S-5932.1

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**FOURTH SUBSTITUTE SENATE BILL 5533**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 66th Legislature 2020 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Braun, Darneille, and Zeiger)

AN ACT Relating to certifying a person's documented improvement related to founded findings; amending RCW 74.13.700, 74.13.020, 43.43.832, 74.39A.056, 43.20A.710, and 43.216.010; reenacting and amending RCW 43.216.270; adding new sections to chapter 74.13 RCW; adding a new section to chapter 18.20 RCW; adding a new section to chapter 18.51 RCW; and providing an effective date.

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

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

(1) The department shall develop and implement a process by which an individual who is the subject of a founded finding of negligent treatment or maltreatment or physical abuse as defined in RCW 26.44.020 or by rule or an individual whose child was found by a court to be dependent as a result of a finding that the individual abused or neglected their child pursuant to RCW 13.34.030(6)(b) may request the secretary issue a certificate of parental improvement.

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

(3) The secretary 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 secretary 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 secretary's denial of an individual's request for a certificate of parental improvement;

(c) The requestor has a final founded finding for sexual abuse, sexual exploitation, or physical abuse if the conduct that was the basis for the physical abuse finding involved cutting, burning, interfering with a child's breathing, shaking a child under three, or threatening a child with a deadly weapon;

(d) The requestor has any conviction or pending criminal investigation 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;

(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 (4)(d); or

(e) The individual applying for a certificate of parental improvement has already received one certificate of parental improvement and is the alleged perpetrator in a subsequent, final founded finding of child abuse or neglect.

(5) The secretary 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 entity that issued the finding 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 proceeding was dismissed, and the outcome of the dependency proceeding, including whether the child was returned to the requestor's home;

(f) Any documentation submitted by the requestor indicating whether the requestor successfully addressed the circumstances that led to the founded finding of physical abuse or negligent treatment or maltreatment including, but not limited to: A declaration by the requestor signed under penalty of perjury; recent assessments or evaluations of the requestor; and completion or progress toward completion of recommended court-ordered treatment, services, or programs;

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

(h) Background checks as authorized under RCW 10.97.050, 43.43.833, and 43.43.834, and the federal bureau of investigation;

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

(j) Any education, volunteer work, employment history, or community involvement of the requestor identified by the requestor; and

(k) Any additional information the secretary deems relevant.

(6) However, in deciding whether to grant a request for a certificate of parental improvement under subsection (5) of this section, the secretary must accept the underlying founded finding as valid and may not review the merits of that founded finding.

(7) The department shall enact rules to implement the process identified in this section.

(8) 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 secretary's denial of this certificate request as provided in this section.

(2) The written notice provided by the department denying a request for a certificate of parental improvement must be sent by mail to the requestor's last known address and include at least the following information in plain language:

(a) The reason or reasons for the secretary's denial of a certificate of parental improvement request following a founded finding of physical abuse or negligent treatment or maltreatment; and

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

(3) Within forty-five calendar days after the department has placed a notice in the mail to the address on the request notifying the requestor that the secretary is denying the request for a certificate of parental improvement pursuant to section 1 of this act, the requestor may request that the secretary review this determination. The request for review must be made in writing.

(4) If a requestor does not request a review as provided in this section, the requestor may not further challenge the secretary's decision not to issue a certificate of parental improvement following a founded finding of physical abuse or negligent treatment or maltreatment.

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

(6) If the secretary does not alter the 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 forty-five calendar days of the date that the department placed the agency review determination in the mail to the address on the request. If a timely request for an adjudicative proceeding is not made as provided in this section, the requestor may not further challenge the secretary's decision and has no right to review by the secretary, an adjudicative hearing, or judicial review of the determination not to issue a certificate of parental improvement.

(7) 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.

(8) The secretary shall establish procedures for reviewing requests for certificates of parental improvement and requests to alter the decision to deny a request for a certificate of parental improvement by administrative rule, including by emergency rule making if necessary. The secretary may adopt additional rules to implement this section.

**Sec.**  RCW 74.13.700 and 2014 c 88 s 4 are each amended to read as follows:

(1) In determining the character, suitability, and competence of an individual, the department may not:

(a) Deny or delay a license or approval of unsupervised access to children to an individual solely because of a crime or civil infraction involving the individual or entity revealed in the background check process that does not fall within the categories of disqualifying crimes described in the adoption and safe families act of 1997 or does not relate directly to child safety, permanence, or well-being; ((~~or~~))

(b) Deny or delay a license or approval of unsupervised access to children to an individual solely because of a founded finding of physical abuse or negligent treatment or maltreatment by the applicant or solely because the applicant's child was found by a court to be dependent as a result of a finding that the parent abused or neglected the child pursuant to RCW 13.34.030(6)(b) when that founded finding or court finding is accompanied by a certificate of parental improvement as defined in this chapter related to the same incident; or

(c) Delay the issuance of a license or approval of unsupervised access to children by requiring the individual to obtain records relating to a crime or civil infraction revealed in the background check process that does not fall within the categories of disqualifying crimes described in the adoption and safe families act of 1997 or does not relate directly to child safety, permanence, or well-being.

(2) If the department determines that an individual does not possess the character, suitability, or competence to provide care or have unsupervised access to a child, it must provide the reasons for its decision in writing with copies of the records or documents related to its decision to the individual within ten days of making the decision.

(3) For purposes of this section, "individual" means a relative as defined in RCW 74.15.020(2)(a), an "other suitable person" under chapter 13.34 RCW, a person pursuing licensing as a foster parent, or a person employed or seeking employment by a business or organization licensed by the department or with whom the department has a contract to provide care, supervision, case management, or treatment of children in the care of the department. "Individual" does not include long-term care workers defined in RCW 74.39A.009((~~(17)(a)~~)) whose background checks are conducted as provided in RCW 74.39A.056.

(4) The department or its officers, agents, or employees may not be held civilly liable based upon its decision to grant or deny unsupervised access to children if the background information it relied upon at the time the decision was made did not indicate that child safety, permanence, or well-being would be a concern.

**Sec.**  RCW 74.13.020 and 2019 c 172 s 7 are each 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) "Child who is a candidate for foster care" means a child who the department identifies as being at imminent risk of entering foster care but who can remain safely in the child's home or in a kinship placement as long as services or programs that are necessary to prevent entry of the child into foster care are provided, and includes but is not limited to a child whose adoption or guardianship arrangement is at risk of a disruption or dissolution that would result in a foster care placement. The term includes a child for whom there is reasonable cause to believe that any of the following circumstances exist:

(a) The child has been abandoned by the parent as defined in RCW 13.34.030 and the child's health, safety, and welfare is seriously endangered as a result;

(b) The child has been abused or neglected as defined in chapter 26.44 RCW and the child's health, safety, and welfare is seriously endangered as a result;

(c) There is no parent capable of meeting the child's needs such that the child is in circumstances that constitute a serious danger to the child's development;

(d) The child is otherwise at imminent risk of harm.

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

(7) "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.

(8) "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.

(9) "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.

(10) "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.

(11) "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.

(12) "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.

(13) "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.

(14) "Prevention and family services and programs" means specific mental health prevention and treatment services, substance abuse prevention and treatment services, and in-home parent skill-based programs that qualify for federal funding under the federal family first prevention services act, P.L. 115-123. For purposes of this chapter, prevention and family services and programs are not remedial services or family reunification services as described in RCW 13.34.025(2).

(15) "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.

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

(17) "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.

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

(19) "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.

(20) "Certificate of parental improvement" means a certificate issued under section 1 of this act to an individual who has a founded finding of physical abuse or negligent treatment or maltreatment, or a court finding that the individual's child was dependent as a result of a finding that the individual abused or neglected their child pursuant to RCW 13.34.030(6)(b).

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 or employee solely because of a founded finding of child abuse or neglect involving the individual revealed in the record check or a court finding or a court finding that the individual's child was dependent as a result of a finding that the individual abused or neglected their child pursuant to RCW 13.34.030(6)(b) 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 or employee solely because of a founded finding of child abuse or neglect involving the individual revealed in the record check or a court finding or a court finding that the individual's child was dependent as a result of a finding that the individual abused or neglected their child pursuant to RCW 13.34.030(6)(b) 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 2019 c 146 s 6 are each 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~~)) as defined in RCW 74.39A.240 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 office of financial management 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.

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

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

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

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

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

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

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

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

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

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

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

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

**Sec.**  RCW 43.216.270 and 2018 c 59 s 1 and 2018 c 58 s 69 are each reenacted and amended to read as follows:

(1)(a) In determining whether an individual is of appropriate character, suitability, and competence to provide child care and early learning services to children, the department may consider the history of past involvement of child protective services or law enforcement agencies with the individual for the purpose of establishing a pattern of conduct, behavior, or inaction with regard to the health, safety, or welfare of a child. No report of child abuse or neglect that has been destroyed or expunged under RCW 26.44.031 may be used for such purposes. No unfounded or inconclusive allegation of child abuse or neglect as defined in RCW 26.44.020 may be disclosed to a provider licensed under this chapter.

(b) The department may not deny or delay a license to provide child care and early learning services under this chapter to an individual solely because of a founded finding of physical abuse or negligent treatment or maltreatment involving the individual revealed in the background check process or solely because the individual's child was found by a court to be dependent as a result of a finding that the individual abused or neglected their child pursuant to RCW 13.34.030(6)(b) 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.

(2) In order to determine the suitability of individuals newly applying for an agency license, new licensees, their new employees, and other persons who newly have unsupervised access to children in child care, shall be fingerprinted.

(a) The fingerprints shall be forwarded to the Washington state patrol and federal bureau of investigation for a criminal history record check.

(b)(i) All individuals applying for first-time agency licenses, all new employees, and other persons who have not been previously qualified by the department to have unsupervised access to children in child care must be fingerprinted and obtain a criminal history record check pursuant to this section.

(ii) Persons required to be fingerprinted and obtain a criminal history record check pursuant to this section must pay for the cost of this check as follows: The fee established by the Washington state patrol for the criminal background history check, including the cost of obtaining the fingerprints; and a fee paid to the department for the cost of administering the individual-based/portable background check clearance registry. The fee paid to the department must be deposited into the individual-based/portable background check clearance account established in RCW 43.216.273. The licensee may, but need not, pay these costs on behalf of a prospective employee or reimburse the prospective employee for these costs. The licensee and the prospective employee may share these costs.

(c) The secretary shall use the fingerprint criminal history record check information solely for the purpose of determining eligibility for a license and for determining the character, suitability, and competence of those persons or agencies, excluding parents, not required to be licensed who are authorized to care for children.

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

(e) No later than July 1, 2013, all agency licensees holding licenses prior to July 1, 2012, persons who were employees before July 1, 2012, and persons who have been qualified by the department before July 1, 2012, to have unsupervised access to children in child care, must submit a new background application to the department. The department must require persons submitting a new background application pursuant to this subsection (2)(e) to pay a fee to the department for the cost of administering the individual-based/portable background check clearance registry. This fee must be paid into the individual-based/portable background check clearance account established in RCW 43.216.273. The licensee may, but need not, pay these costs on behalf of a prospective employee or reimburse the prospective employee for these costs. The licensee and the prospective employee may share these costs.

(f) The department shall issue a background check clearance card or certificate to the applicant if after the completion of a background check the department concludes the applicant is qualified for unsupervised access to children in child care. The background check clearance card or certificate is valid for three years from the date of issuance. A valid card or certificate must be accepted by a potential employer as proof that the applicant has successfully completed a background check as required under this chapter. For purposes of renewal of the background clearance card or certificate, all agency licensees holding a license, persons who are employees, and persons who have been previously qualified by the department, must submit a new background application to the department on a date to be determined by the department. The fee requirements applicable to this section also apply to background clearance renewal applications.

(g) The original applicant for an agency license, licensees, their employees, and other persons who have unsupervised access to children in child care shall submit a new background check application to the department, on a form and by a date as determined by the department.

(h) The payment requirements applicable to (a) through (g) of this subsection do not apply to persons who:

(i) Provide regularly scheduled care for a child or children in the home of the provider or in the home of the child or children for periods of less than twenty-four hours or, if necessary due to the nature of the parent's work, for periods equal to or greater than twenty-four hours;

(ii) Receive child care subsidies; and

(iii) Are exempt from licensing under this chapter.

(i) The applicant and agency shall maintain on-site for inspection a copy of the background check clearance card or certificate.

(j) Individuals who have been issued a background check clearance card or certificate shall report nonconviction and conviction information to the department within twenty-four hours of the event constituting the nonconviction or conviction information.

(k) The department shall investigate and conduct a redetermination of an applicant's or licensee's background clearance if the department receives a complaint or information from individuals, a law enforcement agency, or other federal, state, or local government agency. Subject to the requirements contained in RCW 43.216.325 and 43.216.327 and based on a determination that an individual lacks the appropriate character, suitability, or competence to provide child care or early learning services to children, the department may: (i) Invalidate the background card or certificate; or (ii) suspend, modify, or revoke any license authorized by this chapter.

(3) To satisfy the shared background check requirements of the department of children, youth, and families, the office of the superintendent of public instruction, and the department of social and health services, each department shall share federal fingerprint-based background check results as permitted under the law. The purpose of this provision is to allow these departments to fulfill their joint background check responsibility of checking any individual who may have unsupervised access to vulnerable adults, children, or juveniles. These departments may not share the federal background check results with any other state agency or person.

(4) Individuals who have completed a fingerprint background check as required by the office of the superintendent of public instruction, consistent with RCW 28A.400.303, and have been continuously employed by the same school district or educational service district, can meet the requirements in subsection (2) of this section by providing a true and accurate copy of their Washington state patrol and federal bureau of investigation background check report results to the department or if the school district or the educational service district provides an affidavit to the department that the individual has been authorized to work by the school district or educational service district after completing a record check consistent with RCW 28A.400.303. The department may require that additional background checks be completed that do not require additional fingerprinting and may charge a fee for these additional background checks.

**Sec.**  RCW 43.20A.710 and 2014 c 88 s 2 are each amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

**Sec.**  RCW 43.216.010 and 2017 3rd sp.s. c 6 s 201 are each amended to read as follows:

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

(1) "Agency" means any person, firm, partnership, association, corporation, or facility that provides child care and early learning services outside a child's own home and includes the following irrespective of whether there is compensation to the agency:

(a) "Child day care center" means an agency that regularly provides early childhood education and early learning services for a group of children for periods of less than twenty-four hours;

(b) "Early learning" includes but is not limited to programs and services for child care; state, federal, private, and nonprofit preschool; child care subsidies; child care resource and referral; parental education and support; and training and professional development for early learning professionals;

(c) "Family day care provider" means a child care provider who regularly provides early childhood education and early learning services for not more than twelve children in the provider's home in the family living quarters;

(d) "Nongovernmental private-public partnership" means an entity registered as a nonprofit corporation in Washington state with a primary focus on early learning, school readiness, and parental support, and an ability to raise a minimum of five million dollars in contributions;

(e) "Service provider" means the entity that operates a community facility.

(2) "Agency" does not include the following:

(a) Persons related to the child in the following ways:

(i) Any blood relative, including those of half-blood, and including first cousins, nephews or nieces, and persons of preceding generations as denoted by prefixes of grand, great, or great-great;

(ii) Stepfather, stepmother, stepbrother, and stepsister;

(iii) A person who legally adopts a child or the child's parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law; or

(iv) Spouses of any persons named in (a)(i), (ii), or (iii) of this subsection, even after the marriage is terminated;

(b) Persons who are legal guardians of the child;

(c) Persons who care for a neighbor's or friend's child or children, with or without compensation, where the person providing care for periods of less than twenty-four hours does not conduct such activity on an ongoing, regularly scheduled basis for the purpose of engaging in business, which includes, but is not limited to, advertising such care;

(d) Parents on a mutually cooperative basis exchange care of one another's children;

(e) Nursery schools that are engaged primarily in early childhood education with preschool children and in which no child is enrolled on a regular basis for more than four hours per day;

(f) Schools, including boarding schools, that are engaged primarily in education, operate on a definite school year schedule, follow a stated academic curriculum, and accept only school age children;

(g) Seasonal camps of three months' or less duration engaged primarily in recreational or educational activities;

(h) Facilities providing child care for periods of less than twenty-four hours when a parent or legal guardian of the child remains on the premises of the facility for the purpose of participating in:

(i) Activities other than employment; or

(ii) Employment of up to two hours per day when the facility is operated by a nonprofit entity that also operates a licensed child care program at the same facility in another location or at another facility;

(i) Any entity that provides recreational or educational programming for school age children only and the entity meets all of the following requirements:

(i) The entity utilizes a drop-in model for programming, where children are able to attend during any or all program hours without a formal reservation;

(ii) The entity does not assume responsibility in lieu of the parent, unless for coordinated transportation;

(iii) The entity is a local affiliate of a national nonprofit; and

(iv) The entity is in compliance with all safety and quality standards set by the associated national agency;

(j) A program operated by any unit of local, state, or federal government;

(k) A program located within the boundaries of a federally recognized Indian reservation, licensed by the Indian tribe;

(l) A program located on a federal military reservation, except where the military authorities request that such agency be subject to the licensing requirements of this chapter;

(m) A program that offers early learning and support services, such as parent education, and does not provide child care services on a regular basis.

(3) "Applicant" means a person who requests or seeks employment in an agency.

(4) "Conviction information" means criminal history record information relating to an incident which has led to a conviction or other disposition adverse to the applicant.

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

(6) "Early achievers" means a program that improves the quality of early learning programs and supports and rewards providers for their participation.

(7) "Early childhood education and assistance program contractor" means an organization that provides early childhood education and assistance program services under a signed contract with the department.

(8) "Early childhood education and assistance program provider" means an organization that provides site level, direct, and high quality early childhood education and assistance program services under the direction of an early childhood education and assistance program contractor.

(9) "Early start" means an integrated high quality continuum of early learning programs for children birth-to-five years of age. Components of early start include, but are not limited to, the following:

(a) Home visiting and parent education and support programs;

(b) The early achievers program described in RCW 43.216.085;

(c) Integrated full-day and part-day high quality early learning programs; and

(d) High quality preschool for children whose family income is at or below one hundred ten percent of the federal poverty level.

(10) "Education data center" means the education data center established in RCW 43.41.400, commonly referred to as the education research and data center.

(11) "Employer" means a person or business that engages the services of one or more people, especially for wages or salary to work in an agency.

(12) "Enforcement action" means denial, suspension, revocation, modification, or nonrenewal of a license pursuant to RCW 43.216.325(1) or assessment of civil monetary penalties pursuant to RCW 43.216.325(3).

(13) "Extended day program" means an early childhood education and assistance program that offers early learning education for at least ten hours per day, a minimum of two thousand hours per year, at least four days per week, and operates year-round.

(14) "Full day program" means an early childhood education and assistance program that offers early learning education for a minimum of one thousand hours per year.

(15) "Low-income child care provider" means a person who administers a child care program that consists of at least eighty percent of children receiving working connections child care subsidy.

(16) "Low-income neighborhood" means a district or community where more than twenty percent of households are below the federal poverty level.

(17) "Negative action" means a court order, court judgment, or an adverse action taken by an agency, in any state, federal, tribal, or foreign jurisdiction, which results in a finding against the applicant reasonably related to the individual's character, suitability, and competence to care for or have unsupervised access to children in child care. This may include, but is not limited to:

(a) A decision issued by an administrative law judge;

(b) A final determination, decision, or finding made by an agency following an investigation;

(c) An adverse agency action, including termination, revocation, or denial of a license or certification, or if pending adverse agency action, the voluntary surrender of a license, certification, or contract in lieu of the adverse action;

(d) A revocation, denial, or restriction placed on any professional license; or

(e) A final decision of a disciplinary board.

(18) "Nonconviction information" means arrest, founded allegations of child abuse, or neglect pursuant to chapter 26.44 RCW, or other negative action adverse to the applicant.

(19) "Nonschool age child" means a child who is age six years or younger and who is not enrolled in a public or private school.

(20) "Part day program" means an early childhood education and assistance program that offers early learning education for at least two and one-half hours per class session, at least three hundred twenty hours per year, for a minimum of thirty weeks per year.

(21) "Private school" means a private school approved by the state under chapter 28A.195 RCW.

(22) "Probationary license" means a license issued as a disciplinary measure to an agency that has previously been issued a full license but is out of compliance with licensing standards.

(23) "Requirement" means any rule, regulation, or standard of care to be maintained by an agency.

(24) "School age child" means a child who is five years of age through twelve years of age and is attending a public or private school or is receiving home-based instruction under chapter 28A.200 RCW.

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

(26) "Washington state preschool program" means an education program for children three-to-five years of age who have not yet entered kindergarten, such as the early childhood education and assistance program.

(27) "Certificate of parental improvement" means a certificate issued under section 1 of this act to an individual who has a founded finding of physical abuse or negligent treatment or maltreatment, or a court finding that the individual's child was dependent as a result of a finding that the individual abused or neglected their child pursuant to RCW 13.34.030(6)(b).

NEW SECTION. **Sec.**  This act takes effect January 1, 2021.

**--- END ---**