

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1411

67th Legislature
2021 Regular Session

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

**Speaker of the House of
Representatives**

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

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

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

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1411

AS AMENDED BY THE SENATE

Passed Legislature - 2021 Regular Session

State of Washington 67th Legislature 2021 Regular Session

By House Health Care & Wellness (originally sponsored by Representatives Simmons, Davis, Santos, Valdez, Berry, and Fitzgibbon)

READ FIRST TIME 02/15/21.

1 AN ACT Relating to health care workforce eligibility for persons
2 with prior involvement with the criminal justice system; amending RCW
3 9.97.020, 43.20A.710, 70.128.120, 70.128.120, and 70.128.130; adding
4 a new section to chapter 43.20A RCW; adding a new section to chapter
5 74.39A RCW; creating new sections; providing an effective date; and
6 providing expiration dates.

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

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

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

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

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

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

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

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

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

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

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

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

27 (5) The department, a contracted provider, or a licensee, when
28 conducting a character, competence, and suitability review for the
29 purpose of hiring, licensing, certifying, contracting with,
30 permitting, or continuing to permit a person to be employed in any
31 position caring for or having unsupervised access to vulnerable
32 adults or children, may, in its sole discretion, determine whether to
33 consider any of the convictions identified in subsection (1) of this
34 section. If the department or a consumer directed employer as defined
35 in RCW 74.39A.009 determines that an individual with any of the
36 convictions identified in subsection (1) of this section is qualified
37 to provide services to a department client as an individual provider
38 as defined in RCW 74.39A.240, the department or the consumer directed
39 employer must provide the client, and their guardian if any, with the
40 results of the state background check for their determination of

1 character, suitability, and competence of the individual before the
2 individual begins providing services. The department, a contracted
3 provider, or a licensee, when conducting a character, competence, and
4 suitability review for the purpose of hiring, licensing, certifying,
5 contracting with, permitting, or continuing to permit a person to be
6 employed in any position caring for or having unsupervised access to
7 vulnerable adults or children, has a rebuttable presumption that its
8 exercise of discretion under this section or the refusal to exercise
9 such discretion was appropriate. This subsection does not create a
10 duty for the department to conduct a character, competence, and
11 suitability review.

12 (6) For the purposes of the section:

13 (a) "Contracted provider" means a provider, and its employees,
14 contracted with the department or an area agency on aging to provide
15 services to department clients under programs under chapter 74.09,
16 74.39, 74.39A, or 71A.12 RCW. "Contracted provider" includes area
17 agencies on aging and their subcontractors who provide case
18 management.

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

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

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

- 35 (a) Client safety;
- 36 (b) Client direction;
- 37 (c) Racial equity;
- 38 (d) Cultural competence;

1 (e) Economic consequences of unpaid caregiving on caregivers and
2 people receiving care;

3 (f) Categories of eligible workers (family, friend, trusted
4 individuals, or others);

5 (g) Disqualifying crimes, if any;

6 (h) Mechanisms for consideration (attestation, petition, other);
7 and

8 (i) Workforce development.

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

10 (i) Two representatives from the department;

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

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

15 (iv) Two representatives, one from the west side of the Cascade
16 mountains and one from the east side of the Cascade mountains, from
17 federally recognized tribes;

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

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

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

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

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

27 (x) One representative from the office of the state developmental
28 disability ombuds;

29 (xi) One representative of an association representing medicaid
30 home care agencies;

31 (xii) One representative from the Washington state attorney
32 general's office;

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

35 (xiv) Two representatives who are current or previous consumers
36 of personal care services and who represent the diversity of the
37 disability community; and

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

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

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

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

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

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

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

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

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

1 (ii) This section does not apply to the licensing, certification,
2 or qualification of the following professionals: Accountants, RCW
3 18.04.295; (~~assisted living facilities employees, RCW 18.20.125;~~)
4 bail bond agents, RCW 18.185.020; escrow agents, RCW 18.44.241;
5 (~~long-term care workers, RCW 18.88B.080;~~) nursing home
6 administrators, RCW 18.52.071; nursing, chapter 18.79 RCW; physicians
7 and physician assistants, chapters 18.71 and 18.71A RCW; private
8 investigators, RCW 18.165.030; receivers, RCW 7.60.035; teachers,
9 chapters 28A.405 and 28A.410 RCW; notaries public, chapter 42.45 RCW;
10 private investigators, chapter 18.165 RCW; real estate brokers and
11 salespersons, chapters 18.85 and 18.86 RCW; security guards, chapter
12 18.170 RCW; and vulnerable adult care providers, RCW 43.43.842, who
13 are not home care aides, chapter 18.88B RCW, or contracted providers
14 or licensees as defined in section 1 of this act.

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

18 (b) Unless otherwise (~~addressed in statute~~) prohibited by law,
19 in cases where an applicant would be disqualified under RCW
20 (~~43.20A.710~~) 43.216.170, and the applicant has obtained a
21 certificate of restoration of opportunity for a disqualifying
22 conviction, (~~the department of social and health services and~~) the
23 department of children, youth, and families may, after review of
24 relevant factors, including the nature and seriousness of the
25 offense, time that has passed since conviction, changed circumstances
26 since the offense occurred, and the nature of the employment or
27 license sought, at their discretion:

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

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

34 (c) Unless otherwise prohibited by law, in cases in which an
35 applicant would be disqualified under RCW 43.20A.710, 43.43.842, or
36 department rule, and the applicant has obtained a certificate of
37 restoration of opportunity for a disqualifying conviction, the
38 department of social and health services may, after review of
39 relevant factors, including the nature and seriousness of the
40 offense, time that has passed since conviction, changed circumstances

1 since the offense occurred, and the nature of the employment or
2 license sought, at its discretion:

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

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

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

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

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

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

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

3 (a) A court must determine, in its discretion whether the
4 certificate:

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

6 (ii) Applies only to the convictions or adjudications in the
7 jurisdiction of the court.

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

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

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

29 (4) The department of social and health services, and contracted
30 providers and licensees as defined in section 1 of this act, when
31 hiring, licensing, certifying, contracting with, permitting, or
32 continuing to permit a person to be employed in any position caring
33 for or having unsupervised access to vulnerable adults or children,
34 may, in their sole discretion, determine whether to consider a
35 certificate of restoration of opportunity issued under this chapter.
36 If the department or a consumer directed employer as defined in RCW
37 74.39A.009 determines that an individual with a certificate of
38 restoration of opportunity is qualified to work as an individual
39 provider as defined in RCW 74.39A.240, the department or the consumer
40 directed employer must provide the client, and their guardian if any,

1 with the results of the state background check for their
2 determination of character, suitability, and competence of the
3 individual before the individual begins providing services. The
4 department of social and health services, or contracted providers or
5 licensees as defined in section 1 of this act, when hiring,
6 licensing, certifying, contracting with, permitting, or continuing to
7 permit a person to be employed in any position caring for or having
8 unsupervised access to vulnerable adults or children, have a
9 rebuttable presumption that their exercise of discretion under this
10 subsection or the refusal to exercise such discretion was
11 appropriate. This subsection does not create a protected class, a
12 private right of action, or any right, privilege, or duty, or to
13 change any right, privilege, or duty existing under law related to
14 the department of social and health services, contracted providers,
15 and licensees as defined in section 1 of this act.

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

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

28 (c) Court records:

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

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

38 (d) Effect in other judicial proceedings: A certificate of
39 restoration of opportunity may only be submitted to a court to
40 demonstrate that the individual met the specific requirements of this

1 section and not for any other procedure, including evidence of
2 character, reputation, or conduct. A certificate is not an equivalent
3 procedure under Rule of Evidence 609(c).

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

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

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

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

21 (~~((5))~~) (6) In all cases, an applicant must provide notice to the
22 prosecutor in the county where he or she seeks a certificate of
23 restoration of opportunity of the pendency of such application. If
24 the applicant has been sentenced by any other jurisdiction in the
25 five years preceding the application for a certificate, the applicant
26 must also notify the prosecuting attorney in those jurisdictions. The
27 prosecutor in the county where an applicant applies for a certificate
28 shall provide the court with a report of the applicant's criminal
29 history.

30 (~~((6))~~) (7) Application for a certificate of restoration of
31 opportunity must be filed as a civil action.

32 (~~((7))~~) (8) A superior court in the county in which the applicant
33 resides may decline to consider the application for certificate of
34 restoration of opportunity. If the superior court in which the
35 applicant resides declines to consider the application, the court
36 must dismiss the application without prejudice and the applicant may
37 refile the application in another qualified court. The court must
38 state the reason for the dismissal on the order. If the court
39 determines that the applicant does not meet the required
40 qualifications, then the court must dismiss the application without

1 prejudice and state the reason(s) on the order. The superior court in
2 the county of the applicant's conviction or adjudication may not
3 decline to consider the application.

4 ~~((+8))~~ (9) Unless the qualified court determines that a hearing
5 on an application for certificate of restoration is necessary, the
6 court must decide without a hearing whether to grant the certificate
7 of restoration of opportunity based on a review of the application
8 filed by the applicant and pleadings filed by the prosecuting
9 attorney.

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

17 ~~((+10))~~ (11) (a) The administrative office of the courts shall
18 develop and prepare instructions, forms, and an informational
19 brochure designed to assist applicants applying for a certificate of
20 restoration of opportunity.

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

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

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

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

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

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

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

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

20 (c) Individuals or businesses or organizations for the care,
21 supervision, case management, or treatment of children, persons with
22 developmental disabilities, or vulnerable adults, including but not
23 limited to services contracted for under chapter 18.20, 70.127,
24 70.128, 72.36, or 74.39A RCW or Title 71A RCW.

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

31 (3) Except as provided in subsection (4) of this section, an
32 individual provider or home care agency provider who has resided in
33 the state less than three years before applying for employment
34 involving unsupervised access to a vulnerable adult as defined in
35 chapter 74.34 RCW must be fingerprinted for the purpose of
36 investigating conviction records through both the Washington state
37 patrol and the federal bureau of investigation. This subsection
38 applies only with respect to the provision of in-home services funded
39 by medicaid personal care under RCW 74.09.520, community options
40 program entry system waiver services under RCW 74.39A.030, or chore

1 services under RCW 74.39A.110. However, this subsection does not
2 supersede RCW 74.15.030(2).

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

11 (5) An individual provider or home care agency provider hired to
12 provide in-home care for and having unsupervised access to a
13 vulnerable adult as defined in chapter 74.34 RCW must have no
14 conviction for a disqualifying crime under RCW 43.43.830 and
15 43.43.842. An individual or home care agency provider must also have
16 no conviction for a crime relating to drugs as defined in RCW
17 43.43.830. This subsection applies only with respect to the provision
18 of in-home services funded by medicaid personal care under RCW
19 74.09.520, community options program entry system waiver services
20 under RCW 74.39A.030, or chore services under RCW 74.39A.110.

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

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

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

1 (a) The department of social and health services reviewed the
2 person's otherwise disqualifying criminal history through the
3 department of social and health services' background assessment
4 review team process conducted in 2002 and determined that such person
5 could remain in a position covered by this section(~~, or if the~~
6 ~~otherwise disqualifying~~);

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

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

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

15 (9) The department may not consider any founded finding of
16 physical abuse or negligent treatment or maltreatment of a child made
17 pursuant to chapter 26.44 RCW that is accompanied by a certificate of
18 parental improvement or dependency as a result of a finding of abuse
19 or neglect pursuant to chapter 13.34 RCW that is accompanied by a
20 certificate of parental improvement when evaluating an applicant or
21 employee's character, competency, and suitability pursuant to any
22 background check authorized or required by this chapter, RCW
23 74.39A.056 or 43.43.832, or any of the rules adopted thereunder.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (8) Not (~~been convicted of any crime that is disqualifying under~~
25 ~~RCW 43.43.830 or 43.43.842, or department rules adopted under this~~
26 ~~chapter, or been found to have abused, neglected, exploited, or~~
27 ~~abandoned a minor or vulnerable adult as specified in RCW~~
28 ~~74.39A.056(2)) be disqualified by a department background check;~~

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

1 advanced registered nurse practitioner, or licensed practical nurse
2 licensed under chapter 18.79 RCW;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (8) Not (~~been convicted of any crime that is disqualifying under~~
19 ~~RCW 43.43.830 or 43.43.842, or department rules adopted under this~~
20 ~~chapter, or been found to have abused, neglected, exploited, or~~
21 ~~abandoned a minor or vulnerable adult as specified in RCW~~
22 ~~74.39A.056(2)) be disqualified by a department background check;~~

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

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

38 (11) Applicants must successfully complete an adult family home
39 administration and business planning class, prior to being granted a
40 license. The class must be a minimum of forty-eight hours of

1 classroom time and approved by the department. The department shall
2 promote and prioritize bilingual capabilities within available
3 resources and when materials are available for this purpose. Under
4 exceptional circumstances, such as the sudden and unexpected death of
5 a provider, the department may consider granting a license to an
6 applicant who has not completed the class but who meets all other
7 requirements. If the department decides to grant the license due to
8 exceptional circumstances, the applicant must have enrolled in or
9 completed the class within four months of licensure.

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

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

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

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

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

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

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

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

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

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

38 (7) Adult family homes shall develop a fire drill plan for
39 emergency evacuation of residents, shall have working smoke detectors

1 in each bedroom where a resident is located, shall have working fire
2 extinguishers on each floor of the home, and shall house
3 nonambulatory residents on a level with safe egress to a public
4 right-of-way. Nonambulatory residents must have a bedroom on the
5 floor of the home from which the resident can be evacuated to a
6 designated safe location outside the home without the use of stairs,
7 elevators, chair lifts, platform lifts, or other devices as
8 determined by the department in rule.

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

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

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

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

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

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

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

30 (13) A provider will ensure that any volunteer, student,
31 employee, or person residing within the adult family home who will
32 have unsupervised access to any resident shall not ~~((have been
33 convicted of a crime listed under RCW 43.43.830 or 43.43.842, or been
34 found to have abused, neglected, exploited, or abandoned a minor or
35 vulnerable adult as specified in RCW 74.39A.056(2)))~~ be disqualified
36 by a department background check. A provider may conditionally employ
37 a person pending the completion of a criminal conviction background
38 inquiry, but may not allow the person to have unsupervised access to
39 any resident.

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

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

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

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

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

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

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

33 NEW SECTION. **Sec. 9.** If any part of this act is found to be in
34 conflict with federal requirements that are a prescribed condition to
35 the allocation of federal funds to the state, the conflicting part of
36 this act is inoperative solely to the extent of the conflict and with
37 respect to the agencies directly affected, and this finding does not
38 affect the operation of the remainder of this act in its application

1 to the agencies concerned. Rules adopted under this act must meet
2 federal requirements that are a necessary condition to the receipt of
3 federal funds by the state.

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

6 NEW SECTION. **Sec. 11.** Section 6 of this act takes effect July
7 1, 2022.

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