



Summary of Initiative 1163

Prepared for members of the Washington House of Representatives by the House Office of Program Research.

This information has been prepared in response to various requests for a summary of Initiative 1163. It is provided for analytical and legislative policy purposes only. It is not provided as an expression of support for or opposition to any ballot measure. These materials are intended to provide general information and are not intended to be an exhaustive analysis of all issues presented by the measure.

BRIEF SUMMARY

- Modifies the law governing background checks, training, and home care aide certification for long-term care workers to make these provisions apply sooner (generally beginning in 2011 or 2012 instead of 2014).
- Requires any impacts on an individual provider collective bargaining agreement to take effect immediately without the need for legislative approval, and provides that certain duties related to these agreements and to the initiative are ministerial and nondiscretionary.
- Requires the State Auditor to conduct performance audits of the long-term in-home care program twice annually, and requires the state to hire additional fraud investigators.
- Requires the state to cap long-term in-home care program administrative expenses so that at least 90 percent of taxpayer spending is devoted to direct care.

BACKGROUND

Initiative 1163 was certified for the ballot on August 1, 2011. The ballot title and ballot measure summary prepared by the Attorney General, and amended by court order on May 9, 2011, are as follows:

Ballot Title

Statement of Subject: Initiative No. 1163 concerns long-term care workers and services for elderly and disabled people.

Concise Description: This measure would reinstate background checks, training, and

other requirements for long-term care workers and providers, if amended in 2011; and address financial accountability and administrative expenses of the long-term in-home care program.

Should this measure be enacted into law? Yes [] No []

Ballot Measure Summary

If the legislature amends certain statutes governing long-term care for eligible elderly and people with disabilities in 2011, this measure would reverse such amendments and reinstate prior law. For the long-term in-home care program, it would provide independent audits, increase fraud investigation, and cap administrative expenses. It would also clarify that long-term care workers are covered by applicable law.

Long-term Care Workers Overview

Long-term care workers provide care 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 Disabilities Services Administration. These workers provide their clients personal care assistance with various tasks such as bathing, eating, toileting, dressing, ambulating, meal preparation, and household chores.

The services may be provided: (1) in various regulated residential settings by long-term care workers employed in those settings; or (2) in the client's home by individual providers who contract directly with the DSHS or by agency providers who are employees of a licensed home care agency. A paid individual provider may be a relative or a household member, although the parent of a client who is a minor or the client's spouse may not be a paid individual provider under most programs.

The term "long-term care worker" does not include persons employed in nursing homes, hospitals, hospice agencies, or adult day care or day health care centers.

Training and Certification Requirements for Long-term Care Workers

Legislation enacted in 2000 broadened existing training requirements to cover direct care workers in boarding homes and adult family homes, in-home care providers, and other direct care workers. These training requirements, implemented through rules adopted by the DSHS, determined the hours of training, continuing education, and other requirements.

Initiative 1029 (I-1029), approved by the voters in November 2008, increased the hours of mandatory training for long-term care workers. For example, training for certain categories of long-term care workers increased from 35 hours to 75 hours. It also required home care aide certification for certain long-term care workers beginning with those hired in 2010. Some long-

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term care workers were exempted from the new requirements, including certain workers hired prior to January 1, 2010. This law was amended twice, in 2009 and 2011, delaying the start of this enhanced training and certification program until 2014 and exempting certain workers hired before January 1, 2014.

Background Checks for Long -term Care Workers

Under various laws, the DSHS is responsible for investigating the suitability of applicants or service providers who provide in-home services under DSHS programs. These investigations include an examination of state criminal history record information, and under some statutes applicants must be fingerprinted through both the Washington State Patrol and the Federal Bureau of Investigation (FBI). Initiative 1029 as passed in 2008, and as amended in 2009 and 2011, requires all long-term care workers hired after January 1, 2014, to be screened through both state and federal background checks, including checking against the FBI fingerprint identification records system and the National Sex Offenders Registry.

Collective Bargaining for Individual Providers

In 2001 the voters approved Initiative 775, which established the right of individual providers who contract with the state to bargain collectively with the state over wages, hours, and working conditions. The state is represented by the Governor. If negotiations reach an impasse and cannot be resolved through mediation, interest arbitration is required.

When a request for funds is necessary to implement the compensation and fringe benefits provisions of an individual provider collective bargaining agreement, the Governor must submit the request to the Legislature as part of the proposed budget if certain conditions are met. These conditions include whether the Director of the Office of Financial Management (OFM) has determined that the agreement is financially feasible or whether the agreement reflects an arbitration panel's decision. The Legislature must approve or reject the submission as a whole, and if rejected or not acted on the agreement is reopened solely to renegotiate those funds. The arbitration panel's decision is not binding on the Legislature and, if the Legislature does not approve the submission, is not binding on the state.

In 2008, an individual provider collective bargaining agreement was reached through arbitration. The agreement included pay increases. The Director of OFM found that the agreement was not financially feasible, and the Governor did not include the pay increases in the budget that she submitted to the Legislature. In litigation over the issue, the Washington Supreme Court held that the Governor's decision was a discretionary budget decision and refused to compel the Governor to revise the budget to include the pay increases.

As of July 1, 2009, state contributions to a training partnership are made pursuant to the individual provider collective bargaining agreement. As of January 1, 2010, for individual

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providers in the individual provider bargaining unit, all required training and peer mentoring is provided by the training partnership.

SUMMARY

Long-term Care Worker Background Checks, Training, and Certification

Initiative 1163 modifies the law governing background checks, training, and home care aide certification for long-term care workers by making those provisions apply sooner. This has the effect of reinstating dates enacted in 2009. Generally, this means that program implementation begins in 2011 or 2012 instead of 2014. This results in the following date changes:

- Background checks. The enhanced federal and state background checks generally begin with long-term care workers hired after January 1, 2012, instead of those hired after January 1, 2014.
- Training. Effective January 1, 2011, instead of January 1, 2014, all non-exempt long-term care workers must complete enhanced training within 120 days of employment. Peer mentorship and on-the-job training must be offered to long-term care workers beginning July 1, 2011, instead of January 1, 2014. Advanced training must be offered beginning January 1, 2012, instead of January 1, 2014.

Beginning July 1, 2011, instead of July 1, 2014, long-term care workers must complete additional hours of continuing education.

- Certification. Effective January 1, 2011, instead of January 1, 2014, home care aide certification is required within 150 days of a long-term care worker's hire date. Those already employed as long-term care workers prior to January 1, 2011, instead of January 1, 2014, who completed all required training are exempt from certification.

These changes apply to all long-term care workers as defined by law on April 1, 2011, except that long-term care workers employed as community residential service providers are covered beginning January 1, 2016.

Generally, agency rules to implement the enhanced background checks, training, and certification requirements must be adopted by August 1, 2010, instead of August 1, 2013.

Collective Bargaining

If Initiative 1163 triggers changes to an individual provider collective bargaining agreement, the changes are to go into effect immediately without the need for legislative approval.

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The requirements contained in the individual provider collective bargaining law and Initiative 1163 are stated to be ministerial, mandatory, and nondiscretionary duties. Failure to perform the duties is a violation of the initiative, and any person may bring an action to require the Governor or other responsible person to perform the duties. The action may be brought in certain superior courts or filed directly with the Washington Supreme Court, which is given original jurisdiction over the action.

Performance Audits

The State Auditor is required to conduct biannual performance audits of the long-term in-home care program, beginning within 12 months after Initiative 1163's effective date. The state must hire five additional fraud investigators to ensure that clients receiving tax-funded services are medically and financially qualified.

Administrative Expenses in the Long-term In-home Care Program

Within 180 days of Initiative 1163's effective date, the state must prepare a plan to cap long-term in-home care program administrative expenses so that at least 90 percent of taxpayer spending is devoted to direct care. This limit must be achieved within two years from the initiative's effective date.

Effective Date: Initiative 1163 states that it takes effect 60 days from its enactment.

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