HEALTH CARE WORKFORCE ELIGIBILITY—CRIMINAL RECORDS

EFFECTIVE DATE: July 25, 2021—Except for section 6, which takes effect July 1, 2022.

Passed by the House April 20, 2021
Yeas 58  Nays 40

Laurie Jinkins
Speaker of the House of Representatives

Passed by the Senate April 10, 2021
Yeas 29  Nays 18

Denny Heck
President of the Senate

Approved May 10, 2021 3:15 PM

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is SUBSTITUTE HOUSE BILL 1411 as passed by the House of Representatives and the Senate on the dates hereon set forth.

Bernard Dean
Chief Clerk

FILED

May 10, 2021

Jay Inslee
Governor of the State of Washington

Secretary of State
State of Washington
AN ACT Relating to health care workforce eligibility for persons with prior involvement with the criminal justice system; amending RCW 9.97.020, 43.20A.710, 70.128.120, 70.128.120, and 70.128.130; adding a new section to chapter 43.20A RCW; adding a new section to chapter 74.39A RCW; creating new sections; providing an effective date; and providing expiration dates.

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

NEW SECTION.  Sec. 1.  A new section is added to chapter 43.20A RCW to read as follows:

(1) Where the department is required to screen a long-term care worker, contracted provider, or licensee through a background check to determine whether the person has a history that would disqualify the person from having unsupervised access to, working with, or providing supervision, care, or treatment to vulnerable adults or children, the department may not automatically disqualify a person on the basis of a criminal record that includes a conviction of any of the following crimes once the specified amount of time has passed for the particular crime:

(a) Selling marijuana to a person under RCW 69.50.401 after three years or more have passed between the most recent conviction and the date the background check is processed;
(b) Theft in the first degree under RCW 9A.56.030 after 10 years
or more have passed between the most recent conviction and the date
the background check is processed;

(c) Robbery in the second degree under RCW 9A.56.210 after five
years or more have passed between the most recent conviction and the
date the background check is processed;

(d) Extortion in the second degree under RCW 9A.56.130 after five
years or more have passed between the most recent conviction and the
date the background check is processed;

(e) Assault in the second degree under RCW 9A.36.021 after five
years or more have passed between the most recent conviction and the
date the background check is processed; and

(f) Assault in the third degree under RCW 9A.36.031 after five
years or more have passed between the most recent conviction and the
date the background check is processed.

(2) The provisions of subsection (1) of this section do not apply
where the department is performing background checks for the
department of children, youth, and families.

(3) The provisions of subsection (1) of this section do not apply
to department employees or applicants for department positions except
for positions in the state-operated community residential program.

(4) Notwithstanding subsection (1) of this section, a long-term
care worker, contracted provider, or licensee may not provide, or be
paid to provide, care to children or vulnerable adults under the
medicare or medicaid programs if the worker is excluded from
participating in those programs by federal law.

(5) The department, a contracted provider, or a licensee, when
conducting a character, competence, and suitability review for the
purpose of hiring, licensing, certifying, contracting with,
permitting, or continuing to permit a person to be employed in any
position caring for or having unsupervised access to vulnerable
adults or children, may, in its sole discretion, determine whether to
consider any of the convictions identified in subsection (1) of this
section. If the department or a consumer directed employer as defined
in RCW 74.39A.009 determines that an individual with any of the
convictions identified in subsection (1) of this section is qualified
to provide services to a department client as an individual provider
as defined in RCW 74.39A.240, the department or the consumer directed
employer must provide the client, and their guardian if any, with the
results of the state background check for their determination of
character, suitability, and competence of the individual before the individual begins providing services. The department, a contracted provider, or a licensee, when conducting a character, competence, and suitability review for the purpose of hiring, licensing, certifying, contracting with, permitting, or continuing to permit a person to be employed in any position caring for or having unsupervised access to vulnerable adults or children, has a rebuttable presumption that its exercise of discretion under this section or the refusal to exercise such discretion was appropriate. This subsection does not create a duty for the department to conduct a character, competence, and suitability review.

(6) For the purposes of the section:

(a) "Contracted provider" means a provider, and its employees, contracted with the department or an area agency on aging to provide services to department clients under programs under chapter 74.09, 74.39, 74.39A, or 71A.12 RCW. "Contracted provider" includes area agencies on aging and their subcontractors who provide case management.

(b) "Licensee" means a nonstate facility or setting that is licensed or certified, or has applied to be licensed or certified, by the department and includes the licensee and its employees.

NEW SECTION. Sec. 2. A new section is added to chapter 74.39A RCW to read as follows:

(1) The department shall facilitate a work group dedicated to expanding the long-term care workforce while continuing to recognize the importance of protecting vulnerable adults, racial equity in client choice, just compensation for unpaid care work while preserving choice for those who wish to be informal caregivers without pay, and paid services. The work group shall identify recommendations on informed choice through a process by which older adults and people with disabilities may hire a trusted individual with a criminal record that would otherwise disqualify the person from providing paid home care services under this chapter. The work group's recommendations on the informed choice process shall include:

(a) Client safety;

(b) Client direction;

(c) Racial equity;

(d) Cultural competence;
(e) Economic consequences of unpaid caregiving on caregivers and people receiving care;
(f) Categories of eligible workers (family, friend, trusted individuals, or others);
(g) Disqualifying crimes, if any;
(h) Mechanisms for consideration (attestation, petition, other);
and
(i) Workforce development.
(2)(a) The work group shall consist of:
   (i) Two representatives from the department;
   (ii) Two representatives from community-based organizations that represent people with criminal records;
   (iii) One representative from a community-based organization that represents Black communities;
   (iv) Two representatives, one from the west side of the Cascade mountains and one from the east side of the Cascade mountains, from federally recognized tribes;
   (v) One representative from a community-based organization that represents immigrant populations or persons of color;
   (vi) Three representatives from the union representing the majority of long-term care workers in Washington;
   (vii) One representative of a consumer-directed employer;
   (viii) One representative of an association representing area agencies on aging in Washington;
   (ix) One representative from the office of the state long-term care ombuds;
   (x) One representative from the office of the state developmental disability ombuds;
   (xi) One representative of an association representing medicaid home care agencies;
   (xii) One representative from the Washington state attorney general's office;
   (xiii) Four representatives from organizations representing seniors and individuals with physical or developmental disabilities;
   (xiv) Two representatives who are current or previous consumers of personal care services and who represent the diversity of the disability community; and
   (xv) Two representatives who receive unpaid care from individuals who are unable to become medicaid paid home care workers because of disqualifying convictions.
(b) The department shall invite the participation of persons with expertise in the background check process to provide advice and consultation to the work group with respect to the development of the proposed process under subsection (1) of this section.

(c) Appointments to the work group shall be made by the department. The department shall convene the meetings of the work group and serve as the facilitator.

(3) The work group shall devote at least one meeting to reviewing and analyzing racial disparities relevant to the work group's direction under subsection (1) of this section, including disparities in charges and disqualifications in providing paid home care services under this chapter.

(4) The work group must submit its recommendations to the legislature by December 1, 2022. The recommendations must include a proposed process for clients to hire a trusted individual with a criminal record. The proposed process must include a recommended communication strategy to inform older adults and people with disabilities in Washington about the process.

(5) This section expires July 1, 2023.

Sec. 3. RCW 9.97.020 and 2017 3rd sp.s. c 6 s 806 are each amended to read as follows:

(1) Except as provided in this section, no state, county, or municipal department, board, officer, or agency authorized to assess the qualifications of any applicant for a license, certificate of authority, qualification to engage in the practice of a profession or business, or for admission to an examination to qualify for such a license or certificate may disqualify a qualified applicant, solely based on the applicant's criminal history, if the qualified applicant has obtained a certificate of restoration of opportunity and the applicant meets all other statutory and regulatory requirements, except as required by federal law or exempted under this subsection. Nothing in this section is interpreted as restoring or creating a means to restore any firearms rights or eligibility to obtain a firearm dealer license pursuant to RCW 9.41.110 or requiring the removal of a protection order.

(a)(i) Criminal justice agencies, as defined in RCW 10.97.030, and the Washington state bar association are exempt from this section.
(ii) This section does not apply to the licensing, certification, or qualification of the following professionals: Accountants, RCW 18.04.295; assisted living facilities employees, RCW 18.20.125; bail bond agents, RCW 18.185.020; escrow agents, RCW 18.44.241; long-term care workers, RCW 18.88B.080; nursing home administrators, RCW 18.52.071; nursing, chapter 18.79 RCW; physicians and physician assistants, chapters 18.71 and 18.71A RCW; private investigators, RCW 18.165.030; receivers, RCW 7.60.035; teachers, chapters 28A.405 and 28A.410 RCW; notaries public, chapter 42.45 RCW; private investigators, chapter 18.165 RCW; real estate brokers and salespersons, chapters 18.85 and 18.86 RCW; security guards, chapter 18.170 RCW; and vulnerable adult care providers, RCW 43.43.842, who are not home care aides, chapter 18.88B RCW, or contracted providers or licensees as defined in section 1 of this act.

(iii) To the extent this section conflicts with the requirements for receipt of federal funding under the adoption and safe families act, 42 U.S.C. Sec. 671, this section does not apply.

(b) Unless otherwise prohibited by law, in cases where an applicant would be disqualified under RCW 43.20A.710, and the applicant has obtained a certificate of restoration of opportunity for a disqualifying conviction, ((the department of social and health services and)) the department of children, youth, and families may, after review of relevant factors, including the nature and seriousness of the offense, time that has passed since conviction, changed circumstances since the offense occurred, and the nature of the employment or license sought, at their discretion:

(i) Allow the applicant to have unsupervised access to children, vulnerable adults, or individuals with mental illness or developmental disabilities if the applicant is otherwise qualified and suitable; or

(ii) Disqualify the applicant solely based on the applicant's criminal history.

(c) Unless otherwise prohibited by law, in cases in which an applicant would be disqualified under RCW 43.20A.710, 43.43.842, or department rule, and the applicant has obtained a certificate of restoration of opportunity for a disqualifying conviction, the department of social and health services may, after review of relevant factors, including the nature and seriousness of the offense, time that has passed since conviction, changed circumstances
since the offense occurred, and the nature of the employment or license sought, at its discretion:

(i) Allow the applicant to have unsupervised access to children, vulnerable adults, or individuals with mental illness or developmental disabilities if the applicant is otherwise qualified and suitable; or

(ii) Disqualify the applicant solely based on the applicant's criminal history.

(d) If the practice of a profession or business involves unsupervised contact with vulnerable adults, children, or individuals with mental illness or developmental disabilities, or populations otherwise defined by statute as vulnerable, the department of health may, after review of relevant factors, including the nature and seriousness of the offense, time that has passed since conviction, changed circumstances since the offense occurred, and the nature of the employment or license sought, at its discretion:

(i) Disqualify an applicant who has obtained a certificate of restoration of opportunity, for a license, certification, or registration to engage in the practice of a health care profession or business solely based on the applicant's criminal history; or

(ii) If such applicant is otherwise qualified and suitable, credential or credential with conditions an applicant who has obtained a certificate of restoration of opportunity for a license, certification, or registration to engage in the practice of a health care profession or business.

((d)) (e) The state of Washington, any of its counties, cities, towns, municipal corporations, or quasi-municipal corporations, the department of health, the department of social and health services, and its officers, employees, contractors, and agents are immune from suit in law, equity, or any action under the administrative procedure act based upon its exercise of discretion under this section. This section does not create a protected class; private right of action; any right, privilege, or duty; or change to any right, privilege, or duty existing under law. This section does not modify a licensing or certification applicant's right to a review of an agency's decision under the administrative procedure act or other applicable statute or agency rule. A certificate of restoration of opportunity does not remove or alter citizenship or legal residency requirements already in place for state agencies and employers.
A qualified court has jurisdiction to issue a certificate of restoration of opportunity to a qualified applicant.

(a) A court must determine, in its discretion whether the certificate:
   (i) Applies to all past criminal history; or
   (ii) Applies only to the convictions or adjudications in the jurisdiction of the court.

(b) The certificate does not apply to any future criminal justice involvement that occurs after the certificate is issued.

(c) A court must determine whether to issue a certificate by determining whether the applicant is a qualified applicant as defined in RCW 9.97.010.

(3) An employer or housing provider may, in its sole discretion, determine whether to consider a certificate of restoration of opportunity issued under this chapter in making employment or rental decisions. An employer or housing provider is immune from suit in law, equity, or under the administrative procedure act for damages based upon its exercise of discretion under this section or the refusal to exercise such discretion. In any action at law against an employer or housing provider arising out of the employment of or provision of housing to the recipient of a certificate of restoration of opportunity, evidence of the crime for which a certificate of restoration of opportunity has been issued may not be introduced as evidence of negligence or intentionally tortious conduct on the part of the employer or housing provider. This subsection does not create a protected class, private right of action, any right, privilege, or duty, or to change any right, privilege, or duty existing under law related to employment or housing except as provided in RCW 7.60.035.

(4) The department of social and health services, and contracted providers and licensees as defined in section 1 of this act, when hiring, licensing, certifying, contracting with, permitting, or continuing to permit a person to be employed in any position caring for or having unsupervised access to vulnerable adults or children, may, in their sole discretion, determine whether to consider a certificate of restoration of opportunity issued under this chapter. If the department or a consumer directed employer as defined in RCW 74.39A.009 determines that an individual with a certificate of restoration of opportunity is qualified to work as an individual provider as defined in RCW 74.39A.240, the department or the consumer directed employer must provide the client, and their guardian if any,
with the results of the state background check for their
determination of character, suitability, and competence of the
individual before the individual begins providing services. The
department of social and health services, or contracted providers or
licensees as defined in section 1 of this act, when hiring,
licensing, certifying, contracting with, permitting, or continuing to
permit a person to be employed in any position caring for or having
unsupervised access to vulnerable adults or children, have a
rebuttable presumption that their exercise of discretion under this
subsection or the refusal to exercise such discretion was
appropriate. This subsection does not create a protected class, a
private right of action, or any right, privilege, or duty, or to
change any right, privilege, or duty existing under law related to
the department of social and health services, contracted providers,
and licensees as defined in section 1 of this act.

(5) (a) Department of social and health services: A certificate of
restoration of opportunity does not apply to the state abuse and
neglect registry. No finding of abuse, neglect, or misappropriation
of property may be removed from the registry based solely on a
certificate. The department must include such certificates as part of
its criminal history record reports, qualifying letters, or other
assessments pursuant to RCW 43.43.830 through 43.43.838. The
department shall adopt rules to implement this subsection.

(b) Washington state patrol: The Washington state patrol is not
required to remove any records based solely on a certificate of
restoration of opportunity. The state patrol must include a
certificate as part of its criminal history record report.

(c) Court records:

(i) A certificate of restoration of opportunity has no effect on
any other court records, including records in the judicial
information system. The court records related to a certificate of
restoration of opportunity must be processed and recorded in the same
manner as any other record.

(ii) The qualified court where the applicant seeks the
certificate of restoration of opportunity must administer the court
records regarding the certificate in the same manner as it does
regarding all other proceedings.

(d) Effect in other judicial proceedings: A certificate of
restoration of opportunity may only be submitted to a court to
demonstrate that the individual met the specific requirements of this
section and not for any other procedure, including evidence of character, reputation, or conduct. A certificate is not an equivalent procedure under Rule of Evidence 609(c).

(e) Department of health: The department of health must include a certificate of restoration of opportunity on its public website if:

(i) Its website includes an order, stipulation to informal disposition, or notice of decision related to the conviction identified in the certificate of restoration of opportunity; and

(ii) The credential holder has provided a certified copy of the certificate of restoration of opportunity to the department of health.

(f) Department of children, youth, and families: A certificate of restoration of opportunity does not apply to founded findings of child abuse or neglect. No finding of child abuse or neglect may be destroyed based solely on a certificate. The department of children, youth, and families must include such certificates as part of its criminal history record reports, qualifying letters, or other assessments pursuant to RCW 43.43.830 through 43.43.838. The department of children, youth, and families shall adopt rules to implement this subsection (((4))) (((5))) (f).

((5)) (6) In all cases, an applicant must provide notice to the prosecutor in the county where he or she seeks a certificate of restoration of opportunity of the pendency of such application. If the applicant has been sentenced by any other jurisdiction in the five years preceding the application for a certificate, the applicant must also notify the prosecuting attorney in those jurisdictions. The prosecutor in the county where an applicant applies for a certificate shall provide the court with a report of the applicant's criminal history.

((6)) (7) Application for a certificate of restoration of opportunity must be filed as a civil action.

((7)) (8) A superior court in the county in which the applicant resides may decline to consider the application for certificate of restoration of opportunity. If the superior court in which the applicant resides declines to consider the application, the court must dismiss the application without prejudice and the applicant may refile the application in another qualified court. The court must state the reason for the dismissal on the order. If the court determines that the applicant does not meet the required qualifications, then the court must dismiss the application without
prejudice and state the reason(s) on the order. The superior court in the county of the applicant's conviction or adjudication may not decline to consider the application.

((8)) (9) Unless the qualified court determines that a hearing on an application for certificate of restoration is necessary, the court must decide without a hearing whether to grant the certificate of restoration of opportunity based on a review of the application filed by the applicant and pleadings filed by the prosecuting attorney.

((9)) (10) The clerk of the court in which the certificate of restoration of opportunity is granted shall transmit the certificate of restoration of opportunity to the Washington state patrol identification section, which holds criminal history information for the person who is the subject of the conviction. The Washington state patrol shall update its records to reflect the certificate of restoration of opportunity.

((a)) (11)(a) The administrative office of the courts shall develop and prepare instructions, forms, and an informational brochure designed to assist applicants applying for a certificate of restoration of opportunity.

(b) The instructions must include, at least, a sample of a standard application and a form order for a certificate of restoration of opportunity.

(c) The administrative office of the courts shall distribute a master copy of the instructions, informational brochure, and sample application and form order to all county clerks and a master copy of the application and order to all superior courts by January 1, 2017.

(d) The administrative office of the courts shall determine the significant non-English-speaking or limited English-speaking populations in the state. The administrator shall then arrange for translation of the instructions, which shall contain a sample of the standard application and order, and the informational brochure into languages spoken by those significant non-English-speaking populations and shall distribute a master copy of the translated instructions and informational brochures to the county clerks by January 1, 2017.

(e) The administrative office of the courts shall update the instructions, brochures, standard application and order, and translations when changes in the law make an update necessary.
Sec. 4. RCW 43.20A.710 and 2020 c 270 s 10 are each amended to read as follows:

(1) The secretary shall investigate the conviction records, pending charges and disciplinary board final decisions of:

(a) Any current employee or applicant seeking or being considered for any position with the department who will or may have unsupervised access to children, vulnerable adults, or individuals with mental illness or developmental disabilities. This includes, but is not limited to, positions conducting comprehensive assessments, financial eligibility determinations, licensing and certification activities, investigations, surveys, or case management; or for state positions otherwise required by federal law to meet employment standards;

(b) Individual providers as defined in RCW 74.39A.240 and providers who are paid by home care agencies to provide in-home services involving unsupervised access to persons with physical, mental, or developmental disabilities or mental illness, or to vulnerable adults as defined in chapter 74.34 RCW, including but not limited to services provided under chapter 74.39 or 74.39A RCW; and

(c) Individuals or businesses or organizations for the care, supervision, case management, or treatment of children, persons with developmental disabilities, or vulnerable adults, including but not limited to services contracted for under chapter 18.20, 70.127, 70.128, 72.36, or 74.39A RCW or Title 71A RCW.

(2) The secretary shall require a fingerprint-based background check through both the Washington state patrol and the federal bureau of investigation as provided in RCW 43.43.837. Unless otherwise authorized by law, the secretary shall use the information solely for the purpose of determining the character, suitability, and competence of the applicant.

(3) Except as provided in subsection (4) of this section, an individual provider or home care agency provider who has resided in the state less than three years before applying for employment involving unsupervised access to a vulnerable adult as defined in chapter 74.34 RCW must be fingerprinted for the purpose of investigating conviction records through both the Washington state patrol and the federal bureau of investigation. This subsection applies only with respect to the provision of in-home services funded by medicaid personal care under RCW 74.09.520, community options program entry system waiver services under RCW 74.39A.030, or chore services.
services under RCW 74.39A.110. However, this subsection does not supersede RCW 74.15.030(2).

(4) Long-term care workers, as defined in RCW 74.39A.009, who are hired after January 7, 2012, are subject to background checks under RCW 74.39A.056, except that the department may require a background check at any time under RCW 43.43.837. For the purposes of this subsection, "background check" includes, but is not limited to, a fingerprint check submitted for the purpose of investigating conviction records through both the Washington state patrol and the federal bureau of investigation.

(5) An individual provider or home care agency provider hired to provide in-home care for and having unsupervised access to a vulnerable adult as defined in chapter 74.34 RCW must have no conviction for a disqualifying crime under RCW 43.43.830 and 43.43.842. An individual or home care agency provider must also have no conviction for a crime relating to drugs as defined in RCW 43.43.830. This subsection applies only with respect to the provision of in-home services funded by medicaid personal care under RCW 74.09.520, community options program entry system waiver services under RCW 74.39A.030, or chore services under RCW 74.39A.110.

(6) The secretary shall provide the results of the state background check on long-term care workers, including individual providers, to the persons hiring them or to their legal guardians, if any, for their determination of the character, suitability, and competence of the applicants. If the person elects to hire or retain an individual provider after receiving notice from the department that the applicant has a conviction for an offense that would disqualify the applicant from having unsupervised access to persons with physical, mental, or developmental disabilities or mental illness, or to vulnerable adults as defined in chapter 74.34 RCW, then the secretary shall deny payment for any subsequent services rendered by the disqualified individual provider.

(7) Criminal justice agencies shall provide the secretary such information as they may have and that the secretary may require for such purpose.

(8) Any person whose criminal history would otherwise disqualify the person under this section or RCW 43.43.842, from a position which will or may have unsupervised access to children, vulnerable adults, or persons with mental illness or developmental disabilities shall not be automatically disqualified if ((the))).
(a) The department of social and health services reviewed the person's otherwise disqualifying criminal history through the department of social and health services' background assessment review team process conducted in 2002 and determined that such person could remain in a position covered by this section (or if the otherwise disqualifying);

(b) The conviction is no longer automatically disqualifying pursuant to section 1 of this act;

(c) The applicant has received a certificate of restoration of opportunity for the convictions pursuant to RCW 9.97.020, and the department of social and health services has not disqualified the applicant based on character, competence, and suitability review; or

(d) The conviction or disposition has been the subject of a pardon, annulment, or other equivalent procedure.

(9) The department may not consider any founded finding of physical abuse or negligent treatment or maltreatment of a child made pursuant to chapter 26.44 RCW that is accompanied by a certificate of parental improvement or dependency as a result of a finding of abuse or neglect pursuant to chapter 13.34 RCW that is accompanied by a certificate of parental improvement when evaluating an applicant or employee's character, competency, and suitability pursuant to any background check authorized or required by this chapter, RCW 74.39A.056 or 43.43.832, or any of the rules adopted thereunder.

Sec. 5. RCW 70.128.120 and 2015 c 66 s 2 are each amended to read as follows:

Each adult family home provider, applicant, and each resident manager shall have the following minimum qualifications, except that only applicants are required to meet the provisions of subsections (10) and (11) of this section:

(1) Twenty-one years of age or older;

(2) For those applying after September 1, 2001, to be licensed as providers, and for resident managers whose employment begins after September 1, 2001, a United States high school diploma or high school equivalency certificate as provided in RCW 28B.50.536 or any English or translated government documentation of the following:

(a) Successful completion of government-approved public or private school education in a foreign country that includes an annual average of one thousand hours of instruction over twelve years or no less than twelve thousand hours of instruction;
(b) A foreign college, foreign university, or United States community college two-year diploma;
(c) Admission to, or completion of coursework at, a foreign university or college for which credit was granted;
(d) Admission to, or completion of coursework at, a United States college or university for which credits were awarded;
(e) Admission to, or completion of postgraduate coursework at, a United States college or university for which credits were awarded; or
(f) Successful passage of the United States board examination for registered nursing, or any professional medical occupation for which college or university education preparation was required;
(3) Good moral and responsible character and reputation;
(4) Literacy and the ability to communicate in the English language;
(5) Management and administrative ability to carry out the requirements of this chapter;
(6) Satisfactory completion of department-approved basic training and continuing education training as required by RCW 74.39A.074, and in rules adopted by the department;
(7) Satisfactory completion of department-approved, or equivalent, special care training before a provider may provide special care services to a resident;
(8) Not ((been convicted of any crime that is disqualifying under RCW 43.43.830 or 43.43.842, or department rules adopted under this chapter, or been found to have abused, neglected, exploited, or abandoned a minor or vulnerable adult as specified in RCW 74.39A.056(2))) be disqualified by a department background check;
(9) For those applying to be licensed as providers, and for resident managers whose employment begins after August 24, 2011, at least one thousand hours in the previous sixty months of successful, direct caregiving experience obtained after age eighteen to vulnerable adults in a licensed or contracted setting prior to operating or managing an adult family home. The applicant or resident manager must have credible evidence of the successful, direct caregiving experience or, currently hold one of the following professional licenses: Physician licensed under chapter 18.71 RCW; osteopathic physician licensed under chapter 18.57 RCW; osteopathic physician assistant licensed under chapter 18.57A RCW; physician assistant licensed under chapter 18.71A RCW; registered nurse,
advanced registered nurse practitioner, or licensed practical nurse licensed under chapter 18.79 RCW;

(10) For applicants, proof of financial solvency, as defined in rule; and

(11) Applicants must successfully complete an adult family home administration and business planning class, prior to being granted a license. The class must be a minimum of forty-eight hours of classroom time and approved by the department. The department shall promote and prioritize bilingual capabilities within available resources and when materials are available for this purpose. Under exceptional circumstances, such as the sudden and unexpected death of a provider, the department may consider granting a license to an applicant who has not completed the class but who meets all other requirements. If the department decides to grant the license due to exceptional circumstances, the applicant must have enrolled in or completed the class within four months of licensure.

Sec. 6. RCW 70.128.120 and 2020 c 80 s 47 are each amended to read as follows:

Each adult family home provider, applicant, and each resident manager shall have the following minimum qualifications, except that only applicants are required to meet the provisions of subsections (10) and (11) of this section:

(1) Twenty-one years of age or older;

(2) For those applying after September 1, 2001, to be licensed as providers, and for resident managers whose employment begins after September 1, 2001, a United States high school diploma or high school equivalency certificate as provided in RCW 28B.50.536 or any English or translated government documentation of the following:

(a) Successful completion of government-approved public or private school education in a foreign country that includes an annual average of one thousand hours of instruction over twelve years or no less than twelve thousand hours of instruction;

(b) A foreign college, foreign university, or United States community college two-year diploma;

(c) Admission to, or completion of coursework at, a foreign university or college for which credit was granted;

(d) Admission to, or completion of coursework at, a United States college or university for which credits were awarded;
(e) Admission to, or completion of postgraduate coursework at, a United States college or university for which credits were awarded; or

(f) Successful passage of the United States board examination for registered nursing, or any professional medical occupation for which college or university education preparation was required;

(3) Good moral and responsible character and reputation;

(4) Literacy and the ability to communicate in the English language;

(5) Management and administrative ability to carry out the requirements of this chapter;

(6) Satisfactory completion of department-approved basic training and continuing education training as required by RCW 74.39A.074, and in rules adopted by the department;

(7) Satisfactory completion of department-approved, or equivalent, special care training before a provider may provide special care services to a resident;

(8) Not ((been convicted of any crime that is disqualifying under RCW 43.43.830 or 43.43.842, or department rules adopted under this chapter, or been found to have abused, neglected, exploited, or abandoned a minor or vulnerable adult as specified in RCW 74.39A.056(2))) be disqualified by a department background check;

(9) For those applying to be licensed as providers, and for resident managers whose employment begins after August 24, 2011, at least one thousand hours in the previous sixty months of successful, direct caregiving experience obtained after age eighteen to vulnerable adults in a licensed or contracted setting prior to operating or managing an adult family home. The applicant or resident manager must have credible evidence of the successful, direct caregiving experience or, currently hold one of the following professional licenses: Physician licensed under chapter 18.71 RCW; osteopathic physician licensed under chapter 18.57 RCW; physician assistant licensed under chapter 18.71A RCW; registered nurse, advanced registered nurse practitioner, or licensed practical nurse licensed under chapter 18.79 RCW;

(10) For applicants, proof of financial solvency, as defined in rule; and

(11) Applicants must successfully complete an adult family home administration and business planning class, prior to being granted a license. The class must be a minimum of forty-eight hours of
classroom time and approved by the department. The department shall promote and prioritize bilingual capabilities within available resources and when materials are available for this purpose. Under exceptional circumstances, such as the sudden and unexpected death of a provider, the department may consider granting a license to an applicant who has not completed the class but who meets all other requirements. If the department decides to grant the license due to exceptional circumstances, the applicant must have enrolled in or completed the class within four months of licensure.

Sec. 7. RCW 70.128.130 and 2019 c 80 s 1 are each amended to read as follows:

(1) The provider is ultimately responsible for the day-to-day operations of each licensed adult family home.

(2) The provider shall promote the health, safety, and well-being of each resident residing in each licensed adult family home.

(3) Adult family homes shall be maintained internally and externally in good repair and condition. Such homes shall have safe and functioning systems for heating, cooling, hot and cold water, electricity, plumbing, garbage disposal, sewage, cooking, laundry, artificial and natural light, ventilation, and any other feature of the home.

(4) In order to preserve and promote the residential home-like nature of adult family homes, adult family homes licensed after August 24, 2011, shall:

(a) Have sufficient space to accommodate all residents at one time in the dining and living room areas;
(b) Have hallways and doorways wide enough to accommodate residents who use mobility aids such as wheelchairs and walkers; and
(c) Have outdoor areas that are safe and accessible for residents to use.

(5) The adult family home must provide all residents access to resident common areas throughout the adult family home including, but not limited to, kitchens, dining and living areas, and bathrooms, to the extent that they are safe under the resident’s care plan.

(6) Adult family homes shall be maintained in a clean and sanitary manner, including proper sewage disposal, food handling, and hygiene practices.

(7) Adult family homes shall develop a fire drill plan for emergency evacuation of residents, shall have working smoke detectors
in each bedroom where a resident is located, shall have working fire
extinguishers on each floor of the home, and shall house
nonambulatory residents on a level with safe egress to a public
right-of-way. Nonambulatory residents must have a bedroom on the
floor of the home from which the resident can be evacuated to a
designated safe location outside the home without the use of stairs,
elevators, chair lifts, platform lifts, or other devices as
determined by the department in rule.

(8) The adult family home shall ensure that all residents can be
safely evacuated from the home in an emergency as established by the
department in rule. The rules established by the department must be
developed in consultation with the largest organization representing
fire chiefs in the state of Washington.

(9) Adult family homes shall have clean, functioning, and safe
household items and furnishings.

(10) Adult family homes shall provide a nutritious and balanced
diet and shall recognize residents' needs for special diets.

(11) Adult family homes shall establish health care procedures
for the care of residents including medication administration and
emergency medical care.

(a) Adult family home residents shall be permitted to self-
administer medications.

(b) Adult family home providers may administer medications and
deliver special care only to the extent authorized by law.

(12) Adult family home providers shall either: (a) Reside at the
adult family home; or (b) employ or otherwise contract with a
qualified resident manager to reside at the adult family home. The
department may exempt, for good cause, a provider from the
requirements of this subsection by rule.

(13) A provider will ensure that any volunteer, student,
employee, or person residing within the adult family home who will
have unsupervised access to any resident shall not ((have been
convicted of a crime listed under RCW 43.43.830 or 43.43.842, or been
found to have abused, neglected, exploited, or abandoned a minor or
vulnerable adult as specified in RCW 74.39A.056(2))) be disqualified
by a department background check. A provider may conditionally employ
a person pending the completion of a criminal conviction background
inquiry, but may not allow the person to have unsupervised access to
any resident.
(14) A provider shall offer activities to residents under care as defined by the department in rule.

(15) An adult family home must be financially solvent, and upon request for good cause, shall provide the department with detailed information about the home's finances. Financial records of the adult family home may be examined when the department has good cause to believe that a financial obligation related to resident care or services will not be met.

(16) An adult family home provider must ensure that staff are competent and receive necessary training to perform assigned tasks. Staff must satisfactorily complete department-approved staff orientation, basic training, and continuing education as specified by the department by rule. The provider shall ensure that a qualified caregiver is on-site whenever a resident is at the adult family home; any exceptions will be specified by the department in rule. Notwithstanding RCW 70.128.230, until orientation and basic training are successfully completed, a caregiver may not provide hands-on personal care to a resident without on-site supervision by a person who has successfully completed basic training or been exempted from the training pursuant to statute.

(17) The provider and resident manager must assure that there is:

(a) A mechanism to communicate with the resident in his or her primary language either through a qualified person on-site or readily available at all times, or other reasonable accommodations, such as language lines; and

(b) Staff on-site at all times capable of understanding and speaking English well enough to be able to respond appropriately to emergency situations and be able to read and understand resident care plans.

NEW SECTION. Sec. 8. The department of social and health services and the department of health may adopt rules to implement this act.

NEW SECTION. Sec. 9. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application.
to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

NEW SECTION. Sec. 10. Section 5 of this act expires July 1, 2022.

NEW SECTION. Sec. 11. Section 6 of this act takes effect July 1, 2022.

Passed by the House April 20, 2021.
Passed by the Senate April 10, 2021.
Approved by the Governor May 10, 2021.
Filed in Office of Secretary of State May 10, 2021.

--- END ---