
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: H-5040.1/00

ATTY/TYPIST: KB:ads

BRIEF DESCRIPTION:

2 SSB 6401 - H COMM AMD
3 By Committee on Appropriations

4

5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 43.20A.710 and 1999 c 336 s 7 are each amended to
8 read as follows:

9 (1) The secretary shall investigate the conviction records, pending
10 charges or disciplinary board final decisions of:

11 (a) Persons being considered for state employment in positions
12 directly responsible for the supervision, care, or treatment of
13 children or individuals with mental illness or developmental
14 disabilities; and

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

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

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

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

11 (5) The secretary shall provide the results of the ((state))
12 background check on individual providers to the ((~~individuals with~~
13 ~~physical disabilities, developmental disabilities, mental illness, or~~
14 ~~mental impairment~~)) persons hiring them or to their legal guardians, if
15 any, for their determination of the character, suitability, and
16 competence of the applicants. If ((~~an individual~~)) the person elects
17 to hire or retain an individual provider after receiving notice from
18 the department that the applicant has a conviction for an offense that
19 would disqualify the applicant from ((~~employment with the department~~))
20 having unsupervised access to persons with physical, mental, or
21 developmental disabilities or mental illness, or to vulnerable adults
22 as defined in chapter 74.34 RCW, then the secretary shall deny payment
23 for any subsequent services rendered by the disqualified individual
24 provider.

25 ((~~4~~)) (6) Criminal justice agencies shall provide the secretary
26 such information as they may have and that the secretary may require
27 for such purpose.

28 **Sec. 2.** RCW 74.34.095 and 1999 c 176 s 17 are each amended to read
29 as follows:

30 (1) The following information is confidential and not subject to
31 disclosure, except as provided in this section:

32 (a) A report of abandonment, abuse, financial exploitation, or
33 neglect made under this chapter;

34 (b) The identity of the person making the report; and

35 (c) All files, reports, records, communications, and working papers
36 used or developed in the investigation or provision of protective
37 services.

1 (2) Information considered confidential may be disclosed only for
2 a purpose consistent with this chapter or as authorized by chapter
3 18.20, 18.51, or 74.39A RCW, or as authorized by the long-term care
4 ombudsman programs under federal law or state law, chapter 43.190 RCW.

5 (3) A court or presiding officer in an administrative proceeding
6 may order disclosure of confidential information only if the court, or
7 presiding officer in an administrative proceeding, determines that
8 disclosure is essential to the administration of justice and will not
9 endanger the life or safety of the vulnerable adult or individual who
10 made the report. The court or presiding officer in an administrative
11 hearing may place restrictions on such disclosure as the court or
12 presiding officer deems proper.

13 **Sec. 3.** RCW 74.39A.095 and 1999 c 175 s 3 are each amended to read
14 as follows:

15 (1) In carrying out case management responsibilities established
16 under RCW 74.39A.090 for consumers who are receiving services under the
17 medicaid personal care, community options programs entry system or
18 chore services program through an individual provider, each area agency
19 on aging shall provide adequate oversight of the care being provided to
20 consumers receiving services under this section. Such oversight shall
21 include, but is not limited to:

22 (a) Verification that the individual provider has met any training
23 requirements established by the department;

24 (b) Verification of a sample of worker time sheets;

25 (c) Home visits or telephone contacts sufficient to ensure that the
26 plan of care is being appropriately implemented;

27 (d) Reassessment and reauthorization of services;

28 (e) Monitoring of individual provider performance; and

29 (f) Conducting criminal background checks or verifying that
30 criminal background checks have been conducted.

31 (2) The area agency on aging case manager shall work with each
32 consumer to develop a plan of care under this section that identifies
33 and ensures coordination of health and long-term care services that
34 meet the consumer's needs. In developing the plan, they shall utilize,
35 and modify as needed, any comprehensive community service plan
36 developed by the department as provided in RCW 74.39A.040. The plan of
37 care shall include, at a minimum:

1 (a) The name and telephone number of the consumer's area agency on
2 aging case manager, and a statement as to how the case manager can be
3 contacted about any concerns related to the consumer's well-being or
4 the adequacy of care provided;

5 (b) The name and telephone numbers of the consumer's primary health
6 care provider, and other health or long-term care providers with whom
7 the consumer has frequent contacts;

8 (c) A clear description of the roles and responsibilities of the
9 area agency on aging case manager and the consumer receiving services
10 under this section;

11 (d) The duties and tasks to be performed by the area agency on
12 aging case manager and the consumer receiving services under this
13 section;

14 (e) The type of in-home services authorized, and the number of
15 hours of services to be provided;

16 (f) The terms of compensation of the individual provider;

17 (g) A statement that the individual provider has the ability and
18 willingness to carry out his or her responsibilities relative to the
19 plan of care; and

20 (h)(i) Except as provided in (h)(ii) of this subsection, a clear
21 statement indicating that a consumer receiving services under this
22 section has the right to waive any of the case management services
23 offered by the area agency on aging under this section, and a clear
24 indication of whether the consumer has, in fact, waived any of these
25 services.

26 (ii) The consumer's right to waive case management services does
27 not include the right to waive reassessment or reauthorization of
28 services, or verification that services are being provided in
29 accordance with the plan of care.

30 (3) Each area agency on aging shall retain a record of each waiver
31 of services included in a plan of care under this section.

32 (4) Each consumer has the right to direct and participate in the
33 development of their plan of care to the maximum practicable extent of
34 their abilities and desires, and to be provided with the time and
35 support necessary to facilitate that participation.

36 (5) A copy of the plan of care must be distributed to the
37 consumer's primary care provider, individual provider, and other
38 relevant providers with whom the consumer has frequent contact, as
39 authorized by the consumer.

1 (6) The consumer's plan of care shall be an attachment to the
2 contract between the department, or their designee, and the individual
3 provider.

4 (7) If the department or area agency on aging case manager finds
5 that an individual provider's inadequate performance or inability to
6 deliver quality care is jeopardizing the health, safety, or well-being
7 of a consumer receiving service under this section, the department or
8 the area agency on aging may take action to terminate the contract
9 between the department and the individual provider. If the department
10 or the area agency on aging has a reasonable, good faith belief that
11 the health, safety, or well-being of a consumer is in imminent
12 jeopardy, the department or area agency on aging may summarily suspend
13 the contract pending a fair hearing. The consumer may request a fair
14 hearing to contest the planned action of the case manager, as provided
15 in chapter 34.05 RCW. The department may by rule adopt guidelines for
16 implementing this subsection.

17 (8) The department or area agency on aging may reject a request by
18 (~~an [a]~~) a consumer receiving services under this section to have a
19 family member or other person serve as his or her individual provider
20 if the case manager has a reasonable, good faith belief that the family
21 member or other person will be unable to appropriately meet the care
22 needs of the consumer. The consumer may request a fair hearing to
23 contest the decision of the case manager, as provided in chapter 34.05
24 RCW. The department may by rule adopt guidelines for implementing this
25 subsection.

26 NEW SECTION. Sec. 4. A new section is added to chapter 74.39A RCW
27 to read as follows:

28 A home and community services employer or a nursing home employer
29 who discloses information about a former or current employee to a
30 prospective home and community services employer or nursing home
31 employer is presumed to be acting in good faith and is immune from
32 civil and criminal liability for such disclosure or its consequences if
33 the disclosed information relates to: (1) The employee's ability to
34 perform his or her job; (2) the diligence, skill, or reliability with
35 which the employee carried out the duties of his or her job; or (3) any
36 illegal or wrongful act committed by the employee when related to his
37 or her ability to care for a vulnerable adult. For purposes of this
38 section, the presumption of good faith may only be rebutted upon a

1 showing by clear and convincing evidence that the information disclosed
2 by the home and community services employer or nursing home employer
3 was knowingly false or with reckless disregard for the truth of the
4 information disclosed. Nothing in this section shall affect or limit
5 any other state, federal, or constitutional right otherwise available.
6 Should the employee successfully rebut the presumption of good faith
7 standard in a court of competent jurisdiction, and therefore be the
8 prevailing party, the prevailing party shall be entitled to recover
9 reasonable attorneys' fees against the employer.

10 NEW SECTION. **Sec. 5.** If specific funding for the purposes of this
11 act, referencing this act by bill or chapter number, is not provided by
12 June 30, 2000, in the omnibus appropriations act, this act is null and
13 void."

14 Correct the title.

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