

SENATE BILL REPORT

E2SSB 5278

As Amended by House, April 7, 2023

Title: An act relating to implementing audit recommendations to reduce barriers to home care aide certification.

Brief Description: Implementing audit recommendations to reduce barriers to home care aide certification.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Wilson, L., Fortunato, Lovick, Muzzall, Robinson, Shewmake, Torres, Warnick and Wilson, C.).

Brief History:

Committee Activity: Health & Long Term Care: 1/26/23, 2/10/23 [DPS-WM].
Ways & Means: 2/18/23, 2/24/23 [DP2S].

Floor Activity: Passed Senate: 3/1/23, 45-0.
Passed House: 4/7/23, 96-0.

Brief Summary of Engrossed Second Substitute Bill

- Allows the Department of Health more discretion for the preparation, grading, and administration of the home care aide certification examination.
- Requires the departments of Health and Social and Health Services to address delays between training and testing, the lack of test sites, and performance and contract management processes, by completing specific requirements and submitting a preliminary report to the Governor and Legislature no later than June 30, 2024.

SENATE COMMITTEE ON HEALTH & LONG TERM CARE

Majority Report: That Substitute Senate Bill No. 5278 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

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 Senators Cleveland, Chair; Robinson, Vice Chair; Muzzall, Assistant Ranking Member; Conway, Dhingra, Randall and Van De Wege.

Staff: Julie Tran (786-7283)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5278 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rolfes, Chair; Robinson, Vice Chair, Operating & Revenue; Mullet, Vice Chair, Capital; Wilson, L., Ranking Member, Operating; Gildon, Assistant Ranking Member, Operating; Schoesler, Ranking Member, Capital; Rivers, Assistant Ranking Member, Capital; Warnick, Assistant Ranking Member, Capital; Billig, Boehnke, Braun, Conway, Dhingra, Hasegawa, Hunt, Keiser, Muzzall, Nguyen, Pedersen, Saldaña, Torres, Van De Wege, Wagoner and Wellman.

Staff: Monica Fontaine (786-7341)

Background: Home Care Aides. 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. 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 a private agency or facility licensed by the state.

Most long-term care workers must become certified as home care aides within 200 days of being hired by Department of Health (DOH) unless an exemption applies. 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.

Home Care Aide Certification Exam. DOH is responsible for developing the home care aide certification examination, which evaluates whether an applicant possesses the skills and knowledge necessary to practice competently. Applicants must have completed the training requirements to be eligible to sit for the exam unless the applicant is exempted from the training requirements. The examination must include both a skills demonstration and a written or oral knowledge test. The examination papers, all grading of the papers, and records related to the grading of skills demonstration must be preserved for no less than one year. All examinations are required to be conducted fairly and with impartial methods. The certification examination must be administered and evaluated by DOH or by a contractor to DOH that is neither an employer of long-term care workers nor a private contractor providing training services.

State Auditor's Office. The Office of the Washington State Auditor (SAO) holds state and local governments accountable for the use of public resources. The state auditor has the power to examine the financial affairs of all governments in the state, including local governments, schools, state agencies, and institutions of higher education. SAO carries out special investigations and performance audits of state agencies and local governments, and may contract with certified public accountants to audit state agencies and local governments.

Performance Audits of Long-Term In-home Care. The state auditor is required under Initiative 1163, approved by the voters in November 2011, to conduct performance audits of the long-term in-home care program on a biennial basis. In September 2022, SAO published a performance audit report on addressing testing barriers for home care aides. The audit found that prospective home care aides still face a number of barriers to becoming certified including long delays between completing training and taking the test, as well as the number of regional test sites dropped 20 percent since the previous SAO performance audit in 2016.

The audit recommends the Legislature give DOH similar authority and discretion in testing home care aides as the Nursing Commission has for testing certified nursing assistants. Other recommendations include ways to address delays between training and testing, the lack of test sites, and gaps in performance and contract management. The audit found that concrete steps such as establishing more test sites and reducing delays between the completion of training and scheduling a certification test would result in a greater number of qualified home care aides available in communities across Washington State.

Summary of Engrossed Second Substitute Bill: DOH is required to either prepare, grade, and administer, or determine the nature of and supervise grading and administration of a home care aide certification examination to evaluate whether an applicant possess the skills and knowledge necessary to practice competently. The examination or series of examinations much include both a skills demonstration and written or oral knowledge test. The skills demonstration, the knowledge test, or both, may be administered throughout training, on the last day of training, or after a student's formal training. The examination or series of examinations must be conducted at local testing sites around the state. All examinations must be conducted by fair and wholly impartial methods and be available to be administered in the preferred language for the applicant taking the examination.

For the purpose of reducing the travel time for applicants, DOH must explore alternative testing options such as remote testing.

The certification examination may not be conducted by an employer of long-term care workers unless the employer is a Department of Social and Health Services (DSHS) approved instructor and has met DOH standards for administering the examination.

The following requirements have been removed:

- the examination papers, all grading of papers, and records related to the grading of skills demonstration must be preserved for a period of not less than one year; and
- the requirement that DOH must establish rules governing the number of times and under what circumstances individuals who have failed the examination may sit for the examination, including whether any intermediate remedial steps should be required.

DOH, in consultation with DSHS and other relevant participants, must devise a system to reduce delays between training and testing for home care aides that include:

- integrating testing into training that allows applicants to test at the same location where they train;
- allowing applicants to schedule tests during training to facilitate testing shortly after completing training;
- allowing remote testing within home care aide training programs immediately or shortly after completion of the program; and
- determining the benefits and costs of having home care aide training programs authorize applicants to test instead of DOH.

DOH, in consultation with DSHS and other relevant participants, must examine existing challenges related to a lack of testing sites and develop a plan expanding testing sites with a cost estimation included. The plan must consider:

- applicants' travel time and availability of testing for comparable professions;
- how many tests are needed, where these sites should be located, and the best way to establish appropriate partnerships that can lead to new test sites;
- how often test sites should be available to applicants; and
- whether there are areas of the state where a stipend for travel expenses would be beneficial and appropriate protocols for travel stipends.

DOH, in consultation with DSHS and other relevant participants, must establish performance-based contracts for vendors who administer the tests that include all key performance measures expected and detailed vendor costs. The key performance measures expected must include a definition of what sufficient access to test sites entail.

A preliminary report on this work from DOH, in consultation with DSHS and other relevant participants, is due to the Governor and appropriate committees of the Legislature no later than June 30, 2024, and a final report is due no later than December 31, 2024.

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 Original Bill (Health & Long Term Care): *The committee recommended a different version of the bill than what was heard.* PRO: The lack of test sites is a big issue and in the past few years, there has been a decrease in test sites. For applicants seeking certification, there is a significant investment in time and having to incur additional expenses to travel for their test. It is discouraging. The longer wait time between when an applicant completes training and testing, can result in lower scores and decreasing chances of passing the test. There are issues trying to navigate the challenges of scheduling the test and since applicants cannot choose their test dates, they receive an email with their test date at least 2 weeks in advance. This is not enough time to change shifts or take the time off needed to travel and take the exam. It would be helpful if applicants can submit for testing when signing up for training. These are common sense recommendations. If enacted, the bill will expedite the process for home care aides to train, test, and receive their certification and also, help to turn around the declining numbers of certified home care workers. There is a concern that if training schools are allowed to test, there should be a vetting policy to assure that they have a valid testing and training process.

OTHER: Home care aides are a critical component to the health care workforce and the home care aide workforce is facing a critical shortage. Complicated testing requirements, timelines, and costs are significant barriers to workers wanting to enter and remain in this field. The bill will make an immediate impact on testing delays by removing the requirement to complete training before registering to take the test. There are critical recommendations that should be implemented such as allowing remote knowledge testing, shortening the window for when people complete training to when they can be tested, and allowing people to choose their test dates. There is a request to extend timelines by 6 months for completing the work and submitting the required reports. For any new testing or training site that is established, there needs to be regulations in place and agency oversight to ensure the sites are meeting the standards and people are receiving the types of training that they need. Also, there are changes in the bill that do not solve the problems facing the workforce and could undermine the quality of the home care system. There should be great care to not make the mistake of removing parts of the state law that provide critical protections for consumers in trying to solve the barriers to testing.

Persons Testifying (Health & Long Term Care): PRO: Senator Lynda Wilson, Prime Sponsor; Bob Le Roy, The Long-Term Care Foundation; Sarah Lane, S&H Training Center, a DSHS-approved HCA training program; Robin VanHying, Cornerstone Healthcare Training Company; John Bright, Homecare Association of America, WA chapter.

OTHER: Madeleine Foutch, SEIU 775; Brad Banks, Home Care Coalition; Shawna Fox, Washington State Department of Health; Bea Rector, Washington State Department of Social and Health Services.

Persons Signed In To Testify But Not Testifying (Health & Long Term Care): PRO: Monica Duma, Loving AFH; Pavel Duma, LovingAFH; Winta Jackson, Abby Care AFH.

OTHER: Mary Mutura, Mary's Tender care.

Staff Summary of Public Testimony on First Substitute (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: Long-term care is facing increased demand and a workforce shortage, and this bill will improve the ability to develop more aides in the long-term care field. The current language excludes DSHS approved facility-based training programs, and would like to ensure that the adult family homes who have applied and are qualified to become a facility-based training program can participate in implementing the improvements in the home care aide training, testing, and certification process.

Persons Testifying (Ways & Means): PRO: Senator Lynda Wilson, Prime Sponsor; John Ficker, Adult Family Home Council.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.

EFFECT OF HOUSE AMENDMENT(S):

- Restores the requirement that DOH must develop the examination, instead of prepare, grade, and administer or determine the nature of and supervise the grading of the examination.
- Restores DOH's authority to adopt rules governing the number of times and under what circumstances individuals who have failed the examination may sit for the examination, including whether any intermediate remedial steps should be required.
- Allows an applicant to apply to take the examination during or after training, but prohibits the applicant from sitting for any part of the examination prior to completing the part of the training associated with that part of the examination.
- Allows, instead of requires, the examination to be conducted at local testing sites across the state.
- Allows a high school or community college that meets DOH standards to administer and evaluate the examination.
- Requires DOH to conduct an annual evaluation of the examination results of applicants who complete the examination in a language other than English.
- Requires DOH to conduct a review of the translation if applicants taking the examination in a particular language fail at a disproportionately higher rate than other examination takers.
- Requires DOH to ensure its decisions are informed by existing data on test completion when performing its work relating to reducing delays between training and testing, examining challenges relating to a lack of testing sites, establishing performance measures and data collection criteria, establishing accountability mechanisms, and establishing performance-based contracts.
- Requires DOH, when examining challenges relating to a lack of testing sites, to use various geographic measures and conduct a survey of all approved testing locations in

Washington to determine their current capacity for offering tests and their potential capacity to offer tests but for the lack of available proctors.