

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE HOUSE BILL 1411**

Chapter 219, Laws of 2021

67th Legislature  
2021 Regular Session

HEALTH CARE WORKFORCE ELIGIBILITY—CRIMINAL RECORDS

EFFECTIVE DATE: July 25, 2021—Except for section 6, which takes effect July 1, 2022.

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

LAURIE JINKINS

**Speaker of the House of  
Representatives**

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

DENNY HECK

**President of the Senate**

Approved May 10, 2021 3:15 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 **SUBSTITUTE HOUSE BILL 1411** 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**

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**SUBSTITUTE HOUSE BILL 1411**

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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.

Passed by the House April 20, 2021.

Passed by the Senate April 10, 2021.

Approved by the Governor May 10, 2021.

Filed in Office of Secretary of State May 10, 2021.

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