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HOUSE BILL 2068

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State of Washington                      61st Legislature                      2009 Regular Session

By Representatives Goodman, Hurst, Priest, O'Brien, Miloscia, Seaquist, Cody, Appleton, Roberts, Campbell, and Morrell

Read first time 02/09/09. Referred to Committee on Health Care & Wellness.

1            AN ACT Relating to criminal background checks; amending RCW  
2 74.39A.009, 43.20A.710, and 43.43.837; providing an effective date; and  
3 declaring an emergency.

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

5            **Sec. 1.** RCW 74.39A.009 and 2009 c 2 s 2 (Initiative Measure No.  
6 1029) are each amended to read as follows:

7            Unless the context clearly requires otherwise, the definitions in  
8 this section apply throughout this chapter.

9            (1) "Adult family home" means a home licensed under chapter 70.128  
10 RCW.

11            (2) "Adult residential care" means services provided by a boarding  
12 home that is licensed under chapter 18.20 RCW and that has a contract  
13 with the department under RCW 74.39A.020 to provide personal care  
14 services.

15            (3) "Assisted living services" means services provided by a  
16 boarding home that has a contract with the department under RCW  
17 74.39A.010 to provide personal care services, intermittent nursing  
18 services, and medication administration services, and the resident is  
19 housed in a private apartment-like unit.

1           (4) "Background check" or "fingerprint-based background check"  
2 means a fingerprint check submitted for the purpose of investigating  
3 conviction records both through the Washington state patrol and the  
4 federal bureau of investigation.

5           (5) "Boarding home" means a facility licensed under chapter 18.20  
6 RCW.

7           ~~((+5))~~ (6) "Core competencies" means basic training topics,  
8 including but not limited to, communication skills, worker self-care,  
9 problem solving, maintaining dignity, consumer directed care, cultural  
10 sensitivity, body mechanics, fall prevention, skin and body care, long-  
11 term care worker roles and boundaries, supporting activities of daily  
12 living, and food preparation and handling.

13           ~~((+6))~~ (7) "Cost-effective care" means care provided in a setting  
14 of an individual's choice that is necessary to promote the most  
15 appropriate level of physical, mental, and psychosocial well-being  
16 consistent with client choice, in an environment that is appropriate to  
17 the care and safety needs of the individual, and such care cannot be  
18 provided at a lower cost in any other setting. But this in no way  
19 precludes an individual from choosing a different residential setting  
20 to achieve his or her desired quality of life.

21           ~~((+7))~~ (8) "Department" means the department of social and health  
22 services.

23           ~~((+8))~~ (9) "Developmental disability" has the same meaning as  
24 defined in RCW 71A.10.020.

25           ~~((+9))~~ (10) "Direct care worker" means a paid caregiver who  
26 provides direct, hands-on personal care services to persons with  
27 disabilities or the elderly requiring long-term care.

28           ~~((+10))~~ (11) "Enhanced adult residential care" means services  
29 provided by a boarding home that is licensed under chapter 18.20 RCW  
30 and that has a contract with the department under RCW 74.39A.010 to  
31 provide personal care services, intermittent nursing services, and  
32 medication administration services.

33           ~~((+11))~~ (12) "Functionally disabled person" or "person who is  
34 functionally disabled" is synonymous with chronic functionally disabled  
35 and means a person who because of a recognized chronic physical or  
36 mental condition or disease, or developmental disability, including  
37 chemical dependency, is impaired to the extent of being dependent upon  
38 others for direct care, support, supervision, or monitoring to perform

1 activities of daily living. "Activities of daily living", in this  
2 context, means self-care abilities related to personal care such as  
3 bathing, eating, using the toilet, dressing, and transfer.  
4 Instrumental activities of daily living may also be used to assess a  
5 person's functional abilities as they are related to the mental  
6 capacity to perform activities in the home and the community such as  
7 cooking, shopping, house cleaning, doing laundry, working, and managing  
8 personal finances.

9 ~~((+12+))~~ (13) "Home and community services" means adult family  
10 homes, in-home services, and other services administered or provided by  
11 contract by the department directly or through contract with area  
12 agencies on aging or similar services provided by facilities and  
13 agencies licensed by the department.

14 ~~((+13+))~~ (14) "Home care aide" means a long-term care worker who  
15 has obtained certification as a home care aide by the department of  
16 health.

17 ~~((+14+))~~ (15) "Individual provider" is defined according to RCW  
18 74.39A.240.

19 ~~((+15+))~~ (16) "Long-term care" is synonymous with chronic care and  
20 means care and supports delivered indefinitely, intermittently, or over  
21 a sustained time to persons of any age disabled by chronic mental or  
22 physical illness, disease, chemical dependency, or a medical condition  
23 that is permanent, not reversible or curable, or is long-lasting and  
24 severely limits their mental or physical capacity for self-care. The  
25 use of this definition is not intended to expand the scope of services,  
26 care, or assistance by any individuals, groups, residential care  
27 settings, or professions unless otherwise expressed by law.

28 ~~((+16+))~~ (17)(a) "Long-term care workers for the elderly or persons  
29 with disabilities" or "long-term care workers" includes all persons who  
30 are long-term care workers for the elderly or persons with  
31 disabilities, including but not limited to individual providers of home  
32 care services, direct care employees of home care agencies, providers  
33 of home care services to persons with developmental disabilities under  
34 Title 71 RCW, all direct care workers in state-licensed boarding homes,  
35 assisted living facilities, and adult family homes, respite care  
36 providers, community residential service providers, and any other  
37 direct care worker providing home or community-based services to the

1 elderly or persons with functional disabilities or developmental  
2 disabilities.

3 (b) "Long-term care workers" do not include: (i) Persons employed  
4 in nursing homes subject to chapter 18.51 RCW, hospitals or other acute  
5 care settings, hospice agencies subject to chapter 70.127 RCW, adult  
6 day care centers, and adult day health care centers; or (ii) persons  
7 who are not paid by the state or by a private agency or facility  
8 licensed by the state to provide personal care services.

9 ~~((+17))~~ (18) "Nursing home" means a facility licensed under  
10 chapter 18.51 RCW.

11 ~~((+18))~~ (19) "Personal care services" means physical or verbal  
12 assistance with activities of daily living and instrumental activities  
13 of daily living provided because of a person's functional disability.

14 ~~((+19))~~ (20) "Population specific competencies" means basic  
15 training topics unique to the care needs of the population the long-  
16 term care worker is serving, including but not limited to, mental  
17 health, dementia, developmental disabilities, young adults with  
18 physical disabilities, and older adults.

19 ~~((+20))~~ (21) "Qualified instructor" means a registered nurse or  
20 other person with specific knowledge, training, and work experience in  
21 the provision of direct, hands-on personal care and other assistance  
22 services to the elderly or persons with disabilities requiring  
23 long-term care.

24 ~~((+21))~~ (22) "Secretary" means the secretary of social and health  
25 services.

26 ~~((+22))~~ (23) "Secretary of health" means the secretary of health  
27 or the secretary's designee.

28 ~~((+23))~~ (24) "Training partnership" means a joint partnership or  
29 trust that includes the office of the governor and the exclusive  
30 bargaining representative of individual providers under RCW 74.39A.270  
31 with the capacity to provide training, peer mentoring, and workforce  
32 development, or other services to individual providers.

33 ~~((+24))~~ (25) "Tribally licensed boarding home" means a boarding  
34 home licensed by a federally recognized Indian tribe which home  
35 provides services similar to boarding homes licensed under chapter  
36 18.20 RCW.

1       **Sec. 2.** RCW 43.20A.710 and 2001 c 296 s 5 are each amended to read  
2 as follows:

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

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

13       (b) Individual providers who are paid by the state and providers  
14 who are paid by home care agencies to provide in-home services  
15 involving unsupervised access to persons with physical, mental, or  
16 developmental disabilities or mental illness, or to vulnerable adults  
17 as defined in chapter 74.34 RCW, including but not limited to services  
18 provided under chapter 74.39 or 74.39A RCW; and

19       (c) Individuals or businesses or organizations for the care,  
20 supervision, case management, or treatment of children,  
21 (~~developmentally disabled~~) persons with developmental disabilities,  
22 or vulnerable adults, including but not limited to services contracted  
23 for under chapter 18.20, (~~18.48,~~) 70.127, 70.128, 72.36, or 74.39A  
24 RCW or Title 71A RCW.

25       (2) The investigation may include an examination of state and  
26 national criminal identification data. The secretary shall use the  
27 information solely for the purpose of determining the character,  
28 suitability, and competence of these applicants.

29       (3)(a) On or before January 1, 2010, an individual provider or home  
30 care agency provider who has resided in the state less than three years  
31 before applying for employment involving unsupervised access to a  
32 vulnerable adult as defined in chapter 74.34 RCW must be fingerprinted  
33 for the purpose of investigating conviction records both through the  
34 Washington state patrol and the federal bureau of investigation. This  
35 subsection applies only with respect to the provision of in-home  
36 services funded by medicaid personal care under RCW 74.09.520,  
37 community options program entry system waiver services under RCW

1 74.39A.030, or chore services under RCW 74.39A.110. However, this  
2 subsection does not supersede RCW 74.15.030(2)(b).

3 (b) After January 1, 2010, state and federal criminal background  
4 checks for long-term care workers for the elderly or persons with  
5 disabilities are governed by RCW 74.39A.055.

6 (4) An individual provider or home care agency provider hired to  
7 provide in-home care for and having unsupervised access to a vulnerable  
8 adult as defined in chapter 74.34 RCW must have no conviction for a  
9 disqualifying crime under RCW 43.43.830 and 43.43.842. An individual  
10 or home care agency provider must also have no conviction for a crime  
11 relating to drugs as defined in RCW 43.43.830. This subsection applies  
12 only with respect to the provision of in-home services funded by  
13 medicaid personal care under RCW 74.09.520, community options program  
14 entry system waiver services under RCW 74.39A.030, or chore services  
15 under RCW 74.39A.110.

16 (5) Beginning January 1, 2010, pursuant to chapter 18.88B RCW, the  
17 department of health shall have concurrent responsibility with the  
18 department for suitability determinations regarding disqualifying  
19 crimes.

20 (6) To the extent authorized by law, the secretary shall provide  
21 the results of the background check on individual providers to the  
22 persons hiring them or to their legal guardians, if any, for their  
23 determination of the character, suitability, and competence of the  
24 applicants. If the person elects to hire or retain an individual  
25 provider after receiving notice from the department that the applicant  
26 has a conviction for an offense that would disqualify the applicant  
27 from having unsupervised access to persons with physical, mental, or  
28 developmental disabilities or mental illness, or to vulnerable adults  
29 as defined in chapter 74.34 RCW, then the secretary shall deny payment  
30 for any subsequent services rendered by the disqualified individual  
31 provider.

32 ~~((+6+))~~ (7) Criminal justice agencies shall provide the secretary  
33 such information as they may have and that the secretary may require  
34 for such purpose.

35 (8) For the purposes of this section, "background check" or  
36 "fingerprint-based background check" means the same as defined in RCW  
37 74.39A.009.

1       **Sec. 3.** RCW 43.43.837 and 2007 c 387 s 1 are each amended to read  
2 as follows:

3       (1) In order to determine the character, competence, and  
4 suitability of any applicant or service provider to have unsupervised  
5 access, the secretary may require a fingerprint-based background check  
6 through the Washington state patrol and the federal bureau of  
7 investigation at anytime, but shall require a fingerprint-based  
8 background check when the applicant or service provider has resided in  
9 the state less than three consecutive years before application, and:

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

12       (b) Is an individual residing in an applicant or service provider's  
13 home, facility, entity, agency, or business or who is authorized by the  
14 department to provide services to children or people with developmental  
15 disabilities under RCW 74.15.030; or

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

18       (i) Medicaid personal care under RCW 74.09.520;

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

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

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

25       (2) The secretary shall require a fingerprint-based background  
26 check:

27       (a) For long-term care workers pursuant to RCW 74.39A.055; and

28       (b) Through the Washington state patrol identification and criminal  
29 history section and the federal bureau of investigation when the  
30 department seeks to approve an applicant or service provider for a  
31 foster or adoptive placement of children in accordance with federal and  
32 state law.

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

1 (4) Service providers and service provider applicants who are  
2 required to complete a fingerprint-based background check may be hired  
3 for a one hundred twenty-day provisional period as allowed under law or  
4 program rules when:

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

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

8 (5) Fees charged by the Washington state patrol and the federal  
9 bureau of investigation for fingerprint-based background checks shall  
10 be paid by the department for applicants or service providers  
11 providing:

12 (a) Services to people with a developmental disability under RCW  
13 74.15.030;

14 (b) In-home services funded by medicaid personal care under RCW  
15 74.09.520;

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

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

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

22 (f) Services in, or to residents of, a secure facility under RCW  
23 71.09.115; and

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

25 (6) Service providers licensed under RCW 74.15.030 must pay fees  
26 charged by the Washington state patrol and the federal bureau of  
27 investigation for conducting fingerprint-based background checks.

28 (7) Children's administration service providers licensed under RCW  
29 74.15.030 may not pass on the cost of the background check fees to  
30 their applicants unless the individual is determined to be disqualified  
31 due to the background information.

32 (8) The department shall develop rules identifying the financial  
33 responsibility of service providers, applicants, and the department for  
34 paying the fees charged by law enforcement to roll, print, or scan  
35 fingerprints-based for the purpose of a Washington state patrol or  
36 federal bureau of investigation fingerprint-based background check.

37 (9) For purposes of this section, unless the context plainly  
38 indicates otherwise:



1 (a) "Applicant" means a current or prospective department or  
2 service provider employee, volunteer, student, intern, researcher,  
3 contractor, or any other individual who will or may have unsupervised  
4 access because of the nature of the work or services he or she  
5 provides. "Applicant" includes but is not limited to any individual  
6 who will or may have unsupervised access and is:

7 (i) Applying for a license or certification from the department;

8 (ii) Seeking a contract with the department or a service provider;

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

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

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

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

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

21 (ii) Have unsupervised access to vulnerable adults, juveniles, and  
22 children;

23 (iii) Receive payments from a department program; or

24 (iv) Work or serve in a department-covered position.

25 (c) "Background check" or "fingerprint-based background check"  
26 means the same as defined in RCW 74.39A.009.

27 (d) "Department" means the department of social and health  
28 services.

29 ~~((d))~~ (e) "Secretary" means the secretary of the department of  
30 social and health services.

31 ~~((e))~~ (f) "Secure facility" has the meaning provided in RCW  
32 71.09.020.

33 ~~((f))~~ (g) "Service provider" means entities, facilities,  
34 agencies, businesses, or individuals who are licensed, certified,  
35 authorized, or regulated by, receive payment from, or have contracts or  
36 agreements with the department to provide services to vulnerable  
37 adults, juveniles, or children. "Service provider" includes  
38 individuals whom a department client or guardian of a department client

1 may choose to hire or engage to provide services to himself or herself  
2 or another vulnerable adult, juvenile, or child and who might be  
3 eligible to receive payment from the department for services rendered.  
4 "Service provider" does not include those certified under chapter  
5 70.96A RCW.

6 NEW SECTION. **Sec. 4.** This act is necessary for the immediate  
7 preservation of the public peace, health, or safety, or support of the  
8 state government and its existing public institutions, and takes effect  
9 April 1, 2009.

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