



I-1163: ONCE, TWICE, STILL NOT A PRIORITY

BRIEFLY

State law already requires training and background checks for long-term care workers, and additional, costly requirements (approved as I-1029 in 2008) are scheduled to be implemented in 2014. I-1163 would implement them during the 2011–13 biennium, but the state cannot afford it at the present time.

I-1163 has no funding source. If approved, it will require funds that could be used for other programs.

In 2008, voters approved an initiative that expanded training and background checks for long-term care workers. The initiative (I-1029) included no funding source; subsequently, the legislature delayed implementation of the law twice in response to reductions in state revenues.

Now proponents of the program have responded with a new initiative that will be on the ballot this November. Initiative 1163 would negate the latest delay, among other things. It essentially moves up implementation of the enhancements, meaning that the program will result in state spending in the 2011–13 biennium. I-1163 has no dedicated funding source, however. Consequently, if it is approved, the state will have to pay for it using funds that could be used for other programs. The continuing deterioration of the state's fiscal situation has made prioritization imperative.

I-1029

Prior to the approval of I-1029, state law already required long-term care (LTC) workers to undergo training (about 34 hours within 120 days), complete a competency test, fulfill 10 hours of continuing education each year, and be screened through a Washington state background check (and an FBI fingerprint check if the worker had lived in Washington for less than three years), but LTC workers were not required to be certified by the state. Additionally, a 2007 bill that increased those training requirements, ESSHB 2284, would have gone into effect in 2010. (SOS 2008)

I-1029 added a number of new requirements related to background checks, training, and certification:

- LTC workers for the elderly or persons with disabilities hired after Jan. 1, 2010 must undergo state and federal background checks, including checking against the FBI fingerprint identification records

system and national sex offenders registry. The Department of Social and Health Services (DSHS) must share this information with the Department of Health, and DSHS (not the workers or their employers) must cover the costs of these checks.

- As of Jan. 1, 2010, the Department of Health must require LTC workers to be certified as home care aides within 150 days of being hired. (A home care aide is defined in the initiative as an "LTC worker who has obtained certification as a home care aide by the department of health.") To be certified, workers must complete 75 hours of training and pass a certification exam. Workers must complete the training before taking the exam.
- As of Jan. 1, 2010, the minimum training requirements for LTC workers must be met within 120 days of being hired. Five of the 75 hours must be taken prior to providing care; two of the five must be orientation training and three must be safety training. DSHS must approve training curriculum, and curriculum may only be approved if "developed with input from consumer and worker representatives." Those individual providers who are considered to be public employees for the purposes of collective bargaining (RCW 74.39A.270) will be paid for their time spent in training.
- As of Jan. 1, 2010, individual providers who care for their own developmentally disabled children must have 12 hours of training within 120 days of becoming an individual provider. Other individual providers caring for their own children or parents and individual providers providing 20 hours or less of care per month who are hired before Jan. 1, 2014 must have 35 hours of training within 120 days, five of which must be completed prior to providing care.

Definition of Long-Term Care Worker:

RCW 74.39A.009

(16)(a) "Long-term care workers for the elderly or persons with disabilities" or "long-term care workers" includes all persons who are long-term care workers for the elderly or persons with disabilities, including but not limited to individual providers of home care services, direct care employees of home care agencies, providers of home care services to persons with developmental disabilities under Title 71 RCW, all direct care workers in state-licensed boarding homes, assisted living facilities, and adult family homes, respite care providers, community residential service providers, and any other direct care worker providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.

(b) "Long-term care workers" do not include: (i) Persons employed by the following facilities or agencies: Nursing homes subject to chapter 18.51 RCW, hospitals or other acute care settings, residential habilitation centers under chapter 71A.20 RCW, facilities certified under 42 C.F.R., Part 483, hospice agencies subject to chapter 70.127 RCW, adult day care centers, and adult day health care centers; or (ii) persons who are not paid by the state or by a private agency or facility licensed by the state to provide personal care services.

Definition of Individual Provider:

RCW 74.39A.240

(4) "Individual provider" means a person, including a personal aide, who has contracted with the department to provide personal care or respite care services to functionally disabled persons under the medicaid personal care, community options program entry system, chore services program, or respite care program, or to provide respite care or residential services and support to persons with developmental disabilities under chapter 71A.12 RCW, or to provide respite care as defined in RCW 74.13.270.

- ESSHB 2284 (enacted in 2007) required that LTC workers must have 12 hours of continuing education training each year, beginning Jan. 1, 2010. I-1029 added some qualifications: If workers do not complete the training, they will not maintain their home care aide certification (except individual providers caring only for their children or part-time individual providers hired before June 30, 2014 who did not voluntarily certify) and those individual providers who are considered to be public employees for the purposes of collective bargaining (RCW 74.39A.270) will be paid for their time spent in training.
- ESSHB 2284 also required DSHS to offer, "directly or through contract, training opportunities sufficient for a long-term care worker to accumulate sixty-five hours of training within a reasonable time period." For those represented by an exclusive bargaining representative, the opportunities are to be offered through a training partnership (a partnership between the governor's office and the exclusive bargaining representative). The bill also specified that LTC workers may not be required to obtain this advanced training. I-1029 extended the requirement to 70 hours and delayed implementation until Jan. 1, 2011.
- Some LTC workers do not need to become certified home care aides. These include: Registered nurses, licensed practical nurses, certified nursing assistants, Medicare-certified home health aides, others with similar credentials or special education training, and persons already employed as LTC workers prior to Jan. 1, 2010. These exempted workers "may obtain certification as a home care aide from the department of health without fulfilling the training requirements . . . but must successfully complete a certification examination."

Additionally, LTC workers employed by supported living providers; individual providers caring only for biological, step, or adoptive children or parents; and individual providers hired before June 30, 2014 who provide 20 hours or less of care per month "are not required to obtain certification under this chapter."
- If individual providers have not certified as home care aides, or, if exempt from certification, they have not completed the required training, DSHS must deny payment to them. If their certification is revoked, DSHS may terminate their con-

tract. Further, DSHS "shall take appropriate enforcement action related to the contract of a private agency or facility licensed by the state, to provide personal care services, other than an individual provider, who knowingly employs a long-term care worker who is not a certified home care aide" or who has not completed training.

- DSHS and the Department of Health must adopt rules to implement these provisions by August 1, 2009.

Implementation Delays

In May 2009, ESSB 6180 was enacted. The bill delayed implementation of I-1029 by one or two years, depending on the provision (see the table on page 3). DSHS and the Department of Health were to adopt rules to implement these provisions by August 1, 2010.

Then I-1029 was delayed again, until 2014, with the passage of ESHB 1548 in June 2011. DSHS and the Department of Health were to adopt rules to implement these provisions by August 1, 2013.

ESSHB 2284, enacted in 2007, had required that LTC workers who begin work on or after Jan. 1, 2010 be offered at least one hour per week of on-the-job training or peer mentorship in their first 90 days. That requirement was changed to apply to workers beginning on or after July 1, 2011 by HB 2359 (enacted in 2009). ESHB 1548 again delayed implementation, to apply to workers beginning on or after Jan. 1, 2014.

I-1163

I-1163 essentially repeals ESHB 1548, returning implementation dates to those that stood before passage of that bill. (If approved, I-1163 would be effective Jan. 7, 2012.) It does, however, make some additional changes:

- It would delay implementation of the initiative for community residential service providers until January 1, 2016.
- The state auditor would be required to audit the long-term in-home care program within a year, and biennially thereafter. To do so, the state would hire five new fraud investigators "to ensure that clients receiving services at taxpayers' expense are medically and financially qualified to receive the services and are actually receiving the services."
- It would limit the "percentage of tax revenues that can be used for administrative expenses in the long-term in-home care

program.” The state would have to prepare a plan within 180 days to cap these expenses so that at least 90 percent of spending goes to direct care, and the limit would have to be achieved within two years.

Fiscal Impacts

The Office of Financial Management (OFM) has prepared a fiscal impact statement for I-1163. They estimate that, against the current law baseline, I-1163 would increase state costs by \$31.3 million while also increasing revenues (federal funds and fees) by \$18.4 million over six years. The impact during the 2011–13 biennium is a costs increase of \$32.0 million and a revenue increase of \$14.2 million.

OFM notes that “revenues, expenditures and costs already assumed to begin Jan. 1, 2014, are netted against revenues, expenditures and costs generated from the initiative.” Because OFM estimates that “administrative expenses are currently 9.9 percent of taxpayer spending,” the cap on them would have no fiscal impact. Also, these cost estimates are for state costs only; they do not include the costs of training for workers who are not subject to collective bargaining (who would have to pay for their training themselves).

As noted, OFM’s estimate is of the impact of I-1163 on current law—not on the law in effect pre-Initiative 1029. Opponents of I-1163 have questioned whether the fiscal impact statement reflects the full cost of the program, which has never actually been im-

plemented. OFM has a responsibility to estimate the impacts of initiatives and legislation based on current law—to do otherwise would require guessing at legislative intent.

If I-1163 is not approved by voters in November, the expanded training program as established by I-1029 would remain in place, though delayed by ESHB 1548 until 2014. If the initiative passes, any attempt by the legislature to delay implementation again during the next two years would require a two-thirds majority vote rather than a simple majority vote (pursuant to the state constitution).

Discussion

Prior to the approval of I-1029, state law already required training and background checks for LTC workers. Clearly the legislature has deemed these requirements to be sufficient as they have never implemented the additional training, background checks, and certification adopted as part of I-1029.

As revenue forecasts have plummeted over the past several years, the state has had to prioritize. Services have been cut, and more reductions are assured for 2011–13. Indeed, in September, the Economic and Revenue Forecast Council reduced its forecast of 2011–13 revenues by \$1.413 billion. That translates to a projected general fund–state ending balance of *negative* \$1.555 billion. The governor has already called a special session of the legislature to address the budget problems.

Even if voters believe this is a worthwhile program, we simply cannot afford it. In comparison to other state programs, not funding this one has been an easy choice. As the governor’s 2011–13 budget explained in proposing to delay the program again until 2013–15, “No clients will lose service as a result of this delay.”

References

Office of Financial Management. 2011. Fiscal Impact Statement for Initiative 1163. Washington Secretary of State (SOS). 2008. Online Voter Guide.

Table: Effective Dates

Provision	ESSHB 2284 (2007)	I-1029 (2008)	HB 2359 (2009)	ESSB 6180 (2009)	ESHB 1548 (2011)	I-1163
New LTC workers must have state and federal background checks		1/1/2010		1/1/2012	1/1/2014	1/1/2012
LTC workers must be certified within 150 days of being hired		1/1/2010		1/1/2011	1/1/2014	1/1/2011
LTC workers already employed are not required to be certified, but must complete the exam		1/1/2010		1/1/2011	1/1/2014	1/1/2011
LTC workers must meet minimum training requirements within 120 days of employment		1/1/2010		1/1/2011	1/1/2014	1/1/2011
Individual providers for their developmentally disabled children must have 12 hours of training within 120 days		1/1/2010		1/1/2011	1/1/2014	1/1/2011
Other individual providers must complete 35 hours of training within 120 days		1/1/2010		1/1/2011	1/1/2014	1/1/2011
LTC workers must complete 12 hours of continuing training each year	1/1/2010	1/1/2010		7/1/2011	7/1/2014	7/1/2011
New LTC workers shall be offered on job training or mentorship	1/1/2010		7/1/2011		1/1/2014	7/1/2011
LTC workers must be offered training opportunities sufficient to accumulate 70 hours within reasonable time	1/1/2010 (65 hours)	1/1/2011		1/1/2012	1/1/2014	1/1/2012
Community residential service providers are covered by these provisions						1/1/2016