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ENGROSSED SUBSTITUTE HOUSE BILL 1395

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State of Washington

69th Legislature

2025 Regular Session

**By** House Postsecondary Education & Workforce (originally sponsored by Representatives Farivar, Fosse, Nance, Reeves, Simmons, Obras, Berry, Mena, Scott, Doglio, Macri, Peterson, Salahuddin, Parshley, Cortes, Paul, Alvarado, Ryu, Duerr, Reed, Ramel, Shavers, Wylie, Ormsby, Street, Hill, and Donaghy)

READ FIRST TIME 02/06/25.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (6)(a) An employer or an authorized entity shall not conduct a  
11 character, competence, and suitability review for individual  
12 providers and home care agency providers, based on a name and date of  
13 birth or fingerprint-based background check result, when the employer  
14 or authorized entity has already conducted a character, competence,  
15 and suitability review for the individual provider or home care  
16 agency provider for a previously reviewed nonautomatically  
17 disqualifying conviction, pending charge, or negative action found  
18 during a previous background check, for which the employer or  
19 authorized entity has previously conducted a character, competence,  
20 and suitability review.

21 (b) The department shall develop rules to establish standards for  
22 conducting character, competence, and suitability reviews under this  
23 subsection (6), including parameters to prioritize the safety of  
24 vulnerable adults and minors, clients' rights regarding individual  
25 and home care agency providers' background check results and  
26 character, competence, and suitability reviews, and an equitable  
27 review process for individual providers and home care agency  
28 providers.

29 (7)(a) Individual providers and home care agency providers  
30 subject to and awaiting a character, competence, and suitability  
31 review may work for up to 30 days before the character, competence,  
32 and suitability review is completed, provided that their background  
33 check did not include any automatically disqualifying conviction,  
34 crime, negative action, or pending charge, and the employer has not  
35 completed the character, competence, and suitability review and  
36 determined the home care agency provider or individual provider  
37 unable to work.

38 (b) Prior to the provision of any care services by an individual  
39 provider or home care agency provider during the 30-day temporary  
40 practice period established in (a) of this subsection, the parent or

guardian of the minor, the vulnerable adult, or the guardian of the vulnerable adult must be:

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

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

(iii) If a parent or guardian of a minor or vulnerable adult chooses to allow an individual provider or a home care agency provider to continue providing care during a character, competence, and suitability review, the parent or guardian shall complete an informed consent form to attest that they are aware of and understand the purpose of a character, competence, and suitability review and the possible crimes that would trigger a character, competence, and suitability review and agree to continue to receive service.

(8) For the purposes of the section:

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

(i) Is required to conduct background checks; and

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

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

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

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

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

1       (f) "Individual provider" has the same meaning as in RCW  
2       74.39A.240.

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

6       (h) "Managing employer" has the same meaning as in RCW  
7       74.39A.009.

8       (i) "Name and date of birth background check" means a search of  
9       Washington state criminal history and negative action records using  
10       the applicant's name and date of birth conducted by the department's  
11       background check central unit.

12       (j) "Nonautomatically disqualifying" means, when used in  
13       reference to a conviction, pending charge, or negative action, that  
14       the conviction, pending charge, or negative action is one other than  
15       a permanently disqualifying conviction, permanently disqualifying  
16       negative action, or a time-limited permanently disqualifying  
17       conviction or negative action after the defined amount of time has  
18       passed, as described in RCW 43.43.842 and 43.20A.710(5), and related  
19       department rules.

20       (k) "Review required result" means the result of a name and date  
21       of birth background check or fingerprint-based background check for  
22       an individual provider or a home care agency provider that requires  
23       the employer or an authorized entity to determine if a character,  
24       competence, and suitability review is necessary, based on subsection  
25       (6)(a) of this section, and related implementing rules adopted by the  
26       department.

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

29       (1)(a) All long-term care workers shall be screened through state  
30       and federal background checks in a uniform and timely manner to  
31       verify that they do not have a history that would disqualify them  
32       from working with vulnerable persons. The department must process  
33       background checks for long-term care workers and, based on this  
34       screening, inform employers, prospective employers, and others as  
35       authorized by law, whether screened applicants are ineligible for  
36       employment.

37       (b)(i) For long-term care workers hired on or after January 7,  
38       2012, the background checks required under this section shall include  
39       checking against the federal bureau of investigation fingerprint

1 identification records system or its successor program. The  
2 department shall require these long-term care workers to submit  
3 fingerprints for the purpose of investigating conviction records  
4 through both the Washington state patrol and the federal bureau of  
5 investigation. The department shall not pass on the cost of these  
6 criminal background checks to the workers or their employers.

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

11 (c) Individual providers and home care agency providers must  
12 complete a fingerprint-based background check required in this  
13 section, RCW 43.20A.710, and 43.43.837 only:

14 (i) At the point of initial hire;

15 (ii) As required by federal law;

16 (iii) Before an individual provider starts providing new services  
17 for a new managing employer when the last fingerprint on the  
18 authorized entity's file for the individual provider is five years  
19 old or more and the new managing employer requests a fingerprint-  
20 based background check; and

21 (iv) If there is a reasonable, good faith belief the employer or  
22 authorized entity needs to conduct a fingerprint-based background  
23 check, due to potential new findings in a fingerprint-based  
24 background check, as documented in writing by the employer.

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

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

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

36 (c) A disciplining authority, including the department of health,  
37 has made a finding of abuse, abandonment, neglect, or financial  
38 exploitation of a minor or a vulnerable adult against the provider;  
39 or

1 (d) A court has issued an order that includes a finding of fact  
2 or conclusion of law that the provider has committed abuse,  
3 abandonment, neglect, or financial exploitation of a minor or  
4 vulnerable adult. If the provider has received a certificate of  
5 parental improvement under chapter 74.13 RCW pertaining to the  
6 finding of fact or conclusion of law, the provider is not  
7 disqualified under this section.

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

12 (b) When a background check produces a review required result, as  
13 defined in RCW 43.20A.715, the authorized entity must provide the  
14 client who is the managing employer of the individual provider with a  
15 copy of the background check results and the Washington state record  
16 of arrests and prosecutions, if requested by the client. The  
17 individual provider may choose to provide a copy of the federal  
18 bureau of investigation record of arrests and prosecutions to the  
19 client.

20 (4) The department shall establish, by rule, a state registry  
21 which contains identifying information about long-term care workers  
22 identified under this chapter who have final substantiated findings  
23 of abuse, neglect, financial exploitation, or abandonment of a  
24 vulnerable adult as defined in RCW 74.34.020. The rule must include  
25 disclosure, disposition of findings, notification, findings of fact,  
26 appeal rights, and fair hearing requirements. The department shall  
27 disclose, upon request, final substantiated findings of abuse,  
28 neglect, financial exploitation, or abandonment to any person so  
29 requesting this information. This information must also be shared  
30 with the department of health to advance the purposes of chapter  
31 18.88B RCW.

32 ((4)) (5) For the purposes of this section(~~(,—"provider"~~  
33 ~~means))~~):

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

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

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

39 (b) "Fingerprint-based background check" means a search of in-  
40 state criminal history records through the Washington state patrol

1 and national criminal history records through the federal bureau of  
2 investigation.

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

5 (d) "Managing employer" has the same meaning as in RCW  
6 74.39A.009.

7 (e) "Provider" means:

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

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

17 ((e)) (iii) Any contractor of the department who may have  
18 unsupervised access to vulnerable adults.

19 ((5)) (6) The department shall adopt rules to implement this  
20 section.

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