

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1120

Chapter 203, Laws of 2021

67th Legislature
2021 Regular Session

LONG-TERM SERVICES AND SUPPORTS—STATE OF EMERGENCY

EFFECTIVE DATE: May 10, 2021

Passed by the House April 22, 2021
Yeas 81 Nays 16

LAURIE JINKINS

**Speaker of the House of
Representatives**

Passed by the Senate April 19, 2021
Yeas 49 Nays 0

DENNY HECK

President of the Senate

Approved May 10, 2021 2:59 PM

JAY INSLEE

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 **ENGROSSED SUBSTITUTE HOUSE BILL 1120** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BERNARD DEAN

Chief Clerk

FILED

May 10, 2021

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1120

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 Tharinger, Harris, Cody, Riccelli, Stonier, and Macri; by request of Department of Social and Health Services)

READ FIRST TIME 01/29/21.

1 AN ACT Relating to state of emergency operations impacting long-
2 term services and supports; amending RCW 43.43.832, 43.43.837,
3 74.39A.056, 18.51.091, 18.51.230, 74.42.360, 74.39A.074, 74.39A.076,
4 74.39A.341, 18.88B.021, 70.128.230, 18.20.270, 70.128.070, 70.97.160,
5 18.20.110, 18.88A.030, and 18.88A.087; creating a new section; and
6 declaring an emergency.

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

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

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

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

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

18 (c) Any conviction record to aid in the investigation and
19 prosecution of child, developmentally disabled person, and vulnerable
20 adult abuse cases and to protect children and adults from further
21 incidents of abuse, upon the request of a law enforcement agency, the

1 office of the attorney general, prosecuting authority, or the
2 department of social and health services; and

3 (d) A prospective client's or resident's conviction record, upon
4 the request of a business or organization that qualifies for
5 exemption under section 501(c)(3) of the internal revenue code of
6 1986 (26 U.S.C. Sec. 501(c)(3)) and that provides emergency shelter
7 or transitional housing for children, persons with developmental
8 disabilities, or vulnerable adults.

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

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

26 (b) When considering persons for state positions involving
27 unsupervised access to vulnerable adults to conduct comprehensive
28 assessments, financial eligibility determinations, licensing and
29 certification activities, investigations, surveys, or case
30 management; or for state positions otherwise required by federal law
31 to meet employment standards;

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

37 (d) When contracting with individuals or businesses or
38 organizations for the care, supervision, case management, or
39 treatment, including peer counseling, of children, developmentally
40 disabled persons, or vulnerable adults, including but not limited to

1 services contracted for under chapter 18.20, 70.127, 70.128, 72.36,
2 or 74.39A RCW or Title 71A RCW;

3 (e) When individual providers as defined in RCW 74.39A.240 or
4 providers paid by home care agencies provide in-home services
5 involving unsupervised access to persons with physical, mental, or
6 developmental disabilities or mental illness, or to vulnerable adults
7 as defined in chapter 74.34 RCW, including but not limited to
8 services provided under chapter 74.39 or 74.39A RCW.

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

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

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

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

38 (c) When contracting with any business or organization for
39 activities that will or may have unsupervised access to children who

1 are in child day care, in early learning programs, or receiving early
2 childhood learning education services;

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

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

9 (5) Whenever a state conviction record check is required by state
10 law, persons may be employed or engaged as volunteers or independent
11 contractors on a conditional basis pending completion of the state
12 background investigation. Whenever a national criminal record check
13 through the federal bureau of investigation is required by state law,
14 a person may be employed or engaged as a volunteer or independent
15 contractor on a conditional basis pending completion of the national
16 check. The office of financial management shall adopt rules to
17 accomplish the purposes of this subsection as it applies to state
18 employees. The department of social and health services shall adopt
19 rules to accomplish the purpose of this subsection as it applies to
20 long-term care workers subject to RCW 74.39A.056.

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

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

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

1 since the completion date of the most recent criminal background
2 inquiry.

3 (d) Any health care facility that knows or has reason to believe
4 that an applicant has or may have a disqualifying conviction or
5 finding as described in RCW 43.43.842, subsequent to the completion
6 date of their most recent criminal background inquiry, shall be
7 prohibited from relying on the applicant's previous employer's
8 criminal background inquiry information. A new criminal background
9 inquiry shall be requested pursuant to RCW 43.43.830 through
10 43.43.842.

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

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

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

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

30 (1) Except as provided in subsection (2) of this section, in
31 order to determine the character, competence, and suitability of any
32 applicant or service provider to have unsupervised access, the
33 secretary of the department of social and health services and the
34 secretary of the department of children, youth, and families may
35 require a fingerprint-based background check through both the
36 Washington state patrol and the federal bureau of investigation at
37 any time, but shall require a fingerprint-based background check when
38 the applicant or service provider has resided in the state less than
39 three consecutive years before application, and:

1 (a) Is an applicant or service provider providing services to
2 children or people with developmental disabilities under RCW
3 74.15.030;

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

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

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

15 (i) Medicaid personal care under RCW 74.09.520;

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

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

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

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

25 (3) To satisfy the shared background check requirements provided
26 for in RCW 43.216.270 and 43.20A.710, the department of children,
27 youth, and families and the department of social and health services
28 shall share federal fingerprint-based background check results as
29 permitted under the law. The purpose of this provision is to allow
30 both departments to fulfill their joint background check
31 responsibility of checking any individual who may have unsupervised
32 access to vulnerable adults, children, or juveniles. Neither
33 department may share the federal background check results with any
34 other state agency or person.

35 (4) The secretary of the department of children, youth, and
36 families shall require a fingerprint-based background check through
37 the Washington state patrol identification and criminal history
38 section and the federal bureau of investigation when the department
39 seeks to approve an applicant or service provider for a foster or
40 adoptive placement of children in accordance with federal and state

1 law. Fees charged by the Washington state patrol and the federal
2 bureau of investigation for fingerprint-based background checks shall
3 be paid by the department of children, youth, and families for
4 applicant and service providers providing foster care as required in
5 RCW 74.15.030.

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

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

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

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

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

24 (a) Services to people with a developmental disability under RCW
25 74.15.030;

26 (b) In-home services funded by medicaid personal care under RCW
27 74.09.520;

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

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

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

35 (f) Services in, or to residents of, a secure facility under RCW
36 71.09.115.

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

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

5 (10) The department of social and health services and the
6 department of children, youth, and families shall develop rules
7 identifying the financial responsibility of service providers,
8 applicants, and the department for paying the fees charged by law
9 enforcement to roll, print, or scan fingerprints-based for the
10 purpose of a Washington state patrol or federal bureau of
11 investigation fingerprint-based background check.

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

14 (a) "Applicant" means a current or prospective department of
15 social and health services, department of children, youth, and
16 families, or service provider employee, volunteer, student, intern,
17 researcher, contractor, or any other individual who will or may have
18 unsupervised access because of the nature of the work or services he
19 or she provides. "Applicant" includes but is not limited to any
20 individual who will or may have unsupervised access and is:

21 (i) Applying for a license or certification from the department
22 of social and health services or the department of children, youth,
23 and families;

24 (ii) Seeking a contract with the department of social and health
25 services, the department of children, youth, and families, or a
26 service provider;

27 (iii) Applying for employment, promotion, reallocation, or
28 transfer;

29 (iv) An individual that a department of social and health
30 services or department of children, youth, and families client or
31 guardian of a department of social and health services or department
32 of children, youth, and families client chooses to hire or engage to
33 provide services to himself or herself or another vulnerable adult,
34 juvenile, or child and who might be eligible to receive payment from
35 the department of social and health services or the department of
36 children, youth, and families for services rendered; or

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

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

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

5 (ii) Have unsupervised access to vulnerable adults, juveniles,
6 and children;

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

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

11 (c) "Secretary" means the secretary of the department of social
12 and health services.

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

14 (e) "Service provider" means entities, facilities, agencies,
15 businesses, or individuals who are licensed, certified, authorized,
16 or regulated by, receive payment from, or have contracts or
17 agreements with the department of social and health services or the
18 department of children, youth, and families to provide services to
19 vulnerable adults, juveniles, or children. "Service provider"
20 includes individuals whom a department of social and health services
21 or department of children, youth, and families client or guardian of
22 a department of social and health services or department of children,
23 youth, and families client may choose to hire or engage to provide
24 services to himself or herself or another vulnerable adult, juvenile,
25 or child and who might be eligible to receive payment from the
26 department of social and health services or the department of
27 children, youth, and families for services rendered. (~~"Service
28 provider" does not include those certified under chapter 70.96A
29 RCW.~~)

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

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

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

12 (ii) (~~This subsection does not apply to long-term care workers~~
13 ~~employed by community residential service businesses until January 1,~~
14 ~~2016.~~) A long-term care worker who is not disqualified by the state
15 background check can work and have unsupervised access pending the
16 results of the federal bureau of investigation fingerprint background
17 check as allowed by rules adopted by the department.

18 (c) The department shall share state and federal background check
19 results with the department of health in accordance with RCW
20 18.88B.080.

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

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

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

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

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

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

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

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

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

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

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

18 (3) The department shall establish, by rule, a state registry
19 which contains identifying information about long-term care workers
20 identified under this chapter who have final substantiated findings
21 of abuse, neglect, financial exploitation, or abandonment of a
22 vulnerable adult as defined in RCW 74.34.020. The rule must include
23 disclosure, disposition of findings, notification, findings of fact,
24 appeal rights, and fair hearing requirements. The department shall
25 disclose, upon request, final substantiated findings of abuse,
26 neglect, financial exploitation, or abandonment to any person so
27 requesting this information. This information must also be shared
28 with the department of health to advance the purposes of chapter
29 18.88B RCW.

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

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

32 (b) An employee, licensee, or contractor of any of the following:
33 A home care agency licensed under chapter 70.127 RCW; a nursing home
34 under chapter 18.51 RCW; an assisted living facility under chapter
35 18.20 RCW; an enhanced services facility under chapter 70.97 RCW; a
36 certified resident services and supports agency licensed or certified
37 under chapter 71A.12 RCW; an adult family home under chapter 70.128
38 RCW; or any long-term care facility certified to provide medicaid or
39 medicare services; and

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

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

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

6 (1) The department shall inspect each nursing home periodically
7 in accordance with federal standards under 42 C.F.R. Part 488,
8 Subpart E. The inspection shall be made without providing advance
9 notice of it. Every inspection may include an inspection of every
10 part of the premises and an examination of all records, methods of
11 administration, the general and special dietary and the stores and
12 methods of supply. Those nursing homes that provide community-based
13 care shall establish and maintain separate and distinct accounting
14 and other essential records for the purpose of appropriately
15 allocating costs of the providing of such care: PROVIDED, That such
16 costs shall not be considered allowable costs for reimbursement
17 purposes under chapter 74.46 RCW. Following such inspection or
18 inspections, written notice of any violation of this law or the rules
19 and regulations promulgated hereunder, shall be given to the
20 applicant or licensee and the department. The notice shall describe
21 the reasons for the facility's noncompliance. The department may
22 prescribe by regulations that any licensee or applicant desiring to
23 make specified types of alterations or additions to its facilities or
24 to construct new facilities shall, before commencing such alteration,
25 addition or new construction, submit its plans and specifications
26 therefor to the department for preliminary inspection and approval or
27 recommendations with respect to compliance with the regulations and
28 standards herein authorized.

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

37 (a) Rules adopted under this subsection (2) are effective until
38 the termination of the pandemic, natural disaster, or other declared
39 state of emergency or until the department determines that all

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

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

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

12 (1) The department shall, in addition to any inspections
13 conducted pursuant to complaints filed pursuant to RCW 18.51.190,
14 conduct a periodic general inspection of each nursing home in the
15 state without providing advance notice of such inspection. Such
16 inspections must conform to the federal standards for surveys under
17 42 C.F.R. Part 488, Subpart E.

18 (2) If a pandemic, natural disaster, or other declared state of
19 emergency prevents the department from completing inspections
20 according to the timeline in subsection (1) of this section, the
21 department shall adopt rules to reestablish inspection timelines
22 based on the length of time since the last complete inspection,
23 compliance history of each facility, immediate health or safety
24 concerns, and centers for medicare and medicaid services
25 requirements.

26 (a) Rules adopted under this subsection (2) are effective until
27 the termination of the pandemic, natural disaster, or other declared
28 state of emergency or until the department determines that all
29 facility inspections are occurring according to time frames
30 established in subsection (1) of this section, whichever occurs
31 later. Once the department determines a rule adopted under this
32 subsection (2) is no longer necessary, it must repeal the rule under
33 RCW 34.05.353.

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

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

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

7 (2) The department shall institute minimum staffing standards for
8 nursing homes. Beginning July 1, 2016, facilities must provide a
9 minimum of 3.4 hours per resident day of direct care. Direct care
10 staff has the same meaning as defined in RCW 74.42.010. The minimum
11 staffing standard includes the time when such staff are providing
12 hands-on care related to activities of daily living and nursing-
13 related tasks, as well as care planning. The legislature intends to
14 increase the minimum staffing standard to 4.1 hours per resident day
15 of direct care, but the effective date of a standard higher than 3.4
16 hours per resident day of direct care will be identified if and only
17 if funding is provided explicitly for an increase of the minimum
18 staffing standard for direct care.

19 (a) The department shall establish in rule a system of compliance
20 of minimum direct care staffing standards by January 1, 2016.
21 Oversight must be done at least quarterly using the centers for
22 medicare and medicaid services' payroll-based journal and nursing
23 home facility census and payroll data.

24 (b) The department shall establish in rule by January 1, 2016, a
25 system of financial penalties for facilities out of compliance with
26 minimum staffing standards. No monetary penalty may be issued during
27 the implementation period of July 1, 2016, through September 30,
28 2016. If a facility is found noncompliant during the implementation
29 period, the department shall provide a written notice identifying the
30 staffing deficiency and require the facility to provide a
31 sufficiently detailed correction plan to meet the statutory minimum
32 staffing levels. Monetary penalties begin October 1, 2016. Monetary
33 penalties must be established based on a formula that calculates the
34 cost of wages and benefits for the missing staff hours. If a facility
35 meets the requirements in subsection (3) or (4) of this section, the
36 penalty amount must be based solely on the wages and benefits of
37 certified nurse aides. The first monetary penalty for noncompliance
38 must be at a lower amount than subsequent findings of noncompliance.
39 Monetary penalties established by the department may not exceed two
40 hundred percent of the wage and benefit costs that would have

1 otherwise been expended to achieve the required staffing minimum
2 hours per resident day for the quarter. A facility found out of
3 compliance must be assessed a monetary penalty at the lowest penalty
4 level if the facility has met or exceeded the requirements in
5 subsection (2) of this section for three or more consecutive years.
6 Beginning July 1, 2016, pursuant to rules established by the
7 department, funds that are received from financial penalties must be
8 used for technical assistance, specialized training, or an increase
9 to the quality enhancement established in RCW 74.46.561.

10 (c) The department shall establish in rule an exception allowing
11 geriatric behavioral health workers as defined in RCW 74.42.010 to be
12 recognized in the minimum staffing requirements as part of the direct
13 care service delivery to individuals who have a behavioral health
14 condition. Hours worked by geriatric behavioral health workers may be
15 recognized as direct care hours for purposes of the minimum staffing
16 requirements only up to a portion of the total hours equal to the
17 proportion of resident days of clients with a behavioral health
18 condition identified at that facility on the most recent semiannual
19 minimum data set. In order to qualify for the exception:

20 (i) The worker must:

21 (A) Have a bachelor's or master's degree in social work,
22 behavioral health, or other related areas; or

23 (B) Have at least three years experience providing care for
24 individuals with chronic mental health issues, dementia, or
25 intellectual and developmental disabilities in a long-term care or
26 behavioral health care setting; or

27 (C) Have successfully completed a facility-based behavioral
28 health curriculum approved by the department under RCW 74.39A.078;

29 (ii) Any geriatric behavioral health worker holding less than a
30 master's degree in social work must be directly supervised by an
31 employee who has a master's degree in social work or a registered
32 nurse.

33 (d) (i) The department shall establish a limited exception to the
34 3.4 hours per resident day staffing requirement for facilities
35 demonstrating a good faith effort to hire and retain staff.

36 (ii) To determine initial facility eligibility for exception
37 consideration, the department shall send surveys to facilities
38 anticipated to be below, at, or slightly above the 3.4 hours per
39 resident day requirement. These surveys must measure the hours per
40 resident day in a manner as similar as possible to the centers for

1 medicare and medicaid services' payroll-based journal and cover the
2 staffing of a facility from October through December of 2015, January
3 through March of 2016, and April through June of 2016. A facility
4 must be below the 3.4 staffing standard on all three surveys to be
5 eligible for exception consideration. If the staffing hours per
6 resident day for a facility declines from any quarter to another
7 during the survey period, the facility must provide sufficient
8 information to the department to allow the department to determine if
9 the staffing decrease was deliberate or a result of neglect, which is
10 the lack of evidence demonstrating the facility's efforts to maintain
11 or improve its staffing ratio. The burden of proof is on the facility
12 and the determination of whether or not the decrease was deliberate
13 or due to neglect is entirely at the discretion of the department. If
14 the department determines a facility's decline was deliberate or due
15 to neglect, that facility is not eligible for an exception
16 consideration.

17 (iii) To determine eligibility for exception approval, the
18 department shall review the plan of correction submitted by the
19 facility. Before a facility's exception may be renewed, the
20 department must determine that sufficient progress is being made
21 towards reaching the 3.4 hours per resident day staffing requirement.
22 When reviewing whether to grant or renew an exception, the department
23 must consider factors including but not limited to: Financial
24 incentives offered by the facilities such as recruitment bonuses and
25 other incentives; the robustness of the recruitment process; county
26 employment data; specific steps the facility has undertaken to
27 improve retention; improvements in the staffing ratio compared to the
28 baseline established in the surveys and whether this trend is
29 continuing; and compliance with the process of submitting staffing
30 data, adherence to the plan of correction, and any progress toward
31 meeting this plan, as determined by the department.

32 (iv) Only facilities that have their direct care component rate
33 increase capped according to RCW 74.46.561 are eligible for exception
34 consideration. Facilities that will have their direct care component
35 rate increase capped for one or two years are eligible for exception
36 consideration through June 30, 2017. Facilities that will have their
37 direct care component rate increase capped for three years are
38 eligible for exception consideration through June 30, 2018.

39 (v) The department may not grant or renew a facility's exception
40 if the facility meets the 3.4 hours per resident day staffing

1 requirement and subsequently drops below the 3.4 hours per resident
2 day staffing requirement.

3 (vi) The department may grant exceptions for a six-month period
4 per exception. The department's authority to grant exceptions to the
5 3.4 hours per resident day staffing requirement expires June 30,
6 2018.

7 (3)(a) Large nonessential community providers must have a
8 registered nurse on duty directly supervising resident care twenty-
9 four hours per day, seven days per week.

10 (b)(i) The department shall establish a limited exception process
11 for large nonessential community providers that can demonstrate a
12 good faith effort to hire a registered nurse for the last eight hours
13 of required coverage per day. In granting an exception, the
14 department may consider the competitiveness of the wages and benefits
15 offered as compared to nursing facilities in comparable geographic or
16 metropolitan areas within Washington state, the provider's
17 recruitment and retention efforts, and the availability of registered
18 nurses in the particular geographic area. A one-year exception may be
19 granted and may be renewable; however, the department may limit the
20 admission of new residents, based on medical conditions or
21 complexities, when a registered nurse is not on-site and readily
22 available. If a large nonessential community provider receives an
23 exception, that information must be included in the department's
24 nursing home locator.

25 (ii) By August 1, 2023, and every three years thereafter, the
26 department, along with a stakeholder work group established by the
27 department, shall conduct a review of the exceptions process to
28 determine if it is still necessary. As part of this review, the
29 department shall provide the legislature with a report that includes
30 enforcement and citation data for large nonessential community
31 providers that were granted an exception in the three previous fiscal
32 years in comparison to those without an exception. The report must
33 include a similar comparison of data, provided to the department by
34 the long-term care ombuds, on long-term care ombuds referrals for
35 large nonessential community providers that were granted an exception
36 in the three previous fiscal years and those without an exception.
37 This report, along with a recommendation as to whether the exceptions
38 process should continue, is due to the legislature by December 1st of
39 each year in which a review is conducted. Based on the

1 recommendations outlined in this report, the legislature may take
2 action to end the exceptions process.

3 (4) Essential community providers and small nonessential
4 community providers must have a registered nurse on duty directly
5 supervising resident care a minimum of sixteen hours per day, seven
6 days per week, and a registered nurse or a licensed practical nurse
7 on duty directly supervising resident care the remaining eight hours
8 per day, seven days per week.

9 (5) For the purposes of this section, "behavioral health
10 condition" means one or more of the behavioral symptoms specified in
11 section E of the minimum data set.

12 (6) If a pandemic, natural disaster, or other declared state of
13 emergency impedes or prevents facilities from compliance with
14 subsections (2) through (4) of this section, the department may adopt
15 rules to grant exceptions to these requirements, waive penalties, and
16 suspend oversight activities. Facilities must remain in compliance
17 with subsection (1) of this section. Rules adopted under this
18 subsection are effective until 12 months after the termination of the
19 pandemic, natural disaster, or other declared state of emergency or
20 until determined no longer necessary by the department, whichever
21 occurs first. Once the department determines a rule adopted under
22 this subsection is no longer necessary, it must repeal the rule under
23 RCW 34.05.353.

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

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

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

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

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

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

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

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

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

11 (A) Core competencies; and

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

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

18 (a) Has been developed with input from consumer and worker
19 representatives; and

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

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

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

29 (a) Rules adopted under this subsection (4) are effective until
30 the termination of the pandemic, natural disaster, or other declared
31 state of emergency or until the department determines that all long-
32 term care workers who were unable to complete the training required
33 in subsection (1)(a) of this section have had adequate access to
34 complete the required training, whichever is later. Once the
35 department determines a rule adopted under this subsection (4) is no
36 longer necessary, it must repeal the rule under RCW 34.05.353.

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

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

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

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

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

11 (b) A spouse or registered domestic partner who is a long-term
12 care worker only for a spouse or domestic partner, pursuant to the
13 long-term services and supports trust program established in chapter
14 50B.04 RCW, must receive fifteen hours of basic training, and at
15 least six hours of additional focused training based on the care-
16 receiving spouse's or partner's needs, within the first one hundred
17 twenty days after becoming a long-term care worker.

18 (c) A person working as an individual provider who (i) provides
19 respite care services only for individuals with developmental
20 disabilities receiving services under Title 71A RCW or only for
21 individuals who receive services under this chapter, and (ii) works
22 three hundred hours or less in any calendar year, must complete
23 fourteen hours of training within the first one hundred twenty days
24 after becoming an individual provider. Five of the fourteen hours
25 must be completed before becoming eligible to provide care, including
26 two hours of orientation training regarding the caregiving role and
27 terms of employment and three hours of safety training. The training
28 partnership identified in RCW 74.39A.360 must offer at least twelve
29 of the fourteen hours online, and five of those online hours must be
30 individually selected from elective courses.

31 (d) Individual providers identified in (d)(i) or (ii) of this
32 subsection must complete thirty-five hours of training within the
33 first one hundred twenty days after becoming an individual provider.
34 Five of the thirty-five hours must be completed before becoming
35 eligible to provide care. Two of these five hours shall be devoted to
36 an orientation training regarding an individual provider's role as
37 caregiver and the applicable terms of employment, and three hours
38 shall be devoted to safety training, including basic safety

1 precautions, emergency procedures, and infection control. Individual
2 providers subject to this requirement include:

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

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

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

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

13 (a) Has been developed with input from consumer and worker
14 representatives; and

15 (b) Requires comprehensive instruction by qualified instructors.

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

21 (a) Rules adopted under this subsection (4) are effective until
22 the termination of the pandemic, natural disaster, or other declared
23 state of emergency or until the department determines that all long-
24 term care workers who were unable to complete the training required
25 in subsection (1) of this section have had adequate access to
26 complete the required training, whichever is later. Once the
27 department determines a rule adopted under this subsection (4) is no
28 longer necessary, it must repeal the rule under RCW 34.05.353.

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

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

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

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

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

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

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

8 (b) Registered nurses and licensed practical nurses licensed
9 under chapter 18.79 RCW;

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

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

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

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

20 (a) Has been developed with input from consumer and worker
21 representatives; and

22 (b) Requires comprehensive instruction by qualified instructors.

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

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

30 (a) Rules adopted under this subsection (6) are effective until
31 the termination of the pandemic, natural disaster, or other declared
32 state of emergency or until the department determines that all long-
33 term care workers who were unable to complete the training required
34 in this section have had adequate access to complete the required
35 training, whichever is later. Once the department determines a rule
36 adopted under this subsection (6) is no longer necessary, it must
37 repeal the rule under RCW 34.05.353.

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

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

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

5 ~~((7))~~ (8) The department shall adopt rules to implement
6 subsection (2) of this section.

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

9 (1) Beginning January 7, 2012, except as provided in RCW
10 18.88B.041, any person hired as a long-term care worker must be
11 certified as a home care aide as provided in this chapter within two
12 hundred calendar days after the date of ~~((being hired. In computing~~
13 ~~the time periods in this subsection, the first day is the date of))~~
14 hire, as defined by the department. The department may adopt rules
15 determining under which circumstances a long-term care worker may
16 have more than one date of hire, restarting the person's 200-day
17 period to obtain certification as a home care aide.

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

21 (b) This section does not prohibit a person: (i) From practicing
22 a profession for which the person has been issued a license or which
23 is specifically authorized under this state's laws; or (ii) who is
24 exempt from certification under RCW 18.88B.041 from providing
25 services as a long-term care worker.

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

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

36 (a) Rules adopted under this subsection (3) are effective until
37 the termination of the pandemic, natural disaster, or other declared
38 state of emergency or until the department determines that additional
39 time for long-term care workers to become certified is no longer

1 necessary, whichever is later. Once the department determines a rule
2 adopted under this subsection (3) is no longer necessary, it must
3 repeal the rule under RCW 34.05.353.

4 (b) Within 12 months of the termination of the pandemic, natural
5 disaster, or other declared state of emergency, the department shall
6 conduct a review of certification compliance with subsection (1) of
7 this section and rules adopted under this subsection (3) and provide
8 the legislature with a report.

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

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

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

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

18 (b) "Indirect supervision" means oversight by a person who has
19 demonstrated competency in the core areas or has been fully exempted
20 from the training requirements pursuant to this section and is
21 quickly and easily available to the caregiver, but not necessarily
22 on-site.

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

28 (3) Orientation consists of introductory information on
29 residents' rights, communication skills, fire and life safety, and
30 universal precautions. Orientation must be provided at the facility
31 by appropriate adult family home staff to all adult family home
32 employees before the employees have routine interaction with
33 residents.

34 (4) Basic training consists of modules on the core knowledge and
35 skills that caregivers need to learn and understand to effectively
36 and safely provide care to residents. Basic training must be outcome-
37 based, and the effectiveness of the basic training must be measured
38 by demonstrated competency in the core areas through the use of a
39 competency test. Basic training must be completed by caregivers

1 within one hundred twenty days of the date on which they begin to
2 provide hands-on care. Until competency in the core areas has been
3 demonstrated, caregivers shall not provide hands-on personal care to
4 residents without direct supervision.

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

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

17 (b) Specialty training must be completed by providers and
18 resident managers before admitting and serving residents who have
19 been determined to have special needs related to mental illness,
20 dementia, or a developmental disability. Should a resident develop
21 special needs while living in a home without specialty designation,
22 the provider and resident manager have one hundred twenty days to
23 complete specialty training.

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

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

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

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

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

15 (10) The adult family home training network shall assist adult
16 family homes that desire to deliver facility-based training with
17 facility designated trainers, or adult family homes that desire to
18 pool their resources to create shared training systems. The
19 department shall develop criteria for reviewing and approving
20 trainers and training materials. The department may approve a
21 curriculum based upon attestation by an adult family home
22 administrator that the adult family home's training curriculum
23 addresses basic and specialty training competencies identified by the
24 department, and shall review a curriculum to verify that it meets
25 these requirements. The department may conduct the review as part of
26 the next regularly scheduled inspection authorized under RCW
27 70.128.070. The department shall rescind approval of any curriculum
28 if it determines that the curriculum does not meet these
29 requirements.

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

32 (12) (a) Except as provided in (b) of this subsection, the
33 orientation, basic training, specialty training, and continuing
34 education requirements of this section commence September 1, 2002,
35 and shall be applied to (i) employees hired subsequent to September
36 1, 2002; or (ii) existing employees that on September 1, 2002, have
37 not successfully completed the training requirements under RCW
38 70.128.120 or 70.128.130 and this section. Existing employees who
39 have not successfully completed the training requirements under RCW

1 70.128.120 or 70.128.130 shall be subject to all applicable
2 requirements of this section.

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

6 (13) If a pandemic, natural disaster, or other declared state of
7 emergency makes specialty training unavailable, the department may
8 adopt rules to allow an adult family home where the provider and
9 resident manager have not completed specialty training to admit a
10 resident or residents with special needs related to mental illness,
11 dementia, or a developmental disability, or to care for a resident or
12 residents already living in the home who develop special needs. Such
13 rules must include information about how to complete the specialty
14 training once the training is available.

15 (a) Rules adopted under this subsection (13) are effective until
16 the termination of the pandemic, natural disaster, or other declared
17 state of emergency or until the department determines that providers
18 and resident managers who were unable to complete the specialty
19 training required in subsection (5)(b) of this section have had
20 adequate access to complete the required training, whichever is
21 later. Once the department determines a rule adopted under this
22 subsection (13) is no longer necessary, it must repeal the rule under
23 RCW 34.05.353.

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

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

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

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

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

1 (2) Training must have the following components: Orientation,
2 basic training, specialty training as appropriate, and continuing
3 education. All assisted living facility employees or volunteers who
4 routinely interact with residents shall complete orientation.
5 Assisted living facility administrators, or their designees, and
6 caregivers shall complete orientation, basic training, specialty
7 training as appropriate, and continuing education.

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

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

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

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

37 (b) Specialty training must be completed by caregivers within one
38 hundred twenty days of the date on which they begin to provide hands-
39 on care to a resident having special needs. However, if specialty
40 training is not integrated with basic training, the specialty

1 training must be completed within ninety days of completion of basic
2 training. Until competency in the core specialty areas has been
3 demonstrated, caregivers shall not provide hands-on personal care to
4 residents with special needs without direct supervision.

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

10 (6) Continuing education consists of ongoing delivery of
11 information to caregivers on various topics relevant to the care
12 setting and care needs of residents. Competency testing is not
13 required for continuing education. Continuing education is not
14 required in the same calendar year in which basic or modified basic
15 training is successfully completed. Continuing education is required
16 in each calendar year thereafter. If specialty training is completed,
17 the specialty training applies toward any continuing education
18 requirement for up to two years following the completion of the
19 specialty training.

20 (7) Persons who successfully challenge the competency test for
21 basic training are fully exempt from the basic training requirements
22 of this section. Persons who successfully challenge the specialty
23 training competency test are fully exempt from the specialty training
24 requirements of this section.

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

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

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

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

1 (11) Assisted living facilities that desire to deliver facility-
2 based training with facility designated trainers, or assisted living
3 facilities that desire to pool their resources to create shared
4 training systems, must be encouraged by the department in their
5 efforts. The department shall develop criteria for reviewing and
6 approving trainers and training materials that are substantially
7 similar to or better than the materials developed by the department.
8 The department may approve a curriculum based upon attestation by an
9 assisted living facility administrator that the assisted living
10 facility's training curriculum addresses basic and specialty training
11 competencies identified by the department, and shall review a
12 curriculum to verify that it meets these requirements. The department
13 may conduct the review as part of the next regularly scheduled yearly
14 inspection and investigation required under RCW 18.20.110. The
15 department shall rescind approval of any curriculum if it determines
16 that the curriculum does not meet these requirements.

17 (12) The department shall adopt rules for the implementation of
18 this section.

19 (13)(a) Except as provided in (b) of this subsection, the
20 orientation, basic training, specialty training, and continuing
21 education requirements of this section commence September 1, 2002, or
22 one hundred twenty days from the date of employment, whichever is
23 later, and shall be applied to (i) employees hired subsequent to
24 September 1, 2002; and (ii) existing employees that on September 1,
25 2002, have not successfully completed the training requirements under
26 RCW 74.39A.010 or 74.39A.020 and this section. Existing employees who
27 have not successfully completed the training requirements under RCW
28 74.39A.010 or 74.39A.020 shall be subject to all applicable
29 requirements of this section.

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

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

1 (a) Rules adopted under this subsection (14) are effective until
2 the termination of the pandemic, natural disaster, or other declared
3 state of emergency or until the department determines that providers
4 and resident managers who were unable to complete the specialty
5 training required in subsection (5)(b) of this section have had
6 adequate access to complete the required training, whichever is
7 later. Once the department determines a rule adopted under this
8 subsection (14) is no longer necessary, it must repeal the rule under
9 RCW 34.05.353.

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

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

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

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

20 (b) Homes licensed by the department shall be inspected at least
21 every eighteen months, with an annual average of fifteen months.
22 However, an adult family home may be allowed to continue without
23 inspection for two years if the adult family home had no inspection
24 citations for the past three consecutive inspections and has received
25 no written notice of violations resulting from complaint
26 investigations during that same time period.

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

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

37 (i) Rules adopted under this subsection (2)(d) are effective
38 until the termination of the pandemic, natural disaster, or other
39 declared state of emergency or until the department determines that

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

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

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

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

14 (1) The department shall make or cause to be made at least one
15 inspection of each facility prior to licensure and an unannounced
16 full inspection of facilities at least once every eighteen months.
17 The statewide average interval between full facility inspections must
18 be fifteen months.

19 (2) Any duly authorized officer, employee, or agent of the
20 department may enter and inspect any facility at any time to
21 determine that the facility is in compliance with this chapter and
22 applicable rules, and to enforce any provision of this chapter.
23 Complaint inspections shall be unannounced and conducted in such a
24 manner as to ensure maximum effectiveness. No advance notice shall be
25 given of any inspection unless authorized or required by federal law.

26 (3) During inspections, the facility must give the department
27 access to areas, materials, and equipment used to provide care or
28 support to residents, including resident and staff records, accounts,
29 and the physical premises, including the buildings, grounds, and
30 equipment. The department has the authority to privately interview
31 the provider, staff, residents, and other individuals familiar with
32 resident care and service plans.

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

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

1 (6) The facility shall develop a written plan of correction for
2 any violations identified by the department and provide a plan of
3 correction to the department within ten working days from the receipt
4 of the inspection report.

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

11 (a) Rules adopted under this subsection (7) are effective until
12 the termination of the pandemic, natural disaster, or other declared
13 state of emergency or until the department determines that all
14 facility inspections are occurring according to time frames
15 established in subsection (1) of this section, whichever is later.
16 Once the department determines a rule adopted under this subsection
17 (7) is no longer necessary, it must repeal the rule under RCW
18 34.05.353.

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

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

25 (1) The department shall make or cause to be made, at least every
26 eighteen months with an annual average of fifteen months, an
27 inspection and investigation of all assisted living facilities.
28 However, the department may delay an inspection to twenty-four months
29 if the assisted living facility has had three consecutive inspections
30 with no written notice of violations and has received no written
31 notice of violations resulting from complaint investigation during
32 that same time period. The department may at anytime make an
33 unannounced inspection of a licensed facility to assure that the
34 licensee is in compliance with this chapter and the rules adopted
35 under this chapter. Every inspection shall focus primarily on actual
36 or potential resident outcomes, and may include an inspection of
37 every part of the premises and an examination of all records, methods
38 of administration, the general and special dietary, and the stores
39 and methods of supply; however, the department shall not have access

1 to financial records or to other records or reports described in RCW
2 18.20.390. Financial records of the assisted living facility may be
3 examined when the department has reasonable cause to believe that a
4 financial obligation related to resident care or services will not be
5 met, such as a complaint that staff wages or utility costs have not
6 been paid, or when necessary for the department to investigate
7 alleged financial exploitation of a resident. Following such an
8 inspection or inspections, written notice of any violation of this
9 law or the rules adopted hereunder shall be given to the applicant or
10 licensee and the department. The department may prescribe by rule
11 that any licensee or applicant desiring to make specified types of
12 alterations or additions to its facilities or to construct new
13 facilities shall, before commencing such alteration, addition, or new
14 construction, submit plans and specifications therefor to the
15 agencies responsible for plan reviews for preliminary inspection and
16 approval or recommendations with respect to compliance with the rules
17 and standards herein authorized.

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

24 (a) Rules adopted under this subsection (2) are effective until
25 the termination of the pandemic, natural disaster, or other declared
26 state of emergency or until the department determines that all
27 facility inspections are occurring according to time frames
28 established in subsection (1) of this section, whichever is later.
29 Once the department determines a rule adopted under this subsection
30 (2) is no longer necessary, it must repeal the rule under RCW
31 34.05.353.

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

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

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

4 (b) A health care facility shall not assign a nursing assistant-
5 registered to provide care until the nursing assistant-registered has
6 demonstrated skills necessary to perform competently all assigned
7 duties and responsibilities.

8 (c) Nothing in this chapter shall be construed to confer on a
9 nursing assistant the authority to administer medication unless
10 delegated as a specific nursing task pursuant to this chapter or to
11 practice as a licensed (registered) nurse or licensed practical nurse
12 as defined in chapter 18.79 RCW.

13 (2) (a) A nursing assistant employed in a nursing home must have
14 successfully obtained certification through: (i) An approved training
15 program and the competency evaluation within (~~four months after the~~
16 ~~date of employment~~) a period of time determined in rule by the
17 commission; or (ii) alternative training and the competency
18 evaluation prior to employment.

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

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

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

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

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

33 (ii) Is a certified medical assistant pursuant to a certification
34 program accredited by a national medical assistant accreditation
35 organization and approved by the commission; and

36 (b) Has successfully completed at least twenty-four hours of
37 training that the commission determines is necessary to provide
38 training equivalent to approved training on topics not addressed in
39 the training specified for certification as a home care aide or

1 medical assistant, as applicable. In the commission's discretion, a
2 portion of these hours may include clinical training.

3 (2) (a) (~~By July 1, 2011, the~~) The commission, in consultation
4 with the secretary, the department of social and health services, and
5 consumer, employer, and worker representatives, shall adopt rules to
6 implement this section and to provide(~~(, beginning January 1, 2012,)~~)
7 for a program of credentialing reciprocity to the extent required by
8 this section between home care aide and medical assistant
9 certification and nursing assistant certification. (~~By July 1, 2011,~~
10 ~~the~~) The secretary shall also adopt such rules as may be necessary
11 to implement this section and the credentialing reciprocity program.

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

16 (3) (~~Beginning December 1, 2012, the~~) The secretary, in
17 consultation with the commission, shall report annually by December
18 1st to the governor and the appropriate committees of the legislature
19 on the progress made in achieving career advancement for certified
20 home care aides and medical assistants into nursing practice.

21 NEW SECTION. **Sec. 18.** This act is necessary for the immediate
22 preservation of the public peace, health, or safety, or support of
23 the state government and its existing public institutions, and takes
24 effect immediately.

25 NEW SECTION. **Sec. 19.** This act is remedial and curative in
26 nature and all of its sections apply retroactively to February 29,
27 2020, to include the period of the state of emergency created by the
28 COVID-19 outbreak. In any instance where this act grants rule-making
29 authority to the department of social and health services or the
30 department of health, the agencies may adopt the rules as emergency
31 rules and may make the rules retroactively effective.

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Passed by the Senate April 19, 2021.
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