

RCW 43.20A.715 Long-term care worker screening—Limitations on disqualification. (1) Where the department is required to screen a long-term care worker, contracted provider, or licensee through a background check to determine whether the person has a history that would disqualify the person from having unsupervised access to, working with, or providing supervision, care, or treatment to vulnerable adults or children, the department may not automatically disqualify a person on the basis of a criminal record that includes a conviction of any of the following crimes once the specified amount of time has passed for the particular crime:

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

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

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

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

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

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

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

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

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

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

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

(6) For the purposes of the section:

(a) "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) "Licensee" means a nonstate facility or setting that is licensed or certified, or has applied to be licensed or certified, by the department and includes the licensee and its employees. [2021 c 219 § 1.]

Rules—2021 c 219: "The department of social and health services and the department of health may adopt rules to implement this act." [2021 c 219 § 8.]

Conflict with federal requirements—2021 c 219: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2021 c 219 § 9.]