

SENATE BILL REPORT

ESHB 1395

As Reported by Senate Committee On:
Health & Long-Term Care, March 25, 2025

Title: An act relating to streamlining the home care worker background check process.

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

Sponsors: House Committee on Postsecondary Education & Workforce (originally sponsored by 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 History: Passed House: 3/12/25, 78-19.

Committee Activity: Health & Long-Term Care: 3/21/25, 3/25/25 [DPA, DNP].

Brief Summary of Amended Bill

- Provides conditions under which an employer may not conduct a Character, Competence, and Sustainability (CC&S) review for long-term care (LTC) providers.
- Allows LTC providers to have unsupervised access of children and vulnerable adults for up to 30 days while a CC&S review is conducted under certain circumstances.
- Limits the circumstances under which a fingerprint-based background check is conducted on a LTC provider

SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

Majority Report: Do pass as amended.

Signed by Senators Cleveland, Chair; Orwall, Vice Chair; Bateman, Chapman, Harris, Holy, Riccelli, Robinson and Slatter.

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.

Minority Report: Do not pass.

Signed by Senators Muzzall, Ranking Member; Christian.

Staff: Julie Tran (786-7283)

Background: Long-Term Care Workers. A long-term care (LTC) worker is any person who provides paid, hands-on personal care services for older persons or persons with disabilities. The term includes individual providers (IPs) 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. 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.

LTC 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 IP is a LTC 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 LTC 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 DOH to provide home care services through a contract arrangement with DSHS to clients in their residences.

Background Checks. 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 background check, a fingerprint-based background check, or both.

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.

There are four different result notifications: no record, review required, disqualify, or additional information needed.

- "no record" means none of the background check data sources reported criminal or negative action records that disqualify the applicant from having unsupervised access

- to children or vulnerable adults and there are no background check records to review;
- "review required" means one or more of the background check data sources reported criminal or negative action records that are not listed on the oversight program's list of disqualifying crimes and negative actions. DSHS or other entity must determine whether or not the applicant can work in a position that may have unsupervised access to children or vulnerable adults by:
 1. completing a CC&S review; and
 2. documenting the decision as required;
 - "disqualify" means at least one automatically disqualifying conviction, pending charge, or negative action was found and the applicant cannot have unsupervised access to children or vulnerable adults; and
 - "additional information needed" means that additional information is required before a determination about the applicant or employee can be made. This notification is received if there is an unclear crime or negative action that was reported by any of the sources that DSHS' Background Check Central Unit researches.

Character, Competence, and Suitability Review. DSHS or an employer of a long-term care worker is required to conduct a CC&S review for employees or applicants that receive a review required result from their background check.

A CC&S review and determination is required when:

- an individual has a review required background check result that includes nondisqualifying convictions, pending charges, or negative actions;
- there are concerns about an individual related to a client's health and safety, or other risks to the client; and
- there is a reasonable, good faith belief that the individual cannot meet the care needs of the client.

During a CC&S review and determination, factors that are considered include, but are not limited to:

- whether there is a reasonable, good faith belief that a provider would be unable to meet the care needs of the client;
- vulnerability of the client under the provider's care;
- behaviors since the convictions, charges, negative actions or other adverse behaviors;
- pattern of offenses or other behaviors that may put the client at risk;
- number of years since the conviction, negative action, or other issue;
- whether the provider self-disclosed the conviction(s), pending charge(s), or negative action(s); and
- other health and safety concerns.

If a CC&S review is conducted, DSHS or the employer must document certain information in writing, including the reason for the CC&S review, whether the applicant may have unsupervised access to minors and vulnerable adults, and the date the CC&S review was completed.

A CC&S determination can never be used to allow a provider to work when the individual has an automatically disqualifying conviction, pending charge, or negative action.

Currently, a long-term care worker who is not automatically disqualified by the state background check, but has a review required result and is undergoing a CC&S review cannot work and cannot have unsupervised access to minors or vulnerable adults.

Summary of Bill: The bill as referred to committee not considered.

Summary of Amended Bill: Character, Competence, and Suitability Review. An employer may not conduct a CC&S review for an IP or AP when:

- the employer has already conducted a CC&S review for the IP or AP for a previously reviewed nonautomatically disqualifying conviction, charge, or negative action; or
- it is known to the employer that more than ten years have passed since the last nonautomatically disqualifying conviction or negative action.

DSHS must develop rules to establish standards for conducting CC&S reviews for these requirements including parameters to prioritize the safety of vulnerable adults and minors, clients' rights regarding IPs' and APs' background check results and CC&S reviews, and an equitable review process for IPs and APs.

Access to Vulnerable Adults and Minors. IPs and APs, who are subject to and awaiting a CC&S review, may work for up to 30 days before the CC&S review is completed, provided that:

- their background check did not include any automatically disqualifying conviction, crime, negative action, or pending charge; and
- the employer has not completed the CC&S review and determined the IP or AP unable to work.

Prior to any care services by an IP or AP during the 30-day temporary practice period is established, the minor's parent or guardian, the vulnerable adult, or the vulnerable adult's guardian must be:

- notified in writing that the CC&S review for the IP or AP has not been completed; and
- provided with an opportunity to decline the receipt of care services from the IP or AP and an explanation of the procedure for declining the receipt of care.

The notice requirement does not apply to any AP that has been employed by the same employer since the previous name and date of birth background check or fingerprint-based background check was conducted.

Fingerprint-Based Background Checks. IPs and APs must only complete finger-print based background checks:

- at the point of hire;
- as required by federal law;
- before an IP starts providing new services for a new managing employer when the last fingerprint on the authorized entity's file for the IP is five years old or more and the new managing employer requests a fingerprint-based background check; 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.

IPs and APs may not be required to complete a fingerprint-based background check at the point of initial hire if the provider has been previously employed by the same employer and has not lived outside of Washington after the last fingerprint-based background check.

Clients must be notified of an IP's background check results and the client's right to request a copy of the background check's results.

When a background check produces a review required result, the authorized entity must provide the client, who is the IP's managing employer, with a copy of the background check results and the Washington record of arrests and prosecutions, if requested. The IP may provide a copy of the Federal Bureau of Investigation record of arrests and prosecutions to the client.

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

- Prohibits a CC&S review for a provider when it is known to the employer or authorized entity that more than ten years have passed since the last nonautomatically disqualifying conviction or negative action against the individual provider or home care agency provider.
- Exempts notification to a parent or guardian of a vulnerable adult or minor when a home care agency provider is undergoing a CC&S review if the provider has remained with the same employer since the previous name and date of birth background check or fingerprint-based background check was conducted.
- Removes the requirement for a parent or guardian of a minor or vulnerable adult who chooses to allow an individual provider or a home care agency provider to continue to provide care during a CC&S review to sign an informed consent form to attest that they are aware of and understand the purpose of a CC&S review and the possible crimes that would trigger a CC&S review and agree to continue to receive service.
- Clarifies that individual providers or home care agency providers may not be required to complete a fingerprint-based background check at the point of initial hire if the individual provider or a home care agency provider has been previously employed by the same employer and has not lived outside of Washington after the last fingerprint-based background check.
- Makes technical corrections.

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Proposed Striking Amendment: *The committee recommended a different version of the bill than what was heard.* PRO: The current background check process is cumbersome and broken. There needs to be more clarity and consistency with this process. This bill is focused on two things, which is to streamline the complex background check and fingerprinting system and to maintain protections while reducing some stigma where appropriate. Qualified individuals are stuck in the background check process, and the home care agencies are not able to get these qualified caregivers connected with their individuals in the time that they need. This disruption in care is bad for the worker and bad for the client. This bill is to prevent unnecessary delays that result in gaps of care for clients and cost the state money.

Persons Testifying: PRO: Representative Darya Farivar, Prime Sponsor; Shaine Truscott, SEIU 775 Vice President; Nelly Prieto, Caregiver; Maria Osegueda, Caregiver; Melissah Watts, Parent Provider; Brad Banks, WA Home Care Coalition.

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