



## Legislation Text

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**File #:** 12-0896, **Version:** 6

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Consider the final passage (Second Reading) of Ordinance **5008** adding Chapter 5.30 to Title 5 to the El Dorado County Ordinance Code pertaining to Elder and Dependent Adult Protection.

**Background:**

At their meeting of June 17, 2014 (Item 30) the Board approved the Introduction (First Reading) of Ordinance 5008 and continued the item to June 24, 2014 for consideration of final passage.

The Elder and Dependent Adult Protection Ordinance ("Ordinance") will require individuals who provide home care or caregiver services to an elder or dependent adult, for compensation and who are not employed by a home care agency, to obtain the criminal record clearance required by the State Department of Social Services ("Department") and be listed on the State's Home Care Aide Registry, prior to providing home care services in the County of El Dorado. This ordinance utilizes recently enacted state legislation, the Home Care Services Consumer Protection Act (AB 1217, Chapter 790, Statutes of 2013), which directs the Department to provide for the licensure and regulation of home care agencies, the registration of home care aides, and the establishment of a Home Care Aide Registry ("Registry"). Under the Home Care Services Consumer Protection Act ("Act"), home care aides will be required to register with the Department and obtain a criminal record clearance in order to be listed on the State's Registry. The Act exempts specific providers who provide home care services as part of their duties, including but not limited to those who provide home care related services under the IHSS program, hospice and licensed home health agencies. The proposed Ordinance provides for the same exemptions as defined within Act.

The Act included an effective date of January 1, 2015. The Ordinance, as proposed, will be effective on the same date.

The Act requires home care aides employed by a home care agency to be listed on the Registry prior to providing home care services to a client. However, independent or self-employed home care aides have the option to voluntarily be listed on the Registry in order to provide home care services, meaning that independent home care aides can provide home care services without having to obtain a criminal record clearance from the Department. In 2011 the California Senate Office of Oversight and Outcomes prepared the report, "Caregiver Roulette: California Fails to Screen those who Care for the Elderly at Home." This report details the abuse and neglect of older and dependent adults by their caregivers, including some with criminal records, who were not required to complete a criminal history background check.

While most independent caregivers do not have a criminal background or seek to exploit and abuse the people they care for, it is the independent caregivers, those who are not employed by a home care agency, that are typically the focus of the elder fraud and abuse investigations conducted by the County's Elder Protection Unit ("EPU") member agencies. The proposed Ordinance will require the independent home care aides to be listed on the State Registry prior to providing home care services to elder and dependent adults in the County of El Dorado. The EPU has worked for over two years towards the establishment of a county ordinance that would require those who provide

caregiver/home care services to the elderly and dependent adults be subject to a criminal history background check. The proposed Ordinance achieves this goal.

Seniors, individuals with disabilities and the frail elderly frequently find themselves in need of part-time to full-time assistance from a caregiver or home care aide in order to continue to live at home independently. The Elder and Dependent Adult Protection Ordinance will ensure that persons who serve in this position of trust have at least been subject to a background check process that will screen for crimes which signal the potential for abuse.

### History

In 2006, the Board of Supervisor approved the establishment of the Elder Protection Unit (EPU), comprised of staff representatives from county departments and local agencies, including the Department of Health and Human Services, the District Attorney, local law enforcement, and County Counsel. The EPU was established to ensure the safety and well-being of the County's senior community by pursuing the vigorous prosecution of those who physically, emotionally and/or financially abuse them. The EPU works together towards the mutual goal of providing maximum available assistance for elderly and dependent adults who are the victims of crime and to support the efforts to prevent the abuse of elder and dependent adults.

The private in-home care industry primarily provides services to the frail elderly and people with serious disabilities. Prior to the enactment of the Act in 2013, the industry remained largely unregulated as the State of California did not require any type of licensure or regulation of those who provide in-home caregiving services to elders and dependent adults outside of the in-Home Support Services ("IHSS") Program. Agencies that provide in-home care providers as a service do screen their employees; however, the level of screening varies from agency to agency and not all require their employees to submit to some type of background check process. The Act provides for an established industry-wide standard for home care agencies regarding the training, registration and criminal record clearance for their employees.

There are currently two programs within the County of El Dorado that maintain a resource list or Care Provider Registry of home care aides or caregivers that have been screened and have received clearance per a background check process; the IHSS Public Authority and the Senior Information and Assistance Program.

The IHSS Public Authority maintains a Care Provider Registry of home care aides screened to provide IHSS funded home care aide services to those approved as eligible to receive IHSS support. Not all elderly and dependent adults meet the eligibility criteria to receive IHSS funded assistance.

The County of El Dorado Department of Health and Human Services Agency, through the Senior Information and Assistance Program, maintains a list of home care aides that serves as a resource for those seeking to hire an individual to provide in-home care related services. These services include, but are not limited to, meal preparation, shopping/errands, housekeeping, laundry, yard/household repairs, personal care, respite care and overnight/live-in care. In order to be included on this list, a home care aide must complete a face-to face interview with Senior Information and Assistance Program staff and pass a Live Scan fingerprint background check. The Live Scan fingerprint background check is voluntary but required to be included on the Program's home care aide list. This list is provided as a resource only. Individuals seeking a home care aide are advised to their responsibility to interview and screen all potential home care aides, even those who have

voluntarily obtained a Live Scan fingerprint background check.

In 2010, the County of Napa adopted a Caregiver Permit Ordinance; the first in California. Due to the consistent and increasing number of cases involving the physical, emotional and financial abuses of elders and dependent adults by a "caregiver" or home care aide in the County of El Dorado, an increase that is consistent nationally, the EPU developed a Caregiver Permit Program proposal based on the Napa program.

On July 17, 2012, Supervisor Briggs presented to the Board a proposal for a Caregiver Permit Program that would require those seeking to provide in-home personal or domestic services (caregiver) to an elder or dependent adult, for compensation, to first obtain a county-issued permit that would be issued only after the applicant completed a screening process that included a Live Scan criminal background search of both state and FBI criminal offender records. The proposal included an exemption for IHSS approved caregivers. The Board approved this proposal and authorized Supervisor Briggs to work with appropriate staff to move forward with the next steps in the development of a Caregiver Permit Program and to return to the Board at a later date with a final draft proposal that includes a proposed Ordinance and implementing Resolutions.

As the EPU worked to develop the final draft Ordinance and the processes to implement and enforce the proposed Caregiver Permit Program for the County of El Dorado, members of the State Legislature were also working on various legislative proposals that would implement a similar statewide program. Several legislative proposals were introduced but with little success until October 2013, when the Governor signed AB 1217 (Lowenthal), the Home Care Services Consumer Protection Act. AB 1217 included an effective date of January 1, 2015.

In recognition of the Act, the EPU team then revised the Caregiver Permit Program to develop an ordinance that utilizes the program and process to be implemented by the Act, but that takes the Act one step further with the requirement that caregivers or home care aides who provide home care services for compensation in the County of El Dorado are to be listed on the State's Registry. The Act exempts specific providers who provide home care services as part of their duties, including but not limited to those who provide home care related services under the IHSS program, hospice and licensed home health agencies. The proposed Ordinance provides for the same exemptions as defined within Act.

It would be impossible to calculate the total costs related to the abuse, neglect and fraudulent acts committed against our community's elder and dependent adults. This includes the cost and personal devastation to the victims themselves, many of whom never recover physically or financially; the cost to the county and local agencies that investigate and prosecute those who commit these acts; and the costs to the county and local agencies that respond and provide treatment, resources and support to the victims.

The EPU has worked diligently for more than two years towards the development of the proposed Ordinance, including the identification of existing programs and resources within the county departments that currently provide similar and related services in order to improve our county's efforts to protect elders and dependent adults.

The requirement for a criminal background check alone can be an effective deterrent to those who prey on our community's most vulnerable and is a necessary additional resource to support the

continued efforts of the EPU to protect our community's elder and dependent adults and allow them to remain living in their own homes safe and independent.

Pursuant El Dorado County Board of Supervisor's Policy A-3, new or amended ordinances "shall be presented to the Board of Supervisor's for conceptual approval before requesting County Counsel to prepare a draft ordinance or ordinance amendment." Supervisor Briggs recommends the Board provide conceptual approval and direct Counsel to prepare the Ordinance for introduction (first reading) on June 17, 2014.