

SENATE BILL REPORT

ESHB 1120

As Reported by Senate Committee On:
Health & Long Term Care, March 22, 2021

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

Committee Activity: Health & Long Term Care: 3/15/21, 3/22/21 [DPA, DNP].

Brief Summary of Amended Bill

- Modifies background check requirements for long-term care workers.
- Requires the Department of Social and Health Services (DSHS) to adjust the timelines for long-term care facility inspections during a pandemic, natural disaster, or other declared state of emergency.
- Authorizes DSHS to modify requirements for skilled nursing facility minimum staffing, speciality training, and long-term care worker training during a pandemic, natural disaster, or other declared state of emergency.
- Authorizes the Department of Health to modify home care aide certification requirements during a pandemic, natural disaster, or other declared state of emergency.
- Changes licensing requirements for nursing assistants.

SENATE COMMITTEE ON HEALTH & LONG TERM CARE

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.

Majority Report: Do pass as amended.

Signed by Senators Cleveland, Chair; Frockt, Vice Chair; Conway, Keiser, Randall, Robinson and Van De Wege.

Minority Report: Do not pass.

Signed by Senators Muzzall, Ranking Member; Holy, Padden, Rivers and Wilson, J.

Staff: LeighBeth Merrick (786-7445)

Background: Long-Term Care Workers. A long-term care worker is a 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.

All long-term care workers must be screened through state and federal background checks to verify 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).

Most long-term care workers must complete 75 hours of training within 120 days of their hiring date. Five of the 75 hours must be completed before the worker provides care. 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.

Long-Term Care Facilities. The Department of Social and Health Services (DSHS) licenses and regulates four primary types of long-term care facilities —skilled nursing facilities (SNFs), assisted living facilities, adult family homes, and enhanced services facilities. The regulatory requirements vary by facility type, but are required to be inspected by DSHS according to certain time frames. SNFs must meet minimum staffing requirements. Staff of assisted living facilities and adult family homes must complete certain specialty training requirements.

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 skilled nursing facility 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 they are 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 Amended Bill: Long-Term Care Workers. *Background Checks.* DSHS may require a Washington State Patrol or FBI background check at any time. 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 DSHS check a long-term care worker against the National Sex Offender Registry, to which DSHS does not have access, is eliminated.

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, DSHS may adopt rules allowing the workers additional time to complete the training. 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. 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.

Home Care Aide Certification. 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, DOH may adopt rules allowing the workers additional time to become certified. 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. 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.

Long-Term Care Facilities. *Inspection Timelines.* If the pandemic, disaster, or emergency prevents DSHS from completing required inspections of long-term care facilities, 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. 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.

Skilled Nursing Facilities Minimum Staffing Standards. If the pandemic, disaster, or emergency prevents a SNF from complying with minimum staffing standards, 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 SNF have staff on duty 24 hours daily in sufficient numbers and qualifications to carry out its legal responsibilities. DSHS may adopt the rules as emergency rules and may make the rules retroactively effective. The rules are effective until 12 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.

Specialty Training Requirements: If the pandemic, disaster, or emergency creates a state of emergency that makes specialty training unavailable, 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. 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.

DSHS must review compliance with inspection timelines, and specialty 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.

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, 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.

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

EFFECT OF HEALTH & LONG TERM CARE COMMITTEE AMENDMENT(S):

- Clarifies that a long-term care worker must pass both the state and federal background checks, but may work and have unsupervised access once they pass the state background check and wait completion of the federal check.
- Reduces the 18-month time frame for SNF minimum staffing rules to remain in effect

- to 12 months after the state of emergency is terminated.
- Removes the requirement for DSHS to review and report SNF minimum staffing compliance 12 months after the termination of the state of emergency.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Engrossed Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: The COVID-19 pandemic has greatly impacted long-term care facilities and in-home care. This bill provides DSHS with flexibility needed to respond to emergency situations. It helps address staffing shortages by giving workers more time to complete training and certifications, and allows facilities and DSHS to focus on infection control procedures rather than routine annual inspections. This is agency request legislation to address many of the requirements that were waived through proclamations during the COVID-19 state of emergency. A key benefit of the bill is that it grants DSHS and DOH the authority to respond more quickly to future states of emergencies. Changing the four-month nursing assistant certification requirement will allow the state statute to align with federal statutes and waivers. Supported living staff are focused on caring for their clients and have not had the time to complete the required training. The flexibility this bill provides with completing the training is essential. However, we are concerned that the training requirements will eventually stack up and staff will not be able to complete the training requirements. We are seeking an amendment that would give DSHS additional flexibility to waive enforcement and penalties for staff that do not complete the training within the required timeframes.

Persons Testifying: PRO: Representative Steve Tharinger, Prime Sponsor; Mike Anbesse, Department of Social and Health Services, Aging and Long-Term Support Administration; Paula Meyer, Washington State Department of Health; Melissa Johnson, Community Residential Services Association.

Persons Signed In To Testify But Not Testifying: No one.