testing facilities due to COVID-19. This bill moves the timing requirement for the exam from statute to rule, which will help the state comply with federal waivers. The bill also allows nurses to delegate glucometer testing across settings. Finally, the bill provides more flexibility for persons seeking licensure as home care aides and nursing assistants. This flexibility will allow the state to require additional training, if necessary, to help students be successful.

(Opposed) A large proportion of COVID-19 infections and deaths are linked to nursing homes. This exposes deficiencies in the staffing and design of these facilities. There is need for reform across the system. This bill is not the solution. It gives the DSHS the authority to waive statutes in emergencies. The Governor's waivers are time-limited and subject to a four-corners agreement prior to extension. This bill provides no similar checks and balances. Any solutions must protect residents and provide the high-quality care for which Washington is known.

**Persons Testifying:** (In support) Representative Tharinger, prime sponsor; Paula Meyer, Washington State Department of Health; Candace Goehring, Bea Rector, and Bill Moss, Department of Social and Health Services, Aging and Long-Term Support Administration; Alyssa Odegaard, LeadingAge Washington; and Melissa Johnson, Community Residential Services Association.

(Opposed) Cathy MacCaul, AARP Washington State.

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