
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: H-4906.3/00 3rd draft

ATTY/TYPIST: RJS:ads

BRIEF DESCRIPTION:

2 **SSB 6401** - H COMM AMD

3 By Committee on Criminal Justice & Corrections

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. The department shall pay for the
36 investigation of criminal records as provided for in the omnibus

1 appropriations act. This subsection does not supersede RCW
2 74.15.030(2)(b).

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

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

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

30 NEW SECTION. Sec. 2. A new section is added to chapter 74.34 RCW
31 to read as follows:

32 (1) The department shall establish and maintain a state registry
33 containing names of, and other identifying information about,
34 individuals who have been found to have abandoned, abused, financially
35 exploited, or neglected vulnerable adults. The department shall remove
36 from the registry the name of any individual who: (a) Later is found
37 by the office of administrative hearings under chapter 34.05 RCW, or a
38 court of law, not to have abandoned, abused, financially exploited, or

1 neglected vulnerable adults; or (b) was erroneously placed upon the
2 registry. The department shall adopt rules that are necessary to
3 implement the registry. At a minimum, the rules shall address
4 disclosure, disposition, and notification of findings, appeal rights,
5 fair hearing requirements, and the opportunity for the individual who
6 is the subject of the investigation to provide information orally or in
7 writing prior to the preliminary determination.

8 (2) A nursing home, boarding home, or adult family home employer
9 shall be immune from liability for an employment decision made in
10 reasonable reliance upon information obtained directly from the
11 registry.

12 NEW SECTION. **Sec. 3.** A new section is added to chapter 74.34 RCW
13 to read as follows:

14 If following an investigation into allegations that an individual
15 abandoned, abused, financially exploited, or neglected a vulnerable
16 adult, the department determines that a preponderance of evidence
17 exists to support the allegation, the department shall make a
18 preliminary determination of abandonment, abuse, financial
19 exploitation, or neglect. The department shall not make a preliminary
20 finding of neglect if the individual demonstrates that the neglect was
21 caused by factors beyond his or her control. The department shall not
22 initiate a registry investigation into an allegation of abuse, neglect,
23 abandonment, or financial exploitation in an in-home setting or in a
24 facility licensed under chapter 70.128 or 18.20 RCW if the nursing care
25 quality assurance commission and the department of health have
26 completed a full investigation and have taken no action against a nurse
27 licensed under chapter 18.79 RCW. The individual shall be notified of
28 the preliminary determination and shall be entitled to appeal the
29 preliminary finding in an adjudicative proceeding under chapter 34.05
30 RCW. If the individual does not request an adjudicative proceeding
31 within the time allowed for appeal, or if the department's preliminary
32 determination is upheld following an adjudicative proceeding, the
33 preliminary determination shall be considered a finding and the
34 department shall place such finding on the state registry described in
35 section 2 of this act. This section does not apply to findings of
36 abandonment, abuse, financial exploitation, or neglect by an individual
37 who is a vulnerable adult and who has the functional, mental, or

1 physical inability to care for himself or herself or who has been found
2 incapacitated under chapter 11.88 RCW.

3 NEW SECTION. **Sec. 4.** A new section is added to chapter 74.34 RCW
4 to read as follows:

5 In the case of a single finding of neglect, at least one year after
6 an individual's name has been placed on the registry, the individual
7 may petition the department for removal of his or her name from the
8 registry, or the individual may petition the department to be allowed
9 to work in a licensed nursing home, boarding home, or adult family
10 home. The rules developed by the department shall describe how the
11 petition can be filed, and shall identify factors that the department
12 will consider before rendering a decision on the petition. Any
13 individual whose name has been on the registry for ten consecutive
14 years may petition the removal of his or her name from the registry for
15 any reason.

16 In determining whether to remove the individual's name, the
17 department shall consider the following information if reasonably
18 available: (1) The nature of the conduct that caused the person's name
19 to be placed on the registry; (2) the severity of harm in the original
20 investigated incident; (3) the conduct of the individual in the elapsed
21 ten-year period, including treatment, criminal convictions, and
22 employment history; and (4) such other information as the department
23 determines to be relevant.

24 If the department determines the individual's name can be removed
25 from the registry, the department shall immediately remove the
26 individual's name from the registry. The department shall maintain the
27 records of this review, but such information may not be disclosed
28 except to the individual seeking the removal or by an order entered in
29 superior court.

30 If an individual has been convicted of a disqualifying crime under
31 RCW 43.43.842, the individual may not make a request under this section
32 until ten years from the date of conviction.

33 If the department acted in good faith and in accordance with
34 established procedures when it removed an individual's name from the
35 registry, or when it allowed an individual whose name is on the
36 registry to work in a nursing home, boarding home, or adult family home
37 setting, it shall be immune from liability for the future actions of
38 the individual.

1 NEW SECTION. **Sec. 5.** A new section is added to chapter 74.34 RCW
2 to read as follows:

3 A preliminary determination of abandonment, abuse, financial
4 exploitation, or neglect shall be sustained in an adjudicative
5 proceeding if the presiding officer finds it is supported by a
6 preponderance of the evidence. The presiding officer's decision must
7 be rendered within one hundred twenty days of the date the individual's
8 hearing request was received by the office of administrative hearings.
9 However, if the presiding officer finds that extenuating circumstances
10 exist that will prevent the decision from being made within the one
11 hundred twenty-day time period, the presiding officer may extend the
12 deadline only as long as is reasonably necessary.

13 NEW SECTION. **Sec. 6.** A new section is added to chapter 74.34 RCW
14 to read as follows:

15 When the department learns that any in-state or out-of-state
16 agency, disciplining authority, or court has taken an action that would
17 prevent the individual from being employed in the care of and having
18 unsupervised access to vulnerable adults in accordance with RCW
19 74.39A.050(8), the department shall place identifying information about
20 the individual on the state registry.

21 NEW SECTION. **Sec. 7.** A new section is added to chapter 74.34 RCW
22 to read as follows:

23 The department shall disclose to any home and community services or
24 nursing home employer as defined in chapter 74.39A RCW, or to any
25 person who is employing, staffing, licensing, or contracting for the
26 provision of long-term care services to a vulnerable adult, registry
27 findings of abuse, neglect, abandonment, and financial exploitation so
28 long as the person requesting such information provides to the
29 department the individual's correct legal name, social security number,
30 gender, and date of birth. The department may request additional
31 information necessary to ensure the accurate identification of the
32 individual on the registry. The department shall not release an
33 individual's home address, social security number, or home telephone
34 number.

35 Nothing in this act is to be construed to prevent anyone from
36 obtaining any information about themselves that is in the possession of
37 the department. The department may withhold information regarding

1 other persons as provided by law or when release of such information
2 could reasonably result in a violation or threat to a person's privacy,
3 health, or safety.

4 The person requesting registry findings shall use this information
5 only for making decisions regarding employment, staffing, contracting,
6 or licensing of the individual with regard to the provision of care and
7 services to vulnerable adults. Further dissemination or use of the
8 findings is prohibited.

9 **Sec. 8.** RCW 74.39A.050 and 1999 c 336 s 5 are each amended to read
10 as follows:

11 The department's system of quality improvement for long-term care
12 services shall use the following principles, consistent with applicable
13 federal laws and regulations:

14 (1) The system shall be client-centered and promote privacy,
15 independence, dignity, choice, and a home or home-like environment for
16 consumers consistent with chapter 392, Laws of 1997.

17 (2) The goal of the system is continuous quality improvement with
18 the focus on consumer satisfaction and outcomes for consumers. This
19 includes that when conducting licensing inspections, the department
20 shall interview an appropriate percentage of residents, family members,
21 resident managers, and advocates in addition to interviewing providers
22 and staff.

23 (3) Providers should be supported in their efforts to improve
24 quality and address identified problems initially through training,
25 consultation, technical assistance, and case management.

26 (4) The emphasis should be on problem prevention both in monitoring
27 and in screening potential providers of service.

28 (5) Monitoring should be outcome based and responsive to consumer
29 complaints and a clear set of health, quality of care, and safety
30 standards that are easily understandable and have been made available
31 to providers.

32 (6) Prompt and specific enforcement remedies shall also be
33 implemented without delay, pursuant to RCW 74.39A.080, RCW 70.128.160,
34 chapter 18.51 RCW, or chapter 74.42 RCW, for providers found to have
35 delivered care or failed to deliver care resulting in problems that are
36 serious, recurring, or uncorrected, or that create a hazard that is
37 causing or likely to cause death or serious harm to one or more
38 residents. These enforcement remedies may also include, when

1 appropriate, reasonable conditions on a contract or license. In the
2 selection of remedies, the safety, health, and well-being of residents
3 shall be of paramount importance.

4 (7) To the extent funding is available, all long-term care staff
5 directly responsible for the care, supervision, or treatment of
6 vulnerable persons should be screened through background checks in a
7 uniform and timely manner to ensure that they do not have a criminal
8 history that would disqualify them from working with vulnerable
9 persons. Whenever a state conviction record check is required by state
10 law, persons may be employed or engaged as volunteers or independent
11 contractors on a conditional basis according to law and rules adopted
12 by the department.

13 (8) No provider or staff, or prospective provider or staff, with a
14 stipulated finding of fact, conclusion of law, an agreed order, or
15 finding of fact, conclusion of law, or final order issued by a
16 disciplining authority, a court of law, or entered into a state
17 registry finding him or her guilty of abuse, neglect, exploitation, or
18 abandonment of a minor or a vulnerable adult as defined in chapter
19 74.34 RCW shall be employed in the care of and have unsupervised access
20 to vulnerable adults except as permitted in section 4 of this act.

21 ~~((The department shall establish, by rule, a state registry
22 which contains identifying information about personal care aides
23 identified under this chapter who have substantiated findings of abuse,
24 neglect, financial exploitation, or abandonment of a vulnerable adult
25 as defined in RCW 74.34.020. The rule must include disclosure,
26 disposition of findings, notification, findings of fact, appeal rights,
27 and fair hearing requirements. The department shall disclose, upon
28 request, substantiated findings of abuse, neglect, financial
29 exploitation, or abandonment to any person so requesting this
30 information.~~

31 ~~((10))~~) The department shall by rule develop training requirements
32 for individual providers and home care agency providers. The
33 department shall deny payment to an individual provider or a home care
34 provider who does not complete the training requirement within the time
35 limit specified by the department by rule.

36 ~~((11))~~) (10) The department shall establish, by rule, training,
37 background checks, and other quality assurance requirements for
38 personal aides who provide in-home services funded by medicaid personal
39 care as described in RCW 74.09.520, community options program entry

1 system waiver services as described in RCW 74.39A.030, or chore
2 services as described in RCW 74.39A.110 that are equivalent to
3 requirements for individual providers.

4 ~~((12))~~ (11) Under existing funds the department shall establish
5 internally a quality improvement standards committee to monitor the
6 development of standards and to suggest modifications.

7 ~~((13))~~ (12) Within existing funds, the department shall design,
8 develop, and implement a long-term care training program that is
9 flexible, relevant, and qualifies towards the requirements for a
10 nursing assistant certificate as established under chapter 18.88A RCW.
11 This subsection does not require completion of the nursing assistant
12 certificate training program by providers or their staff. The long-
13 term care teaching curriculum must consist of a fundamental module, or
14 modules, and a range of other available relevant training modules that
15 provide the caregiver with appropriate options that assist in meeting
16 the resident's care needs. Some of the training modules may include,
17 but are not limited to, specific training on the special care needs of
18 persons with developmental disabilities, dementia, mental illness, and
19 the care needs of the elderly. No less than one training module must
20 be dedicated to workplace violence prevention. The nursing care
21 quality assurance commission shall work together with the department to
22 develop the curriculum modules. The nursing care quality assurance
23 commission shall direct the nursing assistant training programs to
24 accept some or all of the skills and competencies from the curriculum
25 modules towards meeting the requirements for a nursing assistant
26 certificate as defined in chapter 18.88A RCW. A process may be
27 developed to test persons completing modules from a caregiver's class
28 to verify that they have the transferable skills and competencies for
29 entry into a nursing assistant training program. The department may
30 review whether facilities can develop their own related long-term care
31 training programs. The department may develop a review process for
32 determining what previous experience and training may be used to waive
33 some or all of the mandatory training. The department of social and
34 health services and the nursing care quality assurance commission shall
35 work together to develop an implementation plan by December 12, 1998.

36 **Sec. 9.** RCW 74.34.095 and 1999 c 176 s 17 are each amended to read
37 as follows:

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

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

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

6 (c) All files, reports, records, communications, and working papers
7 used or developed in the investigation or provision of protective
8 services.

9 (2) Information considered confidential may be disclosed only for
10 a purpose consistent with this chapter or as authorized by chapter
11 18.20, 18.51, or 74.39A RCW, or as authorized by the long-term care
12 ombudsman programs under federal law or state law, chapter 43.190 RCW.

13 (3) A court or presiding officer in an administrative proceeding
14 may order disclosure of confidential information only if the court, or
15 presiding officer in an administrative proceeding, determines that
16 disclosure is essential to the administration of justice and will not
17 endanger the life or safety of the vulnerable adult or individual who
18 made the report. The court or presiding officer in an administrative
19 hearing may place restrictions on such disclosure as the court or
20 presiding officer deems proper.

21 (4) Findings and other information entered into a state registry as
22 authorized by this act are not considered confidential. However, the
23 individual's social security number, home telephone number, and home
24 address shall not be disclosed.

25 **Sec. 10.** RCW 74.39A.095 and 1999 c 175 s 3 are each amended to
26 read as follows:

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

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

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

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

- 1 (d) Reassessment and reauthorization of services;
- 2 (e) Monitoring of individual provider performance; and
- 3 (f) Conducting criminal background checks or verifying that
- 4 criminal background checks have been conducted.

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

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

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

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

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

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

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

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

31 (h)(i) Except as provided in (h)(ii) of this subsection, a clear
32 statement indicating that a consumer receiving services under this
33 section has the right to waive any of the case management services
34 offered by the area agency on aging under this section, and a clear
35 indication of whether the consumer has, in fact, waived any of these
36 services.

37 (ii) The consumer's right to waive case management services does
38 not include the right to waive reassessment or reauthorization of

1 services, or verification that services are being provided in
2 accordance with the plan of care.

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

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

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

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

16 (7) If the department or area agency on aging case manager finds
17 that an individual provider's inadequate performance or inability to
18 deliver quality care is jeopardizing the health, safety, or well-being
19 of a consumer receiving service under this section, the department or
20 the area agency on aging may take action to terminate the contract
21 between the department and the individual provider. If the department
22 or the area agency on aging has a reasonable, good faith belief that
23 the health, safety, or well-being of a consumer is in imminent
24 jeopardy, the department or area agency on aging may summarily suspend
25 the contract pending a fair hearing. The consumer may request a fair
26 hearing to contest the planned action of the case manager, as provided
27 in chapter 34.05 RCW.

28 (8) The department or area agency on aging may reject a request by
29 (~~(an [a])~~) a consumer receiving services under this section to have a
30 family member or other person serve as his or her individual provider
31 if the case manager has a reasonable, good faith belief that the family
32 member or other person will be unable to appropriately meet the care
33 needs of the consumer. The consumer may request a fair hearing to
34 contest the decision of the case manager, as provided in chapter 34.05
35 RCW.

36 NEW SECTION. **Sec. 11.** A new section is added to chapter 74.39A
37 RCW to read as follows:

1 A home and community services employer or a nursing home employer
2 who discloses information about a former or current employee to a
3 prospective home and community services employer or nursing home
4 employer is presumed to be acting in good faith and is immune from
5 civil and criminal liability for such disclosure or its consequences if
6 the disclosed information relates to: (1) The employee's ability to
7 perform his or her job; (2) the diligence, skill, or reliability with
8 which the employee carried out the duties of his or her job; or (3) any
9 illegal or wrongful act committed by the employee when related to his
10 or her ability to care for a vulnerable adult. For purposes of this
11 section, the presumption of good faith may only be rebutted upon a
12 showing by clear and convincing evidence that the information disclosed
13 by the home and community services employer or nursing home employer
14 was knowingly false or with reckless disregard for the truth of the
15 information disclosed. Nothing in this section shall affect or limit
16 any other state, federal, or constitutional right otherwise available.
17 Should the employee successfully rebut the presumption of good faith
18 standard in a court of competent jurisdiction, and therefore be the
19 prevailing party, the prevailing party shall be entitled to recover
20 reasonable attorneys' fees against the employer.

21 NEW SECTION. **Sec. 12.** STATE REGISTRY--TERMINATION. The state
22 registry established in section 2 of this act shall be terminated on
23 June 30, 2004, as provided in section 13 of this act.

24 NEW SECTION. **Sec. 13.** STATE REGISTRY--REPEAL. Section 2 of this
25 act, as now existing or hereafter amended, is repealed effective June
26 30, 2005.

27 NEW SECTION. **Sec. 14.** Captions used in this act are not any part
28 of the law."

29 Correct the title.

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