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**SUBSTITUTE HOUSE BILL 1120**

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**State of Washington**

**67th Legislature**

**2021 Regular Session**

**By** House Health Care & Wellness (originally sponsored by Representatives Tharinger, Harris, Cody, Riccelli, Stonier, and Macri; by request of Department of Social and Health Services)

READ FIRST TIME 01/29/21.

1 AN ACT Relating to state of emergency operations impacting long-  
2 term services and supports; amending RCW 43.43.832, 43.43.837,  
3 74.39A.056, 18.51.091, 18.51.230, 74.42.360, 74.39A.074, 74.39A.076,  
4 74.39A.341, 18.88B.021, 70.128.230, 18.20.270, 70.128.070, 70.97.160,  
5 18.20.110, 18.88A.030, and 18.88A.087; creating a new section; and  
6 declaring an emergency.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 **Sec. 1.** RCW 43.43.832 and 2020 c 270 s 7 are each amended to  
9 read as follows:

10 (1) The Washington state patrol identification and criminal  
11 history section shall disclose conviction records as follows:

12 (a) An applicant's conviction record, upon the request of a  
13 business or organization as defined in RCW 43.43.830, a  
14 developmentally disabled person, or a vulnerable adult as defined in  
15 RCW 43.43.830 or his or her guardian;

16 (b) The conviction record of an applicant for certification, upon  
17 the request of the Washington professional educator standards board;

18 (c) Any conviction record to aid in the investigation and  
19 prosecution of child, developmentally disabled person, and vulnerable  
20 adult abuse cases and to protect children and adults from further  
21 incidents of abuse, upon the request of a law enforcement agency, the

1 office of the attorney general, prosecuting authority, or the  
2 department of social and health services; and

3 (d) A prospective client's or resident's conviction record, upon  
4 the request of a business or organization that qualifies for  
5 exemption under section 501(c)(3) of the internal revenue code of  
6 1986 (26 U.S.C. Sec. 501(c)(3)) and that provides emergency shelter  
7 or transitional housing for children, persons with developmental  
8 disabilities, or vulnerable adults.

9 (2) The secretary of the department of social and health services  
10 and the secretary of children, youth, and families must establish  
11 rules and set standards to require specific action when considering  
12 the information received pursuant to subsection (1) of this section,  
13 and when considering additional information including but not limited  
14 to civil adjudication proceedings as defined in RCW 43.43.830 and any  
15 out-of-state equivalent, in the following circumstances:

16 (a) When considering persons for state employment in positions  
17 directly responsible for the supervision, care, or treatment of  
18 children, vulnerable adults, or individuals with mental illness or  
19 developmental disabilities provided that: For persons residing in a  
20 home that will be utilized to provide foster care for dependent  
21 youth, a criminal background check will be required for all persons  
22 aged sixteen and older and the department of social and health  
23 services may require a criminal background check for persons who are  
24 younger than sixteen in situations where it may be warranted to  
25 ensure the safety of youth in foster care;

26 (b) When considering persons for state positions involving  
27 unsupervised access to vulnerable adults to conduct comprehensive  
28 assessments, financial eligibility determinations, licensing and  
29 certification activities, investigations, surveys, or case  
30 management; or for state positions otherwise required by federal law  
31 to meet employment standards;

32 (c) When licensing agencies or facilities with individuals in  
33 positions directly responsible for the care, supervision, or  
34 treatment of children, developmentally disabled persons, or  
35 vulnerable adults, including but not limited to agencies or  
36 facilities licensed under chapter 74.15 or 18.51 RCW;

37 (d) When contracting with individuals or businesses or  
38 organizations for the care, supervision, case management, or  
39 treatment, including peer counseling, of children, developmentally  
40 disabled persons, or vulnerable adults, including but not limited to

1 services contracted for under chapter 18.20, 70.127, 70.128, 72.36,  
2 or 74.39A RCW or Title 71A RCW;

3 (e) When individual providers as defined in RCW 74.39A.240 or  
4 providers paid by home care agencies provide in-home services  
5 involving unsupervised access to persons with physical, mental, or  
6 developmental disabilities or mental illness, or to vulnerable adults  
7 as defined in chapter 74.34 RCW, including but not limited to  
8 services provided under chapter 74.39 or 74.39A RCW.

9 (3) The secretary of the department of children, youth, and  
10 families shall investigate the conviction records, pending charges,  
11 and other information including civil adjudication proceeding records  
12 of current employees and of any person actively being considered for  
13 any position with the department who will or may have unsupervised  
14 access to children, or for state positions otherwise required by  
15 federal law to meet employment standards. "Considered for any  
16 position" includes decisions about (a) initial hiring, layoffs,  
17 reallocations, transfers, promotions, or demotions, or (b) other  
18 decisions that result in an individual being in a position that will  
19 or may have unsupervised access to children as an employee, an  
20 intern, or a volunteer.

21 (4) The secretary of the department of children, youth, and  
22 families shall adopt rules and investigate conviction records,  
23 pending charges, and other information including civil adjudication  
24 proceeding records, in the following circumstances:

25 (a) When licensing or certifying agencies with individuals in  
26 positions that will or may have unsupervised access to children who  
27 are in child day care, in early learning programs, or receiving early  
28 childhood education services, including but not limited to licensees,  
29 agency staff, interns, volunteers, contracted providers, and persons  
30 living on the premises who are sixteen years of age or older;

31 (b) When authorizing individuals who will or may have  
32 unsupervised access to children who are in child day care, in early  
33 learning programs, or receiving early childhood learning education  
34 services in licensed or certified agencies, including but not limited  
35 to licensees, agency staff, interns, volunteers, contracted  
36 providers, and persons living on the premises who are sixteen years  
37 of age or older;

38 (c) When contracting with any business or organization for  
39 activities that will or may have unsupervised access to children who

1 are in child day care, in early learning programs, or receiving early  
2 childhood learning education services;

3 (d) When establishing the eligibility criteria for individual  
4 providers to receive state paid subsidies to provide child day care  
5 or early learning services that will or may involve unsupervised  
6 access to children; and

7 (e) When responding to a request from an individual for a  
8 certificate of parental improvement under chapter 74.13 RCW.

9 (5) Whenever a state conviction record check is required by state  
10 law, persons may be employed or engaged as volunteers or independent  
11 contractors on a conditional basis pending completion of the state  
12 background investigation. Whenever a national criminal record check  
13 through the federal bureau of investigation is required by state law,  
14 a person may be employed or engaged as a volunteer or independent  
15 contractor on a conditional basis pending completion of the national  
16 check. The office of financial management shall adopt rules to  
17 accomplish the purposes of this subsection as it applies to state  
18 employees. The department of social and health services shall adopt  
19 rules to accomplish the purpose of this subsection as it applies to  
20 long-term care workers subject to RCW 74.39A.056.

21 (6) (a) For purposes of facilitating timely access to criminal  
22 background information and to reasonably minimize the number of  
23 requests made under this section, recognizing that certain health  
24 care providers change employment frequently, health care facilities  
25 may, upon request from another health care facility, share copies of  
26 completed criminal background inquiry information.

27 (b) Completed criminal background inquiry information may be  
28 shared by a willing health care facility only if the following  
29 conditions are satisfied: The licensed health care facility sharing  
30 the criminal background inquiry information is reasonably known to be  
31 the person's most recent employer, no more than twelve months has  
32 elapsed from the date the person was last employed at a licensed  
33 health care facility to the date of their current employment  
34 application, and the criminal background information is no more than  
35 two years old.

36 (c) If criminal background inquiry information is shared, the  
37 health care facility employing the subject of the inquiry must  
38 require the applicant to sign a disclosure statement indicating that  
39 there has been no conviction or finding as described in RCW 43.43.842

1 since the completion date of the most recent criminal background  
2 inquiry.

3 (d) Any health care facility that knows or has reason to believe  
4 that an applicant has or may have a disqualifying conviction or  
5 finding as described in RCW 43.43.842, subsequent to the completion  
6 date of their most recent criminal background inquiry, shall be  
7 prohibited from relying on the applicant's previous employer's  
8 criminal background inquiry information. A new criminal background  
9 inquiry shall be requested pursuant to RCW 43.43.830 through  
10 43.43.842.

11 (e) Health care facilities that share criminal background inquiry  
12 information shall be immune from any claim of defamation, invasion of  
13 privacy, negligence, or any other claim in connection with any  
14 dissemination of this information in accordance with this subsection.

15 (f) Health care facilities shall transmit and receive the  
16 criminal background inquiry information in a manner that reasonably  
17 protects the subject's rights to privacy and confidentiality.

18 (7) The department of social and health services may not consider  
19 any final founded finding of physical abuse or negligent treatment or  
20 maltreatment of a child made pursuant to chapter 26.44 RCW that is  
21 accompanied by a certificate of parental improvement or dependency as  
22 a result of a finding of abuse or neglect pursuant to chapter 13.34  
23 RCW that is accompanied by a certificate of parental improvement when  
24 evaluating an applicant or employee's character, competency, and  
25 suitability pursuant to any background check authorized or required  
26 by this chapter, RCW 43.20A.710 or 74.39A.056, or any of the rules  
27 adopted thereunder.

28 **Sec. 2.** RCW 43.43.837 and 2019 c 470 s 12 are each amended to  
29 read as follows:

30 (1) Except as provided in subsection (2) of this section, in  
31 order to determine the character, competence, and suitability of any  
32 applicant or service provider to have unsupervised access, the  
33 secretary of the department of social and health services and the  
34 secretary of the department of children, youth, and families may  
35 require a fingerprint-based background check through both the  
36 Washington state patrol and the federal bureau of investigation at  
37 any time, but shall require a fingerprint-based background check when  
38 the applicant or service provider has resided in the state less than  
39 three consecutive years before application, and:

1 (a) Is an applicant or service provider providing services to  
2 children or people with developmental disabilities under RCW  
3 74.15.030;

4 (b) Is an individual sixteen years of age or older who: (i) Is  
5 not under the placement and care authority of the department of  
6 children, youth, and families; and (ii) resides in an applicant or  
7 service provider's home, facility, entity, agency, or business or who  
8 is authorized by the department of children, youth, and families to  
9 provide services to children under RCW 74.15.030;

10 (c) Is an individual who is authorized by the department of  
11 social and health services to provide services to people with  
12 developmental disabilities under RCW 74.15.030; or

13 (d) Is an applicant or service provider providing in-home  
14 services funded by:

15 (i) Medicaid personal care under RCW 74.09.520;

16 (ii) Community options program entry system waiver services under  
17 RCW 74.39A.030;

18 (iii) Chore services under RCW 74.39A.110; or

19 (iv) Other home and community long-term care programs,  
20 established pursuant to chapters 74.39 and 74.39A RCW, administered  
21 by the department of social and health services.

22 (2) Long-term care workers, as defined in RCW 74.39A.009, who are  
23 hired after January 7, 2012, are subject to background checks under  
24 RCW 74.39A.056.

25 (3) To satisfy the shared background check requirements provided  
26 for in RCW 43.216.270 and 43.20A.710, the department of children,  
27 youth, and families and the department of social and health services  
28 shall share federal fingerprint-based background check results as  
29 permitted under the law. The purpose of this provision is to allow  
30 both departments to fulfill their joint background check  
31 responsibility of checking any individual who may have unsupervised  
32 access to vulnerable adults, children, or juveniles. Neither  
33 department may share the federal background check results with any  
34 other state agency or person.

35 (4) The secretary of the department of children, youth, and  
36 families shall require a fingerprint-based background check through  
37 the Washington state patrol identification and criminal history  
38 section and the federal bureau of investigation when the department  
39 seeks to approve an applicant or service provider for a foster or  
40 adoptive placement of children in accordance with federal and state

1 law. Fees charged by the Washington state patrol and the federal  
2 bureau of investigation for fingerprint-based background checks shall  
3 be paid by the department of children, youth, and families for  
4 applicant and service providers providing foster care as required in  
5 RCW 74.15.030.

6 (5) Any secure facility operated by the department of social and  
7 health services or the department of children, youth, and families  
8 under chapter 71.09 RCW shall require applicants and service  
9 providers to undergo a fingerprint-based background check through the  
10 Washington state patrol identification and criminal history section  
11 and the federal bureau of investigation.

12 (6) Service providers and service provider applicants, except for  
13 those long-term care workers exempted in subsection (2) of this  
14 section, who are required to complete a fingerprint-based background  
15 check may be hired for a one hundred twenty-day provisional period as  
16 allowed under law or program rules when:

17 (a) A fingerprint-based background check is pending; and

18 (b) The applicant or service provider is not disqualified based  
19 on the immediate result of the background check.

20 (7) Fees charged by the Washington state patrol and the federal  
21 bureau of investigation for fingerprint-based background checks shall  
22 be paid by the applicable department for applicants or service  
23 providers providing:

24 (a) Services to people with a developmental disability under RCW  
25 74.15.030;

26 (b) In-home services funded by medicaid personal care under RCW  
27 74.09.520;

28 (c) Community options program entry system waiver services under  
29 RCW 74.39A.030;

30 (d) Chore services under RCW 74.39A.110;

31 (e) Services under other home and community long-term care  
32 programs, established pursuant to chapters 74.39 and 74.39A RCW,  
33 administered by the department of social and health services or the  
34 department of children, youth, and families; and

35 (f) Services in, or to residents of, a secure facility under RCW  
36 71.09.115.

37 (8) Service providers licensed under RCW 74.15.030 must pay fees  
38 charged by the Washington state patrol and the federal bureau of  
39 investigation for conducting fingerprint-based background checks.

1 (9) Department of children, youth, and families service providers  
2 licensed under RCW 74.15.030 may not pass on the cost of the  
3 background check fees to their applicants unless the individual is  
4 determined to be disqualified due to the background information.

5 (10) The department of social and health services and the  
6 department of children, youth, and families shall develop rules  
7 identifying the financial responsibility of service providers,  
8 applicants, and the department for paying the fees charged by law  
9 enforcement to roll, print, or scan fingerprints-based for the  
10 purpose of a Washington state patrol or federal bureau of  
11 investigation fingerprint-based background check.

12 (11) For purposes of this section, unless the context plainly  
13 indicates otherwise:

14 (a) "Applicant" means a current or prospective department of  
15 social and health services, department of children, youth, and  
16 families, or service provider employee, volunteer, student, intern,  
17 researcher, contractor, or any other individual who will or may have  
18 unsupervised access because of the nature of the work or services he  
19 or she provides. "Applicant" includes but is not limited to any  
20 individual who will or may have unsupervised access and is:

21 (i) Applying for a license or certification from the department  
22 of social and health services or the department of children, youth,  
23 and families;

24 (ii) Seeking a contract with the department of social and health  
25 services, the department of children, youth, and families, or a  
26 service provider;

27 (iii) Applying for employment, promotion, reallocation, or  
28 transfer;

29 (iv) An individual that a department of social and health  
30 services or department of children, youth, and families client or  
31 guardian of a department of social and health services or department  
32 of children, youth, and families client chooses to hire or engage to  
33 provide services to himself or herself or another vulnerable adult,  
34 juvenile, or child and who might be eligible to receive payment from  
35 the department of social and health services or the department of  
36 children, youth, and families for services rendered; or

37 (v) A department of social and health services or department of  
38 children, youth, and families applicant who will or may work in a  
39 department-covered position.



1 (b) "Authorized" means the department of social and health  
2 services or the department of children, youth, and families grants an  
3 applicant, home, or facility permission to:

4 (i) Conduct licensing, certification, or contracting activities;

5 (ii) Have unsupervised access to vulnerable adults, juveniles,  
6 and children;

7 (iii) Receive payments from a department of social and health  
8 services or department of children, youth, and families program; or

9 (iv) Work or serve in a department of social and health services  
10 or department of children, youth, and families-covered position.

11 (c) "Secretary" means the secretary of the department of social  
12 and health services.

13 (d) "Secure facility" has the meaning provided in RCW 71.09.020.

14 (e) "Service provider" means entities, facilities, agencies,  
15 businesses, or individuals who are licensed, certified, authorized,  
16 or regulated by, receive payment from, or have contracts or  
17 agreements with the department of social and health services or the  
18 department of children, youth, and families to provide services to  
19 vulnerable adults, juveniles, or children. "Service provider"  
20 includes individuals whom a department of social and health services  
21 or department of children, youth, and families client or guardian of  
22 a department of social and health services or department of children,  
23 youth, and families client may choose to hire or engage to provide  
24 services to himself or herself or another vulnerable adult, juvenile,  
25 or child and who might be eligible to receive payment from the  
26 department of social and health services or the department of  
27 children, youth, and families for services rendered. (~~"Service  
28 provider" does not include those certified under chapter 70.96A  
29 RCW.~~)

30 **Sec. 3.** RCW 74.39A.056 and 2020 c 270 s 8 are each amended to  
31 read as follows:

32 (1)(a) All long-term care workers shall be screened through state  
33 and federal background checks in a uniform and timely manner to  
34 verify that they do not have a history that would disqualify them  
35 from working with vulnerable persons. The department must process  
36 background checks for long-term care workers and make the information  
37 available to employers, prospective employers, and others as  
38 authorized by law.

1 (b) (i) Except as provided in (b) (ii) of this subsection, for  
2 long-term care workers hired on or after January 7, 2012, the  
3 background checks required under this section shall include checking  
4 against the federal bureau of investigation fingerprint  
5 identification records system (~~(and against the national sex~~  
6 ~~offenders registry or their successor programs)~~ or its successor  
7 program). The department shall require these long-term care workers to  
8 submit fingerprints for the purpose of investigating conviction  
9 records through both the Washington state patrol and the federal  
10 bureau of investigation. The department shall not pass on the cost of  
11 these criminal background checks to the workers or their employers.

12 (ii) (~~(This subsection does not apply to long-term care workers~~  
13 ~~employed by community residential service businesses until January 1,~~  
14 ~~2016.)~~) A long-term care worker who is not disqualified by the state  
15 background check can work and have unsupervised access pending the  
16 results of the federal bureau of investigation fingerprint check as  
17 allowed by rules adopted by the department.

18 (c) The department shall share state and federal background check  
19 results with the department of health in accordance with RCW  
20 18.88B.080.

21 (d) Background check screening required under this section and  
22 department rules is not required for an employee of a consumer  
23 directed employer if all of the following circumstances apply:

24 (i) The individual has an individual provider contract with the  
25 department;

26 (ii) The last background check on the contracted individual  
27 provider is still valid under department rules and did not disqualify  
28 the individual from providing personal care services;

29 (iii) Employment by the consumer directed employer is the only  
30 reason a new background check would be required; and

31 (iv) The department's background check results have been shared  
32 with the consumer directed employer.

33 (e) The department may require a fingerprint-based background  
34 check through both the Washington state patrol and the federal bureau  
35 of investigation at any time.

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

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

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

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

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

18 (3) The department shall establish, by rule, a state registry  
19 which contains identifying information about long-term care workers  
20 identified under this chapter who have final substantiated findings  
21 of abuse, neglect, financial exploitation, or abandonment of a  
22 vulnerable adult as defined in RCW 74.34.020. The rule must include  
23 disclosure, disposition of findings, notification, findings of fact,  
24 appeal rights, and fair hearing requirements. The department shall  
25 disclose, upon request, final substantiated findings of abuse,  
26 neglect, financial exploitation, or abandonment to any person so  
27 requesting this information. This information must also be shared  
28 with the department of health to advance the purposes of chapter  
29 18.88B RCW.

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

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

32 (b) An employee, licensee, or contractor of any of the following:  
33 A home care agency licensed under chapter 70.127 RCW; a nursing home  
34 under chapter 18.51 RCW; an assisted living facility under chapter  
35 18.20 RCW; an enhanced services facility under chapter 70.97 RCW; a  
36 certified resident services and supports agency licensed or certified  
37 under chapter 71A.12 RCW; an adult family home under chapter 70.128  
38 RCW; or any long-term care facility certified to provide medicaid or  
39 medicare services; and

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

3 (5) The department shall adopt rules to implement this section.

4 **Sec. 4.** RCW 18.51.091 and 2020 c 263 s 1 are each amended to  
5 read as follows:

6 (1) The department shall inspect each nursing home periodically  
7 in accordance with federal standards under 42 C.F.R. Part 488,  
8 Subpart E. The inspection shall be made without providing advance  
9 notice of it. Every inspection may include an inspection of every  
10 part of the premises and an examination of all records, methods of  
11 administration, the general and special dietary and the stores and  
12 methods of supply. Those nursing homes that provide community-based  
13 care shall establish and maintain separate and distinct accounting  
14 and other essential records for the purpose of appropriately  
15 allocating costs of the providing of such care: PROVIDED, That such  
16 costs shall not be considered allowable costs for reimbursement  
17 purposes under chapter 74.46 RCW. Following such inspection or  
18 inspections, written notice of any violation of this law or the rules  
19 and regulations promulgated hereunder, shall be given to the  
20 applicant or licensee and the department. The notice shall describe  
21 the reasons for the facility's noncompliance. The department may  
22 prescribe by regulations that any licensee or applicant desiring to  
23 make specified types of alterations or additions to its facilities or  
24 to construct new facilities shall, before commencing such alteration,  
25 addition or new construction, submit its plans and specifications  
26 therefor to the department for preliminary inspection and approval or  
27 recommendations with respect to compliance with the regulations and  
28 standards herein authorized.

29 (2) If a pandemic, natural disaster, or other declared state of  
30 emergency prevents the department from completing inspections  
31 according to the timeline in subsection (1) of this section, the  
32 department shall adopt rules to reestablish inspection timelines  
33 based on the length of time since the last complete inspection,  
34 compliance history of each facility, immediate health or safety  
35 concerns, and centers for medicare and medicaid services  
36 requirements. Rules adopted under this subsection are effective only  
37 during the pandemic, natural disaster, or other declared state of  
38 emergency.

1       **Sec. 5.** RCW 18.51.230 and 2020 c 263 s 2 are each amended to  
2 read as follows:

3       (1) The department shall, in addition to any inspections  
4 conducted pursuant to complaints filed pursuant to RCW 18.51.190,  
5 conduct a periodic general inspection of each nursing home in the  
6 state without providing advance notice of such inspection. Such  
7 inspections must conform to the federal standards for surveys under  
8 42 C.F.R. Part 488, Subpart E.

9       (2) If a pandemic, natural disaster, or other declared state of  
10 emergency prevents the department from completing inspections  
11 according to the timeline in subsection (1) of this section, the  
12 department shall adopt rules to reestablish inspection timelines  
13 based on the length of time since the last complete inspection,  
14 compliance history of each facility, immediate health or safety  
15 concerns, and centers for medicare and medicaid services  
16 requirements. Rules adopted under this subsection are effective only  
17 during the pandemic, natural disaster, or other declared state of  
18 emergency.

19       **Sec. 6.** RCW 74.42.360 and 2020 c 263 s 3 are each amended to  
20 read as follows:

21       (1) The facility shall have staff on duty twenty-four hours daily  
22 sufficient in number and qualifications to carry out the provisions  
23 of RCW 74.42.010 through 74.42.570 and the policies,  
24 responsibilities, and programs of the facility.

25       (2) The department shall institute minimum staffing standards for  
26 nursing homes. Beginning July 1, 2016, facilities must provide a  
27 minimum of 3.4 hours per resident day of direct care. Direct care  
28 staff has the same meaning as defined in RCW 74.42.010. The minimum  
29 staffing standard includes the time when such staff are providing  
30 hands-on care related to activities of daily living and nursing-  
31 related tasks, as well as care planning. The legislature intends to  
32 increase the minimum staffing standard to 4.1 hours per resident day  
33 of direct care, but the effective date of a standard higher than 3.4  
34 hours per resident day of direct care will be identified if and only  
35 if funding is provided explicitly for an increase of the minimum  
36 staffing standard for direct care.

37       (a) The department shall establish in rule a system of compliance  
38 of minimum direct care staffing standards by January 1, 2016.  
39 Oversight must be done at least quarterly using the centers for

1 medicare and medicaid services' payroll-based journal and nursing  
2 home facility census and payroll data.

3 (b) The department shall establish in rule by January 1, 2016, a  
4 system of financial penalties for facilities out of compliance with  
5 minimum staffing standards. No monetary penalty may be issued during  
6 the implementation period of July 1, 2016, through September 30,  
7 2016. If a facility is found noncompliant during the implementation  
8 period, the department shall provide a written notice identifying the  
9 staffing deficiency and require the facility to provide a  
10 sufficiently detailed correction plan to meet the statutory minimum  
11 staffing levels. Monetary penalties begin October 1, 2016. Monetary  
12 penalties must be established based on a formula that calculates the  
13 cost of wages and benefits for the missing staff hours. If a facility  
14 meets the requirements in subsection (3) or (4) of this section, the  
15 penalty amount must be based solely on the wages and benefits of  
16 certified nurse aides. The first monetary penalty for noncompliance  
17 must be at a lower amount than subsequent findings of noncompliance.  
18 Monetary penalties established by the department may not exceed two  
19 hundred percent of the wage and benefit costs that would have  
20 otherwise been expended to achieve the required staffing minimum  
21 hours per resident day for the quarter. A facility found out of  
22 compliance must be assessed a monetary penalty at the lowest penalty  
23 level if the facility has met or exceeded the requirements in  
24 subsection (2) of this section for three or more consecutive years.  
25 Beginning July 1, 2016, pursuant to rules established by the  
26 department, funds that are received from financial penalties must be  
27 used for technical assistance, specialized training, or an increase  
28 to the quality enhancement established in RCW 74.46.561.

29 (c) The department shall establish in rule an exception allowing  
30 geriatric behavioral health workers as defined in RCW 74.42.010 to be  
31 recognized in the minimum staffing requirements as part of the direct  
32 care service delivery to individuals who have a behavioral health  
33 condition. Hours worked by geriatric behavioral health workers may be  
34 recognized as direct care hours for purposes of the minimum staffing  
35 requirements only up to a portion of the total hours equal to the  
36 proportion of resident days of clients with a behavioral health  
37 condition identified at that facility on the most recent semiannual  
38 minimum data set. In order to qualify for the exception:

39 (i) The worker must:

1 (A) Have a bachelor's or master's degree in social work,  
2 behavioral health, or other related areas; or

3 (B) Have at least three years experience providing care for  
4 individuals with chronic mental health issues, dementia, or  
5 intellectual and developmental disabilities in a long-term care or  
6 behavioral health care setting; or

7 (C) Have successfully completed a facility-based behavioral  
8 health curriculum approved by the department under RCW 74.39A.078;

9 (ii) Any geriatric behavioral health worker holding less than a  
10 master's degree in social work must be directly supervised by an  
11 employee who has a master's degree in social work or a registered  
12 nurse.

13 (d) (i) The department shall establish a limited exception to the  
14 3.4 hours per resident day staffing requirement for facilities  
15 demonstrating a good faith effort to hire and retain staff.

16 (ii) To determine initial facility eligibility for exception  
17 consideration, the department shall send surveys to facilities  
18 anticipated to be below, at, or slightly above the 3.4 hours per  
19 resident day requirement. These surveys must measure the hours per  
20 resident day in a manner as similar as possible to the centers for  
21 medicare and medicaid services' payroll-based journal and cover the  
22 staffing of a facility from October through December of 2015, January  
23 through March of 2016, and April through June of 2016. A facility  
24 must be below the 3.4 staffing standard on all three surveys to be  
25 eligible for exception consideration. If the staffing hours per  
26 resident day for a facility declines from any quarter to another  
27 during the survey period, the facility must provide sufficient  
28 information to the department to allow the department to determine if  
29 the staffing decrease was deliberate or a result of neglect, which is  
30 the lack of evidence demonstrating the facility's efforts to maintain  
31 or improve its staffing ratio. The burden of proof is on the facility  
32 and the determination of whether or not the decrease was deliberate  
33 or due to neglect is entirely at the discretion of the department. If  
34 the department determines a facility's decline was deliberate or due  
35 to neglect, that facility is not eligible for an exception  
36 consideration.

37 (iii) To determine eligibility for exception approval, the  
38 department shall review the plan of correction submitted by the  
39 facility. Before a facility's exception may be renewed, the  
40 department must determine that sufficient progress is being made

1 towards reaching the 3.4 hours per resident day staffing requirement.  
2 When reviewing whether to grant or renew an exception, the department  
3 must consider factors including but not limited to: Financial  
4 incentives offered by the facilities such as recruitment bonuses and  
5 other incentives; the robustness of the recruitment process; county  
6 employment data; specific steps the facility has undertaken to  
7 improve retention; improvements in the staffing ratio compared to the  
8 baseline established in the surveys and whether this trend is  
9 continuing; and compliance with the process of submitting staffing  
10 data, adherence to the plan of correction, and any progress toward  
11 meeting this plan, as determined by the department.

12 (iv) Only facilities that have their direct care component rate  
13 increase capped according to RCW 74.46.561 are eligible for exception  
14 consideration. Facilities that will have their direct care component  
15 rate increase capped for one or two years are eligible for exception  
16 consideration through June 30, 2017. Facilities that will have their  
17 direct care component rate increase capped for three years are  
18 eligible for exception consideration through June 30, 2018.

19 (v) The department may not grant or renew a facility's exception  
20 if the facility meets the 3.4 hours per resident day staffing  
21 requirement and subsequently drops below the 3.4 hours per resident  
22 day staffing requirement.

23 (vi) The department may grant exceptions for a six-month period  
24 per exception. The department's authority to grant exceptions to the  
25 3.4 hours per resident day staffing requirement expires June 30,  
26 2018.

27 (3)(a) Large nonessential community providers must have a  
28 registered nurse on duty directly supervising resident care twenty-  
29 four hours per day, seven days per week.

30 (b)(i) The department shall establish a limited exception process  
31 for large nonessential community providers that can demonstrate a  
32 good faith effort to hire a registered nurse for the last eight hours  
33 of required coverage per day. In granting an exception, the  
34 department may consider the competitiveness of the wages and benefits  
35 offered as compared to nursing facilities in comparable geographic or  
36 metropolitan areas within Washington state, the provider's  
37 recruitment and retention efforts, and the availability of registered  
38 nurses in the particular geographic area. A one-year exception may be  
39 granted and may be renewable; however, the department may limit the  
40 admission of new residents, based on medical conditions or



1 complexities, when a registered nurse is not on-site and readily  
2 available. If a large nonessential community provider receives an  
3 exception, that information must be included in the department's  
4 nursing home locator.

5 (ii) By August 1, 2023, and every three years thereafter, the  
6 department, along with a stakeholder work group established by the  
7 department, shall conduct a review of the exceptions process to  
8 determine if it is still necessary. As part of this review, the  
9 department shall provide the legislature with a report that includes  
10 enforcement and citation data for large nonessential community  
11 providers that were granted an exception in the three previous fiscal  
12 years in comparison to those without an exception. The report must  
13 include a similar comparison of data, provided to the department by  
14 the long-term care ombuds, on long-term care ombuds referrals for  
15 large nonessential community providers that were granted an exception  
16 in the three previous fiscal years and those without an exception.  
17 This report, along with a recommendation as to whether the exceptions  
18 process should continue, is due to the legislature by December 1st of  
19 each year in which a review is conducted. Based on the  
20 recommendations outlined in this report, the legislature may take  
21 action to end the exceptions process.

22 (4) Essential community providers and small nonessential  
23 community providers must have a registered nurse on duty directly  
24 supervising resident care a minimum of sixteen hours per day, seven  
25 days per week, and a registered nurse or a licensed practical nurse  
26 on duty directly supervising resident care the remaining eight hours  
27 per day, seven days per week.

28 (5) For the purposes of this section, "behavioral health  
29 condition" means one or more of the behavioral symptoms specified in  
30 section E of the minimum data set.

31 (6) If a pandemic, natural disaster, or other declared state of  
32 emergency impedes or prevents facilities from compliance with  
33 subsections (2) through (4) of this section, the department may adopt  
34 rules to grant exceptions to these requirements, waive penalties, and  
35 suspend oversight activities. Facilities must remain in compliance  
36 with subsection (1) of this section. Rules adopted under this  
37 subsection are effective only during the pandemic, natural disaster,  
38 or other declared state of emergency.

1       **Sec. 7.** RCW 74.39A.074 and 2017 c 216 s 1 are each amended to  
2 read as follows:

3       (1) (a) Except for long-term care workers exempt from  
4 certification under RCW 18.88B.041(1)(a), all persons hired as  
5 long-term care workers must meet the minimum training requirements in  
6 this section within one hundred twenty calendar days after the date  
7 of being hired.

8       (b) Except as provided in RCW 74.39A.076, the minimum training  
9 requirement is seventy-five hours of entry-level training approved by  
10 the department. A long-term care worker must successfully complete  
11 five of these seventy-five hours before being eligible to provide  
12 care.

13       (c) Training required by (d) of this subsection applies toward  
14 the training required under RCW 18.20.270 or 70.128.230 or any  
15 statutory or regulatory training requirements for long-term care  
16 workers employed by community residential service businesses.

17       (d) The seventy-five hours of entry-level training required shall  
18 be as follows:

19       (i) Before a long-term care worker is eligible to provide care,  
20 he or she must complete:

21       (A) Two hours of orientation training regarding his or her role  
22 as caregiver and the applicable terms of employment; and

23       (B) Three hours of safety training, including basic safety  
24 precautions, emergency procedures, and infection control; and

25       (ii) Seventy hours of long-term care basic training, including  
26 training related to:

27       (A) Core competencies; and

28       (B) Population specific competencies, including identification of  
29 individuals with potential hearing loss and how to seek assistance if  
30 hearing loss is suspected.

31       (2) Only training curriculum approved by the department may be  
32 used to fulfill the training requirements specified in this section.  
33 The department shall only approve training curriculum that:

34       (a) Has been developed with input from consumer and worker  
35 representatives; and

36       (b) Requires comprehensive instruction by qualified instructors  
37 on the competencies and training topics in this section.

38       (3) Individual providers under RCW 74.39A.270 shall be  
39 compensated for training time required by this section.

1       (4) If a pandemic, natural disaster, or other declared state of  
2 emergency impacts the ability of long-term care workers to complete  
3 training as required by this section, the department may adopt rules  
4 to allow long-term care workers additional time to complete the  
5 training requirements. Rules adopted under this subsection are  
6 effective only during the pandemic, natural disaster, or other  
7 declared state of emergency.

8       (5) The department shall adopt rules to implement this section.

9       **Sec. 8.** RCW 74.39A.076 and 2019 c 363 s 19 are each amended to  
10 read as follows:

11       (1) Beginning January 7, 2012, except for long-term care workers  
12 exempt from certification under RCW 18.88B.041(1) (a):

13       (a) A biological, step, or adoptive parent who is the individual  
14 provider only for the person's developmentally disabled son or  
15 daughter must receive twelve hours of training relevant to the needs  
16 of adults with developmental disabilities within the first one  
17 hundred twenty days after becoming an individual provider.

18       (b) A spouse or registered domestic partner who is a long-term  
19 care worker only for a spouse or domestic partner, pursuant to the  
20 long-term services and supports trust program established in chapter  
21 50B.04 RCW, must receive fifteen hours of basic training, and at  
22 least six hours of additional focused training based on the care-  
23 receiving spouse's or partner's needs, within the first one hundred  
24 twenty days after becoming a long-term care worker.

25       (c) A person working as an individual provider who (i) provides  
26 respite care services only for individuals with developmental  
27 disabilities receiving services under Title 71A RCW or only for  
28 individuals who receive services under this chapter, and (ii) works  
29 three hundred hours or less in any calendar year, must complete  
30 fourteen hours of training within the first one hundred twenty days  
31 after becoming an individual provider. Five of the fourteen hours  
32 must be completed before becoming eligible to provide care, including  
33 two hours of orientation training regarding the caregiving role and  
34 terms of employment and three hours of safety training. The training  
35 partnership identified in RCW 74.39A.360 must offer at least twelve  
36 of the fourteen hours online, and five of those online hours must be  
37 individually selected from elective courses.

38       (d) Individual providers identified in (d)(i) or (ii) of this  
39 subsection must complete thirty-five hours of training within the

1 first one hundred twenty days after becoming an individual provider.  
2 Five of the thirty-five hours must be completed before becoming  
3 eligible to provide care. Two of these five hours shall be devoted to  
4 an orientation training regarding an individual provider's role as  
5 caregiver and the applicable terms of employment, and three hours  
6 shall be devoted to safety training, including basic safety  
7 precautions, emergency procedures, and infection control. Individual  
8 providers subject to this requirement include:

9 (i) An individual provider caring only for the individual  
10 provider's biological, step, or adoptive child or parent unless  
11 covered by (a) of this subsection; and

12 (ii) A person working as an individual provider who provides  
13 twenty hours or less of care for one person in any calendar month.

14 (2) In computing the time periods in this section, the first day  
15 is the date of hire.

16 (3) Only training curriculum approved by the department may be  
17 used to fulfill the training requirements specified in this section.  
18 The department shall only approve training curriculum that:

19 (a) Has been developed with input from consumer and worker  
20 representatives; and

21 (b) Requires comprehensive instruction by qualified instructors.

22 (4) If a pandemic, natural disaster, or other declared state of  
23 emergency impacts the ability of long-term care workers to complete  
24 training as required by this section, the department may adopt rules  
25 to allow long-term care workers additional time to complete the  
26 training requirements. Rules adopted under this subsection are  
27 effective only during the pandemic, natural disaster, or other  
28 declared state of emergency.

29 (5) The department shall adopt rules to implement this section.

30 **Sec. 9.** RCW 74.39A.341 and 2015 c 152 s 3 are each amended to  
31 read as follows:

32 (1) All long-term care workers shall complete twelve hours of  
33 continuing education training in advanced training topics each year.  
34 This requirement applies beginning July 1, 2012.

35 (2) Completion of continuing education as required in this  
36 section is a prerequisite to maintaining home care aide certification  
37 under chapter 18.88B RCW.

38 (3) Unless voluntarily certified as a home care aide under  
39 chapter 18.88B RCW, subsection (1) of this section does not apply to:

1 (a) An individual provider caring only for his or her biological,  
2 step, or adoptive child;

3 (b) Registered nurses and licensed practical nurses licensed  
4 under chapter 18.79 RCW;

5 (c) Before January 1, 2016, a long-term care worker employed by a  
6 community residential service business;

7 (d) A person working as an individual provider who provides  
8 twenty hours or less of care for one person in any calendar month; or

9 (e) A person working as an individual provider who only provides  
10 respite services and works less than three hundred hours in any  
11 calendar year.

12 (4) Only training curriculum approved by the department may be  
13 used to fulfill the training requirements specified in this section.  
14 The department shall only approve training curriculum that:

15 (a) Has been developed with input from consumer and worker  
16 representatives; and

17 (b) Requires comprehensive instruction by qualified instructors.

18 (5) Individual providers under RCW 74.39A.270 shall be  
19 compensated for training time required by this section.

20 (6) If a pandemic, natural disaster, or other declared state of  
21 emergency impacts the ability of long-term care workers to complete  
22 training as required by this section, the department may adopt rules  
23 to allow long-term care workers additional time to complete the  
24 training requirements. Rules adopted under this subsection are  
25 effective only during the pandemic, natural disaster, or other  
26 declared state of emergency.

27 (7) The department of health shall adopt rules to implement  
28 subsection (1) of this section.

29 ~~((7))~~ (8) The department shall adopt rules to implement  
30 subsection (2) of this section.

31 **Sec. 10.** RCW 18.88B.021 and 2013 c 259 s 1 are each amended to  
32 read as follows:

33 (1) Beginning January 7, 2012, except as provided in RCW  
34 18.88B.041, any person hired as a long-term care worker must be  
35 certified as a home care aide as provided in this chapter within two  
36 hundred calendar days after the date of ~~((being hired. In computing~~  
37 ~~the time periods in this subsection, the first day is the date of))~~  
38 hire, as defined by the department. The department may adopt rules  
39 determining under which circumstances a long-term care worker may

1 have more than one date of hire, restarting the person's two hundred  
2 day period to obtain certification as a home care aide.

3 (2) (a) No person may practice or, by use of any title or  
4 description, represent himself or herself as a certified home care  
5 aide without being certified as provided in this chapter.

6 (b) This section does not prohibit a person: (i) From practicing  
7 a profession for which the person has been issued a license or which  
8 is specifically authorized under this state's laws; or (ii) who is  
9 exempt from certification under RCW 18.88B.041 from providing  
10 services as a long-term care worker.

11 (c) In consultation with consumer and worker representatives, the  
12 department shall, by January 1, 2013, establish by rule a single  
13 scope of practice that encompasses both long-term care workers who  
14 are certified home care aides and long-term care workers who are  
15 exempted from certification under RCW 18.88B.041.

16 (3) If a pandemic, natural disaster, or other declared state of  
17 emergency impacts the ability of long-term care workers to complete  
18 certification as required by this section, the department may adopt  
19 rules to allow long-term care workers additional time to become  
20 certified. Rules adopted under this subsection are effective only  
21 during the pandemic, natural disaster, or other declared state of  
22 emergency.

23 (4) The department shall adopt rules to implement this section.

24 **Sec. 11.** RCW 70.128.230 and 2019 c 466 s 5 are each amended to  
25 read as follows:

26 (1) The definitions in this subsection apply throughout this  
27 section unless the context clearly requires otherwise.

28 (a) "Caregiver" includes all adult family home resident managers  
29 and any person who provides residents with hands-on personal care on  
30 behalf of an adult family home, except volunteers who are directly  
31 supervised.

32 (b) "Indirect supervision" means oversight by a person who has  
33 demonstrated competency in the core areas or has been fully exempted  
34 from the training requirements pursuant to this section and is  
35 quickly and easily available to the caregiver, but not necessarily  
36 on-site.

37 (2) Training must have three components: Orientation, basic  
38 training, and continuing education. All adult family home providers,  
39 resident managers, and employees, or volunteers who routinely

1 interact with residents shall complete orientation. Caregivers shall  
2 complete orientation, basic training, and continuing education.

3 (3) Orientation consists of introductory information on  
4 residents' rights, communication skills, fire and life safety, and  
5 universal precautions. Orientation must be provided at the facility  
6 by appropriate adult family home staff to all adult family home  
7 employees before the employees have routine interaction with  
8 residents.

9 (4) Basic training consists of modules on the core knowledge and  
10 skills that caregivers need to learn and understand to effectively  
11 and safely provide care to residents. Basic training must be outcome-  
12 based, and the effectiveness of the basic training must be measured  
13 by demonstrated competency in the core areas through the use of a  
14 competency test. Basic training must be completed by caregivers  
15 within one hundred twenty days of the date on which they begin to  
16 provide hands-on care. Until competency in the core areas has been  
17 demonstrated, caregivers shall not provide hands-on personal care to  
18 residents without direct supervision.

19 (5) For adult family homes that serve residents with special  
20 needs such as dementia, developmental disabilities, or mental  
21 illness, specialty training is required of providers and resident  
22 managers.

23 (a) Specialty training consists of modules on the core knowledge  
24 and skills that providers and resident managers need to effectively  
25 and safely provide care to residents with special needs. Specialty  
26 training should be integrated into basic training wherever  
27 appropriate. Specialty training must be outcome-based, and the  
28 effectiveness of the specialty training measured by demonstrated  
29 competency in the core specialty areas through the use of a  
30 competency test.

31 (b) Specialty training must be completed by providers and  
32 resident managers before admitting and serving residents who have  
33 been determined to have special needs related to mental illness,  
34 dementia, or a developmental disability. Should a resident develop  
35 special needs while living in a home without specialty designation,  
36 the provider and resident manager have one hundred twenty days to  
37 complete specialty training.

38 (c) If a pandemic, natural disaster, or other declared state of  
39 emergency makes specialty training unavailable, the department may  
40 adopt rules to allow an adult family home where the provider and

1 resident manager have not completed specialty training to admit a  
2 resident or residents with special needs related to mental illness,  
3 dementia, or a developmental disability, or to care for a resident or  
4 residents already living in the home who develop special needs. Such  
5 rules must include information about how to complete the specialty  
6 training once the training is available. Rules adopted under this  
7 subsection are effective only during the pandemic, natural disaster,  
8 or other declared state of emergency.

9 (6) Continuing education consists of ongoing delivery of  
10 information to caregivers on various topics relevant to the care  
11 setting and care needs of residents. Competency testing is not  
12 required for continuing education. Continuing education is not  
13 required in the same calendar year in which basic or modified basic  
14 training is successfully completed. Continuing education is required  
15 in each calendar year thereafter. If specialty training is completed,  
16 the specialty training applies toward any continuing education  
17 requirement for up to two years following the completion of the  
18 specialty training.

19 (7) Persons who successfully complete the competency challenge  
20 test for basic training are fully exempt from the basic training  
21 requirements of this section. Persons who successfully complete the  
22 specialty training competency challenge test are fully exempt from  
23 the specialty training requirements of this section.

24 (8)(a) Registered nurses and licensed practical nurses licensed  
25 under chapter 18.79 RCW are exempt from any continuing education  
26 requirement established under this section.

27 (b) The department may adopt rules that would exempt licensed  
28 persons from all or part of the training requirements under this  
29 chapter, if they are (i) performing the tasks for which they are  
30 licensed and (ii) subject to chapter 18.130 RCW.

31 (9) In an effort to improve access to training and education and  
32 reduce costs, especially for rural communities, the adult family home  
33 training network must include the use of innovative types of learning  
34 strategies such as internet resources, videotapes, and distance  
35 learning using satellite technology coordinated through community  
36 colleges, private associations, or other entities, as defined by the  
37 department.

38 (10) The adult family home training network shall assist adult  
39 family homes that desire to deliver facility-based training with  
40 facility designated trainers, or adult family homes that desire to



1 pool their resources to create shared training systems. The  
2 department shall develop criteria for reviewing and approving  
3 trainers and training materials. The department may approve a  
4 curriculum based upon attestation by an adult family home  
5 administrator that the adult family home's training curriculum  
6 addresses basic and specialty training competencies identified by the  
7 department, and shall review a curriculum to verify that it meets  
8 these requirements. The department may conduct the review as part of  
9 the next regularly scheduled inspection authorized under RCW  
10 70.128.070. The department shall rescind approval of any curriculum  
11 if it determines that the curriculum does not meet these  
12 requirements.

13 (11) The department shall adopt rules by September 1, 2002, for  
14 the implementation of this section.

15 (12)(a) Except as provided in (b) of this subsection, the  
16 orientation, basic training, specialty training, and continuing  
17 education requirements of this section commence September 1, 2002,  
18 and shall be applied to (i) employees hired subsequent to September  
19 1, 2002; or (ii) existing employees that on September 1, 2002, have  
20 not successfully completed the training requirements under RCW  
21 70.128.120 or 70.128.130 and this section. Existing employees who  
22 have not successfully completed the training requirements under RCW  
23 70.128.120 or 70.128.130 shall be subject to all applicable  
24 requirements of this section.

25 (b) Beginning January 7, 2012, long-term care workers, as defined  
26 in RCW 74.39A.009, employed by an adult family home are also subject  
27 to the training requirements under RCW 74.39A.074.

28 **Sec. 12.** RCW 18.20.270 and 2013 c 259 s 4 are each amended to  
29 read as follows:

30 (1) The definitions in this subsection apply throughout this  
31 section unless the context clearly requires otherwise.

32 (a) "Caregiver" includes any person who provides residents with  
33 hands-on personal care on behalf of an assisted living facility,  
34 except volunteers who are directly supervised.

35 (b) "Direct supervision" means oversight by a person who has  
36 demonstrated competency in the core areas or has been fully exempted  
37 from the training requirements pursuant to this section, is on the  
38 premises, and is quickly and easily available to the caregiver.

1 (2) Training must have the following components: Orientation,  
2 basic training, specialty training as appropriate, and continuing  
3 education. All assisted living facility employees or volunteers who  
4 routinely interact with residents shall complete orientation.  
5 Assisted living facility administrators, or their designees, and  
6 caregivers shall complete orientation, basic training, specialty  
7 training as appropriate, and continuing education.

8 (3) Orientation consists of introductory information on  
9 residents' rights, communication skills, fire and life safety, and  
10 universal precautions. Orientation must be provided at the facility  
11 by appropriate assisted living facility staff to all assisted living  
12 facility employees before the employees have routine interaction with  
13 residents.

14 (4) Basic training consists of modules on the core knowledge and  
15 skills that caregivers need to learn and understand to effectively  
16 and safely provide care to residents. Basic training must be outcome-  
17 based, and the effectiveness of the basic training must be measured  
18 by demonstrated competency in the core areas through the use of a  
19 competency test. Basic training must be completed by caregivers  
20 within one hundred twenty days of the date on which they begin to  
21 provide hands-on care. Until competency in the core areas has been  
22 demonstrated, caregivers shall not provide hands-on personal care to  
23 residents without direct supervision. Assisted living facility  
24 administrators, or their designees, must complete basic training and  
25 demonstrate competency within one hundred twenty days of employment.

26 (5) For assisted living facilities that serve residents with  
27 special needs such as dementia, developmental disabilities, or mental  
28 illness, specialty training is required of administrators, or  
29 designees, and caregivers.

30 (a) Specialty training consists of modules on the core knowledge  
31 and skills that caregivers need to effectively and safely provide  
32 care to residents with special needs. Specialty training should be  
33 integrated into basic training wherever appropriate. Specialty  
34 training must be outcome-based, and the effectiveness of the  
35 specialty training measured by demonstrated competency in the core  
36 specialty areas through the use of a competency test.

37 (b) Specialty training must be completed by caregivers within one  
38 hundred twenty days of the date on which they begin to provide hands-  
39 on care to a resident having special needs. However, if specialty  
40 training is not integrated with basic training, the specialty

1 training must be completed within ninety days of completion of basic  
2 training. Until competency in the core specialty areas has been  
3 demonstrated, caregivers shall not provide hands-on personal care to  
4 residents with special needs without direct supervision.

5 (c) Assisted living facility administrators, or their designees,  
6 must complete specialty training and demonstrate competency within  
7 one hundred twenty days from the date on which the administrator or  
8 his or her designee is hired, if the assisted living facility serves  
9 one or more residents with special needs.

10 (d) If a pandemic, natural disaster, or other declared state of  
11 emergency makes specialty training unavailable, the department may  
12 adopt rules to allow an assisted living facility where the  
13 administrator, designee, and caregiving staff have not completed  
14 specialty training to admit a resident or residents with special  
15 needs related to mental illness, dementia, or a developmental  
16 disability. Such rules must include information about how to complete  
17 the specialty training once the training is available. Rules adopted  
18 under this subsection are effective only during the pandemic, natural  
19 disaster, or other declared state of emergency.

20 (6) Continuing education consists of ongoing delivery of  
21 information to caregivers on various topics relevant to the care  
22 setting and care needs of residents. Competency testing is not  
23 required for continuing education. Continuing education is not  
24 required in the same calendar year in which basic or modified basic  
25 training is successfully completed. Continuing education is required  
26 in each calendar year thereafter. If specialty training is completed,  
27 the specialty training applies toward any continuing education  
28 requirement for up to two years following the completion of the  
29 specialty training.

30 (7) Persons who successfully challenge the competency test for  
31 basic training are fully exempt from the basic training requirements  
32 of this section. Persons who successfully challenge the specialty  
33 training competency test are fully exempt from the specialty training  
34 requirements of this section.

35 (8) (a) Registered nurses and licensed practical nurses licensed  
36 under chapter 18.79 RCW are exempt from any continuing education  
37 requirement established under this section.

38 (b) The department may adopt rules that would exempt licensed  
39 persons from all or part of the training requirements under this

1 chapter, if they are (i) performing the tasks for which they are  
2 licensed and (ii) subject to chapter 18.130 RCW.

3 (9) In an effort to improve access to training and education and  
4 reduce costs, especially for rural communities, the coordinated  
5 system of long-term care training and education must include the use  
6 of innovative types of learning strategies such as internet  
7 resources, videotapes, and distance learning using satellite  
8 technology coordinated through community colleges or other entities,  
9 as defined by the department.

10 (10) The department shall develop criteria for the approval of  
11 orientation, basic training, and specialty training programs.

12 (11) Assisted living facilities that desire to deliver facility-  
13 based training with facility designated trainers, or assisted living  
14 facilities that desire to pool their resources to create shared  
15 training systems, must be encouraged by the department in their  
16 efforts. The department shall develop criteria for reviewing and  
17 approving trainers and training materials that are substantially  
18 similar to or better than the materials developed by the department.  
19 The department may approve a curriculum based upon attestation by an  
20 assisted living facility administrator that the assisted living  
21 facility's training curriculum addresses basic and specialty training  
22 competencies identified by the department, and shall review a  
23 curriculum to verify that it meets these requirements. The department  
24 may conduct the review as part of the next regularly scheduled yearly  
25 inspection and investigation required under RCW 18.20.110. The  
26 department shall rescind approval of any curriculum if it determines  
27 that the curriculum does not meet these requirements.

28 (12) The department shall adopt rules for the implementation of  
29 this section.

30 (13)(a) Except as provided in (b) of this subsection, the  
31 orientation, basic training, specialty training, and continuing  
32 education requirements of this section commence September 1, 2002, or  
33 one hundred twenty days from the date of employment, whichever is  
34 later, and shall be applied to (i) employees hired subsequent to  
35 September 1, 2002; and (ii) existing employees that on September 1,  
36 2002, have not successfully completed the training requirements under  
37 RCW 74.39A.010 or 74.39A.020 and this section. Existing employees who  
38 have not successfully completed the training requirements under RCW  
39 74.39A.010 or 74.39A.020 shall be subject to all applicable  
40 requirements of this section.

1 (b) Beginning January 7, 2012, long-term care workers, as defined  
2 in RCW 74.39A.009, employed by facilities licensed under this chapter  
3 are also subject to the training requirements under RCW 74.39A.074.

4 **Sec. 13.** RCW 70.128.070 and 2011 1st sp.s. c 3 s 204 are each  
5 amended to read as follows:

6 (1) A license shall remain valid unless voluntarily surrendered,  
7 suspended, or revoked in accordance with this chapter.

8 (2)(a) Homes applying for a license shall be inspected at the  
9 time of licensure.

10 (b) Homes licensed by the department shall be inspected at least  
11 every eighteen months, with an annual average of fifteen months.  
12 However, an adult family home may be allowed to continue without  
13 inspection for two years if the adult family home had no inspection  
14 citations for the past three consecutive inspections and has received  
15 no written notice of violations resulting from complaint  
16 investigations during that same time period.

17 (c) The department may make an unannounced inspection of a  
18 licensed home at any time to assure that the home and provider are in  
19 compliance with this chapter and the rules adopted under this  
20 chapter.

21 (d) If a pandemic, natural disaster, or other declared state of  
22 emergency prevents the department from completing inspections  
23 according to the timeline in this subsection, the department shall  
24 adopt rules to reestablish inspection timelines based on the length  
25 of time since last inspection, compliance history of each facility,  
26 and immediate health or safety concerns. Rules adopted under this  
27 subsection are effective only during the pandemic, natural disaster,  
28 or other declared state of emergency.

29 (3) If the department finds that the home is not in compliance  
30 with this chapter, it shall require the home to correct any  
31 violations as provided in this chapter.

32 **Sec. 14.** RCW 70.97.160 and 2020 c 278 s 9 are each amended to  
33 read as follows:

34 (1) The department shall make or cause to be made at least one  
35 inspection of each facility prior to licensure and an unannounced  
36 full inspection of facilities at least once every eighteen months.  
37 The statewide average interval between full facility inspections must  
38 be fifteen months.

1 (2) Any duly authorized officer, employee, or agent of the  
2 department may enter and inspect any facility at any time to  
3 determine that the facility is in compliance with this chapter and  
4 applicable rules, and to enforce any provision of this chapter.  
5 Complaint inspections shall be unannounced and conducted in such a  
6 manner as to ensure maximum effectiveness. No advance notice shall be  
7 given of any inspection unless authorized or required by federal law.

8 (3) During inspections, the facility must give the department  
9 access to areas, materials, and equipment used to provide care or  
10 support to residents, including resident and staff records, accounts,  
11 and the physical premises, including the buildings, grounds, and  
12 equipment. The department has the authority to privately interview  
13 the provider, staff, residents, and other individuals familiar with  
14 resident care and service plans.

15 (4) Any public employee giving advance notice of an inspection in  
16 violation of this section shall be suspended from all duties without  
17 pay for a period of not less than five nor more than fifteen days.

18 (5) The department shall prepare a written report describing the  
19 violations found during an inspection, and shall provide a copy of  
20 the inspection report to the facility.

21 (6) The facility shall develop a written plan of correction for  
22 any violations identified by the department and provide a plan of  
23 correction to the department within ten working days from the receipt  
24 of the inspection report.

25 (7) If a pandemic, natural disaster, or other declared state of  
26 emergency prevents the department from completing inspections  
27 according to the timeline in this section, the department shall adopt  
28 rules to reestablish inspection timelines based on the length of time  
29 since last inspection, compliance history of each facility, and  
30 immediate health or safety concerns. Rules adopted under this  
31 subsection are effective only during the pandemic, natural disaster,  
32 or other declared state of emergency.

33 **Sec. 15.** RCW 18.20.110 and 2012 c 10 s 6 are each amended to  
34 read as follows:

35 (1) The department shall make or cause to be made, at least every  
36 eighteen months with an annual average of fifteen months, an  
37 inspection and investigation of all assisted living facilities.  
38 However, the department may delay an inspection to twenty-four months  
39 if the assisted living facility has had three consecutive inspections

1 with no written notice of violations and has received no written  
2 notice of violations resulting from complaint investigation during  
3 that same time period. The department may at anytime make an  
4 unannounced inspection of a licensed facility to assure that the  
5 licensee is in compliance with this chapter and the rules adopted  
6 under this chapter. Every inspection shall focus primarily on actual  
7 or potential resident outcomes, and may include an inspection of  
8 every part of the premises and an examination of all records, methods  
9 of administration, the general and special dietary, and the stores  
10 and methods of supply; however, the department shall not have access  
11 to financial records or to other records or reports described in RCW  
12 18.20.390. Financial records of the assisted living facility may be  
13 examined when the department has reasonable cause to believe that a  
14 financial obligation related to resident care or services will not be  
15 met, such as a complaint that staff wages or utility costs have not  
16 been paid, or when necessary for the department to investigate  
17 alleged financial exploitation of a resident. Following such an  
18 inspection or inspections, written notice of any violation of this  
19 law or the rules adopted hereunder shall be given to the applicant or  
20 licensee and the department. The department may prescribe by rule  
21 that any licensee or applicant desiring to make specified types of  
22 alterations or additions to its facilities or to construct new  
23 facilities shall, before commencing such alteration, addition, or new  
24 construction, submit plans and specifications therefor to the  
25 agencies responsible for plan reviews for preliminary inspection and  
26 approval or recommendations with respect to compliance with the rules  
27 and standards herein authorized.

28 (2) If a pandemic, natural disaster, or other declared state of  
29 emergency prevents the department from completing inspections  
30 according to the timeline in subsection (1) of this section, the  
31 department shall adopt rules to reestablish inspection timelines  
32 based on the length of time since last inspection, compliance history  
33 of each facility, and immediate health or safety concerns. Rules  
34 adopted under this subsection are effective only during the pandemic,  
35 natural disaster, or other declared state of emergency.

36 **Sec. 16.** RCW 18.88A.030 and 2010 c 169 s 4 are each amended to  
37 read as follows:

1 (1) (a) A nursing assistant may assist in the care of individuals  
2 as delegated by and under the direction and supervision of a licensed  
3 (registered) nurse or licensed practical nurse.

4 (b) A health care facility shall not assign a nursing assistant-  
5 registered to provide care until the nursing assistant-registered has  
6 demonstrated skills necessary to perform competently all assigned  
7 duties and responsibilities.

8 (c) Nothing in this chapter shall be construed to confer on a  
9 nursing assistant the authority to administer medication unless  
10 delegated as a specific nursing task pursuant to this chapter or to  
11 practice as a licensed (registered) nurse or licensed practical nurse  
12 as defined in chapter 18.79 RCW.

13 (2) (a) A nursing assistant employed in a nursing home must have  
14 successfully obtained certification through: (i) An approved training  
15 program and the competency evaluation within (~~four months after the~~  
16 ~~date of employment~~) a period of time determined in rule by the  
17 commission; or (ii) alternative training and the competency  
18 evaluation prior to employment.

19 (b) Certification is voluntary for nursing assistants working in  
20 health care facilities other than nursing homes unless otherwise  
21 required by state or federal law or regulation.

22 (3) The commission may adopt rules to implement the provisions of  
23 this chapter.

24 **Sec. 17.** RCW 18.88A.087 and 2010 c 169 s 3 are each amended to  
25 read as follows:

26 (1) The commission shall adopt criteria for evaluating an  
27 applicant's alternative training to determine the applicant's  
28 eligibility to take the competency evaluation for nursing assistant  
29 certification. At least one option adopted by the commission must  
30 allow an applicant to take the competency evaluation if he or she:

31 (a) (i) Is a certified home care aide pursuant to chapter 18.88B  
32 RCW; or

33 (ii) Is a certified medical assistant pursuant to a certification  
34 program accredited by a national medical assistant accreditation  
35 organization and approved by the commission; and

36 (b) Has successfully completed at least twenty-four hours of  
37 training that the commission determines is necessary to provide  
38 training equivalent to approved training on topics not addressed in  
39 the training specified for certification as a home care aide or



1 medical assistant, as applicable. In the commission's discretion, a  
2 portion of these hours may include clinical training.

3 (2) (a) (~~By July 1, 2011, the~~) The commission, in consultation  
4 with the secretary, the department of social and health services, and  
5 consumer, employer, and worker representatives, shall adopt rules to  
6 implement this section and to provide (~~, beginning January 1, 2012,~~)  
7 for a program of credentialing reciprocity to the extent required by  
8 this section between home care aide and medical assistant  
9 certification and nursing assistant certification. (~~By July 1, 2011,~~  
10 ~~the~~) The secretary shall also adopt such rules as may be necessary  
11 to implement this section and the credentialing reciprocity program.

12 (b) Rules adopted under this section must be consistent with  
13 requirements under 42 U.S.C. Sec. 1395i-3(e) and (f) of the federal  
14 social security act relating to state-approved competency evaluation  
15 programs for certified nurse aides.

16 (3) (~~Beginning December 1, 2012, the~~) The secretary, in  
17 consultation with the commission, shall report annually by December  
18 1st to the governor and the appropriate committees of the legislature  
19 on the progress made in achieving career advancement for certified  
20 home care aides and medical assistants into nursing practice.

21 NEW SECTION. **Sec. 18.** This act is necessary for the immediate  
22 preservation of the public peace, health, or safety, or support of  
23 the state government and its existing public institutions, and takes  
24 effect immediately.

25 NEW SECTION. **Sec. 19.** This act is remedial and curative in  
26 nature and all of its sections apply retroactively to February 29,  
27 2020, to include the period of the state of emergency created by the  
28 COVID-19 outbreak. In any instance where this act grants rule-making  
29 authority to the department of social and health services or the  
30 department of health, the agencies may adopt the rules as emergency  
31 rules and may make the rules retroactively effective.

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