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SENATE BILL 5426

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State of Washington

62nd Legislature

2011 Regular Session

By Senators Kohl-Welles, Tom, and McAuliffe; by request of Department of Early Learning

Read first time 01/25/11. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to allowing the department of early learning and  
2 the department of social and health services to share background check  
3 information; and amending RCW 43.20A.710, 43.43.837, 43.215.200, and  
4 43.215.215.

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

6 **Sec. 1.** RCW 43.20A.710 and 2009 c 580 s 5 are each amended to read  
7 as follows:

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

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

18 (b) Individual providers who are paid by the state and providers  
19 who are paid by home care agencies to provide in-home services

1 involving unsupervised access to persons with physical, mental, or  
2 developmental disabilities or mental illness, or to vulnerable adults  
3 as defined in chapter 74.34 RCW, including but not limited to services  
4 provided under chapter 74.39 or 74.39A RCW; and

5 (c) Individuals or businesses or organizations for the care,  
6 supervision, case management, or treatment of children, persons with  
7 developmental disabilities, or vulnerable adults, including but not  
8 limited to services contracted for under chapter 18.20, 70.127, 70.128,  
9 72.36, or 74.39A RCW or Title 71A RCW.

10 (2) (~~The investigation may include an examination of state and~~  
11 ~~national criminal identification data.~~) The secretary shall require a  
12 fingerprint-based background check through both the Washington state  
13 patrol and the federal bureau of investigation as provided in RCW  
14 43.43.837. Unless otherwise authorized by law, the secretary shall use  
15 the information solely for the purpose of determining the character,  
16 suitability, and competence of (~~these~~) the applicant(~~s~~).

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

28 (4) Long-term care workers, as defined in RCW 74.39A.009, who are  
29 hired after January 1, 2012, are subject to background checks under RCW  
30 74.39A.055, except that the department may require a background check  
31 at any time under RCW 43.43.837. For the purposes of this subsection,  
32 "background check" includes, but is not limited to, a fingerprint check  
33 submitted for the purpose of investigating conviction records through  
34 both the Washington state patrol and the federal bureau of  
35 investigation.

36 (5) An individual provider or home care agency provider hired to  
37 provide in-home care for and having unsupervised access to a vulnerable  
38 adult as defined in chapter 74.34 RCW must have no conviction for a

1 disqualifying crime under RCW 43.43.830 and 43.43.842. An individual  
2 or home care agency provider must also have no conviction for a crime  
3 relating to drugs as defined in RCW 43.43.830. This subsection applies  
4 only with respect to the provision of in-home services funded by  
5 medicaid personal care under RCW 74.09.520, community options program  
6 entry system waiver services under RCW 74.39A.030, or chore services  
7 under RCW 74.39A.110.

8 (6) The secretary shall provide the results of the state background  
9 check on long-term care workers, including individual providers, to the  
10 persons hiring them or to their legal guardians, if any, for their  
11 determination of the character, suitability, and competence of the  
12 applicants. If the person elects to hire or retain an individual  
13 provider after receiving notice from the department that the applicant  
14 has a conviction for an offense that would disqualify the applicant  
15 from having unsupervised access to persons with physical, mental, or  
16 developmental disabilities or mental illness, or to vulnerable adults  
17 as defined in chapter 74.34 RCW, then the secretary shall deny payment  
18 for any subsequent services rendered by the disqualified individual  
19 provider.

20 (7) Criminal justice agencies shall provide the secretary such  
21 information as they may have and that the secretary may require for  
22 such purpose.

23 **Sec. 2.** RCW 43.43.837 and 2009 c 580 s 6 are each amended to read  
24 as follows:

25 (1) Except as provided in subsection (2) of this section, in order  
26 to determine the character, competence, and suitability of any  
27 applicant or service provider to have unsupervised access, the  
28 secretary may require a fingerprint-based background check through both  
29 the Washington state patrol and the federal bureau of investigation at  
30 any time, but shall require a fingerprint-based background check when  
31 the applicant or service provider has resided in the state less than  
32 three consecutive years before application, and:

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

35 (b) Is an individual residing in an applicant or service provider's  
36 home, facility, entity, agency, or business or who is authorized by the

1 department to provide services to children or people with developmental  
2 disabilities under RCW 74.15.030; or

3 (c) Is an applicant or service provider providing in-home services  
4 funded by:

5 (i) Medicaid personal care under RCW 74.09.520;

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

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

9 (iv) Other home and community long-term care programs, established  
10 pursuant to chapters 74.39 and 74.39A RCW, administered by the  
11 department.

12 (2) Long-term care workers, as defined in RCW 74.39A.009, who are  
13 hired after January 1, 2012, are subject to background checks under RCW  
14 74.39A.055.

15 (3) To satisfy the shared background check requirements provided  
16 for in RCW 43.215.215 and 43.20A.710, the department of early learning  
17 and the department of social and health services shall share federal  
18 fingerprint-based background check results as permitted under the law.  
19 The purpose of this provision is to allow both departments to fulfill  
20 their joint background check responsibility of checking any individual  
21 who may have unsupervised access to vulnerable adults, children, or  
22 juveniles. Neither department may share the federal background check  
23 results with any other state agency or person.

24 (4) The secretary shall require a fingerprint-based background  
25 check through the Washington state patrol identification and criminal  
26 history section and the federal bureau of investigation when the  
27 department seeks to approve an applicant or service provider for a  
28 foster or adoptive placement of children in accordance with federal and  
29 state law.

30 ((+4)) (5) Any secure facility operated by the department under  
31 chapter 71.09 RCW shall require applicants and service providers to  
32 undergo a fingerprint-based background check through the Washington  
33 state patrol identification and criminal history section and the  
34 federal bureau of investigation.

35 ((+5)) (6) Service providers and service provider applicants who  
36 are required to complete a fingerprint-based background check may be  
37 hired for a one hundred twenty-day provisional period as allowed under  
38 law or program rules when:

- 1 (a) A fingerprint-based background check is pending; and  
2 (b) The applicant or service provider is not disqualified based on  
3 the immediate result of the background check.

4 ~~((+6))~~ (7) Fees charged by the Washington state patrol and the  
5 federal bureau of investigation for fingerprint-based background checks  
6 shall be paid by the department for applicants or service providers  
7 providing:

8 (a) Services to people with a developmental disability under RCW  
9 74.15.030;

10 (b) In-home services funded by medicaid personal care under RCW  
11 74.09.520;

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

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

15 (e) Services under other home and community long-term care  
16 programs, established pursuant to chapters 74.39 and 74.39A RCW,  
17 administered by the department;

18 (f) Services in, or to residents of, a secure facility under RCW  
19 71.09.115; and

20 (g) Foster care as required under RCW 74.15.030.

21 ~~((+7))~~ (8) Service providers licensed under RCW 74.15.030 must pay  
22 fees charged by the Washington state patrol and the federal bureau of  
23 investigation for conducting fingerprint-based background checks.

24 ~~((+8))~~ (9) Children's administration service providers licensed  
25 under RCW 74.15.030 may not pass on the cost of the background check  
26 fees to their applicants unless the individual is determined to be  
27 disqualified due to the background information.

28 ~~((+9))~~ (10) The department shall develop rules identifying the  
29 financial responsibility of service providers, applicants, and the  
30 department for paying the fees charged by law enforcement to roll,  
31 print, or scan fingerprints-based for the purpose of a Washington state  
32 patrol or federal bureau of investigation fingerprint-based background  
33 check.

34 ~~((+10))~~ (11) For purposes of this section, unless the context  
35 plainly indicates otherwise:

36 (a) "Applicant" means a current or prospective department or  
37 service provider employee, volunteer, student, intern, researcher,  
38 contractor, or any other individual who will or may have unsupervised

1 access because of the nature of the work or services he or she  
2 provides. "Applicant" includes but is not limited to any individual  
3 who will or may have unsupervised access and is:

- 4 (i) Applying for a license or certification from the department;
- 5 (ii) Seeking a contract with the department or a service provider;
- 6 (iii) Applying for employment, promotion, reallocation, or  
7 transfer;

8 (iv) An individual that a department client or guardian of a  
9 department client chooses to hire or engage to provide services to  
10 himself or herself or another vulnerable adult, juvenile, or child and  
11 who might be eligible to receive payment from the department for  
12 services rendered; or

13 (v) A department applicant who will or may work in a department-  
14 covered position.

15 (b) "Authorized" means the department grants an applicant, home, or  
16 facility permission to:

- 17 (i) Conduct licensing, certification, or contracting activities;
- 18 (ii) Have unsupervised access to vulnerable adults, juveniles, and  
19 children;
- 20 (iii) Receive payments from a department program; or
- 21 (iv) Work or serve in a department-covered position.

22 (c) "Department" means the department of social and health  
23 services.

24 (d) "Secretary" means the secretary of the department of social and  
25 health services.

26 (e) "Secure facility" has the meaning provided in RCW 71.09.020.

27 (f) "Service provider" means entities, facilities, agencies,  
28 businesses, or individuals who are licensed, certified, authorized, or  
29 regulated by, receive payment from, or have contracts or agreements  
30 with the department to provide services to vulnerable adults,  
31 juveniles, or children. "Service provider" includes individuals whom  
32 a department client or guardian of a department client may choose to  
33 hire or engage to provide services to himself or herself or another  
34 vulnerable adult, juvenile, or child and who might be eligible to  
35 receive payment from the department for services rendered. "Service  
36 provider" does not include those certified under chapter 70.96A RCW.

1       **Sec. 3.** RCW 43.215.200 and 2007 c 415 s 3 are each amended to read  
2 as follows:

3       It shall be the director's duty with regard to licensing:

4       (1) In consultation and with the advice and assistance of persons  
5 representative of the various type agencies to be licensed, to  
6 designate categories of child care facilities for which separate or  
7 different requirements shall be developed as may be appropriate whether  
8 because of variations in the ages and other characteristics of the  
9 children served, variations in the purposes and services offered or  
10 size or structure of the agencies to be licensed, or because of any  
11 other factor relevant thereto;

12       (2) In consultation and with the advice and assistance of parents  
13 or guardians, and persons representative of the various type agencies  
14 to be licensed, to adopt and publish minimum requirements for licensing  
15 applicable to each of the various categories of agencies to be licensed  
16 under this chapter;

17       (3) In consultation with law enforcement personnel, the director  
18 shall investigate the conviction record or pending charges of each  
19 agency and its staff seeking licensure or relicensure, and other  
20 persons having unsupervised access to children in care;

21       (4) To satisfy the shared background check requirements provided  
22 for in RCW 43.215.215 and 43.20A.710, the department of early learning  
23 and the department of social and health services shall share federal  
24 fingerprint-based background check results as permitted under the law.  
25 The purpose of this provision is to allow both departments to fulfill  
26 their joint background check responsibility of checking any individual  
27 who may have unsupervised access to vulnerable adults, children, or  
28 juveniles. Neither department may share the federal background check  
29 results with any other state agency or person.

30       (5) To issue, revoke, or deny licenses to agencies pursuant to this  
31 chapter. Licenses shall specify the category of care that an agency is  
32 authorized to render and the ages and number of children to be served;

33       ~~((+5))~~ (6) To prescribe the procedures and the form and contents  
34 of reports necessary for the administration of this chapter and to  
35 require regular reports from each licensee;

36       ~~((+6))~~ (7) To inspect agencies periodically to determine whether  
37 or not there is compliance with this chapter and the requirements  
38 adopted under this chapter;

1        ~~((7))~~ (8) To review requirements adopted under this chapter at  
2 least every two years and to adopt appropriate changes after  
3 consultation with affected groups for child day care requirements; and  
4        ~~((8))~~ (9) To consult with public and private agencies in order to  
5 help them improve their methods and facilities for the care and early  
6 learning of children.

7        **Sec. 4.** RCW 43.215.215 and 2007 c 415 s 5 are each amended to read  
8 as follows:

9        (1) In determining whether an individual is of appropriate  
10 character, suitability, and competence to provide child care and early  
11 learning services to children, the department may consider the history  
12 of past involvement of child protective services or law enforcement  
13 agencies with the individual for the purpose of establishing a pattern  
14 of conduct, behavior, or inaction with regard to the health, safety, or  
15 welfare of a child. No report of child abuse or neglect that has been  
16 destroyed or expunged under RCW 26.44.031 may be used for such  
17 purposes. No unfounded or inconclusive allegation of child abuse or  
18 neglect as defined in RCW 26.44.020 may be disclosed to a provider  
19 licensed under this chapter.

20        (2) In order to determine the suitability of applicants for an  
21 agency license, licensees, their employees, and other persons who have  
22 unsupervised access to children in care, and who have not resided in  
23 the state of Washington during the three-year period before being  
24 authorized to care for children, shall be fingerprinted.

25        (a) The fingerprints shall be forwarded to the Washington state  
26 patrol and federal bureau of investigation for a criminal history  
27 record check.

28        (b) The fingerprint criminal history record checks shall be at the  
29 expense of the licensee. The licensee may not pass this cost on to the  
30 employee or prospective employee, unless the employee is determined to  
31 be unsuitable due to his or her criminal history record.

32        (c) The director shall use the information solely for the purpose  
33 of determining eligibility for a license and for determining the  
34 character, suitability, and competence of those persons or agencies,  
35 excluding parents, not required to be licensed who are authorized to  
36 care for children.



1 (d) Criminal justice agencies shall provide the director such  
2 information as they may have and that the director may require for such  
3 purpose.

4 (3) To satisfy the shared background check requirements of the  
5 department of early learning and the department of social and health  
6 services, each department shall share federal fingerprint-based  
7 background check results as permitted under the law. The purpose of  
8 this provision is to allow both departments to fulfill their joint  
9 background check responsibility of checking any individual who may have  
10 unsupervised access to vulnerable adults, children, or juveniles.  
11 Neither department may share the federal background check results with  
12 any other state agency or person.

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