
SENATE BILL 5531

State of Washington

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By Senators Chapman, Bateman, Conway, Frame, Krishnadasan, Lovelett, Nobles, Stanford, and Valdez

Read first time 01/28/25. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to streamlining the home care worker background
2 check process; and amending RCW 43.20A.715 and 74.39A.056.

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

4 **Sec. 1.** RCW 43.20A.715 and 2023 c 470 s 3014 are each amended to
5 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

10 (6) (a) An employer or an authorized entity shall not conduct a
11 character, competence, and suitability review for individual
12 providers and home care agency providers, based on a name and date of
13 birth or fingerprint background check result, when:

14 (i) The employer or authorized entity has already conducted a
15 character, competence, and suitability review for the individual
16 provider or home care agency provider for a nonautomatically
17 disqualifying conviction, pending charge, or negative action found
18 during a previous background check, for which the employer or
19 authorized entity has previously conducted a character, competence,
20 and suitability review;

21 (ii) An individual provider or home care agency provider has
22 obtained a certificate of restoration of opportunity under RCW
23 9.97.020 for a nonautomatically disqualifying conviction;

24 (iii) It is known to the employer or authorized entity that more
25 than 10 years have passed since the last nonautomatically
26 disqualifying conviction or negative action against the individual
27 provider or home care agency provider; or

28 (iv) The results of a name and date of birth background check or
29 fingerprint-based background check conducted on the individual
30 provider or home care agency provider identified a nonautomatically
31 disqualifying:

32 (A) Negative action, except when involving the harm or
33 exploitation of a minor or vulnerable adult;

34 (B) Misdemeanor, except when involving the harm or exploitation
35 of a minor, vulnerable adult, or animal; or

36 (C) Gross misdemeanor under chapter 69.50 RCW or Title 46 RCW.

37 (b) The department shall develop rules to establish standards for
38 conducting character, competence, and suitability reviews under this
39 subsection (6), including parameters to ensure the safety of

1 vulnerable adults and minors, and an equitable review process for
2 individual providers and home care agency providers.

3 (7)(a) Individual providers and home care agency providers who
4 are required to complete a character, competence, and suitability
5 review pursuant to a review required result following a name and date
6 of birth background check or fingerprint-based background check may
7 have unsupervised access to minors or vulnerable adults for a period
8 of up to 30 days while the character, competence, and suitability
9 review is being conducted by the department or the authorized entity
10 if the individual is not disqualified by reason of a name and date of
11 birth background check or fingerprint-based background check that
12 identifies a conviction, pending charge, or negative action as
13 described in RCW 43.43.842 and 43.20A.710(5), as well as any related
14 implementing rules adopted by the department of social and health
15 services, unless the character, competence, and suitability review
16 has been completed and concluded that the applicant may not have
17 unsupervised access to minors and vulnerable adults.

18 (b)(i) Prior to the provision of any care services by an
19 individual provider or home care agency provider during the 30-day
20 temporary practice period established in (a) of this subsection, the
21 parent or guardian of the minor, the vulnerable adult, or the
22 guardian of the vulnerable adult must be:

23 (A) Notified in writing that the character, competence, and
24 suitability review for the individual provider or home care agency
25 provider has not been completed; and

26 (B) Provided with an opportunity to decline the receipt of care
27 services from the individual provider or home care agency provider
28 and an explanation of the procedure for declining the receipt of
29 care.

30 (ii) The notice requirement of (b)(i) of this subsection does not
31 apply to any home care agency provider that has been employed by the
32 same employer since the previous name and date of birth background
33 check or fingerprint-based background check had been conducted.

34 (8) For the purposes of the section:

35 (a) "Authorized entity" means a service provider, licensee,
36 contractor, or other public or private agency that:

37 (i) Is required to conduct background checks; and

38 (ii) Is authorized to conduct background checks through the
39 department's background check central unit.

1 (b) "Character, competence, and suitability review" means a
2 review process that the employer or an authorized entity uses to
3 decide whether a person has the character, competence, and
4 suitability to work in a position that may have unsupervised access
5 to minors or vulnerable adults.

6 (c) "Contracted provider" means a provider, and its employees,
7 contracted with the department or an area agency on aging to provide
8 services to department clients under programs under chapter 74.09,
9 74.39, 74.39A, or 71A.12 RCW. "Contracted provider" includes area
10 agencies on aging and their subcontractors who provide case
11 management.

12 ~~((b))~~ (d) "Fingerprint-based background check" means a search
13 of in-state criminal history records through the Washington state
14 patrol and national criminal history records through the federal
15 bureau of investigation.

16 (e) "Home care agency provider" means a long-term care worker
17 paid by a home care agency, as described in RCW 43.20A.710(1)(b).

18 (f) "Individual provider" has the same meaning as in RCW
19 74.39A.240.

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

23 (h) "Name and date of birth background check" means a search of
24 Washington state criminal history and negative action records using
25 the applicant's name and date of birth conducted by the department's
26 background check central unit.

27 (i) "Nonautomatically disqualifying" means, when used in
28 reference to a conviction, pending charge, or negative action, that
29 the conviction, pending charge, or negative action is one other than
30 a permanently disqualifying conviction, permanently disqualifying
31 negative action, or a time-limited permanently disqualifying
32 conviction or negative action after the defined amount of time has
33 passed, as described in RCW 43.43.842 and 43.20A.710(5), and related
34 department rules.

35 (j) "Review required result" means the result of a name and date
36 of birth background check or fingerprint-based background check for
37 an individual provider or a home care agency provider that requires
38 the employer or an authorized entity to determine if a character,
39 competence, and suitability review is necessary, based on subsection

1 (6)(a)(iv) of this section, and related implementing rules adopted by
2 the department.

3 **Sec. 2.** RCW 74.39A.056 and 2023 c 223 s 4 are each amended to
4 read as follows:

5 (1)(a) All long-term care workers shall be screened through state
6 and federal background checks in a uniform and timely manner to
7 verify that they do not have a history that would disqualify them
8 from working with vulnerable persons. The department must process
9 background checks for long-term care workers and, based on this
10 screening, inform employers, prospective employers, and others as
11 authorized by law, whether screened applicants are ineligible for
12 employment.

13 (b)(i) For long-term care workers hired on or after January 7,
14 2012, the background checks required under this section shall include
15 checking against the federal bureau of investigation fingerprint
16 identification records system or its successor program. The
17 department shall require these long-term care workers to submit
18 fingerprints for the purpose of investigating conviction records
19 through both the Washington state patrol and the federal bureau of
20 investigation. The department shall not pass on the cost of these
21 criminal background checks to the workers or their employers.

22 (ii) A long-term care worker who is not disqualified by the state
23 background check can work and have unsupervised access pending the
24 results of the federal bureau of investigation fingerprint background
25 check as allowed by rules adopted by the department.

26 (c)(i) Individual providers and home care agency providers must
27 complete a fingerprint-based background check required in this
28 section and RCW 43.43.837 only:

29 (A) Except as provided in (c)(ii) of this subsection, at the
30 point of initial hire;

31 (B) As required by federal law; and

32 (C) If there is a reasonable, good faith belief the employer or
33 authorized entity needs to conduct a fingerprint-based background
34 check, due to potential new findings in a fingerprint-based
35 background check, as documented in writing by the employer.

36 (ii) Notwithstanding the requirement of (c)(i)(A) of this
37 subsection, individual providers and home care agency providers may
38 not be required to complete a fingerprint-based background check
39 pursuant to (a) of this subsection and RCW 43.43.837 at the point of

1 initial hire if the individual provider or home care agency provider
2 had been previously employed by the same employer and has not lived
3 outside of Washington after the last fingerprint-based background
4 check.

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

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

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

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

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

27 (3)(a) A client who has elected to receive services from an
28 individual provider must be notified of the results of a background
29 check and of the client's right to request a copy of the background
30 check's results under (b) of this subsection.

31 (b) When a background check produces a review required result, as
32 defined in RCW 43.20A.715, the authorized entity must provide the
33 client who is the managing employer of the individual provider with a
34 copy of the background check results and the Washington state record
35 of arrests and prosecutions, if requested by the client. The
36 individual provider may choose to provide a copy of the federal
37 bureau of investigation record of arrests and prosecutions to the
38 client.

39 (4) The department shall establish, by rule, a state registry
40 which contains identifying information about long-term care workers

1 identified under this chapter who have final substantiated findings
2 of abuse, neglect, financial exploitation, or abandonment of a
3 vulnerable adult as defined in RCW 74.34.020. The rule must include
4 disclosure, disposition of findings, notification, findings of fact,
5 appeal rights, and fair hearing requirements. The department shall
6 disclose, upon request, final substantiated findings of abuse,
7 neglect, financial exploitation, or abandonment to any person so
8 requesting this information. This information must also be shared
9 with the department of health to advance the purposes of chapter
10 18.88B RCW.

11 ~~((4))~~ (5) For the purposes of this section(~~(,—"provider"~~
12 ~~means))~~):

13 (a) "Authorized entity" means a service provider, licensee,
14 contractor, or other public or private agency that:

15 (i) Is required to conduct background checks; and

16 (ii) Is authorized to conduct background checks through the
17 department's background check central unit.

18 (b) "Fingerprint-based background check" means a search of in-
19 state criminal history records through the Washington state patrol
20 and national criminal history records through the federal bureau of
21 investigation.

22 (c) "Home care agency provider" means a long-term care worker
23 paid by a home care agency, as described in RCW 43.20A.710(1)(b).

24 (d) "Provider" means:

25 (i) An individual provider (~~as defined in RCW 74.39A.240~~);

26 ~~((b))~~ (ii) An employee, licensee, or contractor of any of the
27 following: A home care agency licensed under chapter 70.127 RCW; a
28 nursing home under chapter 18.51 RCW; an assisted living facility
29 under chapter 18.20 RCW; an enhanced services facility under chapter
30 70.97 RCW; a certified resident services and supports agency licensed
31 or certified under chapter 71A.12 RCW; an adult family home under
32 chapter 70.128 RCW; or any long-term care facility certified to
33 provide medicaid or medicare services; and

34 ~~((e))~~ (iii) Any contractor of the department who may have
35 unsupervised access to vulnerable adults.

36 ~~((5))~~ (6) The department shall adopt rules to implement this
37 section.

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