**5533-S2 AMS BRAU S2687.1 - NOT FOR FLOOR USE**

**2SSB 5533** - S AMD **240**

By Senator Braun

**NOT CONSIDERED 12/23/2019**

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec.**  A new section is added to chapter 74.13 RCW to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, the department shall develop and implement a process by which an individual with a founded finding of child abuse or neglect as defined in RCW 26.44.020 or an individual whose child was found by a court to be dependent pursuant to chapter 13.34 RCW may request the department for issuance of a certificate of parental improvement.

(2) The department shall respond to a certificate of parental improvement request and notify the requestor of the department's determination to issue or deny that request within sixty days.

(3) The department shall issue a certificate of parental improvement if, on a more probable than not basis, the requestor has the character, suitability, and competence to care for children and meets the other requirements of this section.

(4) The department may not issue a certificate of parental improvement to any individual if:

(a) Fewer than five years have passed since the requestor's last founded finding of child abuse or neglect as defined in RCW 26.44.020;

(b) Fewer than two years have passed since the department's denial of an individual's request for a certificate of parental improvement; or

(c) The requestor has any conviction or pending criminal action for:

(i) Any felony offense involving the physical neglect of a child under chapter 9A.42 RCW;

(ii) Any felony offense under chapter 9A.32 or 9A.36 RCW involving a physical injury or death of a child;

(iii) Any felony domestic violence offense committed against a family or household member as defined in chapter 10.99 RCW;

(iv) A felony offense against a child under chapter 9.68A RCW;

(v) Any of the following felony offenses:

(A) Any felony defined under any law as a class A felony or an attempt to commit a class A felony;

(B) Criminal solicitation of or criminal conspiracy to commit a class A felony;

(C) Manslaughter in the first or second degree;

(D) Indecent liberties if committed by forcible compulsion;

(E) Kidnapping in the second degree;

(F) Arson in the second degree;

(G) Extortion in the first degree;

(H) Robbery in the second degree;

(I) Drive-by shooting; and

(J) Vehicular homicide; or

(vi) Any out-of-state, federal, or state conviction for a felony offense that is comparable to an offense listed in this subsection (3)(b).

(5) The department shall consider the following when determining whether to issue a certificate of parental improvement:

(a) Documentation of any founded finding of child abuse or neglect and the underlying documentation the department relied upon to make that finding;

(b) Findings from any civil adjudication proceeding as defined in RCW 43.43.830;

(c) Referral history alleging child abuse or neglect against the requestor;

(d) The length of time that has elapsed since the founded finding of child abuse or neglect;

(e) Whether a court made a finding that the requestor's child was dependent pursuant to chapter 13.34 RCW, the length of time elapsed since that dependency court process was dismissed, and the outcome of the dependency court process including whether the child was returned to the requestor's care;

(f) Any documentation that the requestor successfully addressed the circumstances that led to an administrative finding of child abuse or neglect, including but not limited to: A declaration by the requestor; recent assessments or evaluations; completion or progress toward completion of recommended court ordered treatment, services, or programs;

(g) Any pending criminal or civil actions against the requestor;

(h) Results of a Washington state patrol criminal history and federal background check;

(i) Personal and professional references from employers, professionals, and agencies familiar with the requestor who can address the requestor's current character; and

(j) Any education, volunteer work, employment history, or community involvement of the requestor.

(6) Governmental entities, and their officers, agents, employees, and volunteers are not liable in tort for any of their acts or omissions in issuing certificates of parental improvement including, but not limited to, any determination to issue the certificate, or any later act of an individual who received a certificate.

NEW SECTION. **Sec.**  A new section is added to chapter 74.13 RCW to read as follows:

(1) A person who applies for a certificate of parental improvement pursuant to section 1 of this act has the right to seek review of the department's denial of this certificate request as provided in this section.

(2) Within thirty calendar days after the department has notified the requestor that the department is denying the request for a certificate of parental improvement pursuant to section 1 of this act, the requestor may request that the department review this determination. The request for department review must be made in writing. The written notice provided by the department denying a request for a certificate of parental improvement must be sent by certified mail, return receipt requested, to the requestor's last known address and include at least the following information in plain language:

(a) The reason or reasons for the department's denial of a certificate of parental improvement request following a child abuse or neglect finding; and

(b) That the requestor has a right to challenge the department's decision not to issue a certificate of parental improvement, including a description of the process for requesting a review of the department's decision to deny a request for a certificate of parental improvement.

(3) If a requestor does not request review according to the process provided in this subsection, the requestor may not further challenge the department's decision not to issue a certificate of parental improvement following a child abuse or neglect finding.

(4) Upon receipt of a written request for review, the department shall review and, if appropriate, may change its decision and issue a certificate of parental improvement. The secretary shall designate the appropriate staff to conduct this review. The review must be completed within thirty days after receiving the written request for departmental review. Upon completion of this review, the department shall notify the requestor in writing of the department's determination.

(5) If the department does not alter its decision not to issue a certificate of parental improvement following a child abuse or neglect finding, the requestor may request an adjudicative hearing to contest this decision. The adjudicative proceeding is governed by the administrative procedure act, chapter 34.05 RCW, and this section. The request for an adjudicative proceeding must be filed within thirty calendar days after receiving notice of the agency review determination. If a request for an adjudicative proceeding is not made as provided in this section, the requestor may not further challenge the department's decision and has no right to departmental review, an adjudicative hearing, or judicial review of the determination not to issue a certificate of parental improvement.

(6) Reviews and hearings conducted under this section are confidential and are not open to the public. Information about reports, reviews, and hearings may be disclosed only in accordance with federal and state laws pertaining to child welfare records and child protective services reports.

(7) The department shall establish by administrative rule procedures for reviewing requests for certificates of parental improvement. The department may adopt additional rules to implement this section.

**Sec.**  RCW 74.13.020 and 2018 c 284 s 36, 2018 c 58 s 51, and 2018 c 34 s 3 are each reenacted and amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Case management" means convening family meetings, developing, revising, and monitoring implementation of any case plan or individual service and safety plan, coordinating and monitoring services needed by the child and family, caseworker-child visits, family visits, and the assumption of court-related duties, excluding legal representation, including preparing court reports, attending judicial hearings and permanency hearings, and ensuring that the child is progressing toward permanency within state and federal mandates, including the Indian child welfare act.

(2) "Child" means:

(a) A person less than eighteen years of age; or

(b) A person age eighteen to twenty-one years who is eligible to receive the extended foster care services authorized under RCW 74.13.031.

(3) "Child protective services" has the same meaning as in RCW 26.44.020.

(4) "Child welfare services" means social services including voluntary and in-home services, out-of-home care, case management, and adoption services which strengthen, supplement, or substitute for, parental care and supervision for the purpose of:

(a) Preventing or remedying, or assisting in the solution of problems which may result in families in conflict, or the neglect, abuse, exploitation, or criminal behavior of children;

(b) Protecting and caring for dependent, abused, or neglected children;

(c) Assisting children who are in conflict with their parents, and assisting parents who are in conflict with their children, with services designed to resolve such conflicts;

(d) Protecting and promoting the welfare of children, including the strengthening of their own homes where possible, or, where needed;

(e) Providing adequate care of children away from their homes in foster family homes or day care or other child care agencies or facilities.

"Child welfare services" does not include child protection services.

(5) "Department" means the department of children, youth, and families.

(6) "Extended foster care services" means residential and other support services the department is authorized to provide to dependent children. These services include, but are not limited to, placement in licensed, relative, or otherwise approved care, or supervised independent living settings; assistance in meeting basic needs; independent living services; medical assistance; and counseling or treatment.

(7) "Family assessment" means a comprehensive assessment of child safety, risk of subsequent child abuse or neglect, and family strengths and needs that is applied to a child abuse or neglect report. Family assessment does not include a determination as to whether child abuse or neglect occurred, but does determine the need for services to address the safety of the child and the risk of subsequent maltreatment.

(8) "Medical condition" means, for the purposes of qualifying for extended foster care services, a physical or mental health condition as documented by any licensed health care provider regulated by a disciplining authority under RCW 18.130.040.

(9) "Nonminor dependent" means any individual age eighteen to twenty-one years who is participating in extended foster care services authorized under RCW 74.13.031.

(10) "Out-of-home care services" means services provided after the shelter care hearing to or for children in out-of-home care, as that term is defined in RCW 13.34.030, and their families, including the recruitment, training, and management of foster parents, the recruitment of adoptive families, and the facilitation of the adoption process, family reunification, independent living, emergency shelter, residential group care, and foster care, including relative placement.

(11) "Performance-based contracting" means the structuring of all aspects of the procurement of services around the purpose of the work to be performed and the desired results with the contract requirements set forth in clear, specific, and objective terms with measurable outcomes. Contracts shall also include provisions that link the performance of the contractor to the level and timing of reimbursement.

(12) "Permanency services" means long-term services provided to secure a child's safety, permanency, and well-being, including foster care services, family reunification services, adoption services, and preparation for independent living services.

(13) "Primary prevention services" means services which are designed and delivered for the primary purpose of enhancing child and family well-being and are shown, by analysis of outcomes, to reduce the risk to the likelihood of the initial need for child welfare services.

(14) "Secretary" means the secretary of the department.

(15) "Supervised independent living" includes, but is not limited to, apartment living, room and board arrangements, college or university dormitories, and shared roommate settings. Supervised independent living settings must be approved by the department or the court.

(16) "Unsupervised" has the same meaning as in RCW 43.43.830.

(17) "Voluntary placement agreement" means, for the purposes of extended foster care services, a written voluntary agreement between a nonminor dependent who agrees to submit to the care and authority of the department for the purposes of participating in the extended foster care program.

(18) "Certificate of parental improvement" means a certificate issued under section 1 of this act to an individual with a founded finding of child abuse or neglect or a court finding that the individual's child was dependent pursuant to chapter 13.34 RCW.

NEW SECTION. **Sec.**  A new section is added to chapter 18.20 RCW to read as follows:

Assisted living facilities, as defined in this chapter, may not automatically deny a prospective volunteer solely because of a founded finding of abuse or neglect involving the individual revealed in the record check or a court finding that the individual's child was dependent pursuant to chapter 13.34 RCW when that founded finding or court finding is accompanied by a certificate of parental improvement as defined in chapter 74.13 RCW related to the same incident without conducting a review to determine the individual's character, suitability, and competency to volunteer with vulnerable adults.

NEW SECTION. **Sec.**  A new section is added to chapter 18.51 RCW to read as follows:

Nursing homes, as defined in this chapter, may not automatically deny a prospective volunteer solely because of a founded finding of abuse or neglect involving the individual revealed in the record check or a court finding that the individual's child was dependent pursuant to chapter 13.34 RCW when that founded finding or court finding is accompanied by a certificate of parental improvement as defined in chapter 74.13 RCW related to the same incident without conducting a review to determine the individual's character, suitability, and competency to volunteer with vulnerable adults.

**Sec.**  RCW 43.43.832 and 2017 3rd sp.s. c 20 s 5 and 2017 3rd sp.s. c 6 s 224 are each reenacted and amended to read as follows:

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

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

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

(c) Any conviction record to aid in the investigation and prosecution of child, developmentally disabled person, and vulnerable adult abuse cases and to protect children and adults from further incidents of abuse, upon the request of a law enforcement agency, the office of the attorney general, prosecuting authority, or the department of social and health services; and

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

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

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

(b) When considering persons for state positions involving unsupervised access to vulnerable adults to conduct 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;

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

(d) When contracting with individuals or businesses or organizations for the care, supervision, case management, or treatment, including peer counseling, of children, developmentally disabled persons, 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;

(e) When individual providers are paid by the state or providers 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.

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

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

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

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

(c) When contracting with any business or organization for activities that will or may have unsupervised access to children who are in child day care, in early learning programs, or receiving early childhood learning education services;

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

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

(5) Whenever a state conviction record check is required by state law, persons may be employed or engaged as volunteers or independent contractors on a conditional basis pending completion of the state background investigation. Whenever a national criminal record check through the federal bureau of investigation is required by state law, a person may be employed or engaged as a volunteer or independent contractor on a conditional basis pending completion of the national check. The Washington personnel resources board shall adopt rules to accomplish the purposes of this subsection as it applies to state employees.

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

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

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

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

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

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

**Sec.**  RCW 74.39A.056 and 2018 c 278 s 8 are each amended to read as follows:

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

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

(ii) This subsection does not apply to long-term care workers employed by community residential service businesses until January 1, 2016.

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

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

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

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

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

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

(2)(a) No provider, or its staff, or long‑term care worker, or prospective provider or long‑term care worker, with a stipulated finding of fact, conclusion of law, an agreed order, or finding of fact, conclusion of law, or final order issued by a disciplining authority or a court of law or entered into a state registry with a final substantiated finding of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW shall be employed in the care of and have unsupervised access to vulnerable adults.

(b) A provider may not automatically deny a request from a prospective volunteer for unsupervised access to vulnerable adults under this chapter solely because of a founded finding of child abuse or neglect involving the individual revealed in the background check process or solely because the individual's child was found by a court to be dependent pursuant to chapter 13.34 RCW when that founded finding or court finding is accompanied by a certificate of parental improvement as defined in chapter 74.13 RCW related to the same incident without conducting a review to determine the individual's character, suitability, and competency to volunteer with vulnerable adults.

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

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

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By Senator Braun

**NOT CONSIDERED 12/23/2019**

On page 1, line 1 of the title, after "improvement;" strike the remainder of the title and insert "amending RCW 74.39A.056; reenacting and amending RCW 74.13.020 and 43.43.832; adding new sections to chapter 74.13 RCW; adding a new section to chapter 18.20 RCW; and adding a new section to chapter 18.51 RCW."

EFFECT: An individual with a founded finding of child abuse or neglect or a court finding that the individual's child was a dependent may not automatically be denied an opportunity to volunteer in an assisted living facility, nursing home, or with vulnerable adults based solely on that finding if the individual also has a certificate of parental improvement related to that finding.