

# HOUSE BILL REPORT

## ESHB 2693

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### As Amended by the Senate

**Title:** An act relating to required basic training and certification of long-term care workers.

**Brief Description:** Regarding training and certification of long-term care workers.

**Sponsors:** By House Committee on Appropriations (originally sponsored by Representatives Morrell, Darneille, Moeller, Hudgins, Eddy, Upthegrove, Campbell, McIntire, Conway, O'Brien, Simpson, Kenney, Wood and Sells).

**Brief History:**

**Committee Activity:**

Health Care & Wellness: 1/30/08, 2/4/08 [DP];

Appropriations: 2/11/08 [DPS].

**Floor Activity:**

Passed House: 2/18/08, 95-0.

Senate Amended.

Passed Senate: 3/6/08, 47-2.

**Brief Summary of Engrossed Substitute Bill**

- Establishes, beginning January 1, 2010, a training and credentialing program for long-term care workers who are paid to provide personal care services to persons with functional disabilities.

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### HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

**Majority Report:** Do pass. Signed by 10 members: Representatives Cody, Chair; Morrell, Vice Chair; Barlow, Campbell, DeBolt, Green, Moeller, Pedersen, Schual-Berke and Seaquist.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Hinkle, Ranking Minority Member; Alexander, Assistant Ranking Minority Member; Condotta.

**Staff:** Chris Cordes (786-7103).

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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 a part of the legislation nor does it constitute a statement of legislative intent.*

## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 22 members: Representatives Sommers, Chair; Dunshee, Vice Chair; Cody, Conway, Darneille, Ericks, Fromhold, Grant, Green, Haigh, Hunt, Kagi, Kenney, Kessler, Linville, McIntire, Morrell, Pettigrew, Priest, Seaquist, Sullivan and Walsh.

**Minority Report:** Do not pass. Signed by 10 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Haler, Assistant Ranking Minority Member; Anderson, Chandler, Hinkle, Kretz, Ross, Schmick and Schual-Berke.

**Staff:** Carma Matti (786-7140).

### **Background:**

#### Long-term Care Workers

Long-term care workers provide long-term care services to elderly and disabled clients, many of whom are eligible for publicly-funded services through the Department of Social and Health Services' (DSHS) Aging and Adult Services and Developmental Disabilities programs. These workers provide their clients personal care assistance with various tasks such as bathing, eating, toileting, dressing, ambulating, meal preparation, and household chores.

By statute, long-term care workers include all persons who are long-term care workers for an elderly or disabled client, including individual providers of home care services, direct care employees of home care agencies, providers of home care services to persons with developmental disabilities, all direct care workers in boarding homes, assisted living facilities, and adult family homes, respite care providers, and other direct care workers providing home or community-based services to these clients. They do not include workers in nursing homes, hospitals, hospice agencies, or adult day care or health day care centers.

#### Long-term Care Worker Training Requirements

*Long-term Care Worker Training Generally.* Individual providers and some agency care workers must meet certain training requirements under various state statutes and the DSHS rules. These training requirements include:

- an orientation which provides basic introductory information appropriate to the in-home setting and the population served;
- basic training as to the core knowledge and skills needed to provide personal care services effectively and safely; and
- continuing education designed to increase and keep current a person's knowledge and skills.

This training is generally met with 34 hours of training, to be completed within 120 days of hire. However, orientation and safety training may be required before working with the client. Long-term care workers must also have an additional 10 hours of continuing education annually, which increases to 12 hours in 2010.

Different training requirements apply to parents who are individual providers for only their developmentally disabled son or daughter who is receiving services through the Division of Developmental Disabilities in the DSHS. They must complete six hours of training within 180 days. They are not required to have continuing education until 2010 when they must begin completing 12 hours of continuing education annually.

The DSHS may deny payment to an individual provider or home care provider who does not complete the required training within 120 days of employment.

The DSHS, working with the Nursing Care Quality Assurance Commission, must have a long-term care training program under which some or all training hours earned under the long-term care worker training program may be applied toward the requirements for a nursing assistant certificate. Testing is permitted to allow caregivers to verify their competency to enter into a nursing assistant training program.

*Training Requirements after January 1, 2010.* Various additional training requirements apply to long-term care workers after January 1, 2010. These include requirements that:

- long-term care workers who begin working on or after January 1, 2010, must be offered on-the-job training or peer mentorship for at least one hour per week in the first 90 days of work from a long-term care worker who has completed 12 hours of mentor training and is mentoring no more than 10 other workers;
- all long-term care workers must complete 12 hours of continuing education training in advanced training topics each year; and
- the DSHS must offer sufficient opportunities for all long-term care workers, who choose to do so, to accumulate 65 hours of training within a reasonable time period.

For individual providers represented by an exclusive bargaining representative, all required training and peer mentoring must be provided by the Individual Provider Training Partnership (Training Partnership) beginning January 1, 2010. Employer contributions to the Training Partnership for this training and other specified career development training are subject to collective bargaining at the request of the individual providers' exclusive bargaining representative.

#### 2007 Study of Long-term Care Worker Training

In 2007 the Joint Legislative and Executive Task Force on Long-Term Care Financing and Chronic Care Management (Task Force) was charged with establishing a 15-member Home and Community Long-Term Care Workforce Development Workgroup (Workgroup). The Workgroup was co-chaired by the Chair of the Task Force and the Executive Director of the Home Care Quality Authority.

The Workgroup was required to evaluate current training requirements for long-term care workers and to make recommendations regarding (1) the appropriate number of basic training hours and curricula content; and (2) the development of criteria associated with certification of new long-term care workers. The Workgroup report was issued on December 1, 2007.

## **Summary of Engrossed Substitute Bill:**

Beginning January 1, 2010, basic training and registration requirements are established for long-term care workers, who are persons paid to provide personal care services to persons with functional disabilities. Long-term care workers may elect voluntary certification beginning January 1, 2012. Certain long-term care workers are exempt from these requirements. In addition, separate training requirements apply to parents who are caring for their developmentally disabled or functionally disabled son or daughter and their respite caregivers.

### Long-term Care Worker Training Requirements

*Basic Training Requirements.* Long-term care workers initially contracted or employed on or after January 1, 2010, must complete 35 hours of basic (classroom) training. The DSHS may defer the training implementation date to July 1, 2010, if it finds that administrative capacities will not be fully functional by January 1, 2010.

The worker orientation portion of basic training must be completed before the long-term care worker has routine interaction with the persons for whom care is provided. The remaining hours of basic training must be completed within 120 days after initial contracting or employment as a long-term care worker, unless the DSHS, for good cause, extends the time limit for up to 60 days.

This basic training satisfies the basic training requirements for caregiver employees of boarding homes and adult family homes.

*Exemptions.* As specified in DSHS rules, the following persons are fully or partially exempt from training requirements: registered nurses, licensed practical nurses, certified nursing assistants, Medicare certified home health aides, or persons with a similar health certification or licensure. However, these exempt persons must complete worker orientation.

Long-term care workers who were contracted or employed before January 1, 2010, are also exempt, but they must complete the training requirements in effect before that date. Long-term care workers employed by supportive living providers and subject to specific DSHS training rules are exempt.

Persons who successfully challenge the competency test are exempt, but they must complete worker orientation.

Different training requirements apply to parents who are individual providers, or unpaid caregivers, for only their developmentally disabled or functionally disabled son or daughter, and persons providing intermittent respite care (fewer than an average of 24 hours per month) to the son or daughter. These caregivers must have six hours of training relevant to the needs of adults with developmental disabilities and related functional disabilities, as appropriate, and safety training.

*Basic Training Curricula.* The basic training must address the core knowledge and competencies that caregivers need to meet the needs, safely and effectively, of persons with functional disabilities. It includes worker orientation covering, among other things, residents'

rights and life safety. Training standards must be relevant to varied needs of persons served and training should use innovative learning strategies.

Competency testing must be used to measure the effectiveness of the basic training.

The DSHS must develop qualification requirements for trainers and criteria for the approval of training programs. Only DSHS-approved training curricula may be used to fulfill the basic training requirements. Boarding home administrators, adult family home providers, home care agency administrators, and other entities must be encouraged in efforts to pool resources to provide shared training systems. Entities providing training must provide reports on workers who begin training and those who complete training, and must verify that training requirements have been met.

The DSHS must consult with the State Board for Community and Technical Colleges, the Superintendent of Public Instruction, and the Training Partnership to ensure that approved curricula, to the extent possible, assist with articulation to relevant degree or skill programs offered in secondary schools and community colleges. The DSHS must adopt rules to implement basic training by September 1, 2009.

*Training under the Individual Provider Training Partnership.* The Training Partnership must offer unpaid informal caregivers providing care for family members or friends an opportunity to attend training at no cost to the caregiver or the state. Attendance may be limited, however, if the maximum capacity for a training module is fully reserved 24 hours in advance.

The Training Partnership's authority to provide training examinations is deleted.

*Continuing Education.* Parents of developmentally disabled or functionally disabled adult children, and certain intermittent caregivers, are exempt from the continuing education requirements for long-term care workers that begin on January 1, 2010, unless the parent elects long-term care worker registration or certification with the Department of Health (DOH).

Adult family home providers must complete two hours annually of administrative continuing education, administered by the DSHS in collaboration with the Adult Family Home Advisory Committee appointed by the DSHS.

#### Long-term Care Worker Credentialing Program

*Registration.* On January 1, 2010, a registration program with the DOH begins for all long-term care workers except: (1) registered nurses, licensed practical nurses, certified nursing assistants, Medicare certified home health aides, or persons with a similar health certification or licensure as determined by the Secretary of DOH (Secretary), or persons with a special education endorsement from the Superintendent of Public Instruction; and (2) parents who are individual providers, or unpaid caregivers, for only their developmentally disabled or functionally disabled son or daughter, and persons providing intermittent respite care to the son or daughter. Qualified exempt long-term care workers may choose to register.

Registration is required within 120 days after the worker initially contracts or is employed as a long-term care worker, except that workers contracted or employed before January 1, 2010, must be registered within 120 days after January 1, 2010. The DOH may extend these time periods for good cause.

A registered long-term care worker may provide direct, hands-on personal care services to persons with functional disabilities requiring long-term care services. No one may practice or represent him or herself as a registered long-term care worker without being registered.

Among other requirements, applicants for registration must pay the applicable fee and must successfully complete, or challenge, basic training.

*Certification.* Beginning January 1, 2012, long-term care workers may elect to be certified with the DOH. Certified long-term care workers may apply for a specialty endorsement in specialty areas identified by the Secretary in consultation with the DSHS. Among other requirements, applicants for certification must complete approved training (35 hours of basic training, plus other approved training, such as peer mentoring, certain on-the-job training, and population and setting-specific training) and pass an examination.

The Secretary must develop a plan to implement the voluntary certification and specialty area endorsement provisions in a cost effective manner. The plan, to be reported to the Legislature by December 1, 2009, must be developed in consultation with specified parties and must consider how the program can assist long-term care workers to enter a health profession career path, including articulation with nursing assistant certification, and must make recommendations on appropriate examinations and/or practical work experience requirements for certification and specialty area endorsements.

Adult family homes may participate in a voluntary adult family home certification program through the University of Washington Geriatric Education Center.

*Program Administration.* The long-term care worker credentialing program is administered by the DOH, which is authorized to set fees, establish forms, procedures, and examinations, issue registrations and certificates to an applicant that has met applicable training, background check, and examination requirements, maintain a record of applicants and registered and certificated long-term care workers, and administer discipline under the Uniform Disciplinary Act. The DOH may defer the registration implementation date to July 1, 2010, if it finds that administrative capacities will not be fully functional by January 1, 2010.

The DOH must adopt rules by September 1, 2009, to implement the registration requirements. In developing rules, the DOH must consult with the DSHS, the Nursing Care Quality Assurance Commission, adult family home providers, boarding home providers, in-home personal care providers, the Training Partnership, affected labor organizations, community and technical colleges, long-term care consumers, and other interested parties.

*DSHS Enforcement.* The DSHS must deny payment to an individual provider of home care services who does not complete basic training or obtain registration within the required time limits. The DSHS also may:

- terminate the contract of an individual provider, or take other appropriate action, if the individual provider's registration or certification is revoked; and
- immediately terminate the contract of an individual provider, if the long-term care worker caused or presents an imminent threat of harm to his or her client with functional disabilities.

In addition, the DSHS must take appropriate enforcement action related to the contract or licensure of a provider of home and community-based services who knowingly employs a long-term care worker who has not completed the training requirements or obtained registration within the required time limits.

#### Repealed Laws

Statutes addressing the development of training standards for long-term care workers in boarding homes and adult family homes are repealed.

#### **EFFECT OF SENATE AMENDMENT(S):**

The Senate amendment directs the DSHS to adopt rules to implement long-term care worker peer mentoring, optional advanced training, and on-the-job training, and also allows the DSHS to adopt rules related to specialty endorsements.

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**Appropriation:** None.

**Fiscal Note:** Requested February 19, 2008.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed. However, the bill is null and void unless funded in the budget.

#### **Staff Summary of Public Testimony:** (Health Care & Wellness)

(In support) The Long-Term Care Workers Training Workgroup worked hard last summer and tried to balance all the needs. Not everyone got everything they wanted. The goal stated in the report is that training should be flexible and relevant. There is a need to consider a registration requirement. Training should create opportunities to access a career ladder without a large expense.

(In support with concerns) The bill raises concerns about raising barriers and reducing the available long-term care workforce just when more workers are needed as the "boomer" population ages. Washington's place as a leader in "age in place" strategies should not be undone. The bill should focus on state-funded individual caregivers and not limit options in the private sector. There is no evidence or outcome-based support for tying hours of training with quality care. While the industry could accept the 35-hour training requirement, this is a change as there are not mandated training hours now. The certification should be an option for the private industry sector. Testing is a difficulty for many workers in this industry. Small business owners in this industry take risks to serve this population and will not succeed if the quality of care goes down.

The 50 hours of experiential training is too unstructured. It needs to be real training that can count toward a community college degree or an apprenticeship program. If the training does not use qualified instructors, the community colleges will not accept the training. Quality care is linked to training. This training should apply to all long-term care workers and should not differentiate based on the relationship of the worker and the client or on the hours worked by the worker. All workers, including parents of developmentally disabled children should be supported with better training.

(Opposed) One size does not fit all in providing personal care services. It is wrong to tie the bill's requirements to the Training Partnership. No one has shown that the current training system is broken; the information given to the Workgroup was from other states, not Washington. Adult family homes are required to have a business course before they can open. Currently there is worker training for 28 hours, nine to 10 hours relating to nurse delegation, and additional training in CPR training, specialty training, and continuing education. The industry has been very active in promoting worker education, offering both specific training and online programs. The medical model of credentialing does not work in this industry. Adult family homes should be allowed to opt out of this new training.

**Staff Summary of Public Testimony:** (Appropriations)

(In support) None.

(With concerns) We strongly support the 85 hours of training but are disappointed that the bill doesn't have all the long-term care task force recommendations in it. Requiring classes that are not accredited does not support job mobility. The bill is a good start but the training in this bill is not applied equally for all long-term care workers. Instead, this bill offers a tiered approach that allows differing training standards based on the worker's relationship with the client and the number of hours that are worked in a given month. There are several considerations that should be made to mitigate the costs of this bill including using technology that is already available, assuming that some workers will challenge test provisions thereby reducing the costs for training and testing, and considering that over time, higher training standards reduce the need for a high number of workers. Training incentives growth of a full-time, permanent, and committed workforce. When people are well trained, a smaller workforce will provide the same quality of care. This bill has significant fiscal impacts on home care agencies and needs continued discussion and amendments. We support 35 hours of training for all workers, but 50 hours of experiential training should be optional for a licensed agency with supervised care workers. We support registration of all long-term care workers and voluntary, rather than mandatory, certification. We support the flexible nature of the experiential training requirements.

(Opposed) Private duty providers face significant fiscal impacts in this bill since they do not get state funding. Parents of developmentally disabled children should not be required to take additional training. The money that it would cost to train parents to take care of the same child that they have raised from birth would be better spent providing respite. There is no data that identifies a problem with current boarding home training and we believe boarding homes should be exempt from this bill. The Department of Health has reported that boarding homes



do not have a care problem. The level of detail in this bill and the fact that the Department of Social and Health Services is required to set rules for training requirements is in direct conflict with the statutes for collective bargaining rights for adult family homes. This bill does harm to collective bargaining and could have serious legal complications. Adult family homes need to be removed from this bill and collective bargaining will handle their training requirements. Washington is already a leader in training for fundamental community based care. This bill moves toward institutionalizing community based services. It promotes a one-size-fits-all approach and is predicated on a medical model. Certification should not be mandatory. There isn't a large number of long-term care workers that fit into the career ladder category.

**Persons Testifying:** (Health Care & Wellness) (In support) Representative Morrell, prime sponsor.

(In support with concerns) Leslie Emerick, Home Care Association of Washington, Washington Private Duty Association, and Washington State Hospice and Palliative Care Organization; Sam Miller, Home Care Association of Washington; Ron Bode, Washington Private Duty Association; and Charissa Raynor, Linda Lee, Wardell Henderson, and Cathi Hoffman, SEIU Healthcare 775 Northwest.

(Opposed) Dan Simniow, Janet Rhode, and Craig Fredrickson, Washington State Residential Care Council.

**Persons Testifying:** (Appropriations) (With concerns) Gary Weeks, Washington Health Care Association; Charissa Rayner, Service Employees International Union Healthcare 775 Northwest; Dennis Eagle, Washington Federation of State Employees; and Leslie Emerick, Washington Health Care Association.

(Opposed) Craig Frederickson and Terry Kohl, Washington State Residential Care Council; and Julie Peterson, Association of Housing and Services for the Aging.

**Persons Signed In To Testify But Not Testifying:** (Health Care & Wellness) (In support) Laura Falkenstine and Melissa Johnson, Community Residential Services Association; and Gary Weeks and Beth Johnston, Washington Health Care Association.

(In support with concerns) Julie Ferguson, Advanced Health Care; Marcia Ives, With a Little Help; Ingrid McDonald, American Association of Retired Persons; and David Lawrence, Family Resource Home Care and Washington Private Duty Association.

(Opposed) Joanne O'Neill, The Arc of King County; Lance Morehouse, The Arc of Spokane; Julie Peterson, Washington Association of Housing and Services for the Aging; Cherie Tessier, Pass Port 4 Change; Dennis Eagle, Washington Federation of State Employees; Robb Menaul, Washington State Hospital Association; Bill Day, Adult Family Homes Association; Richard G. Peterson, AAA Residential Services; and Louise Ryan, Long-Term Care Ombudsman.

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