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## Postsecondary Education & Workforce Committee

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### HB 1395

**Brief Description:** Streamlining the home care worker background check process.

**Sponsors:** Representatives Farivar, Fosse, Nance, Reeves, Simmons, Obras, Berry, Mena, Scott, Doglio, Macri, Peterson, Salahuddin, Parshley, Cortes, Paul, Alvarado, Ryu, Duerr, Reed, Ramel, Shavers, Wylie, Ormsby, Street, Hill and Donaghy.

#### Brief Summary of Bill

- Provides conditions under which an employer may not conduct a character, competence, and sustainability review for long-term care providers.
- Allows long-term care providers to have unsupervised access of children and vulnerable adults for up to 30 days while a character, competency, and sustainability review is conducted under certain circumstances.
- Limits the circumstances under which a fingerprint-based background check is conducted on a long-term care provider.

**Hearing Date:** 1/29/25

**Staff:** Elizabeth Allison (786-7129).

#### **Background:**

##### Long-Term Care Workers.

A long-term care worker is any person who provides paid, hands-on personal care services for older persons or persons with disabilities. The term includes individual providers of home care services, direct care workers employed by home care agencies, providers of home care services

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to people with developmental disabilities, direct care workers in assisted living facilities and adult family homes, and respite care providers. The term excludes employees of several types of health care and residential care facilities, as well as care providers not paid by the state or by a private agency or facility licensed to provide personal care services.

Long-term care workers must become certified as home care aides by the Department of Health (DOH) unless an exemption applies. To become certified, a long-term care worker must complete 75 hours of training, pass a certification examination, and pass state and federal background checks.

An individual provider (IP) is a long-term care worker who provides personal care or respite services to persons who are functionally disabled or eligible under certain Medicaid state plans or waiver programs or similar state-funded in-home care programs. Most individual providers are employees of a Consumer Directed Employer, which is a private entity that contracts with the Department of Social and Health Services (DSHS).

A long-term care worker who is employed by a home care agency is a home care agency provider (AP). A home care agency is an entity that is licensed by the DOH to provide home care services through a contract arrangement with the DSHS to clients in their residences.

#### Background Checks.

The DSHS must screen long-term care workers through a background check to learn if they have a history that would disqualify them from working with vulnerable adults or children. A background check can be a name and date of birth check, a fingerprint-based background check, or both. Some crimes that may be listed on a background check result are automatically disqualifying, while others may allow the person to work with vulnerable adults depending on the results of a character, competence, and suitability review (CCS review) conducted by the employer.

A name and date of birth background check is a Washington background check of criminal history and negative action records using the applicant's name and date of birth. A fingerprint-based background check is a search of in-state and national criminal history records through the Washington State Patrol and the Federal Bureau of Investigation criminal history records.

#### Character, Competence, and Suitability Review.

The DSHS or an employer of a long-term care worker is required to conduct a CCS review for employees or applicants that receive a "review required" result from their background check. If a CCS review is conducted, the DSHS or the employer must document certain information in writing, including the reason for the CCS review, whether the applicant may have unsupervised access to minors and vulnerable adults, and the date the CCS review was completed. An applicant may not have unsupervised access to minors and vulnerable adults unless certain requirements are met.

#### Certificate of Restoration of Opportunity.

A certificate of restoration of opportunity (CROP) is a civil court order that restores an individual's eligibility for occupational licenses. An individual can obtain a CROP if certain specified conditions are met, including never having been convicted of certain crimes, complying with all terms of a sentence, and being out of confinement or probation for a certain amount of time.

**Summary of Bill:**

An employer may not conduct a CCS review for an IP or AP under the following circumstances:

- the employer already conducted a CCS review for the IP or AP for a nonautomatically disqualifying conviction, charge, or negative action during a previous CCS review conducted by the same employer;
- the IP or AP has obtained a CROP for a nonautomatically disqualifying conviction;
- more than 10 years have passed since the last nonautomatically disqualifying conviction or negative action; or
- the results of the background check identified a nonautomatically disqualifying: (a) negative action; (b) misdemeanor; or (c) gross misdemeanor related to controlled substances or motor vehicles.

Those IPs and APs who are required to complete a CCS review may have unsupervised access to minors and vulnerable adults for up to 30 days while the CCS review is being conducted. Before receiving care during the 30-day period, the client or their guardian must be notified that the CCS review has not been completed and provided with an opportunity to decline care from the IP or AP. The 30-day unsupervised access does not apply to certain disqualifying crimes. The notice requirement does not apply to an AP that has been employed by the same employer since the previous background check.

Independent providers and APs must only complete finger-print based background checks:

- at the point of hire;
- as required by federal law; and
- if there is a reasonable, good faith belief that the employer needs to conduct a fingerprint-based background check due to potential new findings, as documented by the employer.

There is an exception to the point of initial hire requirement for IPs and APs previously employed by the same employer if they have not lived out-of-state since the last fingerprint-based background check.

Clients must be notified of an individual provider's background check results and the client's right to request a copy of the background check's results. When a CCS review is required, the client must receive a copy of the background check results and the Washington record of arrests and prosecutions and the individual provider may provide a copy of the Federal Bureau of Investigation record of arrests and prosecutions to the client.

**Appropriation:** None.

**Fiscal Note:** Requested on January 24, 2025.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.