



SUMMARY OF INITIATIVE 1163 TO THE PEOPLE

(Concerns long-term care workers and services for elderly and disabled people)

*This information has been prepared in response to specific questions about the provisions and effects of Initiative 1163 to the People and is provided for legislative purposes only; it is **not** provided as an expression for or against the ballot measure. Please remember that it is inappropriate to use public resources to support or oppose a ballot measure. Please refer to pages 8-9 of the 2010-11 Legislative Ethics Manual or contact Senate Counsel for further guidance on when and how comment on ballot measures is appropriate.*

BRIEF SUMMARY

During the 2011 session, the Legislature amended certain training, certification and background check requirements for long-term care workers by delaying implementation of these requirements until January 1, 2014. Initiative 1163 repeals the 2011 amendments and requires that individual providers, hired after January 1, 2012, be subject to background checks, and training and certification requirements that are effective retroactively to January 1, 2011. The State Auditor is required to conduct performance audits of the long-term in-home care program on a biannual basis and must hire five fraud investigators to ensure that clients receiving services are qualified to receive such services. The state is required to cap administrative expenses so that 90 percent of taxpayer spending is devoted to direct care. Any collective bargaining agreement that must be changed as a result of the Initiative, is not subject to legislative approval and such changes will immediately take effect.

BACKGROUND

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

In 2008, voters approved Initiative 1029 which established training and background check requirements for long-term care workers, including:

- Long-term care workers hired after January 1, 2010, must be screened through state and federal background checks to ensure they do not have a criminal history.

- Beginning January 1, 2010, long-term care workers must meet minimum training requirements of 75 hours of entry level training within 120 days of employment.
- The Department of Social and Health Services must offer advanced training opportunities to long-term care workers beginning January 1, 2011, rather than January 1, 2010.
- Beginning January 1, 2010, individual providers caring for their biological, step, or adoptive child or parent must receive training.
- Beginning January 1, 2010, long-term care workers for the elderly or persons with developmental disabilities must be certified as home care aides within 150 days of the date of hire.
- Certain long-term care workers are not required to become certified home care aides, including nurses, nursing assistants, and people already employed as long-term care workers before January 1, 2010.

In 2009, the Legislature modified Initiative 1029 by delaying the dates by which the training, background check, and certification requirements began. Rather than begin in 2010, the training and background check requirements begin January 1, 2012, and the requirement that long-term care workers be certified as home care aides was delayed until January 1, 2011. The Legislature also modified an existing continuing education requirement by delaying its effective date until July 1, 2011.

In 2011, the Legislature again modified the long-term care worker training, background check, and certification requirements by delaying these requirements. Certification, background check, and training requirements begin January 1, 2014, rather than in 2011 or 2012. A continuing education requirement was delayed from July 1, 2011, to January 1, 2014. The Legislature also delayed from July 1, 2011, to January 1, 2014, a requirement that long-term care workers be offered on-the-job training or peer mentorship.

Individual providers of long-term care services may collectively bargain with the state over wages, hours, and working conditions. Requests for funds necessary to implement the compensation and fringe benefits provisions of a collective bargaining agreement are conditioned on the Legislature's approval of the funds and may only be submitted to the Legislature for approval if they have been certified as feasible financially for the state or reflect the decision of an arbitration panel. The Legislature must approve or reject the submission of the request for funds as a whole. If the Legislature rejects or fails to act on the submission, the collective bargaining agreement must be reopened only to renegotiate the funds necessary to implement the agreement.

SUMMARY OF INITIATIVE 1163

The implementation dates for long-term care workers' training, certification, and background check requirements are restored to the dates adopted in 2009. Rather than take effect in 2014, training and certification requirements for these workers have a retroactive effective date of January 1, 2011. Background checks are required for long-term care workers starting employment after January 1, 2012, rather than January 1, 2014.

Long-term care workers who begin work after July 1, 2011, rather than January 1, 2014, must be offered on-the-job training or peer mentorship. The requirement to offer advanced training begins January 1, 2012, rather than January 1, 2014. Until June 30, 2014, a person hired as an individual provider who provides 20 hours or less of care for one person a month is not required to become certified. Long-term care workers employed as community residential service providers are subject to training, certification, and background check requirements beginning January 1, 2016.

The state auditor must biannually conduct performance audits of the long-term in-home care program. Five fraud investigators must be hired to ensure that clients receiving services at taxpayers' expense are medically and financially qualified to receive those services and are actually receiving them. The initiative does not define the term "services" for the purposes of this requirement.

The initiative establishes a limitation on the percentage of tax revenues that can be used for administrative expenses in the long-term in-home care program. The state must prepare a plan to cap administrative expenses so that at least 90 percent of taxpayer spending is devoted to direct care; this cap on expenses must be achieved within two years.

If the passage of Initiative 1163 requires a change to a collective bargaining agreement, the changes must go into effect immediately without legislative approval. The requirements of implementing the individual providers' collective bargaining agreements constitute ministerial, mandatory, and nondiscretionary duties. Any person may bring an action to require performance of these duties. Action may be brought in Thurston County, the petitioner's county of residence or principal place of business, or the Supreme Court which is given original jurisdiction for such actions.

For information on assumptions, see the OFM statement of fiscal impacts (given only in total dollars) at the following website: <http://ofm.wa.gov/initiatives/default.asp>.

For further information please contact:
Kathy Buchli, (360) 786-7488
Senate Health & Long Term Care Committee

This summary should not be considered legislative history for purposes of interpreting Initiative 1163.