

SHB 1411 - S COMM AMD

By Committee on Health & Long Term Care

ADOPTED AS AMENDED 04/10/2021

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

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

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

14 (a) Selling marijuana to a person under RCW 69.50.401 after three
15 years or more have passed between the most recent conviction and the
16 date the background check is processed;

17 (b) Theft in the first degree under RCW 9A.56.030 after 10 years
18 or more have passed between the most recent conviction and the date
19 the background check is processed;

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

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

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

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

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

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

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

12 (5) The department, a contracted provider, or a licensee, when
13 conducting a character, competence, and suitability review for the
14 purpose of hiring, licensing, certifying, contracting with,
15 permitting, or continuing to permit a person to be employed in any
16 position caring for or having unsupervised access to vulnerable
17 adults or children, may, in its sole discretion, determine whether to
18 consider any of the convictions identified in subsection (1) of this
19 section. The department, a contracted provider, or a licensee, when
20 conducting a character, competence, and suitability review for the
21 purpose of hiring, licensing, certifying, contracting with,
22 permitting, or continuing to permit a person to be employed in any
23 position caring for or having unsupervised access to vulnerable
24 adults or children, is immune from suit in law, equity, or under the
25 administrative procedure act, for damages based upon its exercise of
26 discretion under this section or the refusal to exercise such
27 discretion, and the department's, contracted provider's, or
28 licensee's consideration or lack of consideration of a criminal
29 conviction identified in subsection (1) of this section and resulting
30 decision does not constitute negligence. This subsection does not
31 create a duty for the department to conduct a character, competence,
32 and suitability review.

33 (6) For the purposes of the section:

34 (a) "Contracted provider" means a provider, and its employees,
35 contracted with the department or an area agency on aging to provide
36 services to department clients under programs under chapter 74.09,
37 74.39, 74.39A, or 71A.12 RCW. "Contracted provider" includes area
38 agencies on aging and their subcontractors who provide case
39 management.

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

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

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

17 (a) Client safety;

18 (b) Client direction;

19 (c) Racial equity;

20 (d) Cultural competence;

21 (e) Economic consequences of unpaid caregiving on caregivers and
22 people receiving care;

23 (f) Categories of eligible workers (family, friend, trusted
24 individuals, or others);

25 (g) Disqualifying crimes, if any;

26 (h) Mechanisms for consideration (attestation, petition, other);

27 and

28 (i) Workforce development.

29 (2) (a) The work group shall consist of:

30 (i) Two representatives from the department;

31 (ii) Two representatives from community-based organizations that
32 represent people with criminal records;

33 (iii) One representative from a community-based organization that
34 represents Black communities;

35 (iv) One representative from an organization or tribe to
36 represent the interests of American Indians and Alaska Natives;

37 (v) One representative from a community-based organization that
38 represents immigrant populations or persons of color;

1 (vi) Three representatives from the union representing the
2 majority of long-term care workers in Washington;

3 (vii) One representative of a consumer-directed employer;

4 (viii) One representative of an association representing area
5 agencies on aging in Washington;

6 (ix) One representative from the office of the state long-term
7 care ombuds;

8 (x) One representative from the office of the state developmental
9 disability ombuds;

10 (xi) One representative of an association representing medicaid
11 home care agencies;

12 (xii) One representative from the Washington state attorney
13 general's office;

14 (xiii) Four representatives from organizations representing
15 seniors and individuals with physical or developmental disabilities;

16 (xiv) Two representatives who are current or previous consumers
17 of personal care services and who represent the diversity of the
18 disability community; and

19 (xv) Two representatives who receive unpaid care from individuals
20 who are unable to become medicaid paid home care workers because of
21 disqualifying convictions.

22 (b) The department shall invite the participation of persons with
23 expertise in the background check process to provide advice and
24 consultation to the work group with respect to the development of the
25 proposed process under subsection (1) of this section.

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

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

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

40 (5) This section expires July 1, 2023.

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

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

17 (a)(i) Criminal justice agencies, as defined in RCW 10.97.030,
18 and the Washington state bar association are exempt from this
19 section.

20 (ii) This section does not apply to the licensing, certification,
21 or qualification of the following professionals: Accountants, RCW
22 18.04.295; (~~assisted living facilities employees, RCW 18.20.125;~~)
23 bail bond agents, RCW 18.185.020; escrow agents, RCW 18.44.241;
24 (~~long-term care workers, RCW 18.88B.080;~~) nursing home
25 administrators, RCW 18.52.071; nursing, chapter 18.79 RCW; physicians
26 and physician assistants, chapters 18.71 and 18.71A RCW; private
27 investigators, RCW 18.165.030; receivers, RCW 7.60.035; teachers,
28 chapters 28A.405 and 28A.410 RCW; notaries public, chapter 42.45 RCW;
29 private investigators, chapter 18.165 RCW; real estate brokers and
30 salespersons, chapters 18.85 and 18.86 RCW; security guards, chapter
31 18.170 RCW; and vulnerable adult care providers, RCW 43.43.842, who
32 are not home care aides, chapter 18.88B RCW, or contracted providers
33 or licensees as defined in section 1 of this act.

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

37 (b) Unless otherwise (~~addressed in statute~~) prohibited by law,
38 in cases where an applicant would be disqualified under RCW
39 (~~43.20A.710~~) 43.216.170, and the applicant has obtained a
40 certificate of restoration of opportunity for a disqualifying

1 conviction, (~~the department of social and health services and~~) the
2 department of children, youth, and families may, after review of
3 relevant factors, including the nature and seriousness of the
4 offense, time that has passed since conviction, changed circumstances
5 since the offense occurred, and the nature of the employment or
6 license sought, at their discretion:

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

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

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

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

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

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

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

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

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

20 (2) A qualified court has jurisdiction to issue a certificate of
21 restoration of opportunity to a qualified applicant.

22 (a) A court must determine, in its discretion whether the
23 certificate:

24 (i) Applies to all past criminal history; or

25 (ii) Applies only to the convictions or adjudications in the
26 jurisdiction of the court.

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

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

32 (3) An employer or housing provider may, in its sole discretion,
33 determine whether to consider a certificate of restoration of
34 opportunity issued under this chapter in making employment or rental
35 decisions. An employer or housing provider is immune from suit in
36 law, equity, or under the administrative procedure act for damages
37 based upon its exercise of discretion under this section or the
38 refusal to exercise such discretion. In any action at law against an
39 employer or housing provider arising out of the employment of or
40 provision of housing to the recipient of a certificate of restoration

1 of opportunity, evidence of the crime for which a certificate of
2 restoration of opportunity has been issued may not be introduced as
3 evidence of negligence or intentionally tortious conduct on the part
4 of the employer or housing provider. This subsection does not create
5 a protected class, private right of action, any right, privilege, or
6 duty, or to change any right, privilege, or duty existing under law
7 related to employment or housing except as provided in RCW 7.60.035.

8 (4) The department of social and health services, and contracted
9 providers and licensees as defined in section 1 of this act, when
10 hiring, licensing, certifying, contracting with, permitting, or
11 continuing to permit a person to be employed in any position caring
12 for or having unsupervised access to vulnerable adults or children,
13 may, in their sole discretion, determine whether to consider a
14 certificate of restoration of opportunity issued under this chapter.
15 The department of social and health services, or contracted providers
16 or licensees as defined in section 1 of this act, when hiring,
17 licensing, certifying, contracting with, permitting, or continuing to
18 permit a person to be employed in any position caring for or having
19 unsupervised access to vulnerable adults or children, are immune from
20 suit in law, equity, or under the administrative procedure act for
21 damages based upon their exercise of discretion under this subsection
22 or the refusal to exercise such discretion, and the department,
23 contracted provider, or licensee's consideration or lack of
24 consideration of a criminal conviction accompanied by a certificate
25 of restoration of opportunity and resulting decision does not
26 constitute negligence. This subsection does not create a protected
27 class, a private right of action, or any right, privilege, or duty,
28 or to change any right, privilege, or duty existing under law related
29 to the department of social and health services, contracted
30 providers, and licensees as defined in section 1 of this act.

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

39 (b) Washington state patrol: The Washington state patrol is not
40 required to remove any records based solely on a certificate of

1 restoration of opportunity. The state patrol must include a
2 certificate as part of its criminal history record report.

3 (c) Court records:

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

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

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

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

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

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

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

36 (~~((5))~~) (6) In all cases, an applicant must provide notice to the
37 prosecutor in the county where he or she seeks a certificate of
38 restoration of opportunity of the pendency of such application. If
39 the applicant has been sentenced by any other jurisdiction in the
40 five years preceding the application for a certificate, the applicant

1 must also notify the prosecuting attorney in those jurisdictions. The
2 prosecutor in the county where an applicant applies for a certificate
3 shall provide the court with a report of the applicant's criminal
4 history.

5 ~~((+6))~~ (7) Application for a certificate of restoration of
6 opportunity must be filed as a civil action.

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

19 ~~((+8))~~ (9) Unless the qualified court determines that a hearing
20 on an application for certificate of restoration is necessary, the
21 court must decide without a hearing whether to grant the certificate
22 of restoration of opportunity based on a review of the application
23 filed by the applicant and pleadings filed by the prosecuting
24 attorney.

25 ~~((+9))~~ (10) The clerk of the court in which the certificate of
26 restoration of opportunity is granted shall transmit the certificate
27 of restoration of opportunity to the Washington state patrol
28 identification section, which holds criminal history information for
29 the person who is the subject of the conviction. The Washington state
30 patrol shall update its records to reflect the certificate of
31 restoration of opportunity.

32 ~~((+10))~~ (11)(a) The administrative office of the courts shall
33 develop and prepare instructions, forms, and an informational
34 brochure designed to assist applicants applying for a certificate of
35 restoration of opportunity.

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

39 (c) The administrative office of the courts shall distribute a
40 master copy of the instructions, informational brochure, and sample

1 application and form order to all county clerks and a master copy of
2 the application and order to all superior courts by January 1, 2017.

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

12 (e) The administrative office of the courts shall update the
13 instructions, brochures, standard application and order, and
14 translations when changes in the law make an update necessary.

15 **Sec. 4.** RCW 43.20A.710 and 2020 c 270 s 10 are each amended to
16 read as follows:

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

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

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

34 (c) Individuals or businesses or organizations for the care,
35 supervision, case management, or treatment of children, persons with
36 developmental disabilities, or vulnerable adults, including but not
37 limited to services contracted for under chapter 18.20, 70.127,
38 70.128, 72.36, or 74.39A RCW or Title 71A RCW.

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

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

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

27 (5) An individual provider or home care agency provider hired to
28 provide in-home care for and having unsupervised access to a
29 vulnerable adult as defined in chapter 74.34 RCW must have no
30 conviction for a disqualifying crime under RCW 43.43.830 and
31 43.43.842. An individual or home care agency provider must also have
32 no conviction for a crime relating to drugs as defined in RCW
33 43.43.830. This subsection applies only with respect to the provision
34 of in-home services funded by medicaid personal care under RCW
35 74.09.520, community options program entry system waiver services
36 under RCW 74.39A.030, or chore services under RCW 74.39A.110.

37 (6) The secretary shall provide the results of the state
38 background check on long-term care workers, including individual
39 providers, to the persons hiring them or to their legal guardians, if
40 any, for their determination of the character, suitability, and

1 competence of the applicants. If the person elects to hire or retain
2 an individual provider after receiving notice from the department
3 that the applicant has a conviction for an offense that would
4 disqualify the applicant from having unsupervised access to persons
5 with physical, mental, or developmental disabilities or mental
6 illness, or to vulnerable adults as defined in chapter 74.34 RCW,
7 then the secretary shall deny payment for any subsequent services
8 rendered by the disqualified individual provider.

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

12 (8) Any person whose criminal history would otherwise disqualify
13 the person under this section or RCW 43.43.842, from a position which
14 will or may have unsupervised access to children, vulnerable adults,
15 or persons with mental illness or developmental disabilities shall
16 not be automatically disqualified if ~~((the))~~:

17 (a) The department of social and health services reviewed the
18 person's otherwise disqualifying criminal history through the
19 department of social and health services' background assessment
20 review team process conducted in 2002 and determined that such person
21 could remain in a position covered by this section ~~((, or if the~~
22 ~~otherwise disqualifying))~~;

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

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

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

31 (9) The department may not consider any founded finding of
32 physical abuse or negligent treatment or maltreatment of a child made
33 pursuant to chapter 26.44 RCW that is accompanied by a certificate of
34 parental improvement or dependency as a result of a finding of abuse
35 or neglect pursuant to chapter 13.34 RCW that is accompanied by a
36 certificate of parental improvement when evaluating an applicant or
37 employee's character, competency, and suitability pursuant to any
38 background check authorized or required by this chapter, RCW
39 74.39A.056 or 43.43.832, or any of the rules adopted thereunder.

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

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

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

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

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

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

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

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

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

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

29 (3) Good moral and responsible character and reputation;

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

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

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

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

1 (8) Not (~~been convicted of any crime that is disqualifying under~~
2 ~~RCW 43.43.830 or 43.43.842, or department rules adopted under this~~
3 ~~chapter, or been found to have abused, neglected, exploited, or~~
4 ~~abandoned a minor or vulnerable adult as specified in RCW~~
5 ~~74.39A.056(2)) be disqualified by a department background check;~~

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

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

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

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

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

- 1 (1) Twenty-one years of age or older;
- 2 (2) For those applying after September 1, 2001, to be licensed as
3 providers, and for resident managers whose employment begins after
4 September 1, 2001, a United States high school diploma or high school
5 equivalency certificate as provided in RCW 28B.50.536 or any English
6 or translated government documentation of the following:
- 7 (a) Successful completion of government-approved public or
8 private school education in a foreign country that includes an annual
9 average of one thousand hours of instruction over twelve years or no
10 less than twelve thousand hours of instruction;
- 11 (b) A foreign college, foreign university, or United States
12 community college two-year diploma;
- 13 (c) Admission to, or completion of coursework at, a foreign
14 university or college for which credit was granted;
- 15 (d) Admission to, or completion of coursework at, a United States
16 college or university for which credits were awarded;
- 17 (e) Admission to, or completion of postgraduate coursework at, a
18 United States college or university for which credits were awarded;
19 or
- 20 (f) Successful passage of the United States board examination for
21 registered nursing, or any professional medical occupation for which
22 college or university education preparation was required;
- 23 (3) Good moral and responsible character and reputation;
- 24 (4) Literacy and the ability to communicate in the English
25 language;
- 26 (5) Management and administrative ability to carry out the
27 requirements of this chapter;
- 28 (6) Satisfactory completion of department-approved basic training
29 and continuing education training as required by RCW 74.39A.074, and
30 in rules adopted by the department;
- 31 (7) Satisfactory completion of department-approved, or
32 equivalent, special care training before a provider may provide
33 special care services to a resident;
- 34 (8) Not (~~been convicted of any crime that is disqualifying under~~
35 ~~RCW 43.43.830 or 43.43.842, or department rules adopted under this~~
36 ~~chapter, or been found to have abused, neglected, exploited, or~~
37 ~~abandoned a minor or vulnerable adult as specified in RCW~~
38 ~~74.39A.056(2)) be disqualified by a department background check;~~
- 39 (9) For those applying to be licensed as providers, and for
40 resident managers whose employment begins after August 24, 2011, at

1 least one thousand hours in the previous sixty months of successful,
2 direct caregiving experience obtained after age eighteen to
3 vulnerable adults in a licensed or contracted setting prior to
4 operating or managing an adult family home. The applicant or resident
5 manager must have credible evidence of the successful, direct
6 caregiving experience or, currently hold one of the following
7 professional licenses: Physician licensed under chapter 18.71 RCW;
8 osteopathic physician licensed under chapter 18.57 RCW; physician
9 assistant licensed under chapter 18.71A RCW; registered nurse,
10 advanced registered nurse practitioner, or licensed practical nurse
11 licensed under chapter 18.79 RCW;

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

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

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

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

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

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

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

4 (a) Have sufficient space to accommodate all residents at one
5 time in the dining and living room areas;

6 (b) Have hallways and doorways wide enough to accommodate
7 residents who use mobility aids such as wheelchairs and walkers; and

8 (c) Have outdoor areas that are safe and accessible for residents
9 to use.

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

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

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

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

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

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

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

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

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

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

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

18 (14) A provider shall offer activities to residents under care as
19 defined by the department in rule.

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

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

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

39 (a) A mechanism to communicate with the resident in his or her
40 primary language either through a qualified person on-site or readily

1 available at all times, or other reasonable accommodations, such as
2 language lines; and

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

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

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

19 NEW SECTION. **Sec. 10.** Section 5 of this act expires July 1,
20 2022.

21 NEW SECTION. **Sec. 11.** Section 6 of this act takes effect July
22 1, 2022."

SHB 1411 - S COMM AMD

By Committee on Health & Long Term Care

ADOPTED AS AMENDED 04/10/2021

23 On page 1, line 2 of the title, after "system;" strike the
24 remainder of the title and insert "amending RCW 9.97.020, 43.20A.710,
25 70.128.120, 70.128.120, and 70.128.130; adding a new section to
26 chapter 43.20A RCW; adding a new section to chapter 74.39A RCW;
27 creating new sections; providing an effective date; and providing
28 expiration dates."

EFFECT: Changes one of the crimes for which DSHS must no longer
automatically disqualify from selling marijuana to a person under the
Code Rev/MW:lel 20 S-2252.1/21

age of 21 to selling marijuana to a person. Increases the time that must have passed for theft in the first degree from five years to 10 years. Changes references to "department contracted provider" and "contracted employee" to "contracted provider". Adds Area Agencies on Aging and their subcontractors who provide case management to the contracted provider definition. Expands the law suit immunity to also state that DSHS's, a contracted provider's, or licensee's consideration or lack of consideration of a criminal conviction and its resulting decision does not constitute negligence. Modifies the goals and the list of items the informed consent work group must address. Adds the following members to the work group: One representative from the Attorney General's Office, two consumers of personal care services that represent the diversity of the disability community, and two individuals who receive unpaid care from individuals who were disqualified due to their criminal records. Removes the requirement for DSHS to revise and implement the work group's recommendations by January 1, 2023, and instead requires the work group to submit their recommendations to the legislature by December 1, 2022. Adds vulnerable adult care providers who are not certified Home Care Aides, DSHS contracted providers, and licensees to the list of professions that are not required to accept a certificate of restoration of opportunity.

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