

SHB 1411 - S COMM AMD

By Committee on Health & Long Term Care

ADOPTED AND ENGROSSED 04/10/2021

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

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 43.20A  
4 RCW to read as follows:

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

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

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

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

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

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

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

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

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

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

12 (5) The department, a contracted provider, or a licensee, when  
13 conducting a character, competence, and suitability review for the  
14 purpose of hiring, licensing, certifying, contracting with,  
15 permitting, or continuing to permit a person to be employed in any  
16 position caring for or having unsupervised access to vulnerable  
17 adults or children, may, in its sole discretion, determine whether to  
18 consider any of the convictions identified in subsection (1) of this  
19 section. If the department or a consumer directed employer as defined  
20 in RCW 74.39A.009 determines that an individual with any of the  
21 convictions identified in subsection (1) of this section is qualified  
22 to provide services to a department client as an individual provider  
23 as defined in RCW 74.39A.240, the department or the consumer directed  
24 employer must provide the client, and their guardian if any, with the  
25 results of the state background check for their determination of  
26 character, suitability, and competence of the individual before the  
27 individual begins providing services. The department, a contracted  
28 provider, or a licensee, when conducting a character, competence, and  
29 suitability review for the purpose of hiring, licensing, certifying,  
30 contracting with, permitting, or continuing to permit a person to be  
31 employed in any position caring for or having unsupervised access to  
32 vulnerable adults or children, has a rebuttable presumption that its  
33 exercise of discretion under this section or the refusal to exercise  
34 such discretion was appropriate. This subsection does not create a  
35 duty for the department to conduct a character, competence, and  
36 suitability review.

37 (6) For the purposes of the section:

38 (a) "Contracted provider" means a provider, and its employees,  
39 contracted with the department or an area agency on aging to provide  
40 services to department clients under programs under chapter 74.09,

1 74.39, 74.39A, or 71A.12 RCW. "Contracted provider" includes area  
2 agencies on aging and their subcontractors who provide case  
3 management.

4 (b) "Licensee" means a nonstate facility or setting that is  
5 licensed or certified, or has applied to be licensed or certified, by  
6 the department and includes the licensee and its employees.

7 NEW SECTION. **Sec. 2.** A new section is added to chapter 74.39A  
8 RCW to read as follows:

9 (1) The department shall facilitate a work group dedicated to  
10 expanding the long-term care workforce while continuing to recognize  
11 the importance of protecting vulnerable adults, racial equity in  
12 client choice, just compensation for unpaid care work while  
13 preserving choice for those who wish to be informal caregivers  
14 without pay, and paid services. The work group shall identify  
15 recommendations on informed choice through a process by which older  
16 adults and people with disabilities may hire a trusted individual  
17 with a criminal record that would otherwise disqualify the person  
18 from providing paid home care services under this chapter. The work  
19 group's recommendations on the informed choice process shall include:

- 20 (a) Client safety;
- 21 (b) Client direction;
- 22 (c) Racial equity;
- 23 (d) Cultural competence;
- 24 (e) Economic consequences of unpaid caregiving on caregivers and  
25 people receiving care;
- 26 (f) Categories of eligible workers (family, friend, trusted  
27 individuals, or others);
- 28 (g) Disqualifying crimes, if any;
- 29 (h) Mechanisms for consideration (attestation, petition, other);
- 30 and
- 31 (i) Workforce development.

- 32 (2) (a) The work group shall consist of:
  - 33 (i) Two representatives from the department;
  - 34 (ii) Two representatives from community-based organizations that  
35 represent people with criminal records;
  - 36 (iii) One representative from a community-based organization that  
37 represents Black communities;

1 (iv) Two representatives, one from the west side of the Cascade  
2 mountains and one from the east side of the Cascade mountains, from  
3 federally recognized tribes;

4 (v) One representative from a community-based organization that  
5 represents immigrant populations or persons of color;

6 (vi) Three representatives from the union representing the  
7 majority of long-term care workers in Washington;

8 (vii) One representative of a consumer-directed employer;

9 (viii) One representative of an association representing area  
10 agencies on aging in Washington;

11 (ix) One representative from the office of the state long-term  
12 care ombuds;

13 (x) One representative from the office of the state developmental  
14 disability ombuds;

15 (xi) One representative of an association representing medicaid  
16 home care agencies;

17 (xii) One representative from the Washington state attorney  
18 general's office;

19 (xiii) Four representatives from organizations representing  
20 seniors and individuals with physical or developmental disabilities;

21 (xiv) Two representatives who are current or previous consumers  
22 of personal care services and who represent the diversity of the  
23 disability community; and

24 (xv) Two representatives who receive unpaid care from individuals  
25 who are unable to become medicaid paid home care workers because of  
26 disqualifying convictions.

27 (b) The department shall invite the participation of persons with  
28 expertise in the background check process to provide advice and  
29 consultation to the work group with respect to the development of the  
30 proposed process under subsection (1) of this section.

31 (c) Appointments to the work group shall be made by the  
32 department. The department shall convene the meetings of the work  
33 group and serve as the facilitator.

34 (3) The work group shall devote at least one meeting to reviewing  
35 and analyzing racial disparities relevant to the work group's  
36 direction under subsection (1) of this section, including disparities  
37 in charges and disqualifications in providing paid home care services  
38 under this chapter.

39 (4) The work group must submit its recommendations to the  
40 legislature by December 1, 2022. The recommendations must include a

1 proposed process for clients to hire a trusted individual with a  
2 criminal record. The proposed process must include a recommended  
3 communication strategy to inform older adults and people with  
4 disabilities in Washington about the process.

5 (5) This section expires July 1, 2023.

6 **Sec. 3.** RCW 9.97.020 and 2017 3rd sp.s. c 6 s 806 are each  
7 amended to read as follows:

8 (1) Except as provided in this section, no state, county, or  
9 municipal department, board, officer, or agency authorized to assess  
10 the qualifications of any applicant for a license, certificate of  
11 authority, qualification to engage in the practice of a profession or  
12 business, or for admission to an examination to qualify for such a  
13 license or certificate may disqualify a qualified applicant, solely  
14 based on the applicant's criminal history, if the qualified applicant  
15 has obtained a certificate of restoration of opportunity and the  
16 applicant meets all other statutory and regulatory requirements,  
17 except as required by federal law or exempted under this subsection.  
18 Nothing in this section is interpreted as restoring or creating a  
19 means to restore any firearms rights or eligibility to obtain a  
20 firearm dealer license pursuant to RCW 9.41.110 or requiring the  
21 removal of a protection order.

22 (a)(i) Criminal justice agencies, as defined in RCW 10.97.030,  
23 and the Washington state bar association are exempt from this  
24 section.

25 (ii) This section does not apply to the licensing, certification,  
26 or qualification of the following professionals: Accountants, RCW  
27 18.04.295; (~~assisted living facilities employees, RCW 18.20.125;~~)  
28 bail bond agents, RCW 18.185.020; escrow agents, RCW 18.44.241;  
29 (~~long term care workers, RCW 18.88B.080;~~) nursing home  
30 administrators, RCW 18.52.071; nursing, chapter 18.79 RCW; physicians  
31 and physician assistants, chapters 18.71 and 18.71A RCW; private  
32 investigators, RCW 18.165.030; receivers, RCW 7.60.035; teachers,  
33 chapters 28A.405 and 28A.410 RCW; notaries public, chapter 42.45 RCW;  
34 private investigators, chapter 18.165 RCW; real estate brokers and  
35 salespersons, chapters 18.85 and 18.86 RCW; security guards, chapter  
36 18.170 RCW; and vulnerable adult care providers, RCW 43.43.842, who  
37 are not home care aides, chapter 18.88B RCW, or contracted providers  
38 or licensees as defined in section 1 of this act.

1 (iii) To the extent this section conflicts with the requirements  
2 for receipt of federal funding under the adoption and safe families  
3 act, 42 U.S.C. Sec. 671, this section does not apply.

4 (b) Unless otherwise (~~addressed in statute~~) prohibited by law,  
5 in cases where an applicant would be disqualified under RCW  
6 (~~43.20A.710~~) 43.216.170, and the applicant has obtained a  
7 certificate of restoration of opportunity for a disqualifying  
8 conviction, (~~the department of social and health services and~~) the  
9 department of children, youth, and families may, after review of  
10 relevant factors, including the nature and seriousness of the  
11 offense, time that has passed since conviction, changed circumstances  
12 since the offense occurred, and the nature of the employment or  
13 license sought, at their discretion:

14 (i) Allow the applicant to have unsupervised access to children,  
15 vulnerable adults, or individuals with mental illness or  
16 developmental disabilities if the applicant is otherwise qualified  
17 and suitable; or

18 (ii) Disqualify the applicant solely based on the applicant's  
19 criminal history.

20 (c) Unless otherwise prohibited by law, in cases in which an  
21 applicant would be disqualified under RCW 43.20A.710, 43.43.842, or  
22 department rule, and the applicant has obtained a certificate of  
23 restoration of opportunity for a disqualifying conviction, the  
24 department of social and health services may, after review of  
25 relevant factors, including the nature and seriousness of the  
26 offense, time that has passed since conviction, changed circumstances  
27 since the offense occurred, and the nature of the employment or  
28 license sought, at its discretion:

29 (i) Allow the applicant to have unsupervised access to children,  
30 vulnerable adults, or individuals with mental illness or  
31 developmental disabilities if the applicant is otherwise qualified  
32 and suitable; or

33 (ii) Disqualify the applicant solely based on the applicant's  
34 criminal history.

35 (d) If the practice of a profession or business involves  
36 unsupervised contact with vulnerable adults, children, or individuals  
37 with mental illness or developmental disabilities, or populations  
38 otherwise defined by statute as vulnerable, the department of health  
39 may, after review of relevant factors, including the nature and  
40 seriousness of the offense, time that has passed since conviction,

1 changed circumstances since the offense occurred, and the nature of  
2 the employment or license sought, at its discretion:

3 (i) Disqualify an applicant who has obtained a certificate of  
4 restoration of opportunity, for a license, certification, or  
5 registration to engage in the practice of a health care profession or  
6 business solely based on the applicant's criminal history; or

7 (ii) If such applicant is otherwise qualified and suitable,  
8 credential or credential with conditions an applicant who has  
9 obtained a certificate of restoration of opportunity for a license,  
10 certification, or registration to engage in the practice of a health  
11 care profession or business.

12 (~~(d)~~) (e) The state of Washington, any of its counties, cities,  
13 towns, municipal corporations, or quasi-municipal corporations, the  
14 department of health, the department of social and health services,  
15 and its officers, employees, contractors, and agents are immune from  
16 suit in law, equity, or any action under the administrative procedure  
17 act based upon its exercise of discretion under this section. This  
18 section does not create a protected class; private right of action;  
19 any right, privilege, or duty; or change to any right, privilege, or  
20 duty existing under law. This section does not modify a licensing or  
21 certification applicant's right to a review of an agency's decision  
22 under the administrative procedure act or other applicable statute or  
23 agency rule. A certificate of restoration of opportunity does not  
24 remove or alter citizenship or legal residency requirements already  
25 in place for state agencies and employers.

26 (2) A qualified court has jurisdiction to issue a certificate of  
27 restoration of opportunity to a qualified applicant.

28 (a) A court must determine, in its discretion whether the  
29 certificate:

30 (i) Applies to all past criminal history; or

31 (ii) Applies only to the convictions or adjudications in the  
32 jurisdiction of the court.

33 (b) The certificate does not apply to any future criminal justice  
34 involvement that occurs after the certificate is issued.

35 (c) A court must determine whether to issue a certificate by  
36 determining whether the applicant is a qualified applicant as defined  
37 in RCW 9.97.010.

38 (3) An employer or housing provider may, in its sole discretion,  
39 determine whether to consider a certificate of restoration of  
40 opportunity issued under this chapter in making employment or rental

1 decisions. An employer or housing provider is immune from suit in  
2 law, equity, or under the administrative procedure act for damages  
3 based upon its exercise of discretion under this section or the  
4 refusal to exercise such discretion. In any action at law against an  
5 employer or housing provider arising out of the employment of or  
6 provision of housing to the recipient of a certificate of restoration  
7 of opportunity, evidence of the crime for which a certificate of  
8 restoration of opportunity has been issued may not be introduced as  
9 evidence of negligence or intentionally tortious conduct on the part  
10 of the employer or housing provider. This subsection does not create  
11 a protected class, private right of action, any right, privilege, or  
12 duty, or to change any right, privilege, or duty existing under law  
13 related to employment or housing except as provided in RCW 7.60.035.

14 (4) The department of social and health services, and contracted  
15 providers and licensees as defined in section 1 of this act, when  
16 hiring, licensing, certifying, contracting with, permitting, or  
17 continuing to permit a person to be employed in any position caring  
18 for or having unsupervised access to vulnerable adults or children,  
19 may, in their sole discretion, determine whether to consider a  
20 certificate of restoration of opportunity issued under this chapter.  
21 If the department or a consumer directed employer as defined in RCW  
22 74.39A.009 determines that an individual with a certificate of  
23 restoration of opportunity is qualified to work as an individual  
24 provider as defined in RCW 74.39A.240, the department or the consumer  
25 directed employer must provide the client, and their guardian if any,  
26 with the results of the state background check for their  
27 determination of character, suitability, and competence of the  
28 individual before the individual begins providing services. The  
29 department of social and health services, or contracted providers or  
30 licensees as defined in section 1 of this act, when hiring,  
31 licensing, certifying, contracting with, permitting, or continuing to  
32 permit a person to be employed in any position caring for or having  
33 unsupervised access to vulnerable adults or children, have a  
34 rebuttable presumption that their exercise of discretion under this  
35 subsection or the refusal to exercise such discretion was  
36 appropriate. This subsection does not create a protected class, a  
37 private right of action, or any right, privilege, or duty, or to  
38 change any right, privilege, or duty existing under law related to  
39 the department of social and health services, contracted providers,  
40 and licensees as defined in section 1 of this act.



1       (5)(a) Department of social and health services: A certificate of  
2 restoration of opportunity does not apply to the state abuse and  
3 neglect registry. No finding of abuse, neglect, or misappropriation  
4 of property may be removed from the registry based solely on a  
5 certificate. The department must include such certificates as part of  
6 its criminal history record reports, qualifying letters, or other  
7 assessments pursuant to RCW 43.43.830 through 43.43.838. The  
8 department shall adopt rules to implement this subsection.

9       (b) Washington state patrol: The Washington state patrol is not  
10 required to remove any records based solely on a certificate of  
11 restoration of opportunity. The state patrol must include a  
12 certificate as part of its criminal history record report.

13       (c) Court records:

14       (i) A certificate of restoration of opportunity has no effect on  
15 any other court records, including records in the judicial  
16 information system. The court records related to a certificate of  
17 restoration of opportunity must be processed and recorded in the same  
18 manner as any other record.

19       (ii) The qualified court where the applicant seeks the  
20 certificate of restoration of opportunity must administer the court  
21 records regarding the certificate in the same manner as it does  
22 regarding all other proceedings.

23       (d) Effect in other judicial proceedings: A certificate of  
24 restoration of opportunity may only be submitted to a court to  
25 demonstrate that the individual met the specific requirements of this  
26 section and not for any other procedure, including evidence of  
27 character, reputation, or conduct. A certificate is not an equivalent  
28 procedure under Rule of Evidence 609(c).

29       (e) Department of health: The department of health must include a  
30 certificate of restoration of opportunity on its public website if:

31       (i) Its website includes an order, stipulation to informal  
32 disposition, or notice of decision related to the conviction  
33 identified in the certificate of restoration of opportunity; and

34       (ii) The credential holder has provided a certified copy of the  
35 certificate of restoration of opportunity to the department of  
36 health.

37       (f) Department of children, youth, and families: A certificate of  
38 restoration of opportunity does not apply to founded findings of  
39 child abuse or neglect. No finding of child abuse or neglect may be  
40 destroyed based solely on a certificate. The department of children,

1 youth, and families must include such certificates as part of its  
2 criminal history record reports, qualifying letters, or other  
3 assessments pursuant to RCW 43.43.830 through 43.43.838. The  
4 department of children, youth, and families shall adopt rules to  
5 implement this subsection (~~((4))~~) (5)(f).

6 (~~((5))~~) (6) In all cases, an applicant must provide notice to the  
7 prosecutor in the county where he or she seeks a certificate of  
8 restoration of opportunity of the pendency of such application. If  
9 the applicant has been sentenced by any other jurisdiction in the  
10 five years preceding the application for a certificate, the applicant  
11 must also notify the prosecuting attorney in those jurisdictions. The  
12 prosecutor in the county where an applicant applies for a certificate  
13 shall provide the court with a report of the applicant's criminal  
14 history.

15 (~~((6))~~) (7) Application for a certificate of restoration of  
16 opportunity must be filed as a civil action.

17 (~~((7))~~) (8) A superior court in the county in which the applicant  
18 resides may decline to consider the application for certificate of  
19 restoration of opportunity. If the superior court in which the  
20 applicant resides declines to consider the application, the court  
21 must dismiss the application without prejudice and the applicant may  
22 refile the application in another qualified court. The court must  
23 state the reason for the dismissal on the order. If the court  
24 determines that the applicant does not meet the required  
25 qualifications, then the court must dismiss the application without  
26 prejudice and state the reason(s) on the order. The superior court in  
27 the county of the applicant's conviction or adjudication may not  
28 decline to consider the application.

29 (~~((8))~~) (9) Unless the qualified court determines that a hearing  
30 on an application for certificate of restoration is necessary, the  
31 court must decide without a hearing whether to grant the certificate  
32 of restoration of opportunity based on a review of the application  
33 filed by the applicant and pleadings filed by the prosecuting  
34 attorney.

35 (~~((9))~~) (10) The clerk of the court in which the certificate of  
36 restoration of opportunity is granted shall transmit the certificate  
37 of restoration of opportunity to the Washington state patrol  
38 identification section, which holds criminal history information for  
39 the person who is the subject of the conviction. The Washington state

1 patrol shall update its records to reflect the certificate of  
2 restoration of opportunity.

3 ~~((10))~~ (11)(a) The administrative office of the courts shall  
4 develop and prepare instructions, forms, and an informational  
5 brochure designed to assist applicants applying for a certificate of  
6 restoration of opportunity.

7 (b) The instructions must include, at least, a sample of a  
8 standard application and a form order for a certificate of  
9 restoration of opportunity.

10 (c) The administrative office of the courts shall distribute a  
11 master copy of the instructions, informational brochure, and sample  
12 application and form order to all county clerks and a master copy of  
13 the application and order to all superior courts by January 1, 2017.

14 (d) The administrative office of the courts shall determine the  
15 significant non-English-speaking or limited English-speaking  
16 populations in the state. The administrator shall then arrange for  
17 translation of the instructions, which shall contain a sample of the  
18 standard application and order, and the informational brochure into  
19 languages spoken by those significant non-English-speaking  
20 populations and shall distribute a master copy of the translated  
21 instructions and informational brochures to the county clerks by  
22 January 1, 2017.

23 (e) The administrative office of the courts shall update the  
24 instructions, brochures, standard application and order, and  
25 translations when changes in the law make an update necessary.

26 **Sec. 4.** RCW 43.20A.710 and 2020 c 270 s 10 are each amended to  
27 read as follows:

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

30 (a) Any current employee or applicant seeking or being considered  
31 for any position with the department who will or may have  
32 unsupervised access to children, vulnerable adults, or individuals  
33 with mental illness or developmental disabilities. This includes, but  
34 is not limited to, positions conducting comprehensive assessments,  
35 financial eligibility determinations, licensing and certification  
36 activities, investigations, surveys, or case management; or for state  
37 positions otherwise required by federal law to meet employment  
38 standards;

1 (b) Individual providers as defined in RCW 74.39A.240 and  
2 providers who are paid by home care agencies to provide in-home  
3 services involving unsupervised access to persons with physical,  
4 mental, or developmental disabilities or mental illness, or to  
5 vulnerable adults as defined in chapter 74.34 RCW, including but not  
6 limited to services provided under chapter 74.39 or 74.39A RCW; and

7 (c) Individuals or businesses or organizations for the care,  
8 supervision, case management, or treatment of children, persons with  
9 developmental disabilities, or vulnerable adults, including but not  
10 limited to services contracted for under chapter 18.20, 70.127,  
11 70.128, 72.36, or 74.39A RCW or Title 71A RCW.

12 (2) The secretary shall require a fingerprint-based background  
13 check through both the Washington state patrol and the federal bureau  
14 of investigation as provided in RCW 43.43.837. Unless otherwise  
15 authorized by law, the secretary shall use the information solely for  
16 the purpose of determining the character, suitability, and competence  
17 of the applicant.

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

30 (4) Long-term care workers, as defined in RCW 74.39A.009, who are  
31 hired after January 7, 2012, are subject to background checks under  
32 RCW 74.39A.056, except that the department may require a background  
33 check at any time under RCW 43.43.837. For the purposes of this  
34 subsection, "background check" includes, but is not limited to, a  
35 fingerprint check submitted for the purpose of investigating  
36 conviction records through both the Washington state patrol and the  
37 federal bureau of investigation.

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

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

8 (6) The secretary shall provide the results of the state  
9 background check on long-term care workers, including individual  
10 providers, to the persons hiring them or to their legal guardians, if  
11 any, for their determination of the character, suitability, and  
12 competence of the applicants. If the person elects to hire or retain  
13 an individual provider after receiving notice from the department  
14 that the applicant has a conviction for an offense that would  
15 disqualify the applicant from having unsupervised access to persons  
16 with physical, mental, or developmental disabilities or mental  
17 illness, or to vulnerable adults as defined in chapter 74.34 RCW,  
18 then the secretary shall deny payment for any subsequent services  
19 rendered by the disqualified individual 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 (8) Any person whose criminal history would otherwise disqualify  
24 the person under this section or RCW 43.43.842, from a position which  
25 will or may have unsupervised access to children, vulnerable adults,  
26 or persons with mental illness or developmental disabilities shall  
27 not be automatically disqualified if ~~((the))~~:

28 (a) The department of social and health services reviewed the  
29 person's otherwise disqualifying criminal history through the  
30 department of social and health services' background assessment  
31 review team process conducted in 2002 and determined that such person  
32 could remain in a position covered by this section~~((, or if the~~  
33 ~~otherwise disqualifying))~~:

34 (b) The conviction is no longer automatically disqualifying  
35 pursuant to section 1 of this act;

36 (c) The applicant has received a certificate of restoration of  
37 opportunity for the convictions pursuant to RCW 9.97.020, and the  
38 department of social and health services has not disqualified the  
39 applicant based on character, competence, and suitability review; or

1        (d) The conviction or disposition has been the subject of a  
2 pardon, annulment, or other equivalent procedure.

3        (9) The department may not consider any founded finding of  
4 physical abuse or negligent treatment or maltreatment of a child made  
5 pursuant to chapter 26.44 RCW that is accompanied by a certificate of  
6 parental improvement or dependency as a result of a finding of abuse  
7 or neglect pursuant to chapter 13.34 RCW that is accompanied by a  
8 certificate of parental improvement when evaluating an applicant or  
9 employee's character, competency, and suitability pursuant to any  
10 background check authorized or required by this chapter, RCW  
11 74.39A.056 or 43.43.832, or any of the rules adopted thereunder.

12        **Sec. 5.** RCW 70.128.120 and 2015 c 66 s 2 are each amended to  
13 read as follows:

14        Each adult family home provider, applicant, and each resident  
15 manager shall have the following minimum qualifications, except that  
16 only applicants are required to meet the provisions of subsections  
17 (10) and (11) of this section:

18        (1) Twenty-one years of age or older;

19        (2) For those applying after September 1, 2001, to be licensed as  
20 providers, and for resident managers whose employment begins after  
21 September 1, 2001, a United States high school diploma or high school  
22 equivalency certificate as provided in RCW 28B.50.536 or any English  
23 or translated government documentation of the following:

24        (a) Successful completion of government-approved public or  
25 private school education in a foreign country that includes an annual  
26 average of one thousand hours of instruction over twelve years or no  
27 less than twelve thousand hours of instruction;

28        (b) A foreign college, foreign university, or United States  
29 community college two-year diploma;

30        (c) Admission to, or completion of coursework at, a foreign  
31 university or college for which credit was granted;

32        (d) Admission to, or completion of coursework at, a United States  
33 college or university for which credits were awarded;

34        (e) Admission to, or completion of postgraduate coursework at, a  
35 United States college or university for which credits were awarded;  
36 or

37        (f) Successful passage of the United States board examination for  
38 registered nursing, or any professional medical occupation for which  
39 college or university education preparation was required;

- 1 (3) Good moral and responsible character and reputation;
- 2 (4) Literacy and the ability to communicate in the English  
3 language;
- 4 (5) Management and administrative ability to carry out the  
5 requirements of this chapter;
- 6 (6) Satisfactory completion of department-approved basic training  
7 and continuing education training as required by RCW 74.39A.074, and  
8 in rules adopted by the department;
- 9 (7) Satisfactory completion of department-approved, or  
10 equivalent, special care training before a provider may provide  
11 special care services to a resident;
- 12 (8) Not (~~been convicted of any crime that is disqualifying under~~  
13 ~~RCW 43.43.830 or 43.43.842, or department rules adopted under this~~  
14 ~~chapter, or been found to have abused, neglected, exploited, or~~  
15 ~~abandoned a minor or vulnerable adult as specified in RCW~~  
16 ~~74.39A.056(2)) be disqualified by a department background check;~~
- 17 (9) For those applying to be licensed as providers, and for  
18 resident managers whose employment begins after August 24, 2011, at  
19 least one thousand hours in the previous sixty months of successful,  
20 direct caregiving experience obtained after age eighteen to  
21 vulnerable adults in a licensed or contracted setting prior to  
22 operating or managing an adult family home. The applicant or resident  
23 manager must have credible evidence of the successful, direct  
24 caregiving experience or, currently hold one of the following  
25 professional licenses: Physician licensed under chapter 18.71 RCW;  
26 osteopathic physician licensed under chapter 18.57 RCW; osteopathic  
27 physician assistant licensed under chapter 18.57A RCW; physician  
28 assistant licensed under chapter 18.71A RCW; registered nurse,  
29 advanced registered nurse practitioner, or licensed practical nurse  
30 licensed under chapter 18.79 RCW;
- 31 (10) For applicants, proof of financial solvency, as defined in  
32 rule; and
- 33 (11) Applicants must successfully complete an adult family home  
34 administration and business planning class, prior to being granted a  
35 license. The class must be a minimum of forty-eight hours of  
36 classroom time and approved by the department. The department shall  
37 promote and prioritize bilingual capabilities within available  
38 resources and when materials are available for this purpose. Under  
39 exceptional circumstances, such as the sudden and unexpected death of  
40 a provider, the department may consider granting a license to an

1 applicant who has not completed the class but who meets all other  
2 requirements. If the department decides to grant the license due to  
3 exceptional circumstances, the applicant must have enrolled in or  
4 completed the class within four months of licensure.

5 **Sec. 6.** RCW 70.128.120 and 2020 c 80 s 47 are each amended to  
6 read as follows:

7 Each adult family home provider, applicant, and each resident  
8 manager shall have the following minimum qualifications, except that  
9 only applicants are required to meet the provisions of subsections  
10 (10) and (11) of this section:

11 (1) Twenty-one years of age or older;

12 (2) For those applying after September 1, 2001, to be licensed as  
13 providers, and for resident managers whose employment begins after  
14 September 1, 2001, a United States high school diploma or high school  
15 equivalency certificate as provided in RCW 28B.50.536 or any English  
16 or translated government documentation of the following:

17 (a) Successful completion of government-approved public or  
18 private school education in a foreign country that includes an annual  
19 average of one thousand hours of instruction over twelve years or no  
20 less than twelve thousand hours of instruction;

21 (b) A foreign college, foreign university, or United States  
22 community college two-year diploma;

23 (c) Admission to, or completion of coursework at, a foreign  
24 university or college for which credit was granted;

25 (d) Admission to, or completion of coursework at, a United States  
26 college or university for which credits were awarded;

27 (e) Admission to, or completion of postgraduate coursework at, a  
28 United States college or university for which credits were awarded;  
29 or

30 (f) Successful passage of the United States board examination for  
31 registered nursing, or any professional medical occupation for which  
32 college or university education preparation was required;

33 (3) Good moral and responsible character and reputation;

34 (4) Literacy and the ability to communicate in the English  
35 language;

36 (5) Management and administrative ability to carry out the  
37 requirements of this chapter;



1 (6) Satisfactory completion of department-approved basic training  
2 and continuing education training as required by RCW 74.39A.074, and  
3 in rules adopted by the department;

4 (7) Satisfactory completion of department-approved, or  
5 equivalent, special care training before a provider may provide  
6 special care services to a resident;

7 (8) Not (~~been convicted of any crime that is disqualifying under~~  
8 ~~RCW 43.43.830 or 43.43.842, or department rules adopted under this~~  
9 ~~chapter, or been found to have abused, neglected, exploited, or~~  
10 ~~abandoned a minor or vulnerable adult as specified in RCW~~  
11 ~~74.39A.056(2)) be disqualified by a department background check;~~

12 (9) For those applying to be licensed as providers, and for  
13 resident managers whose employment begins after August 24, 2011, at  
14 least one thousand hours in the previous sixty months of successful,  
15 direct caregiving experience obtained after age eighteen to  
16 vulnerable adults in a licensed or contracted setting prior to  
17 operating or managing an adult family home. The applicant or resident  
18 manager must have credible evidence of the successful, direct  
19 caregiving experience or, currently hold one of the following  
20 professional licenses: Physician licensed under chapter 18.71 RCW;  
21 osteopathic physician licensed under chapter 18.57 RCW; physician  
22 assistant licensed under chapter 18.71A RCW; registered nurse,  
23 advanced registered nurse practitioner, or licensed practical nurse  
24 licensed under chapter 18.79 RCW;

25 (10) For applicants, proof of financial solvency, as defined in  
26 rule; and

27 (11) Applicants must successfully complete an adult family home  
28 administration and business planning class, prior to being granted a  
29 license. The class must be a minimum of forty-eight hours of  
30 classroom time and approved by the department. The department shall  
31 promote and prioritize bilingual capabilities within available  
32 resources and when materials are available for this purpose. Under  
33 exceptional circumstances, such as the sudden and unexpected death of  
34 a provider, the department may consider granting a license to an  
35 applicant who has not completed the class but who meets all other  
36 requirements. If the department decides to grant the license due to  
37 exceptional circumstances, the applicant must have enrolled in or  
38 completed the class within four months of licensure.

1       **Sec. 7.** RCW 70.128.130 and 2019 c 80 s 1 are each amended to  
2 read as follows:

3       (1) The provider is ultimately responsible for the day-to-day  
4 operations of each licensed adult family home.

5       (2) The provider shall promote the health, safety, and well-being  
6 of each resident residing in each licensed adult family home.

7       (3) Adult family homes shall be maintained internally and  
8 externally in good repair and condition. Such homes shall have safe  
9 and functioning systems for heating, cooling, hot and cold water,  
10 electricity, plumbing, garbage disposal, sewage, cooking, laundry,  
11 artificial and natural light, ventilation, and any other feature of  
12 the home.

13       (4) In order to preserve and promote the residential home-like  
14 nature of adult family homes, adult family homes licensed after  
15 August 24, 2011, shall:

16       (a) Have sufficient space to accommodate all residents at one  
17 time in the dining and living room areas;

18       (b) Have hallways and doorways wide enough to accommodate  
19 residents who use mobility aids such as wheelchairs and walkers; and

20       (c) Have outdoor areas that are safe and accessible for residents  
21 to use.

22       (5) The adult family home must provide all residents access to  
23 resident common areas throughout the adult family home including, but  
24 not limited to, kitchens, dining and living areas, and bathrooms, to  
25 the extent that they are safe under the resident's care plan.

26       (6) Adult family homes shall be maintained in a clean and  
27 sanitary manner, including proper sewage disposal, food handling, and  
28 hygiene practices.

29       (7) Adult family homes shall develop a fire drill plan for  
30 emergency evacuation of residents, shall have working smoke detectors  
31 in each bedroom where a resident is located, shall have working fire  
32 extinguishers on each floor of the home, and shall house  
33 nonambulatory residents on a level with safe egress to a public  
34 right-of-way. Nonambulatory residents must have a bedroom on the  
35 floor of the home from which the resident can be evacuated to a  
36 designated safe location outside the home without the use of stairs,  
37 elevators, chair lifts, platform lifts, or other devices as  
38 determined by the department in rule.

39       (8) The adult family home shall ensure that all residents can be  
40 safely evacuated from the home in an emergency as established by the

1 department in rule. The rules established by the department must be  
2 developed in consultation with the largest organization representing  
3 fire chiefs in the state of Washington.

4 (9) Adult family homes shall have clean, functioning, and safe  
5 household items and furnishings.

6 (10) Adult family homes shall provide a nutritious and balanced  
7 diet and shall recognize residents' needs for special diets.

8 (11) Adult family homes shall establish health care procedures  
9 for the care of residents including medication administration and  
10 emergency medical care.

11 (a) Adult family home residents shall be permitted to self-  
12 administer medications.

13 (b) Adult family home providers may administer medications and  
14 deliver special care only to the extent authorized by law.

15 (12) Adult family home providers shall either: (a) Reside at the  
16 adult family home; or (b) employ or otherwise contract with a  
17 qualified resident manager to reside at the adult family home. The  
18 department may exempt, for good cause, a provider from the  
19 requirements of this subsection by rule.

20 (13) A provider will ensure that any volunteer, student,  
21 employee, or person residing within the adult family home who will  
22 have unsupervised access to any resident shall not ~~((have been  
23 convicted of a crime listed under RCW 43.43.830 or 43.43.842, or been  
24 found to have abused, neglected, exploited, or abandoned a minor or  
25 vulnerable adult as specified in RCW 74.39A.056(2))~~ be disqualified  
26 by a department background check. A provider may conditionally employ  
27 a person pending the completion of a criminal conviction background  
28 inquiry, but may not allow the person to have unsupervised access to  
29 any resident.

30 (14) A provider shall offer activities to residents under care as  
31 defined by the department in rule.

32 (15) An adult family home must be financially solvent, and upon  
33 request for good cause, shall provide the department with detailed  
34 information about the home's finances. Financial records of the adult  
35 family home may be examined when the department has good cause to  
36 believe that a financial obligation related to resident care or  
37 services will not be met.

38 (16) An adult family home provider must ensure that staff are  
39 competent and receive necessary training to perform assigned tasks.  
40 Staff must satisfactorily complete department-approved staff

1 orientation, basic training, and continuing education as specified by  
2 the department by rule. The provider shall ensure that a qualified  
3 caregiver is on-site whenever a resident is at the adult family home;  
4 any exceptions will be specified by the department in rule.  
5 Notwithstanding RCW 70.128.230, until orientation and basic training  
6 are successfully completed, a caregiver may not provide hands-on  
7 personal care to a resident without on-site supervision by a person  
8 who has successfully completed basic training or been exempted from  
9 the training pursuant to statute.

10 (17) The provider and resident manager must assure that there is:

11 (a) A mechanism to communicate with the resident in his or her  
12 primary language either through a qualified person on-site or readily  
13 available at all times, or other reasonable accommodations, such as  
14 language lines; and

15 (b) Staff on-site at all times capable of understanding and  
16 speaking English well enough to be able to respond appropriately to  
17 emergency situations and be able to read and understand resident care  
18 plans.

19 NEW SECTION. **Sec. 8.** The department of social and health  
20 services and the department of health may adopt rules to implement  
21 this act.

22 NEW SECTION. **Sec. 9.** If any part of this act is found to be in  
23 conflict with federal requirements that are a prescribed condition to  
24 the allocation of federal funds to the state, the conflicting part of  
25 this act is inoperative solely to the extent of the conflict and with  
26 respect to the agencies directly affected, and this finding does not  
27 affect the operation of the remainder of this act in its application  
28 to the agencies concerned. Rules adopted under this act must meet  
29 federal requirements that are a necessary condition to the receipt of  
30 federal funds by the state.

31 NEW SECTION. **Sec. 10.** Section 5 of this act expires July 1,  
32 2022.

33 NEW SECTION. **Sec. 11.** Section 6 of this act takes effect July  
34 1, 2022."

**SHB 1411** - S COMM AMD

By Committee on Health & Long Term Care

**ADOPTED 04/10/2021**

1        On page 1, line 2 of the title, after "system;" strike the  
2 remainder of the title and insert "amending RCW 9.97.020, 43.20A.710,  
3 70.128.120, 70.128.120, and 70.128.130; adding a new section to  
4 chapter 43.20A RCW; adding a new section to chapter 74.39A RCW;  
5 creating new sections; providing an effective date; and providing  
6 expiration dates."

--- END ---