

# HOUSE BILL REPORT

## ESHB 1395

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### As Passed House:

March 12, 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:

#### Committee Activity:

Postsecondary Education & Workforce: 1/29/25, 2/4/25 [DPS].

#### Floor Activity:

Passed House: 3/12/25, 78-19.

### Brief Summary of Engrossed Substitute 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.

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## HOUSE COMMITTEE ON POSTSECONDARY EDUCATION & WORKFORCE

**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 9 members: Representatives Paul, Chair; Nance, Vice Chair; Entenman, Leavitt, Pollet, Reed, Salahuddin, Thomas and Timmons.

**Minority Report:** Without recommendation. Signed by 7 members: Representatives Ybarra, Ranking Minority Member; McEntire, Assistant Ranking Minority Member; Graham, Keaton, Ley, Mendoza and Schmidt.

**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 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 Engrossed Substitute Bill:**

An employer may not conduct a CCS review for an IP or AP when 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.

Those IPs and APs who are subject to and awaiting a CCS review may work for up to 30 days before the character, competence, and suitability 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 CCS review and determined the IP or AP unable to work.

Independent providers 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.

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. Before a client can continue to receive care during the 30-day period, the parent or guardian of the minor or vulnerable adult must complete an informed consent form which describes the purpose of the CCS review and the possible crimes that would trigger a CCS review and agree to continue to receive service.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) A lot of work has been put into this bill. The goal is to make sure that caregivers can continue working and not have care interrupted unless its appropriate. This bill tries to walk the right line to ensure only those who need to be flagged and reviewed more closely are the ones going through the additional screening process. The screening process is time-consuming. Caregivers are not working or getting paid when the CCS review is being conducted. Clients are also not receiving care during this process. A CCS review can be triggered for something as small as a traffic infraction or not picking up after your dog. This bill is trying to streamline the process by eliminated an additional review for past or minor offenses. The current background check process is convoluted and inefficient and can cause delays in care. This is bad for caregivers and for clients. The bill does not change the list of disqualifying crimes or the requirement that a background check be conducted every two years. The bill looks at where the hurdles are at and tries to address them.

(Opposed) None.

(Other) The two-year background check requirement should not be eliminated.

**Persons Testifying:** (In support) Representative Darya Farivar, prime sponsor; Shaine Truscott, SEIU 775; Nelly Prieto; Melissah Watts, Parent Provider; Maria Osegueda; Brad Banks, Home Care Coalition; and Moses Perez, Open Doors for Multicultural Families.

(Other) Noah Seidel, Office of Developmental Disabilities Ombuds.

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