

RCW 74.39A.056 Background checks on long-term care workers.

(1)(a) All long-term care workers shall be screened through state and federal background checks in a uniform and timely manner to verify that they do not have a history that would disqualify them from working with vulnerable persons. The department must process background checks for long-term care workers and, based on this screening, inform employers, prospective employers, and others as authorized by law, whether screened applicants are ineligible for employment.

(b)(i) For long-term care workers hired on or after January 7, 2012, the background checks required under this section shall include checking against the federal bureau of investigation fingerprint identification records system or its successor program. The department shall require these long-term care workers to submit fingerprints for the purpose of investigating conviction records through both the Washington state patrol and the federal bureau of investigation. The department shall not pass on the cost of these criminal background checks to the workers or their employers.

(ii) A long-term care worker who is not disqualified by the state background check can work and have unsupervised access pending the results of the federal bureau of investigation fingerprint background check as allowed by rules adopted by the department.

(2) A provider may not be employed in the care of and have unsupervised access to vulnerable adults if:

(a) The provider is on the vulnerable adult abuse registry or on any other registry based upon a finding of abuse, abandonment, neglect, or financial exploitation of a vulnerable adult;

(b) On or after October 1, 1998, the department of children, youth, and families, or its predecessor agency, has made a founded finding of abuse or neglect of a child against the provider. If the provider has received a certificate of parental improvement under chapter 74.13 RCW pertaining to the finding, the provider is not disqualified under this section;

(c) A disciplining authority, including the department of health, has made a finding of abuse, abandonment, neglect, or financial exploitation of a minor or a vulnerable adult against the provider; or

(d) A court has issued an order that includes a finding of fact or conclusion of law that the provider has committed abuse, abandonment, neglect, or financial exploitation of a minor or vulnerable adult. If the provider has received a certificate of parental improvement under chapter 74.13 RCW pertaining to the finding of fact or conclusion of law, the provider is not disqualified under this section.

(3) The department shall establish, by rule, a state registry which contains identifying information about long-term care workers identified under this chapter who have final substantiated findings of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult as defined in RCW 74.34.020. The rule must include disclosure, disposition of findings, notification, findings of fact, appeal rights, and fair hearing requirements. The department shall disclose, upon request, final substantiated findings of abuse, neglect, financial exploitation, or abandonment to any person so requesting this information. This information must also be shared with the department of health to advance the purposes of chapter 18.88B RCW.

(4) For the purposes of this section, "provider" means:

(a) An individual provider as defined in RCW 74.39A.240;

(b) An employee, licensee, or contractor of any of the following: A home care agency licensed under chapter 70.127 RCW; a nursing home under chapter 18.51 RCW; an assisted living facility under chapter 18.20 RCW; an enhanced services facility under chapter 70.97 RCW; a certified resident services and supports agency licensed or certified under chapter 71A.12 RCW; an adult family home under chapter 70.128 RCW; or any long-term care facility certified to provide medicaid or medicare services; and

(c) Any contractor of the department who may have unsupervised access to vulnerable adults.

(5) The department shall adopt rules to implement this section. [2023 c 223 s 4; 2021 c 203 s 3; 2020 c 270 s 8; 2018 c 278 s 8; 2012 c 164 s 503; 2012 c 1 s 101 (Initiative Measure No. 1163, approved November 8, 2011).]

Effective date—Retroactive application—2021 c 203: See notes following RCW 43.43.832.

Effective date—2020 c 270: See note following RCW 74.13.720.

Findings—Intent—2018 c 278: See note following RCW 74.39A.500.

Finding—Intent—Rules—Effective date—2012 c 164: See notes following RCW 18.88B.010.

Intent—Findings—2012 c 1 (Initiative Measure No. 1163): "It is the intent of the people through this initiative to protect vulnerable elderly and people with disabilities by reinstating the requirement that all long-term care workers obtain criminal background checks and adequate training. The people of the state of Washington find as follows:

(1) The state legislature proposes to eliminate the requirement that long-term care workers obtain criminal background checks and adequate training, which would jeopardize the safety and quality care of vulnerable elderly and persons with disabilities. Should the legislature take this action, this initiative will reinstate these critical protections for vulnerable elderly and persons with disabilities; and

(2) Taxpayers' investment will be protected by requiring regular program audits, including fraud investigations, and capping administrative expenses." [2012 c 1 s 1 (Initiative Measure No. 1163, approved November 8, 2011).]

Audits—2022 c 148; 2012 c 164; 2012 c 1 (Initiative Measure No. 1163): "The state auditor shall conduct audits of the long-term in-home care program after consultation with affected disability and aging stakeholder groups. The first audit must be completed within twelve months after January 7, 2012, and must be completed on a biennial basis thereafter. As part of this auditing process, the state shall hire five additional 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. An audit conducted by the state auditor under the authority of RCW 43.09.020 and 43.09.050(2) may satisfy this requirement, provided that a performance audit of the program was completed in the

preceding biennium." [2022 c 148 s 7; 2012 c 164 s 709; 2012 c 1 s 201 (Initiative Measure No. 1163, approved November 8, 2011).]

Spending limits—2012 c 1 (Initiative Measure No. 1163): "The people hereby establish limits on the percentage of tax revenues that can be used for administrative expenses in the long-term in-home care program. Within one hundred eighty days of January 7, 2012, the state shall prepare a plan to cap administrative expenses so that at least ninety percent of taxpayer spending must be devoted to direct care. This limitation must be achieved within two years from January 7, 2012." [2012 c 1 s 202 (Initiative Measure No. 1163, approved November 8, 2011).]

Contingent effective dates—2012 c 1 (Initiative Measure No. 1163): "(1) Sections 101 and 115(6) of this act only take effect if RCW 74.39A.055 is amended or repealed by the legislature in 2011.
(2) Sections 102 and 115(10) of this act only take effect if RCW 74.39A.260 is amended or repealed by the legislature in 2011.
(3) Sections 103 and 115(1) of this act only take effect if RCW 18.88B.020 is amended or repealed by the legislature in 2011.
(4) Sections 104 and 115(2) of this act only take effect if RCW 18.88B.030 is amended or repealed by the legislature in 2011.
(5) Sections 105 and 115(3) of this act only take effect if RCW 18.88B.040 is amended or repealed by the legislature in 2011.
(6) Sections 106 and 115(5) of this act only take effect if RCW 74.39A.050 is amended or repealed by the legislature in 2011.
(7) Sections 107 and 115(7) of this act only take effect if RCW 74.39A.073 is amended or repealed by the legislature in 2011.
(8) Sections 108 and 115(8) of this act only take effect if RCW 74.39A.075 is amended or repealed by the legislature in 2011.
(9) Sections 109 and 115(9) of this act only take effect if RCW 74.39A.085 is amended or repealed by the legislature in 2011.
(10) Sections 110 and 115(11) of this act only take effect if RCW 74.39A.310 is amended or repealed by the legislature in 2011.
(11) Sections 111 and 115(12) of this act only take effect if RCW 74.39A.330 is amended or repealed by the legislature in 2011.
(12) Sections 112 and 115(13) of this act only take effect if RCW 74.39A.340 is amended or repealed by the legislature in 2011.
(13) Sections 113 and 115(14) of this act only take effect if RCW 74.39A.350 is amended or repealed by the legislature in 2011.
(14) Sections 114 and 115(4) of this act only take effect if RCW 74.39A.009 is amended or repealed by the legislature in 2011.
(15) Section 303 of this act takes effect only if one or more other sections of this act take effect pursuant to paragraphs (1) through (14) of this section." [2012 c 1 s 301 (Initiative Measure No. 1163, approved November 8, 2011).]

Application—2012 c 1 (Initiative Measure No. 1163): "Notwithstanding any action of the legislature during 2011, all long-term care workers as defined under RCW 74.39A.009(16), as it existed on April 1, 2011, are covered by sections 101 through 113 of this act or by the corresponding original versions of the statutes, as referenced in section 302 (1) through (13) on the schedules set forth in those sections, as amended by chapter 164, Laws of 2012, except that long-term care workers employed by community residential service businesses are exempt to the extent provided in RCW 18.88B.041,

74.39A.056, 74.39A.074, 74.39A.331, 74.39A.341, and 74.39A.351." [2012 c 164 s 710; 2012 c 1 s 303 (Initiative Measure No. 1163, approved November 8, 2011).]

Construction—2012 c 1 (Initiative Measure No. 1163): "The provisions of this act are to be liberally construed to effectuate the intent, policies, and purposes of this act." [2012 c 1 s 305 (Initiative Measure No. 1163, approved November 8, 2011).]

Effective date—2012 c 1 (Initiative Measure No. 1163): "This act takes effect sixty days from its *enactment by the people [January 7, 2012]." [2012 c 1 s 307 (Initiative Measure No. 1163, approved November 8, 2011).]

***Reviser's note:** Initiative Measure No. 1163 was approved by a vote of the people November 8, 2011. The secretary of state has determined that the effective date of Initiative Measure No. 1163 is January 7, 2012.

Short title—2012 c 1 (Initiative Measure No. 1163): "This act may be known and cited as the restoring quality home care initiative." [2012 c 1 s 308 (Initiative Measure No. 1163, approved November 8, 2011).]