State of Washington 63rd Legislature 2014 Regular Session

By Senators Rivers, Eide, Hargrove, Padden, Fraser, Honeyford, and Rolfes

Read first time 01/16/14. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to review of licensing and employment decisions by the children's administration; amending RCW 74.15.130; reenacting and amending RCW 74.15.030; and adding a new section to chapter 74.15 RCW.

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

Sec. 1. RCW 74.15.030 and 2007 c 387 s 5 and 2007 c 17 s 14 are each reenacted and amended to read as follows:

The secretary shall (have the power and it shall be the secretary's duty):

(1) In consultation with the children's services advisory committee, and with the advice and assistance of representatives of the various types of agencies to be licensed, designate categories of facilities for which separate or different requirements (shall) must be developed as (may be) appropriate (whether because of) based upon variations in the age(s), sex (and) or other characteristics of the persons served, differences in the purposes services offered (or) size or structure of the agencies to be licensed hereunder), or (because of any) for other (factor) relevant factors;
In consultation with the children's services advisory committee, and with the advice and assistance of representatives of the various types of agencies to be licensed, adopt and publish minimum requirements for licensing applicable to each of the various categories of agencies to be licensed. The minimum requirements shall be limited to:

(a) The size and suitability of a facility and the plan of operation for carrying out the purpose for which the license is sought;

(b) Obtaining background information and any out-of-state equivalent, to determine whether the applicant or service provider is disqualified and to determine the character, competence, and suitability of an agency, the agency's employees, volunteers, and other persons associated with an agency;

(c) Conducting background checks for those who will or may have unsupervised access to children, expectant mothers, or individuals with a developmental disability;

(d) Obtaining child protective services information or records maintained in the department case management information system. No unfounded allegation of child abuse or neglect as defined in RCW 26.44.020 may be disclosed to a child-placing agency, private adoption agency, or any other provider licensed under this chapter;

(e) Submitting a fingerprint-based background check through the Washington state patrol under chapter 10.97 RCW and through the federal bureau of investigation for:

(i) Agencies and their staff, volunteers, students, and interns when the agency is seeking license or relicense;

(ii) Foster care and adoption placements; and

(iii) Any adult living in a home where a child may be placed;

(f) If any adult living in the home has not resided in the state of Washington for the preceding five years, the department shall review any child abuse and neglect registries maintained by any state where the adult has resided over the preceding five years;

(g) The cost of fingerprint background check fees will be paid as required in RCW 43.43.837;

(h) National and state background information must be used solely for the purpose of determining eligibility for a license and for
determining the character, suitability, and competence of those persons or agencies, excluding parents, not required to be licensed who are authorized to care for children or expectant mothers;

((±)) The character, suitability, and competence of an agency and other persons associated with an agency who are directly responsible for the care and treatment of children, expectant mothers, or individuals with developmental disabilities;

(c) The number of qualified persons required to render the type of care and treatment for which an agency seeks a license;

((+)) ((d)) The safety, cleanliness, and general adequacy of the premises to provide for the comfort, care and well-being of children, expectant mothers or developmentally disabled persons;

((++)) (e) The provision of necessary care, including food, clothing, supervision and discipline; physical, mental and social well-being; and educational, recreational and spiritual opportunities for those served;

((++)) (f) The financial ability of an agency to comply with minimum requirements established pursuant to chapter 74.15 RCW and RCW 74.13.031; and

((++)) (g) The maintenance of records pertaining to the admission, progress, health and discharge of persons served;

(3) (Fe) Investigate any person, including relatives by blood or marriage except for parents, for character, suitability, and competence in the care and treatment of children, expectant mothers, and developmentally disabled) persons with developmental disabilities prior to authorizing that person to care for children, expectant mothers, and developmentally disabled) persons with developmental disabilities, as provided in section 2 of this act. However, if a child is placed with a relative under RCW 13.34.065 or 13.34.130, and if such relative appears otherwise suitable and competent to provide care and treatment the criminal history background check required by this section need not be completed before placement, but ((shall)) must be completed as soon as possible after placement;

(4) (On reports of alleged child abuse and neglect, te)) Allow individuals who are denied licensure, employment, or unsupervised access to children by the children's administration based upon the results of a background check to request an internal administrative review in writing using forms provided by the department, which must
include the opportunity to submit evidence of the individual's rehabilitation and that allowing the individual unsupervised access to a child will not jeopardize the child's health or safety. This review process must include participation by children's administration management staff who are not in the direct chain of command with contracts staff and be completed within sixty days. Administrative proceedings under RCW 74.15.130 and applicable timelines for filing may be stayed or extended as appropriate pending this review process. This subsection does not create any civil liability on the part of the state or any state agency, officer, employee, or agent based upon the operation or outcome of this review process except based upon gross negligence;

(5) Investigate agencies in accordance with chapter 26.44 RCW, including child day(=)care centers and family day(=)care homes, upon reports of alleged child abuse and neglect, to determine whether the alleged abuse or neglect has occurred, and whether child protective services or referral to a law enforcement agency is appropriate;

(6) Issue, revoke, or deny licenses to agencies pursuant to chapter 74.15 RCW and RCW 74.13.031. Licenses shall specify the category of care which an agency is authorized to render and the ages, sex and number of persons to be served;

(7) Prescribe the procedures and the form and contents of reports necessary for the administration of chapter 74.15 RCW and RCW 74.13.031 and to require regular reports from each licensee;

(8) Inspect agencies periodically to determine whether or not there is compliance with chapter 74.15 RCW and RCW 74.13.031 and the requirements adopted pursuant to this section;

(9) Review requirements adopted pursuant to this section at least once every two years and to adopt appropriate changes after consultation with the children's services advisory committee or, in the case of child day care requirements, with the affected groups; and

(10) Consult with public and private agencies in order to help improve methods and facilities for the care of children, expectant mothers, and persons with developmental disabilities.
NEW SECTION. Sec. 2. A new section is added to chapter 74.15 RCW to read as follows:

(1) In conducting background investigations under RCW 74.15.030, the secretary shall:

(a) Obtain background information, and any out-of-state equivalent, to determine whether the applicant or service provider is disqualified, and to determine the character, competence, and suitability of an agency, the agency's employees, volunteers, and other persons associated with an agency;

(b) Obtain child protective services information or records maintained in the department case management information system. No unfounded allegation of child abuse or neglect as defined in RCW 26.44.020 may be disclosed to a child-placing agency, private adoption agency, or any other provider licensed under this chapter;

(c) Submit a fingerprint-based background check through the Washington state patrol under chapter 10.97 RCW and through the federal bureau of investigation for:

(i) Agencies and their staff, volunteers, students, and interns when the agency is seeking license or relicense;

(ii) Foster care and adoption placements; and

(iii) Any adult living in a home where a child may be placed.

(2) If any adult living in the home has not resided in the state of Washington for the preceding five years, the department shall review any child abuse and neglect registries maintained by any state where the adult has resided over the preceding five years.

(3) The cost of fingerprint background check fees under this section will be paid as required in RCW 43.43.837.

(4) National and state background information must be used solely for the purpose of determining eligibility for a license and for determining the character, suitability, and competence of those persons or agencies, excluding parents, not required to be licensed who are authorized to care for children, expectant mothers, or person's with developmental disabilities.

Sec. 3. RCW 74.15.130 and 2007 c 220 s 6 are each amended to read as follows:

(1) An agency may be denied a license, or any license issued pursuant to chapter 74.15 RCW and RCW 74.13.031 may be suspended,
revoked, modified, or not renewed by the secretary upon proof (a) that the agency has failed or refused to comply with the provisions of chapter 74.15 RCW and RCW 74.13.031 or the requirements promulgated pursuant to the provisions of chapter 74.15 RCW and RCW 74.13.031; or (b) that the conditions required for the issuance of a license under chapter 74.15 RCW and RCW 74.13.031 have ceased to exist with respect to such licenses.

(2) RCW 43.20A.205 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding. The department shall afford the same notice, right to an adjudicative proceeding, and evidentiary standards described in this section and under RCW 43.20A.205 to a person who has been denied employment with a contracted agency by the children's administration based on the result of a background check.

((2+) (3) In any adjudicative proceeding regarding the denial, modification, suspension, or revocation of a foster family home license, the department's decision shall be upheld if there is reasonable cause to believe that:

(a) The applicant or licensee lacks the character, suitability, or competence to care for children placed in out-of-home care, however, no unfounded, inconclusive, or screened-out report of child abuse or neglect may be used to deny employment or a license;

(b) The applicant or licensee has failed or refused to comply with any provision of chapter 74.15 RCW, RCW 74.13.031, or the requirements adopted pursuant to such provisions; or

(c) The conditions required for issuance of a license under chapter 74.15 RCW and RCW 74.13.031 have ceased to exist with respect to such licenses.

((3+) (4) In any adjudicative proceeding regarding the denial, modification, suspension, or revocation of any license under this chapter, other than a foster family home license, the department's decision shall be upheld if it is supported by a preponderance of the evidence.

((4+) (5) The department may assess civil monetary penalties upon proof that an agency has failed or refused to comply with the rules adopted under the provisions of this chapter and RCW 74.13.031 or that an agency subject to licensing under this chapter and RCW 74.13.031 is operating without a license except that civil monetary penalties shall
not be levied against a licensed foster home. Monetary penalties levied against unlicensed agencies that submit an application for licensure within thirty days of notification and subsequently become licensed will be forgiven. These penalties may be assessed in addition to or in lieu of other disciplinary actions. Civil monetary penalties, if imposed, may be assessed and collected, with interest, for each day an agency is or was out of compliance. Civil monetary penalties shall not exceed two hundred fifty dollars per violation for group homes and child-placing agencies. Each day upon which the same or substantially similar action occurs is a separate violation subject to the assessment of a separate penalty. The department shall provide a notification period before a monetary penalty is effective and may forgive the penalty levied if the agency comes into compliance during this period. The department may suspend, revoke, or not renew a license for failure to pay a civil monetary penalty it has assessed pursuant to this chapter within ten days after such assessment becomes final. Chapter 43.20A RCW governs notice of a civil monetary penalty and provides the right of an adjudicative proceeding. The preponderance of evidence standard shall apply in adjudicative proceedings related to assessment of civil monetary penalties.

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