

HOUSE BILL REPORT

ESSB 6180

As Passed House:
April 25, 2009

Title: An act relating to the training and background checks of long-term care workers.

Brief Description: Concerning the training and background checks of long-term care workers.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Keiser, Tom and Prentice).

Brief History:

Committee Activity:

None.

Floor Activity

Passed House: 4/25/09, 72-22.

Brief Summary of Engrossed Substitute Bill

- Delays the implementation dates for long-term care worker fingerprint-based background checks, training, and certification under Initiative 1029 (I-1029).
- Clarifies the I-1029 fingerprint-based background check requirement for long-term care workers hired after January 1, 2012.
- Adds an exemption from the definition of long-term care worker for employees of the state residential habilitation centers.

Staff: Chris Cordes (786-7103) and Carma Matti (786-7140)

Background:

Long-term Care Workers.

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 Adult Services and Developmental Disabilities programs. These

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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 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. This paid provider may be a relative or a household member, although the client's spouse may not be a paid provider under most programs.

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

Background Checks for Long-term Care Workers.

Background Check Requirements prior to I-1029. 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 (CHRI). Some laws may also require a fingerprint-based national background check through the Washington State Patrol (WSP) and the CHRI maintained by the Federal Bureau of Investigation (FBI). Applicants or service providers who have resided in the state for fewer than three years must be fingerprinted through both the WSP and the FBI.

Background Check Requirements under I-1029. The passage of Initiative 1029 (I-1029) in 2008 added a new background check provision to the state law governing long-term care service options. The new provision requires all long-term care workers hired after January 1, 2010, to be screened through state and federal background checks, including checking against the FBI fingerprint identification records system and the National Sex Offenders Registry.

On December 1, 2008 the WSP received a letter from the FBI's Office of the General Counsel stating that the requirements in I-1029 did not qualify for access to the FBI-maintained CHRI. The letter cited two deficiencies: the measure failed to reference the submission of fingerprints and, for sharing of information with the Department of Health (DOH), the statute must be clear that the DOH has concurrent responsibility for making suitability determinations.

Long-term Care Worker Training and Certification

Training and Certification Requirements prior to I-1029. Until January 1, 2010, training requirements for long-term care workers are governed by DSHS rules. The rules generally require 34 hours of training, to be completed within 120 days after hire. Under DSHS rules, most long-term care workers must also have an additional 10 hours of continuing education. In 2007 a statutory requirement for 12 hours of continuing education was added for all long-term care workers beginning January 1, 2010. There is no long-term care worker credentialing requirement.

Training rules adopted by the DSHS provide different training requirements for parents who are the individual providers for only their developmentally disabled son or daughter who receives services through the Division of Developmental Disabilities in the DSHS. They

must complete six hours of training within 180 days. Until 2010, they are not required to have continuing education.

Additional training opportunities must be offered to long-term care workers who begin work on or after January 1, 2010. These include:

- on-the-job training or peer mentorship for at least one hour per week in the first 90 days of work from a long-term care worker who has completed 12 hours of mentor training and is mentoring no more than 10 other workers; and
- opportunities to accumulate 65 hours of advanced training within a reasonable time period.

For individual providers represented by an exclusive bargaining representative, all required training and peer mentoring must be provided by a training partnership beginning January 1, 2010. Beginning July 1, 2009, contributions to the training partnership must be made pursuant to a collective bargaining agreement negotiated with the Governor at the request of the individual providers' exclusive bargaining representative.

Training and Certification Requirements under I-1029. Under I-1029, long-term care worker training is modified and a new home care aide certification is required.

With certain exceptions, long-term care workers hired on or after January 1, 2010, must have 75 hours of training within 120 days after hire. Individual providers must be compensated for training time. Exceptions from the new training requirements include:

- parents who are the individual provider for only their developmentally disabled child, who must have 12 hours of relevant training within 120 days of becoming an individual provider; and
- individual providers caring only for their child or parent and, until 2014, certain respite providers, who must have 35 hours of training within 120 days of becoming an individual provider.

Long-term care workers hired on or after January 1, 2010, must also become certified by the DOH as home care aides within 150 days from the date of hire by completing the 75 hours of training and passing an examination. Certification is not required for individual providers caring only for their child or parent, long-term care workers employed by supported living providers, or, until 2014, certain respite providers.

Exemptions from continuing education requirements are provided for individual providers caring only for their child and, until 2014, certain respite providers. Individual providers must be compensated for training time.

Advanced training opportunities for long-term care workers must be offered for up to 70 hours beginning January 1, 2011.

The DSHS and the DOH must adopt rules to implement the I-1029 requirements by August 1, 2009.

Summary of Bill:

Long-term Care Worker Definition.

The exemptions from the long-term care worker definition include persons employed by the state residential habilitation centers (federally certified intermediate care facilities for persons with developmental disabilities).

Fingerprint-based Background Checks.

The requirement in I-1029 to conduct FBI fingerprint-based background checks for long-term care workers applies to workers hired after January 1, 2012, instead of January 1, 2010. The requirement includes an explicit requirement to submit fingerprints. Neither the DSHS nor the DOH may share the federal background check information with other agencies or persons.

The DOH's responsibilities under the home care aide certification statute are explicitly referenced in the I-1029 background check provision, and these responsibilities include adopting rules with criteria for reviewing applicants' state and federal background checks.

Long-term Care Worker Training and Certification.

The requirements in I-1029 related to new training and certification requirements for long-term care workers are delayed as follows:

- New basic training applies to long-term care workers hired on or after January 1, 2011, instead of January 1, 2010.
- Home care aide certification applies to long-term care workers hired on or after January 1, 2011, instead of January 1, 2010.
- The increased continuing education requirements for long-term care workers apply beginning July 1, 2011, instead of January 1, 2010.
- Advanced training must be offered beginning January 1, 2012, instead of January 1, 2011.

Related agency rules must be adopted by August 1, 2010, instead of August 1, 2009.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed, except section 15, relating to the DOH rules on reciprocity with nursing assistant certification, which takes effect September 1, 2009.