

**SHB 1120 - H AMD 33**

By Representative Tharinger

**ADOPTED 02/05/2021**

1 Strike everything after the enacting clause and insert the  
2 following:

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

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

7 (a) An applicant's conviction record, upon the request of a  
8 business or organization as defined in RCW 43.43.830, a  
9 developmentally disabled person, or a vulnerable adult as defined in  
10 RCW 43.43.830 or his or her guardian;

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

13 (c) Any conviction record to aid in the investigation and  
14 prosecution of child, developmentally disabled person, and vulnerable  
15 adult abuse cases and to protect children and adults from further  
16 incidents of abuse, upon the request of a law enforcement agency, the  
17 office of the attorney general, prosecuting authority, or the  
18 department of social and health services; and

19 (d) A prospective client's or resident's conviction record, upon  
20 the request of a business or organization that qualifies for  
21 exemption under section 501(c)(3) of the internal revenue code of  
22 1986 (26 U.S.C. Sec. 501(c)(3)) and that provides emergency shelter  
23 or transitional housing for children, persons with developmental  
24 disabilities, or vulnerable adults.

25 (2) The secretary of the department of social and health services  
26 and the secretary of children, youth, and families must establish  
27 rules and set standards to require specific action when considering  
28 the information received pursuant to subsection (1) of this section,  
29 and when considering additional information including but not limited  
30 to civil adjudication proceedings as defined in RCW 43.43.830 and any  
31 out-of-state equivalent, in the following circumstances:

1 (a) When considering persons for state employment in positions  
2 directly responsible for the supervision, care, or treatment of  
3 children, vulnerable adults, or individuals with mental illness or  
4 developmental disabilities provided that: For persons residing in a  
5 home that will be utilized to provide foster care for dependent  
6 youth, a criminal background check will be required for all persons  
7 aged sixteen and older and the department of social and health  
8 services may require a criminal background check for persons who are  
9 younger than sixteen in situations where it may be warranted to  
10 ensure the safety of youth in foster care;

11 (b) When considering persons for state positions involving  
12 unsupervised access to vulnerable adults to conduct comprehensive  
13 assessments, financial eligibility determinations, licensing and  
14 certification activities, investigations, surveys, or case  
15 management; or for state positions otherwise required by federal law  
16 to meet employment standards;

17 (c) When licensing agencies or facilities with individuals in  
18 positions directly responsible for the care, supervision, or  
19 treatment of children, developmentally disabled persons, or  
20 vulnerable adults, including but not limited to agencies or  
21 facilities licensed under chapter 74.15 or 18.51 RCW;

22 (d) When contracting with individuals or businesses or  
23 organizations for the care, supervision, case management, or  
24 treatment, including peer counseling, of children, developmentally  
25 disabled persons, or vulnerable adults, including but not limited to  
26 services contracted for under chapter 18.20, 70.127, 70.128, 72.36,  
27 or 74.39A RCW or Title 71A RCW;

28 (e) When individual providers as defined in RCW 74.39A.240 or  
29 providers paid by home care agencies provide in-home services  
30 involving unsupervised access to persons with physical, mental, or  
31 developmental disabilities or mental illness, or to vulnerable adults  
32 as defined in chapter 74.34 RCW, including but not limited to  
33 services provided under chapter 74.39 or 74.39A RCW.

34 (3) The secretary of the department of children, youth, and  
35 families shall investigate the conviction records, pending charges,  
36 and other information including civil adjudication proceeding records  
37 of current employees and of any person actively being considered for  
38 any position with the department who will or may have unsupervised  
39 access to children, or for state positions otherwise required by  
40 federal law to meet employment standards. "Considered for any

1 position" includes decisions about (a) initial hiring, layoffs,  
2 reallocations, transfers, promotions, or demotions, or (b) other  
3 decisions that result in an individual being in a position that will  
4 or may have unsupervised access to children as an employee, an  
5 intern, or a volunteer.

6 (4) The secretary of the department of children, youth, and  
7 families shall adopt rules and investigate conviction records,  
8 pending charges, and other information including civil adjudication  
9 proceeding records, in the following circumstances:

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

16 (b) When authorizing individuals who will or may have  
17 unsupervised access to children who are in child day care, in early  
18 learning programs, or receiving early childhood learning education  
19 services in licensed or certified agencies, including but not limited  
20 to licensees, agency staff, interns, volunteers, contracted  
21 providers, and persons living on the premises who are sixteen years  
22 of age or older;

23 (c) When contracting with any business or organization for  
24 activities that will or may have unsupervised access to children who  
25 are in child day care, in early learning programs, or receiving early  
26 childhood learning education services;

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

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

33 (5) Whenever a state conviction record check is required by state  
34 law, persons may be employed or engaged as volunteers or independent  
35 contractors on a conditional basis pending completion of the state  
36 background investigation. Whenever a national criminal record check  
37 through the federal bureau of investigation is required by state law,  
38 a person may be employed or engaged as a volunteer or independent  
39 contractor on a conditional basis pending completion of the national  
40 check. The office of financial management shall adopt rules to

1 accomplish the purposes of this subsection as it applies to state  
2 employees. The department of social and health services shall adopt  
3 rules to accomplish the purpose of this subsection as it applies to  
4 long-term care workers subject to RCW 74.39A.056.

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

11 (b) Completed criminal background inquiry information may be  
12 shared by a willing health care facility only if the following  
13 conditions are satisfied: The licensed health care facility sharing  
14 the criminal background inquiry information is reasonably known to be  
15 the person's most recent employer, no more than twelve months has  
16 elapsed from the date the person was last employed at a licensed  
17 health care facility to the date of their current employment  
18 application, and the criminal background information is no more than  
19 two years old.

20 (c) If criminal background inquiry information is shared, the  
21 health care facility employing the subject of the inquiry must  
22 require the applicant to sign a disclosure statement indicating that  
23 there has been no conviction or finding as described in RCW 43.43.842  
24 since the completion date of the most recent criminal background  
25 inquiry.

26 (d) Any health care facility that knows or has reason to believe  
27 that an applicant has or may have a disqualifying conviction or  
28 finding as described in RCW 43.43.842, subsequent to the completion  
29 date of their most recent criminal background inquiry, shall be  
30 prohibited from relying on the applicant's previous employer's  
31 criminal background inquiry information. A new criminal background  
32 inquiry shall be requested pursuant to RCW 43.43.830 through  
33 43.43.842.

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

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

1 (7) The department of social and health services may not consider  
2 any final founded finding of physical abuse or negligent treatment or  
3 maltreatment of a child made pursuant to chapter 26.44 RCW that is  
4 accompanied by a certificate of parental improvement or dependency as  
5 a result of a finding of abuse or neglect pursuant to chapter 13.34  
6 RCW that is accompanied by a certificate of parental improvement when  
7 evaluating an applicant or employee's character, competency, and  
8 suitability pursuant to any background check authorized or required  
9 by this chapter, RCW 43.20A.710 or 74.39A.056, or any of the rules  
10 adopted thereunder.

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

13 (1) Except as provided in subsection (2) of this section, in  
14 order to determine the character, competence, and suitability of any  
15 applicant or service provider to have unsupervised access, the  
16 secretary of the department of social and health services and the  
17 secretary of the department of children, youth, and families may  
18 require a fingerprint-based background check through both the  
19 Washington state patrol and the federal bureau of investigation at  
20 any time, but shall require a fingerprint-based background check when  
21 the applicant or service provider has resided in the state less than  
22 three consecutive years before application, and:

23 (a) Is an applicant or service provider providing services to  
24 children or people with developmental disabilities under RCW  
25 74.15.030;

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

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

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

37 (i) Medicaid personal care under RCW 74.09.520;

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

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

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

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

8 (3) To satisfy the shared background check requirements provided  
9 for in RCW 43.216.270 and 43.20A.710, the department of children,  
10 youth, and families and the department of social and health services  
11 shall share federal fingerprint-based background check results as  
12 permitted under the law. The purpose of this provision is to allow  
13 both departments to fulfill their joint background check  
14 responsibility of checking any individual who may have unsupervised  
15 access to vulnerable adults, children, or juveniles. Neither  
16 department may share the federal background check results with any  
17 other state agency or person.

18 (4) The secretary of the department of children, youth, and  
19 families shall require a fingerprint-based background check through  
20 the Washington state patrol identification and criminal history  
21 section and the federal bureau of investigation when the department  
22 seeks to approve an applicant or service provider for a foster or  
23 adoptive placement of children in accordance with federal and state  
24 law. Fees charged by the Washington state patrol and the federal  
25 bureau of investigation for fingerprint-based background checks shall  
26 be paid by the department of children, youth, and families for  
27 applicant and service providers providing foster care as required in  
28 RCW 74.15.030.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (a) "Applicant" means a current or prospective department of  
37 social and health services, department of children, youth, and  
38 families, or service provider employee, volunteer, student, intern,  
39 researcher, contractor, or any other individual who will or may have  
40 unsupervised access because of the nature of the work or services he

1 or she provides. "Applicant" includes but is not limited to any  
2 individual who will or may have unsupervised access and is:

3 (i) Applying for a license or certification from the department  
4 of social and health services or the department of children, youth,  
5 and families;

6 (ii) Seeking a contract with the department of social and health  
7 services, the department of children, youth, and families, or a  
8 service provider;

9 (iii) Applying for employment, promotion, reallocation, or  
10 transfer;

11 (iv) An individual that a department of social and health  
12 services or department of children, youth, and families client or  
13 guardian of a department of social and health services or department  
14 of children, youth, and families client chooses to hire or engage to  
15 provide services to himself or herself or another vulnerable adult,  
16 juvenile, or child and who might be eligible to receive payment from  
17 the department of social and health services or the department of  
18 children, youth, and families for services rendered; or

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

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

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

26 (ii) Have unsupervised access to vulnerable adults, juveniles,  
27 and children;

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

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

32 (c) "Secretary" means the secretary of the department of social  
33 and health services.

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

35 (e) "Service provider" means entities, facilities, agencies,  
36 businesses, or individuals who are licensed, certified, authorized,  
37 or regulated by, receive payment from, or have contracts or  
38 agreements with the department of social and health services or the  
39 department of children, youth, and families to provide services to  
40 vulnerable adults, juveniles, or children. "Service provider"

1 includes individuals whom a department of social and health services  
2 or department of children, youth, and families client or guardian of  
3 a department of social and health services or department of children,  
4 youth, and families client may choose to hire or engage to provide  
5 services to himself or herself or another vulnerable adult, juvenile,  
6 or child and who might be eligible to receive payment from the  
7 department of social and health services or the department of  
8 children, youth, and families for services rendered. (~~"Service  
9 provider" does not include those certified under chapter 70.96A  
10 RCW.~~)

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

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

20 (b)(i) Except as provided in (b)(ii) of this subsection, for  
21 long-term care workers hired on or after January 7, 2012, the  
22 background checks required under this section shall include checking  
23 against the federal bureau of investigation fingerprint  
24 identification records system (~~(and against the national sex  
25 offenders registry or their successor programs)~~) or its successor  
26 program. The department shall require these long-term care workers to  
27 submit fingerprints for the purpose of investigating conviction  
28 records through both the Washington state patrol and the federal  
29 bureau of investigation. The department shall not pass on the cost of  
30 these criminal background checks to the workers or their employers.

31 (~~(ii) ((This subsection does not apply to long-term care workers  
32 employed by community residential service businesses until January 1,  
33 2016.))~~) A long-term care worker who is not disqualified by the state  
34 background check can work and have unsupervised access pending the  
35 results of the federal bureau of investigation fingerprint background  
36 check as allowed by rules adopted by the department.

37 (c) The department shall share state and federal background check  
38 results with the department of health in accordance with RCW  
39 18.88B.080.

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

4 (i) The individual has an individual provider contract with the  
5 department;

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

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

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

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

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

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

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

27 (c) A disciplining authority, including the department of health,  
28 has made a finding of abuse, abandonment, neglect, or financial  
29 exploitation of a minor or a vulnerable adult against the provider;  
30 or

31 (d) A court has issued an order that includes a finding of fact  
32 or conclusion of law that the provider has committed abuse,  
33 abandonment, neglect, or financial exploitation of a minor or  
34 vulnerable adult. If the provider has received a certificate of  
35 parental improvement under chapter 74.13 RCW pertaining to the  
36 finding of fact or conclusion of law, the provider is not  
37 disqualified under this section.

38 (3) The department shall establish, by rule, a state registry  
39 which contains identifying information about long-term care workers  
40 identified under this chapter who have final substantiated findings

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

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

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

12 (b) An employee, licensee, or contractor of any of the following:  
13 A home care agency licensed under chapter 70.127 RCW; a nursing home  
14 under chapter 18.51 RCW; an assisted living facility under chapter  
15 18.20 RCW; an enhanced services facility under chapter 70.97 RCW; a  
16 certified resident services and supports agency licensed or certified  
17 under chapter 71A.12 RCW; an adult family home under chapter 70.128  
18 RCW; or any long-term care facility certified to provide medicaid or  
19 medicare services; and

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

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

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

25 (1) The department shall inspect each nursing home periodically  
26 in accordance with federal standards under 42 C.F.R. Part 488,  
27 Subpart E. The inspection shall be made without providing advance  
28 notice of it. Every inspection may include an inspection of every  
29 part of the premises and an examination of all records, methods of  
30 administration, the general and special dietary and the stores and  
31 methods of supply. Those nursing homes that provide community-based  
32 care shall establish and maintain separate and distinct accounting  
33 and other essential records for the purpose of appropriately  
34 allocating costs of the providing of such care: PROVIDED, That such  
35 costs shall not be considered allowable costs for reimbursement  
36 purposes under chapter 74.46 RCW. Following such inspection or  
37 inspections, written notice of any violation of this law or the rules  
38 and regulations promulgated hereunder, shall be given to the  
39 applicant or licensee and the department. The notice shall describe

1 the reasons for the facility's noncompliance. The department may  
2 prescribe by regulations that any licensee or applicant desiring to  
3 make specified types of alterations or additions to its facilities or  
4 to construct new facilities shall, before commencing such alteration,  
5 addition or new construction, submit its plans and specifications  
6 therefor to the department for preliminary inspection and approval or  
7 recommendations with respect to compliance with the regulations and  
8 standards herein authorized.

9 (2) If a pandemic, natural disaster, or other declared state of  
10 emergency prevents the department from completing inspections  
11 according to the timeline in subsection (1) of this section, the  
12 department shall adopt rules to reestablish inspection timelines  
13 based on the length of time since the last complete inspection,  
14 compliance history of each facility, immediate health or safety  
15 concerns, and centers for medicare and medicaid services  
16 requirements.

17 (a) Rules adopted under this subsection (2) are effective until  
18 the termination of the pandemic, natural disaster, or other declared  
19 state of emergency or until the department determines that all  
20 facility inspections are occurring according to time frames  
21 established in subsection (1) of this section, whichever occurs  
22 later. Once the department determines a rule adopted under this  
23 subsection (2) is no longer necessary, it must repeal the rule under  
24 RCW 34.05.353.

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

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

31 (1) The department shall, in addition to any inspections  
32 conducted pursuant to complaints filed pursuant to RCW 18.51.190,  
33 conduct a periodic general inspection of each nursing home in the  
34 state without providing advance notice of such inspection. Such  
35 inspections must conform to the federal standards for surveys under  
36 42 C.F.R. Part 488, Subpart E.

37 (2) If a pandemic, natural disaster, or other declared state of  
38 emergency prevents the department from completing inspections  
39 according to the timeline in subsection (1) of this section, the

1 department shall adopt rules to reestablish inspection timelines  
2 based on the length of time since the last complete inspection,  
3 compliance history of each facility, immediate health or safety  
4 concerns, and centers for medicare and medicaid services  
5 requirements.

6 (a) Rules adopted under this subsection (2) are effective until  
7 the termination of the pandemic, natural disaster, or other declared  
8 state of emergency or until the department determines that all  
9 facility inspections are occurring according to time frames  
10 established in subsection (1) of this section, whichever occurs  
11 later. Once the department determines a rule adopted under this  
12 subsection (2) is no longer necessary, it must repeal the rule under  
13 RCW 34.05.353.

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

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

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

24 (2) The department shall institute minimum staffing standards for  
25 nursing homes. Beginning July 1, 2016, facilities must provide a  
26 minimum of 3.4 hours per resident day of direct care. Direct care  
27 staff has the same meaning as defined in RCW 74.42.010. The minimum  
28 staffing standard includes the time when such staff are providing  
29 hands-on care related to activities of daily living and nursing-  
30 related tasks, as well as care planning. The legislature intends to  
31 increase the minimum staffing standard to 4.1 hours per resident day  
32 of direct care, but the effective date of a standard higher than 3.4  
33 hours per resident day of direct care will be identified if and only  
34 if funding is provided explicitly for an increase of the minimum  
35 staffing standard for direct care.

36 (a) The department shall establish in rule a system of compliance  
37 of minimum direct care staffing standards by January 1, 2016.  
38 Oversight must be done at least quarterly using the centers for

1 medicare and medicaid services' payroll-based journal and nursing  
2 home facility census and payroll data.

3 (b) The department shall establish in rule by January 1, 2016, a  
4 system of financial penalties for facilities out of compliance with  
5 minimum staffing standards. No monetary penalty may be issued during  
6 the implementation period of July 1, 2016, through September 30,  
7 2016. If a facility is found noncompliant during the implementation  
8 period, the department shall provide a written notice identifying the  
9 staffing deficiency and require the facility to provide a  
10 sufficiently detailed correction plan to meet the statutory minimum  
11 staffing levels. Monetary penalties begin October 1, 2016. Monetary  
12 penalties must be established based on a formula that calculates the  
13 cost of wages and benefits for the missing staff hours. If a facility  
14 meets the requirements in subsection (3) or (4) of this section, the  
15 penalty amount must be based solely on the wages and benefits of  
16 certified nurse aides. The first monetary penalty for noncompliance  
17 must be at a lower amount than subsequent findings of noncompliance.  
18 Monetary penalties established by the department may not exceed two  
19 hundred percent of the wage and benefit costs that would have  
20 otherwise been expended to achieve the required staffing minimum  
21 hours per resident day for the quarter. A facility found out of  
22 compliance must be assessed a monetary penalty at the lowest penalty  
23 level if the facility has met or exceeded the requirements in  
24 subsection (2) of this section for three or more consecutive years.  
25 Beginning July 1, 2016, pursuant to rules established by the  
26 department, funds that are received from financial penalties must be  
27 used for technical assistance, specialized training, or an increase  
28 to the quality enhancement established in RCW 74.46.561.

29 (c) The department shall establish in rule an exception allowing  
30 geriatric behavioral health workers as defined in RCW 74.42.010 to be  
31 recognized in the minimum staffing requirements as part of the direct  
32 care service delivery to individuals who have a behavioral health  
33 condition. Hours worked by geriatric behavioral health workers may be  
34 recognized as direct care hours for purposes of the minimum staffing  
35 requirements only up to a portion of the total hours equal to the  
36 proportion of resident days of clients with a behavioral health  
37 condition identified at that facility on the most recent semiannual  
38 minimum data set. In order to qualify for the exception:

39 (i) The worker must:

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

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

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

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

13 (d) (i) The department shall establish a limited exception to the  
14 3.4 hours per resident day staffing requirement for facilities  
15 demonstrating a good faith effort to hire and retain staff.

16 (ii) To determine initial facility eligibility for exception  
17 consideration, the department shall send surveys to facilities  
18 anticipated to be below, at, or slightly above the 3.4 hours per  
19 resident day requirement. These surveys must measure the hours per  
20 resident day in a manner as similar as possible to the centers for  
21 medicare and medicaid services' payroll-based journal and cover the  
22 staffing of a facility from October through December of 2015, January  
23 through March of 2016, and April through June of 2016. A facility  
24 must be below the 3.4 staffing standard on all three surveys to be  
25 eligible for exception consideration. If the staffing hours per  
26 resident day for a facility declines from any quarter to another  
27 during the survey period, the facility must provide sufficient  
28 information to the department to allow the department to determine if  
29 the staffing decrease was deliberate or a result of neglect, which is  
30 the lack of evidence demonstrating the facility's efforts to maintain  
31 or improve its staffing ratio. The burden of proof is on the facility  
32 and the determination of whether or not the decrease was deliberate  
33 or due to neglect is entirely at the discretion of the department. If  
34 the department determines a facility's decline was deliberate or due  
35 to neglect, that facility is not eligible for an exception  
36 consideration.

37 (iii) To determine eligibility for exception approval, the  
38 department shall review the plan of correction submitted by the  
39 facility. Before a facility's exception may be renewed, the  
40 department must determine that sufficient progress is being made

1 towards reaching the 3.4 hours per resident day staffing requirement.  
2 When reviewing whether to grant or renew an exception, the department  
3 must consider factors including but not limited to: Financial  
4 incentives offered by the facilities such as recruitment bonuses and  
5 other incentives; the robustness of the recruitment process; county  
6 employment data; specific steps the facility has undertaken to  
7 improve retention; improvements in the staffing ratio compared to the  
8 baseline established in the surveys and whether this trend is  
9 continuing; and compliance with the process of submitting staffing  
10 data, adherence to the plan of correction, and any progress toward  
11 meeting this plan, as determined by the department.

12 (iv) Only facilities that have their direct care component rate  
13 increase capped according to RCW 74.46.561 are eligible for exception  
14 consideration. Facilities that will have their direct care component  
15 rate increase capped for one or two years are eligible for exception  
16 consideration through June 30, 2017. Facilities that will have their  
17 direct care component rate increase capped for three years are  
18 eligible for exception consideration through June 30, 2018.

19 (v) The department may not grant or renew a facility's exception  
20 if the facility meets the 3.4 hours per resident day staffing  
21 requirement and subsequently drops below the 3.4 hours per resident  
22 day staffing requirement.

23 (vi) The department may grant exceptions for a six-month period  
24 per exception. The department's authority to grant exceptions to the  
25 3.4 hours per resident day staffing requirement expires June 30,  
26 2018.

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

30 (b) (i) The department shall establish a limited exception process  
31 for large nonessential community providers that can demonstrate a  
32 good faith effort to hire a registered nurse for the last eight hours  
33 of required coverage per day. In granting an exception, the  
34 department may consider the competitiveness of the wages and benefits  
35 offered as compared to nursing facilities in comparable geographic or  
36 metropolitan areas within Washington state, the provider's  
37 recruitment and retention efforts, and the availability of registered  
38 nurses in the particular geographic area. A one-year exception may be  
39 granted and may be renewable; however, the department may limit the  
40 admission of new residents, based on medical conditions or

1 complexities, when a registered nurse is not on-site and readily  
2 available. If a large nonessential community provider receives an  
3 exception, that information must be included in the department's  
4 nursing home locator.

5 (ii) By August 1, 2023, and every three years thereafter, the  
6 department, along with a stakeholder work group established by the  
7 department, shall conduct a review of the exceptions process to  
8 determine if it is still necessary. As part of this review, the  
9 department shall provide the legislature with a report that includes  
10 enforcement and citation data for large nonessential community  
11 providers that were granted an exception in the three previous fiscal  
12 years in comparison to those without an exception. The report must  
13 include a similar comparison of data, provided to the department by  
14 the long-term care ombuds, on long-term care ombuds referrals for  
15 large nonessential community providers that were granted an exception  
16 in the three previous fiscal years and those without an exception.  
17 This report, along with a recommendation as to whether the exceptions  
18 process should continue, is due to the legislature by December 1st of  
19 each year in which a review is conducted. Based on the  
20 recommendations outlined in this report, the legislature may take  
21 action to end the exceptions process.

22 (4) Essential community providers and small nonessential  
23 community providers must have a registered nurse on duty directly  
24 supervising resident care a minimum of sixteen hours per day, seven  
25 days per week, and a registered nurse or a licensed practical nurse  
26 on duty directly supervising resident care the remaining eight hours  
27 per day, seven days per week.

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

31 (6) If a pandemic, natural disaster, or other declared state of  
32 emergency impedes or prevents facilities from compliance with  
33 subsections (2) through (4) of this section, the department may adopt  
34 rules to grant exceptions to these requirements, waive penalties, and  
35 suspend oversight activities. Facilities must remain in compliance  
36 with subsection (1) of this section.

37 (a) Rules adopted under this subsection (6) are effective until  
38 18 months after the termination of the pandemic, natural disaster, or  
39 other declared state of emergency or until determined no longer  
40 necessary by the department, whichever occurs first. Once the

1 department determines a rule adopted under this subsection (6) is no  
2 longer necessary, it must repeal the rule under RCW 34.05.353.

3 (b) Within 12 months of the termination of the pandemic, natural  
4 disaster, or other declared state of emergency, the department shall  
5 conduct a review of direct care staffing adequacy in relation to  
6 meeting the requirements of subsections (2) and (4) of this section  
7 and provide the legislature with a report.

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

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

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

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

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

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

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

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

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

34 (A) Core competencies; and

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

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

4 (a) Has been developed with input from consumer and worker  
5 representatives; and

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

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

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

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

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

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

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

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

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

37 (b) A spouse or registered domestic partner who is a long-term  
38 care worker only for a spouse or domestic partner, pursuant to the  
39 long-term services and supports trust program established in chapter

1 50B.04 RCW, must receive fifteen hours of basic training, and at  
2 least six hours of additional focused training based on the care-  
3 receiving spouse's or partner's needs, within the first one hundred  
4 twenty days after becoming a long-term care worker.

5 (c) A person working as an individual provider who (i) provides  
6 respite care services only for individuals with developmental  
7 disabilities receiving services under Title 71A RCW or only for  
8 individuals who receive services under this chapter, and (ii) works  
9 three hundred hours or less in any calendar year, must complete  
10 fourteen hours of training within the first one hundred twenty days  
11 after becoming an individual provider. Five of the fourteen hours  
12 must be completed before becoming eligible to provide care, including  
13 two hours of orientation training regarding the caregiving role and  
14 terms of employment and three hours of safety training. The training  
15 partnership identified in RCW 74.39A.360 must offer at least twelve  
16 of the fourteen hours online, and five of those online hours must be  
17 individually selected from elective courses.

18 (d) Individual providers identified in (d)(i) or (ii) of this  
19 subsection must complete thirty-five hours of training within the  
20 first one hundred twenty days after becoming an individual provider.  
21 Five of the thirty-five hours must be completed before becoming  
22 eligible to provide care. Two of these five hours shall be devoted to  
23 an orientation training regarding an individual provider's role as  
24 caregiver and the applicable terms of employment, and three hours  
25 shall be devoted to safety training, including basic safety  
26 precautions, emergency procedures, and infection control. Individual  
27 providers subject to this requirement include:

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

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

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

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

38 (a) Has been developed with input from consumer and worker  
39 representatives; and

40 (b) Requires comprehensive instruction by qualified instructors.

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

6       (a) Rules adopted under this subsection (4) are effective until  
7 the termination of the pandemic, natural disaster, or other declared  
8 state of emergency or until the department determines that all long-  
9 term care workers who were unable to complete the training required  
10 in subsection (1) of this section have had adequate access to  
11 complete the required training, whichever is later. Once the  
12 department determines a rule adopted under this subsection (4) is no  
13 longer necessary, it must repeal the rule under RCW 34.05.353.

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

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

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

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

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

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

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

31       (b) Registered nurses and licensed practical nurses licensed  
32 under chapter 18.79 RCW;

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

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

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

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

4 (a) Has been developed with input from consumer and worker  
5 representatives; and

6 (b) Requires comprehensive instruction by qualified instructors.

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

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

14 (a) Rules adopted under this subsection (6) are effective until  
15 the termination of the pandemic, natural disaster, or other declared  
16 state of emergency or until the department determines that all long-  
17 term care workers who were unable to complete the training required  
18 in this section have had adequate access to complete the required  
19 training, whichever is later. Once the department determines a rule  
20 adopted under this subsection (6) is no longer necessary, it must  
21 repeal the rule under RCW 34.05.353.

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

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

28 ((+7)) (8) The department shall adopt rules to implement  
29 subsection (2) of this section.

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

32 (1) Beginning January 7, 2012, except as provided in RCW  
33 18.88B.041, any person hired as a long-term care worker must be  
34 certified as a home care aide as provided in this chapter within two  
35 hundred calendar days after the date of ~~((being hired. In computing~~  
36 ~~the time periods in this subsection, the first day is the date of))~~  
37 hire, as defined by the department. The department may adopt rules  
38 determining under which circumstances a long-term care worker may

1 have more than one date of hire, restarting the person's 200-day  
2 period to obtain certification as a home care aide.

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

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

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

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

21 (a) Rules adopted under this subsection (3) are effective until  
22 the termination of the pandemic, natural disaster, or other declared  
23 state of emergency or until the department determines that additional  
24 time for long-term care workers to become certified is no longer  
25 necessary, whichever is later. Once the department determines a rule  
26 adopted under this subsection (3) is no longer necessary, it must  
27 repeal the rule under RCW 34.05.353.

28 (b) Within 12 months of the termination of the pandemic, natural  
29 disaster, or other declared state of emergency, the department shall  
30 conduct a review of certification compliance with subsection (1) of  
31 this section and rules adopted under this subsection (3) and provide  
32 the legislature with a report.

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

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

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

38 (a) "Caregiver" includes all adult family home resident managers  
39 and any person who provides residents with hands-on personal care on

1 behalf of an adult family home, except volunteers who are directly  
2 supervised.

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

8 (2) Training must have three components: Orientation, basic  
9 training, and continuing education. All adult family home providers,  
10 resident managers, and employees, or volunteers who routinely  
11 interact with residents shall complete orientation. Caregivers shall  
12 complete orientation, basic training, and continuing education.

13 (3) Orientation consists of introductory information on  
14 residents' rights, communication skills, fire and life safety, and  
15 universal precautions. Orientation must be provided at the facility  
16 by appropriate adult family home staff to all adult family home  
17 employees before the employees have routine interaction with  
18 residents.

19 (4) Basic training consists of modules on the core knowledge and  
20 skills that caregivers need to learn and understand to effectively  
21 and safely provide care to residents. Basic training must be outcome-  
22 based, and the effectiveness of the basic training must be measured  
23 by demonstrated competency in the core areas through the use of a  
24 competency test. Basic training must be completed by caregivers  
25 within one hundred twenty days of the date on which they begin to  
26 provide hands-on care. Until competency in the core areas has been  
27 demonstrated, caregivers shall not provide hands-on personal care to  
28 residents without direct supervision.

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

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

1 (b) Specialty training must be completed by providers and  
2 resident managers before admitting and serving residents who have  
3 been determined to have special needs related to mental illness,  
4 dementia, or a developmental disability. Should a resident develop  
5 special needs while living in a home without specialty designation,  
6 the provider and resident manager have one hundred twenty days to  
7 complete specialty training.

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

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

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

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

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

37 (10) The adult family home training network shall assist adult  
38 family homes that desire to deliver facility-based training with  
39 facility designated trainers, or adult family homes that desire to  
40 pool their resources to create shared training systems. The

1 department shall develop criteria for reviewing and approving  
2 trainers and training materials. The department may approve a  
3 curriculum based upon attestation by an adult family home  
4 administrator that the adult family home's training curriculum  
5 addresses basic and specialty training competencies identified by the  
6 department, and shall review a curriculum to verify that it meets  
7 these requirements. The department may conduct the review as part of  
8 the next regularly scheduled inspection authorized under RCW  
9 70.128.070. The department shall rescind approval of any curriculum  
10 if it determines that the curriculum does not meet these  
11 requirements.

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

14 (12)(a) Except as provided in (b) of this subsection, the  
15 orientation, basic training, specialty training, and continuing  
16 education requirements of this section commence September 1, 2002,  
17 and shall be applied to (i) employees hired subsequent to September  
18 1, 2002; or (ii) existing employees that on September 1, 2002, have  
19 not successfully completed the training requirements under RCW  
20 70.128.120 or 70.128.130 and this section. Existing employees who  
21 have not successfully completed the training requirements under RCW  
22 70.128.120 or 70.128.130 shall be subject to all applicable  
23 requirements of this section.

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

27 (13) If a pandemic, natural disaster, or other declared state of  
28 emergency makes specialty training unavailable, the department may  
29 adopt rules to allow an adult family home where the provider and  
30 resident manager have not completed specialty training to admit a  
31 resident or residents with special needs related to mental illness,  
32 dementia, or a developmental disability, or to care for a resident or  
33 residents already living in the home who develop special needs. Such  
34 rules must include information about how to complete the specialty  
35 training once the training is available.

36 (a) Rules adopted under this subsection (13) are effective until  
37 the termination of the pandemic, natural disaster, or other declared  
38 state of emergency or until the department determines that providers  
39 and resident managers who were unable to complete the specialty  
40 training required in subsection (5)(b) of this section have had

1 adequate access to complete the required training, whichever is  
2 later. Once the department determines a rule adopted under this  
3 subsection (13) is no longer necessary, it must repeal the rule under  
4 RCW 34.05.353.

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

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

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

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

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

20 (2) Training must have the following components: Orientation,  
21 basic training, specialty training as appropriate, and continuing  
22 education. All assisted living facility employees or volunteers who  
23 routinely interact with residents shall complete orientation.  
24 Assisted living facility administrators, or their designees, and  
25 caregivers shall complete orientation, basic training, specialty  
26 training as appropriate, and continuing education.

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

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

1 provide hands-on care. Until competency in the core areas has been  
2 demonstrated, caregivers shall not provide hands-on personal care to  
3 residents without direct supervision. Assisted living facility  
4 administrators, or their designees, must complete basic training and  
5 demonstrate competency within one hundred twenty days of employment.

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

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

17 (b) Specialty training must be completed by caregivers within one  
18 hundred twenty days of the date on which they begin to provide hands-  
19 on care to a resident having special needs. However, if specialty  
20 training is not integrated with basic training, the specialty  
21 training must be completed within ninety days of completion of basic  
22 training. Until competency in the core specialty areas has been  
23 demonstrated, caregivers shall not provide hands-on personal care to  
24 residents with special needs without direct supervision.

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

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

1 (7) Persons who successfully challenge the competency test for  
2 basic training are fully exempt from the basic training requirements  
3 of this section. Persons who successfully challenge the specialty  
4 training competency test are fully exempt from the specialty training  
5 requirements of this section.

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

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

13 (9) In an effort to improve access to training and education and  
14 reduce costs, especially for rural communities, the coordinated  
15 system of long-term care training and education must include the use  
16 of innovative types of learning strategies such as internet  
17 resources, videotapes, and distance learning using satellite  
18 technology coordinated through community colleges or other entities,  
19 as defined by the department.

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

22 (11) Assisted living facilities that desire to deliver facility-  
23 based training with facility designated trainers, or assisted living  
24 facilities that desire to pool their resources to create shared  
25 training systems, must be encouraged by the department in their  
26 efforts. The department shall develop criteria for reviewing and  
27 approving trainers and training materials that are substantially  
28 similar to or better than the materials developed by the department.  
29 The department may approve a curriculum based upon attestation by an  
30 assisted living facility administrator that the assisted living  
31 facility's training curriculum addresses basic and specialty training  
32 competencies identified by the department, and shall review a  
33 curriculum to verify that it meets these requirements. The department  
34 may conduct the review as part of the next regularly scheduled yearly  
35 inspection and investigation required under RCW 18.20.110. The  
36 department shall rescind approval of any curriculum if it determines  
37 that the curriculum does not meet these requirements.

38 (12) The department shall adopt rules for the implementation of  
39 this section.

1 (13) (a) Except as provided in (b) of this subsection, the  
2 orientation, basic training, specialty training, and continuing  
3 education requirements of this section commence September 1, 2002, or  
4 one hundred twenty days from the date of employment, whichever is  
5 later, and shall be applied to (i) employees hired subsequent to  
6 September 1, 2002; and (ii) existing employees that on September 1,  
7 2002, have not successfully completed the training requirements under  
8 RCW 74.39A.010 or 74.39A.020 and this section. Existing employees who  
9 have not successfully completed the training requirements under RCW  
10 74.39A.010 or 74.39A.020 shall be subject to all applicable  
11 requirements of this section.

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

15 (14) If a pandemic, natural disaster, or other declared state of  
16 emergency makes specialty training unavailable, the department may  
17 adopt rules to allow an assisted living facility where the  
18 administrator, designee, and caregiving staff have not completed  
19 specialty training to admit a resident or residents with special  
20 needs related to mental illness, dementia, or a developmental  
21 disability. Such rules must include information about how to complete  
22 the specialty training once the training is available.

23 (a) Rules adopted under this subsection (14) are effective until  
24 the termination of the pandemic, natural disaster, or other declared  
25 state of emergency or until the department determines that providers  
26 and resident managers who were unable to complete the specialty  
27 training required in subsection (5)(b) of this section have had  
28 adequate access to complete the required training, whichever is  
29 later. Once the department determines a rule adopted under this  
30 subsection (14) is no longer necessary, it must repeal the rule under  
31 RCW 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 training compliance with subsection (5)(b) of  
35 this section and provide the legislature with a report.

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

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

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

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

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

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

20 (i) Rules adopted under this subsection (2)(d) are effective  
21 until the termination of the pandemic, natural disaster, or other  
22 declared state of emergency or until the department determines that  
23 all facility inspections are occurring according to time frames  
24 established in (b) of this subsection, whichever is later. Once the  
25 department determines a rule adopted under this subsection (2)(d) is  
26 no longer necessary, it must repeal the rule under RCW 34.05.353.

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

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

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

36 (1) The department shall make or cause to be made at least one  
37 inspection of each facility prior to licensure and an unannounced  
38 full inspection of facilities at least once every eighteen months.

1 The statewide average interval between full facility inspections must  
2 be fifteen months.

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

10 (3) During inspections, the facility must give the department  
11 access to areas, materials, and equipment used to provide care or  
12 support to residents, including resident and staff records, accounts,  
13 and the physical premises, including the buildings, grounds, and  
14 equipment. The department has the authority to privately interview  
15 the provider, staff, residents, and other individuals familiar with  
16 resident care and service plans.

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

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

23 (6) The facility shall develop a written plan of correction for  
24 any violations identified by the department and provide a plan of  
25 correction to the department within ten working days from the receipt  
26 of the inspection report.

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

33 (a) Rules adopted under this subsection (7) are effective until  
34 the termination of the pandemic, natural disaster, or other declared  
35 state of emergency or until the department determines that all  
36 facility inspections are occurring according to time frames  
37 established in subsection (1) of this section, whichever is later.  
38 Once the department determines a rule adopted under this subsection  
39 (7) is no longer necessary, it must repeal the rule under RCW  
40 34.05.353.

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

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

7       (1) The department shall make or cause to be made, at least every  
8 eighteen months with an annual average of fifteen months, an  
9 inspection and investigation of all assisted living facilities.  
10 However, the department may delay an inspection to twenty-four months  
11 if the assisted living facility has had three consecutive inspections  
12 with no written notice of violations and has received no written  
13 notice of violations resulting from complaint investigation during  
14 that same time period. The department may at anytime make an  
15 unannounced inspection of a licensed facility to assure that the  
16 licensee is in compliance with this chapter and the rules adopted  
17 under this chapter. Every inspection shall focus primarily on actual  
18 or potential resident outcomes, and may include an inspection of  
19 every part of the premises and an examination of all records, methods  
20 of administration, the general and special dietary, and the stores  
21 and methods of supply; however, the department shall not have access  
22 to financial records or to other records or reports described in RCW  
23 18.20.390. Financial records of the assisted living facility may be  
24 examined when the department has reasonable cause to believe that a  
25 financial obligation related to resident care or services will not be  
26 met, such as a complaint that staff wages or utility costs have not  
27 been paid, or when necessary for the department to investigate  
28 alleged financial exploitation of a resident. Following such an  
29 inspection or inspections, written notice of any violation of this  
30 law or the rules adopted hereunder shall be given to the applicant or  
31 licensee and the department. The department may prescribe by rule  
32 that any licensee or applicant desiring to make specified types of  
33 alterations or additions to its facilities or to construct new  
34 facilities shall, before commencing such alteration, addition, or new  
35 construction, submit plans and specifications therefor to the  
36 agencies responsible for plan reviews for preliminary inspection and  
37 approval or recommendations with respect to compliance with the rules  
38 and standards herein authorized.

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

7 (a) Rules adopted under this subsection (2) are effective until  
8 the termination of the pandemic, natural disaster, or other declared  
9 state of emergency or until the department determines that all  
10 facility inspections are occurring according to time frames  
11 established in subsection (1) of this section, whichever is later.  
12 Once the department determines a rule adopted under this subsection  
13 (2) is no longer necessary, it must repeal the rule under RCW  
14 34.05.353.

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

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

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

24 (b) A health care facility shall not assign a nursing assistant-  
25 registered to provide care until the nursing assistant-registered has  
26 demonstrated skills necessary to perform competently all assigned  
27 duties and responsibilities.

28 (c) Nothing in this chapter shall be construed to confer on a  
29 nursing assistant the authority to administer medication unless  
30 delegated as a specific nursing task pursuant to this chapter or to  
31 practice as a licensed (registered) nurse or licensed practical nurse  
32 as defined in chapter 18.79 RCW.

33 (2)(a) A nursing assistant employed in a nursing home must have  
34 successfully obtained certification through: (i) An approved training  
35 program and the competency evaluation within ~~((four months after the~~  
36 ~~date of employment))~~ a period of time determined in rule by the  
37 commission; or (ii) alternative training and the competency  
38 evaluation prior to employment.

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

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

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

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

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

15 (ii) Is a certified medical assistant pursuant to a certification  
16 program accredited by a national medical assistant accreditation  
17 organization and approved by the commission; and

18 (b) Has successfully completed at least twenty-four hours of  
19 training that the commission determines is necessary to provide  
20 training equivalent to approved training on topics not addressed in  
21 the training specified for certification as a home care aide or  
22 medical assistant, as applicable. In the commission's discretion, a  
23 portion of these hours may include clinical training.

24 (2) (a) (~~By July 1, 2011, the~~) The commission, in consultation  
25 with the secretary, the department of social and health services, and  
26 consumer, employer, and worker representatives, shall adopt rules to  
27 implement this section and to provide(~~(, beginning January 1, 2012,)~~)  
28 for a program of credentialing reciprocity to the extent required by  
29 this section between home care aide and medical assistant  
30 certification and nursing assistant certification. (~~By July 1, 2011,~~  
31 ~~the~~) The secretary shall also adopt such rules as may be necessary  
32 to implement this section and the credentialing reciprocity program.

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

37 (3) (~~Beginning December 1, 2012, the~~) The secretary, in  
38 consultation with the commission, shall report annually by December  
39 1st to the governor and the appropriate committees of the legislature

1 on the progress made in achieving career advancement for certified  
2 home care aides and medical assistants into nursing practice.

3 NEW SECTION. **Sec. 18.** This act is necessary for the immediate  
4 preservation of the public peace, health, or safety, or support of  
5 the state government and its existing public institutions, and takes  
6 effect immediately.

7 NEW SECTION. **Sec. 19.** This act is remedial and curative in  
8 nature and all of its sections apply retroactively to February 29,  
9 2020, to include the period of the state of emergency created by the  
10 COVID-19 outbreak. In any instance where this act grants rule-making  
11 authority to the department of social and health services or the  
12 department of health, the agencies may adopt the rules as emergency  
13 rules and may make the rules retroactively effective."

**SHB 1120 - H AMD 33**

By Representative Tharinger

**ADOPTED 02/05/2021**

14 Correct the title.

EFFECT: (1) Provides alternate expiration periods for rules adopted in response to a pandemic, natural disaster, or other declared state of emergency: (a) For long-term care facility inspections, the rules are effective until the termination of the pandemic, disaster, or emergency or the reestablishment of normal inspection timelines, whichever is later; (b) For staffing requirements for nursing homes, the rules are effective until 18 months after the termination of the pandemic, disaster, or emergency or when the Department of Social and Health Services (DSHS) determines they are no longer necessary, whichever occurs first; (c) For training requirements, the rules are effective until the termination of the pandemic, disaster, or emergency or until there is adequate access to complete the required training, whichever is later; (d) For health care aide certification, the rules are effective until the termination of the pandemic, disaster, or emergency or until the Department of Health (DOH) determines the rules are no longer necessary, whichever occurs first.

(2) Requires the DSHS and the DOH to repeal rules that are no longer necessary using the expedited rule-making process.

(3) Requires the DSHS and the DOH to report to the Legislature on rules adopted in response to a pandemic, natural disaster, or other

declared state of emergency within 12 months of the termination of the pandemic, disaster, or emergency.

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