

ESHB 1120 - S COMM AMD

By Committee on Health & Long Term Care

ADOPTED 04/19/2021

1 Strike everything after the enacting clause and insert the
2 following:

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

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

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

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

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

19 (d) A prospective client's or resident's conviction record, upon
20 the request of a business or organization that qualifies for
21 exemption under section 501(c)(3) of the internal revenue code of
22 1986 (26 U.S.C. Sec. 501(c)(3)) and that provides emergency shelter
23 or transitional housing for children, persons with developmental
24 disabilities, or vulnerable adults.

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

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

11 (b) When considering persons for state positions involving
12 unsupervised access to vulnerable adults to conduct comprehensive
13 assessments, financial eligibility determinations, licensing and
14 certification activities, investigations, surveys, or case
15 management; or for state positions otherwise required by federal law
16 to meet employment standards;

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

22 (d) When contracting with individuals or businesses or
23 organizations for the care, supervision, case management, or
24 treatment, including peer counseling, of children, developmentally
25 disabled persons, or vulnerable adults, including but not limited to
26 services contracted for under chapter 18.20, 70.127, 70.128, 72.36,
27 or 74.39A RCW or Title 71A RCW;

28 (e) When individual providers as defined in RCW 74.39A.240 or
29 providers paid by home care agencies provide in-home services
30 involving unsupervised access to persons with physical, mental, or
31 developmental disabilities or mental illness, or to vulnerable adults
32 as defined in chapter 74.34 RCW, including but not limited to
33 services provided under chapter 74.39 or 74.39A RCW.

34 (3) The secretary of the department of children, youth, and
35 families shall investigate the conviction records, pending charges,
36 and other information including civil adjudication proceeding records
37 of current employees and of any person actively being considered for
38 any position with the department who will or may have unsupervised
39 access to children, or for state positions otherwise required by
40 federal law to meet employment standards. "Considered for any

1 position" includes decisions about (a) initial hiring, layoffs,
2 reallocations, transfers, promotions, or demotions, or (b) other
3 decisions that result in an individual being in a position that will
4 or may have unsupervised access to children as an employee, an
5 intern, or a volunteer.

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

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

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

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

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

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

33 (5) Whenever a state conviction record check is required by state
34 law, persons may be employed or engaged as volunteers or independent
35 contractors on a conditional basis pending completion of the state
36 background investigation. Whenever a national criminal record check
37 through the federal bureau of investigation is required by state law,
38 a person may be employed or engaged as a volunteer or independent
39 contractor on a conditional basis pending completion of the national
40 check. The office of financial management shall adopt rules to

1 accomplish the purposes of this subsection as it applies to state
2 employees. The department of social and health services shall adopt
3 rules to accomplish the purpose of this subsection as it applies to
4 long-term care workers subject to RCW 74.39A.056.

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

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

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

26 (d) Any health care facility that knows or has reason to believe
27 that an applicant has or may have a disqualifying conviction or
28 finding as described in RCW 43.43.842, subsequent to the completion
29 date of their most recent criminal background inquiry, shall be
30 prohibited from relying on the applicant's previous employer's
31 criminal background inquiry information. A new criminal background
32 inquiry shall be requested pursuant to RCW 43.43.830 through
33 43.43.842.

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

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

1 (7) The department of social and health services may not consider
2 any final founded finding of physical abuse or negligent treatment or
3 maltreatment of a child made pursuant to chapter 26.44 RCW that is
4 accompanied by a certificate of parental improvement or dependency as
5 a result of a finding of abuse or neglect pursuant to chapter 13.34
6 RCW that is accompanied by a certificate of parental improvement when
7 evaluating an applicant or employee's character, competency, and
8 suitability pursuant to any background check authorized or required
9 by this chapter, RCW 43.20A.710 or 74.39A.056, or any of the rules
10 adopted thereunder.

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

13 (1) Except as provided in subsection (2) of this section, in
14 order to determine the character, competence, and suitability of any
15 applicant or service provider to have unsupervised access, the
16 secretary of the department of social and health services and the
17 secretary of the department of children, youth, and families may
18 require a fingerprint-based background check through both the
19 Washington state patrol and the federal bureau of investigation at
20 any time, but shall require a fingerprint-based background check when
21 the applicant or service provider has resided in the state less than
22 three consecutive years before application, and:

23 (a) Is an applicant or service provider providing services to
24 children or people with developmental disabilities under RCW
25 74.15.030;

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

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

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

37 (i) Medicaid personal care under RCW 74.09.520;

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

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

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

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

8 (3) To satisfy the shared background check requirements provided
9 for in RCW 43.216.270 and 43.20A.710, the department of children,
10 youth, and families and the department of social and health services
11 shall share federal fingerprint-based background check results as
12 permitted under the law. The purpose of this provision is to allow
13 both departments to fulfill their joint background check
14 responsibility of checking any individual who may have unsupervised
15 access to vulnerable adults, children, or juveniles. Neither
16 department may share the federal background check results with any
17 other state agency or person.

18 (4) The secretary of the department of children, youth, and
19 families shall require a fingerprint-based background check through
20 the Washington state patrol identification and criminal history
21 section and the federal bureau of investigation when the department
22 seeks to approve an applicant or service provider for a foster or
23 adoptive placement of children in accordance with federal and state
24 law. Fees charged by the Washington state patrol and the federal
25 bureau of investigation for fingerprint-based background checks shall
26 be paid by the department of children, youth, and families for
27 applicant and service providers providing foster care as required in
28 RCW 74.15.030.

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

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

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

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

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

7 (a) Services to people with a developmental disability under RCW
8 74.15.030;

9 (b) In-home services funded by medicaid personal care under RCW
10 74.09.520;

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

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

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

18 (f) Services in, or to residents of, a secure facility under RCW
19 71.09.115.

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

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

27 (10) The department of social and health services and the
28 department of children, youth, and families shall develop rules
29 identifying the financial responsibility of service providers,
30 applicants, and the department for paying the fees charged by law
31 enforcement to roll, print, or scan fingerprints-based for the
32 purpose of a Washington state patrol or federal bureau of
33 investigation fingerprint-based background check.

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

36 (a) "Applicant" means a current or prospective department of
37 social and health services, department of children, youth, and
38 families, or service provider employee, volunteer, student, intern,
39 researcher, contractor, or any other individual who will or may have
40 unsupervised access because of the nature of the work or services he

1 or she provides. "Applicant" includes but is not limited to any
2 individual who will or may have unsupervised access and is:

3 (i) Applying for a license or certification from the department
4 of social and health services or the department of children, youth,
5 and families;

6 (ii) Seeking a contract with the department of social and health
7 services, the department of children, youth, and families, or a
8 service provider;

9 (iii) Applying for employment, promotion, reallocation, or
10 transfer;

11 (iv) An individual that a department of social and health
12 services or department of children, youth, and families client or
13 guardian of a department of social and health services or department
14 of children, youth, and families client chooses to hire or engage to
15 provide services to himself or herself or another vulnerable adult,
16 juvenile, or child and who might be eligible to receive payment from
17 the department of social and health services or the department of
18 children, youth, and families for services rendered; or

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

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

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

26 (ii) Have unsupervised access to vulnerable adults, juveniles,
27 and children;

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

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

32 (c) "Secretary" means the secretary of the department of social
33 and health services.

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

35 (e) "Service provider" means entities, facilities, agencies,
36 businesses, or individuals who are licensed, certified, authorized,
37 or regulated by, receive payment from, or have contracts or
38 agreements with the department of social and health services or the
39 department of children, youth, and families to provide services to
40 vulnerable adults, juveniles, or children. "Service provider"

1 includes individuals whom a department of social and health services
2 or department of children, youth, and families client or guardian of
3 a department of social and health services or department of children,
4 youth, and families client may choose to hire or engage to provide
5 services to himself or herself or another vulnerable adult, juvenile,
6 or child and who might be eligible to receive payment from the
7 department of social and health services or the department of
8 children, youth, and families for services rendered. (~~"Service
9 provider" does not include those certified under chapter 70.96A
10 RCW.~~)

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

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

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

31 (ii) (~~(This subsection does not apply to long-term care workers
32 employed by community residential service businesses until January 1,
33 2016.)~~) A long-term care worker who is not disqualified by the state
34 background check can work and have unsupervised access pending the
35 results of the federal bureau of investigation fingerprint background
36 check as allowed by rules adopted by the department.

37 (c) The department shall share state and federal background check
38 results with the department of health in accordance with RCW
39 18.88B.080.

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

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

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

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

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

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

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

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

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

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

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

38 (3) The department shall establish, by rule, a state registry
39 which contains identifying information about long-term care workers
40 identified under this chapter who have final substantiated findings

1 of abuse, neglect, financial exploitation, or abandonment of a
2 vulnerable adult as defined in RCW 74.34.020. The rule must include
3 disclosure, disposition of findings, notification, findings of fact,
4 appeal rights, and fair hearing requirements. The department shall
5 disclose, upon request, final substantiated findings of abuse,
6 neglect, financial exploitation, or abandonment to any person so
7 requesting this information. This information must also be shared
8 with the department of health to advance the purposes of chapter
9 18.88B RCW.

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

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

12 (b) An employee, licensee, or contractor of any of the following:
13 A home care agency licensed under chapter 70.127 RCW; a nursing home
14 under chapter 18.51 RCW; an assisted living facility under chapter
15 18.20 RCW; an enhanced services facility under chapter 70.97 RCW; a
16 certified resident services and supports agency licensed or certified
17 under chapter 71A.12 RCW; an adult family home under chapter 70.128
18 RCW; or any long-term care facility certified to provide medicaid or
19 medicare services; and

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

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

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

25 (1) The department shall inspect each nursing home periodically
26 in accordance with federal standards under 42 C.F.R. Part 488,
27 Subpart E. The inspection shall be made without providing advance
28 notice of it. Every inspection may include an inspection of every
29 part of the premises and an examination of all records, methods of
30 administration, the general and special dietary and the stores and
31 methods of supply. Those nursing homes that provide community-based
32 care shall establish and maintain separate and distinct accounting
33 and other essential records for the purpose of appropriately
34 allocating costs of the providing of such care: PROVIDED, That such
35 costs shall not be considered allowable costs for reimbursement
36 purposes under chapter 74.46 RCW. Following such inspection or
37 inspections, written notice of any violation of this law or the rules
38 and regulations promulgated hereunder, shall be given to the
39 applicant or licensee and the department. The notice shall describe

1 the reasons for the facility's noncompliance. The department may
2 prescribe by regulations that any licensee or applicant desiring to
3 make specified types of alterations or additions to its facilities or
4 to construct new facilities shall, before commencing such alteration,
5 addition or new construction, submit its plans and specifications
6 therefor to the department for preliminary inspection and approval or
7 recommendations with respect to compliance with the regulations and
8 standards herein authorized.

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.

17 (a) Rules adopted under this subsection (2) are effective until
18 the termination of the pandemic, natural disaster, or other declared
19 state of emergency or until the department determines that all
20 facility inspections are occurring according to time frames
21 established in subsection (1) of this section, whichever occurs
22 later. Once the department determines a rule adopted under this
23 subsection (2) is no longer necessary, it must repeal the rule under
24 RCW 34.05.353.

25 (b) Within 12 months of the termination of the pandemic, natural
26 disaster, or other declared state of emergency, the department shall
27 conduct a review of inspection compliance with subsection (1) of this
28 section and provide the legislature with a report.

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

31 (1) The department shall, in addition to any inspections
32 conducted pursuant to complaints filed pursuant to RCW 18.51.190,
33 conduct a periodic general inspection of each nursing home in the
34 state without providing advance notice of such inspection. Such
35 inspections must conform to the federal standards for surveys under
36 42 C.F.R. Part 488, Subpart E.

37 (2) If a pandemic, natural disaster, or other declared state of
38 emergency prevents the department from completing inspections
39 according to the timeline in subsection (1) of this section, the

1 department shall adopt rules to reestablish inspection timelines
2 based on the length of time since the last complete inspection,
3 compliance history of each facility, immediate health or safety
4 concerns, and centers for medicare and medicaid services
5 requirements.

6 (a) Rules adopted under this subsection (2) are effective until
7 the termination of the pandemic, natural disaster, or other declared
8 state of emergency or until the department determines that all
9 facility inspections are occurring according to time frames
10 established in subsection (1) of this section, whichever occurs
11 later. Once the department determines a rule adopted under this
12 subsection (2) is no longer necessary, it must repeal the rule under
13 RCW 34.05.353.

14 (b) Within 12 months of the termination of the pandemic, natural
15 disaster, or other declared state of emergency, the department shall
16 conduct a review of inspection compliance with subsection (1) of this
17 section and provide the legislature with a report.

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

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

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

36 (a) The department shall establish in rule a system of compliance
37 of minimum direct care staffing standards by January 1, 2016.
38 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 until 12 months after the termination of the
38 pandemic, natural disaster, or other declared state of emergency or
39 until determined no longer necessary by the department, whichever
40 occurs first. Once the department determines a rule adopted under

1 this subsection is no longer necessary, it must repeal the rule under
2 RCW 34.05.353.

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

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

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

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

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

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

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

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

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

29 (A) Core competencies; and

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

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

36 (a) Has been developed with input from consumer and worker
37 representatives; and

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

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

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

8 (a) Rules adopted under this subsection (4) are effective until
9 the termination of the pandemic, natural disaster, or other declared
10 state of emergency or until the department determines that all long-
11 term care workers who were unable to complete the training required
12 in subsection (1)(a) of this section have had adequate access to
13 complete the required training, whichever is later. Once the
14 department determines a rule adopted under this subsection (4) is no
15 longer necessary, it must repeal the rule under RCW 34.05.353.

16 (b) Within 12 months of the termination of the pandemic, natural
17 disaster, or other declared state of emergency, the department shall
18 conduct a review of training compliance with subsection (1)(a) of
19 this section and provide the legislature with a report.

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

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

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

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

30 (b) A spouse or registered domestic partner who is a long-term
31 care worker only for a spouse or domestic partner, pursuant to the
32 long-term services and supports trust program established in chapter
33 50B.04 RCW, must receive fifteen hours of basic training, and at
34 least six hours of additional focused training based on the care-
35 receiving spouse's or partner's needs, within the first one hundred
36 twenty days after becoming a long-term care worker.

37 (c) A person working as an individual provider who (i) provides
38 respite care services only for individuals with developmental
39 disabilities receiving services under Title 71A RCW or only for

1 individuals who receive services under this chapter, and (ii) works
2 three hundred hours or less in any calendar year, must complete
3 fourteen hours of training within the first one hundred twenty days
4 after becoming an individual provider. Five of the fourteen hours
5 must be completed before becoming eligible to provide care, including
6 two hours of orientation training regarding the caregiving role and
7 terms of employment and three hours of safety training. The training
8 partnership identified in RCW 74.39A.360 must offer at least twelve
9 of the fourteen hours online, and five of those online hours must be
10 individually selected from elective courses.

11 (d) Individual providers identified in (d)(i) or (ii) of this
12 subsection must complete thirty-five hours of training within the
13 first one hundred twenty days after becoming an individual provider.
14 Five of the thirty-five hours must be completed before becoming
15 eligible to provide care. Two of these five hours shall be devoted to
16 an orientation training regarding an individual provider's role as
17 caregiver and the applicable terms of employment, and three hours
18 shall be devoted to safety training, including basic safety
19 precautions, emergency procedures, and infection control. Individual
20 providers subject to this requirement include:

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

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

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

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

31 (a) Has been developed with input from consumer and worker
32 representatives; and

33 (b) Requires comprehensive instruction by qualified instructors.

34 (4) If a pandemic, natural disaster, or other declared state of
35 emergency impacts the ability of long-term care workers to complete
36 training as required by this section, the department may adopt rules
37 to allow long-term care workers additional time to complete the
38 training requirements.

39 (a) Rules adopted under this subsection (4) are effective until
40 the termination of the pandemic, natural disaster, or other declared

1 state of emergency or until the department determines that all long-
2 term care workers who were unable to complete the training required
3 in subsection (1) of this section have had adequate access to
4 complete the required training, whichever is later. Once the
5 department determines a rule adopted under this subsection (4) is no
6 longer necessary, it must repeal the rule under RCW 34.05.353.

7 (b) Within 12 months of the termination of the pandemic, natural
8 disaster, or other declared state of emergency, the department shall
9 conduct a review of training compliance with subsection (1) of this
10 section and provide the legislature with a report.

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

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

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

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

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

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

24 (b) Registered nurses and licensed practical nurses licensed
25 under chapter 18.79 RCW;

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

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

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

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

36 (a) Has been developed with input from consumer and worker
37 representatives; and

38 (b) Requires comprehensive instruction by qualified instructors.

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

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

8 (a) Rules adopted under this subsection (6) are effective until
9 the termination of the pandemic, natural disaster, or other declared
10 state of emergency or until the department determines that all long-
11 term care workers who were unable to complete the training required
12 in this section have had adequate access to complete the required
13 training, whichever is later. Once the department determines a rule
14 adopted under this subsection (6) is no longer necessary, it must
15 repeal the rule under RCW 34.05.353.

16 (b) Within 12 months of the termination of the pandemic, natural
17 disaster, or other declared state of emergency, the department shall
18 conduct a review of training compliance with subsection (1) of this
19 section and provide the legislature with a report.

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

22 ((+7)) (8) The department shall adopt rules to implement
23 subsection (2) of this section.

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

26 (1) Beginning January 7, 2012, except as provided in RCW
27 18.88B.041, any person hired as a long-term care worker must be
28 certified as a home care aide as provided in this chapter within two
29 hundred calendar days after the date of ~~((being hired. In computing~~
30 ~~the time periods in this subsection, the first day is the date of))~~
31 hire, as defined by the department. The department may adopt rules
32 determining under which circumstances a long-term care worker may
33 have more than one date of hire, restarting the person's 200-day
34 period to obtain certification as a home care aide.

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

38 (b) This section does not prohibit a person: (i) From practicing
39 a profession for which the person has been issued a license or which

1 is specifically authorized under this state's laws; or (ii) who is
2 exempt from certification under RCW 18.88B.041 from providing
3 services as a long-term care worker.

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

9 (3) If a pandemic, natural disaster, or other declared state of
10 emergency impacts the ability of long-term care workers to complete
11 certification as required by this section, the department may adopt
12 rules to allow long-term care workers additional time to become
13 certified.

14 (a) Rules adopted under this subsection (3) are effective until
15 the termination of the pandemic, natural disaster, or other declared
16 state of emergency or until the department determines that additional
17 time for long-term care workers to become certified is no longer
18 necessary, whichever is later. Once the department determines a rule
19 adopted under this subsection (3) is no longer necessary, it must
20 repeal the rule under RCW 34.05.353.

21 (b) Within 12 months of the termination of the pandemic, natural
22 disaster, or other declared state of emergency, the department shall
23 conduct a review of certification compliance with subsection (1) of
24 this section and rules adopted under this subsection (3) and provide
25 the legislature with a report.

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

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

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

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

35 (b) "Indirect 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 and is
38 quickly and easily available to the caregiver, but not necessarily
39 on-site.

1 (2) Training must have three components: Orientation, basic
2 training, and continuing education. All adult family home providers,
3 resident managers, and employees, or volunteers who routinely
4 interact with residents shall complete orientation. Caregivers shall
5 complete orientation, basic training, and continuing education.

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

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

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

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

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

1 (6) Continuing education consists of ongoing delivery of
2 information to caregivers on various topics relevant to the care
3 setting and care needs of residents. Competency testing is not
4 required for continuing education. Continuing education is not
5 required in the same calendar year in which basic or modified basic
6 training is successfully completed. Continuing education is required
7 in each calendar year thereafter. If specialty training is completed,
8 the specialty training applies toward any continuing education
9 requirement for up to two years following the completion of the
10 specialty training.

11 (7) Persons who successfully complete the competency challenge
12 test for basic training are fully exempt from the basic training
13 requirements of this section. Persons who successfully complete the
14 specialty training competency challenge test are fully exempt from
15 the specialty training requirements of this section.

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

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

23 (9) In an effort to improve access to training and education and
24 reduce costs, especially for rural communities, the adult family home
25 training network must include the use of innovative types of learning
26 strategies such as internet resources, videotapes, and distance
27 learning using satellite technology coordinated through community
28 colleges, private associations, or other entities, as defined by the
29 department.

30 (10) The adult family home training network shall assist adult
31 family homes that desire to deliver facility-based training with
32 facility designated trainers, or adult family homes that desire to
33 pool their resources to create shared training systems. The
34 department shall develop criteria for reviewing and approving
35 trainers and training materials. The department may approve a
36 curriculum based upon attestation by an adult family home
37 administrator that the adult family home's training curriculum
38 addresses basic and specialty training competencies identified by the
39 department, and shall review a curriculum to verify that it meets
40 these requirements. The department may conduct the review as part of

1 the next regularly scheduled inspection authorized under RCW
2 70.128.070. The department shall rescind approval of any curriculum
3 if it determines that the curriculum does not meet these
4 requirements.

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

7 (12)(a) Except as provided in (b) of this subsection, the
8 orientation, basic training, specialty training, and continuing
9 education requirements of this section commence September 1, 2002,
10 and shall be applied to (i) employees hired subsequent to September
11 1, 2002; or (ii) existing employees that on September 1, 2002, have
12 not successfully completed the training requirements under RCW
13 70.128.120 or 70.128.130 and this section. Existing employees who
14 have not successfully completed the training requirements under RCW
15 70.128.120 or 70.128.130 shall be subject to all applicable
16 requirements of this section.

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

20 (13) If a pandemic, natural disaster, or other declared state of
21 emergency makes specialty training unavailable, the department may
22 adopt rules to allow an adult family home where the provider and
23 resident manager have not completed specialty training to admit a
24 resident or residents with special needs related to mental illness,
25 dementia, or a developmental disability, or to care for a resident or
26 residents already living in the home who develop special needs. Such
27 rules must include information about how to complete the specialty
28 training once the training is available.

29 (a) Rules adopted under this subsection (13) are effective until
30 the termination of the pandemic, natural disaster, or other declared
31 state of emergency or until the department determines that providers
32 and resident managers who were unable to complete the specialty
33 training required in subsection (5)(b) of this section have had
34 adequate access to complete the required training, whichever is
35 later. Once the department determines a rule adopted under this
36 subsection (13) is no longer necessary, it must repeal the rule under
37 RCW 34.05.353.

38 (b) Within 12 months of the termination of the pandemic, natural
39 disaster, or other declared state of emergency, the department shall

1 conduct a review of training compliance with subsection (5)(b) of
2 this section and provide the legislature with a report.

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

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

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

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

14 (2) Training must have the following components: Orientation,
15 basic training, specialty training as appropriate, and continuing
16 education. All assisted living facility employees or volunteers who
17 routinely interact with residents shall complete orientation.
18 Assisted living facility administrators, or their designees, and
19 caregivers shall complete orientation, basic training, specialty
20 training as appropriate, and continuing education.

21 (3) Orientation consists of introductory information on
22 residents' rights, communication skills, fire and life safety, and
23 universal precautions. Orientation must be provided at the facility
24 by appropriate assisted living facility staff to all assisted living
25 facility employees before the employees have routine interaction with
26 residents.

27 (4) Basic training consists of modules on the core knowledge and
28 skills that caregivers need to learn and understand to effectively
29 and safely provide care to residents. Basic training must be outcome-
30 based, and the effectiveness of the basic training must be measured
31 by demonstrated competency in the core areas through the use of a
32 competency test. Basic training must be completed by caregivers
33 within one hundred twenty days of the date on which they begin to
34 provide hands-on care. Until competency in the core areas has been
35 demonstrated, caregivers shall not provide hands-on personal care to
36 residents without direct supervision. Assisted living facility
37 administrators, or their designees, must complete basic training and
38 demonstrate competency within one hundred twenty days of employment.

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

5 (a) Specialty training consists of modules on the core knowledge
6 and skills that caregivers need to effectively and safely provide
7 care to residents with special needs. Specialty training should be
8 integrated into basic training wherever appropriate. Specialty
9 training must be outcome-based, and the effectiveness of the
10 specialty training measured by demonstrated competency in the core
11 specialty areas through the use of a competency test.

12 (b) Specialty training must be completed by caregivers within one
13 hundred twenty days of the date on which they begin to provide hands-
14 on care to a resident having special needs. However, if specialty
15 training is not integrated with basic training, the specialty
16 training must be completed within ninety days of completion of basic
17 training. Until competency in the core specialty areas has been
18 demonstrated, caregivers shall not provide hands-on personal care to
19 residents with special needs without direct supervision.

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

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

35 (7) Persons who successfully challenge the competency test for
36 basic training are fully exempt from the basic training requirements
37 of this section. Persons who successfully challenge the specialty
38 training competency test are fully exempt from the specialty training
39 requirements of this section.

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

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

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

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

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

33 (12) The department shall adopt rules for the implementation of
34 this section.

35 (13) (a) Except as provided in (b) of this subsection, the
36 orientation, basic training, specialty training, and continuing
37 education requirements of this section commence September 1, 2002, or
38 one hundred twenty days from the date of employment, whichever is
39 later, and shall be applied to (i) employees hired subsequent to
40 September 1, 2002; and (ii) existing employees that on September 1,

1 2002, have not successfully completed the training requirements under
2 RCW 74.39A.010 or 74.39A.020 and this section. Existing employees who
3 have not successfully completed the training requirements under RCW
4 74.39A.010 or 74.39A.020 shall be subject to all applicable
5 requirements of this section.

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

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

17 (a) Rules adopted under this subsection (14) are effective until
18 the termination of the pandemic, natural disaster, or other declared
19 state of emergency or until the department determines that providers
20 and resident managers who were unable to complete the specialty
21 training required in subsection (5)(b) of this section have had
22 adequate access to complete the required training, whichever is
23 later. Once the department determines a rule adopted under this
24 subsection (14) is no longer necessary, it must repeal the rule under
25 RCW 34.05.353.

26 (b) Within 12 months of the termination of the pandemic, natural
27 disaster, or other declared state of emergency, the department shall
28 conduct a review of training compliance with subsection (5)(b) of
29 this section and provide the legislature with a report.

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

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

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

36 (b) Homes licensed by the department shall be inspected at least
37 every eighteen months, with an annual average of fifteen months.
38 However, an adult family home may be allowed to continue without
39 inspection for two years if the adult family home had no inspection

1 citations for the past three consecutive inspections and has received
2 no written notice of violations resulting from complaint
3 investigations during that same time period.

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

8 (d) If a pandemic, natural disaster, or other declared state of
9 emergency prevents the department from completing inspections
10 according to the timeline in this subsection, the department shall
11 adopt rules to reestablish inspection timelines based on the length
12 of time since last inspection, compliance history of each facility,
13 and immediate health or safety concerns.

14 (i) Rules adopted under this subsection (2)(d) are effective
15 until the termination of the pandemic, natural disaster, or other
16 declared state of emergency or until the department determines that
17 all facility inspections are occurring according to time frames
18 established in (b) of this subsection, whichever is later. Once the
19 department determines a rule adopted under this subsection (2)(d) is
20 no longer necessary, it must repeal the rule under RCW 34.05.353.

21 (ii) Within 12 months of the termination of the pandemic, natural
22 disaster, or declared state of emergency, the department shall
23 conduct a review of inspection compliance with (b) of this subsection
24 and provide the legislature with a report.

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

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

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

35 (2) Any duly authorized officer, employee, or agent of the
36 department may enter and inspect any facility at any time to
37 determine that the facility is in compliance with this chapter and
38 applicable rules, and to enforce any provision of this chapter.
39 Complaint inspections shall be unannounced and conducted in such a

1 manner as to ensure maximum effectiveness. No advance notice shall be
2 given of any inspection unless authorized or required by federal law.

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

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

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

16 (6) The facility shall develop a written plan of correction for
17 any violations identified by the department and provide a plan of
18 correction to the department within ten working days from the receipt
19 of the inspection report.

20 (7) If a pandemic, natural disaster, or other declared state of
21 emergency prevents the department from completing inspections
22 according to the timeline in this section, the department shall adopt
23 rules to reestablish inspection timelines based on the length of time
24 since last inspection, compliance history of each facility, and
25 immediate health or safety concerns.

26 (a) Rules adopted under this subsection (7) are effective until
27 the termination of the pandemic, natural disaster, or other declared
28 state of emergency or until the department determines that all
29 facility inspections are occurring according to time frames
30 established in subsection (1) of this section, whichever is later.
31 Once the department determines a rule adopted under this subsection
32 (7) is no longer necessary, it must repeal the rule under RCW
33 34.05.353.

34 (b) Within 12 months of the termination of the pandemic, natural
35 disaster, or other declared state of emergency, the department shall
36 conduct a review of inspection compliance with subsection (1) of this
37 section and provide the legislature with a report.

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

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

33 (2) If a pandemic, natural disaster, or other declared state of
34 emergency prevents the department from completing inspections
35 according to the timeline in subsection (1) of this section, the
36 department shall adopt rules to reestablish inspection timelines
37 based on the length of time since last inspection, compliance history
38 of each facility, and immediate health or safety concerns.

39 (a) Rules adopted under this subsection (2) are effective until
40 the termination of the pandemic, natural disaster, or other declared

1 state of emergency or until the department determines that all
2 facility inspections are occurring according to time frames
3 established in subsection (1) of this section, whichever is later.
4 Once the department determines a rule adopted under this subsection
5 (2) is no longer necessary, it must repeal the rule under RCW
6 34.05.353.

7 (b) Within 12 months of the termination of the pandemic, natural
8 disaster, or other declared state of emergency, the department shall
9 conduct a review of inspection compliance with subsection (1) of this
10 section and provide the legislature with a report.

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

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

16 (b) A health care facility shall not assign a nursing assistant-
17 registered to provide care until the nursing assistant-registered has
18 demonstrated skills necessary to perform competently all assigned
19 duties and responsibilities.

20 (c) Nothing in this chapter shall be construed to confer on a
21 nursing assistant the authority to administer medication unless
22 delegated as a specific nursing task pursuant to this chapter or to
23 practice as a licensed (registered) nurse or licensed practical nurse
24 as defined in chapter 18.79 RCW.

25 (2)(a) A nursing assistant employed in a nursing home must have
26 successfully obtained certification through: (i) An approved training
27 program and the competency evaluation within ~~((four months after the~~
28 ~~date of employment))~~ a period of time determined in rule by the
29 commission; or (ii) alternative training and the competency
30 evaluation prior to employment.

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

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

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

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

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

8 (ii) Is a certified medical assistant pursuant to a certification
9 program accredited by a national medical assistant accreditation
10 organization and approved by the commission; and

11 (b) Has successfully completed at least twenty-four hours of
12 training that the commission determines is necessary to provide
13 training equivalent to approved training on topics not addressed in
14 the training specified for certification as a home care aide or
15 medical assistant, as applicable. In the commission's discretion, a
16 portion of these hours may include clinical training.

17 (2) (a) (~~By July 1, 2011, the~~) The commission, in consultation
18 with the secretary, the department of social and health services, and
19 consumer, employer, and worker representatives, shall adopt rules to
20 implement this section and to provide (~~(, beginning January 1, 2012,)~~)
21 for a program of credentialing reciprocity to the extent required by
22 this section between home care aide and medical assistant
23 certification and nursing assistant certification. (~~By July 1, 2011,~~
24 ~~the~~) The secretary shall also adopt such rules as may be necessary
25 to implement this section and the credentialing reciprocity program.

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

30 (3) (~~Beginning December 1, 2012, the~~) The secretary, in
31 consultation with the commission, shall report annually by December
32 1st to the governor and the appropriate committees of the legislature
33 on the progress made in achieving career advancement for certified
34 home care aides and medical assistants into nursing practice.

35 NEW SECTION. **Sec. 18.** This act is necessary for the immediate
36 preservation of the public peace, health, or safety, or support of
37 the state government and its existing public institutions, and takes
38 effect immediately.

1 NEW SECTION. **Sec. 19.** This act is remedial and curative in
2 nature and all of its sections apply retroactively to February 29,
3 2020, to include the period of the state of emergency created by the
4 COVID-19 outbreak. In any instance where this act grants rule-making
5 authority to the department of social and health services or the
6 department of health, the agencies may adopt the rules as emergency
7 rules and may make the rules retroactively effective."

ESHB 1120 - S COMM AMD

By Committee on Health & Long Term Care

ADOPTED 04/19/2021

8 On page 1, line 2 of the title, after "supports;" strike the
9 remainder of the title and insert "amending RCW 43.43.832, 43.43.837,
10 74.39A.056, 18.51.091, 18.51.230, 74.42.360, 74.39A.074, 74.39A.076,
11 74.39A.341, 18.88B.021, 70.128.230, 18.20.270, 70.128.070, 70.97.160,
12 18.20.110, 18.88A.030, and 18.88A.087; creating a new section; and
13 declaring an emergency."

EFFECT: Clarifies that a long-term care worker must pass both the state and federal background checks. Reduces the 18-month time frame for SNF minimum staffing rules to remain in effect to 12 months after the state of emergency is terminated. Removes the requirement for DSHS to review and report SNF minimum staffing compliance 12 months after the termination of the state of emergency.

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