
SUBSTITUTE HOUSE BILL 2569

State of Washington 56th Legislature 2000 Regular Session

By House Committee on Health Care (originally sponsored by Representatives Edmonds, Pflug, McDonald, Lovick, Voloria, Morris, Keiser, Rockefeller and Kagi; by request of Governor Locke)

Read first time 02/04/2000. Referred to Committee on .

1 AN ACT Relating to protecting vulnerable adults; amending RCW
2 43.20A.710, 74.39A.050, 74.34.095, and 74.39A.095; adding new sections
3 to chapter 74.34 RCW; creating new sections; and providing an effective
4 date.

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

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

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

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

14 (b) Individual providers who are paid by the state (~~for~~) and
15 providers who are paid by home care agencies to provide in-home
16 services (~~and hired by individuals~~) involving unsupervised access to
17 persons with physical (~~disabilities~~), mental, or developmental
18 disabilities(~~(-)~~) or mental illness, or (~~mental impairment~~) to

1 vulnerable adults as defined in chapter 74.34 RCW, including but not
2 limited to services provided under chapter 74.39 or 74.39A RCW.

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

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

18 (4) An individual provider or home care agency provider hired to
19 provide in-home care for and having unsupervised access to a vulnerable
20 adult as defined in chapter 74.34 RCW must have no conviction for a
21 disqualifying crime under RCW 43.43.830 and 43.43.842. An individual
22 or home care agency provider must also have no conviction for a crime
23 relating to drugs as defined in RCW 43.43.830. This subsection applies
24 only with respect to the provision of in-home services funded by
25 medicaid personal care under RCW 74.09.520, community options program
26 entry system waiver services under RCW 74.39A.030, or chore services
27 under RCW 74.39A.110.

28 (5) The secretary shall provide the results of the ((state))
29 background check on individual providers to the ((~~individuals with~~
30 ~~physical disabilities, developmental disabilities, mental illness, or~~
31 ~~mental impairment~~)) persons hiring them or to their legal guardians, if
32 any, for their determination of the character, suitability, and
33 competence of the applicants. If ((~~an individual~~)) the person elects
34 to hire or retain an individual provider after receiving notice from
35 the department that the applicant has a conviction for an offense that
36 would disqualify the applicant from ((~~employment with the department~~))
37 having unsupervised access to persons with physical, mental, or
38 developmental disabilities or mental illness, or to vulnerable adults
39 as defined in chapter 74.34 RCW, then the secretary shall deny payment

1 for any subsequent services rendered by the disqualified individual
2 provider.

3 ~~((4))~~ (6) Criminal justice agencies shall provide the secretary
4 such information as they may have and that the secretary may require
5 for such purpose.

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

8 (1) The department shall establish and maintain a state registry
9 containing names of, and other identifying information about,
10 individuals who have been found to have abandoned, abused, financially
11 exploited, or neglected vulnerable adults. The department shall remove
12 from the registry the name of any individual who: (a) Later is found
13 by the board of appeals under chapter 34.05 RCW, or a court of law not
14 to have abandoned, abused, financially exploited, or neglected
15 vulnerable adults; or (b) was erroneously placed upon the registry.
16 The department shall adopt rules that are necessary to implement the
17 registry. At a minimum, the rules shall address disclosure,
18 disposition, and notification of findings, appeal rights, fair hearing
19 requirements, and the opportunity for the individual who is the subject
20 of the investigation to provide information orally or in writing prior
21 to the preliminary determination.

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

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

28 If following an investigation into allegations that an individual
29 abandoned, abused, financially exploited, or neglected a vulnerable
30 adult, the department determines that a preponderance of evidence
31 exists to support the allegation, the department shall make a
32 preliminary determination of abandonment, abuse, financial
33 exploitation, or neglect. The department shall not make a finding of
34 neglect if the individual demonstrates that the neglect was caused by
35 factors beyond his or her control. The individual shall be notified of
36 the preliminary determination and shall be entitled to appeal the
37 finding in an adjudicative proceeding under chapter 34.05 RCW. If the

1 individual does not request an adjudicative proceeding within the time
2 allowed for appeal, or if the department's preliminary determination is
3 upheld following an adjudicative proceeding, the preliminary
4 determination shall be considered a finding and the department shall
5 place such finding on the state registry described in section 2 of this
6 act. This section does not apply to findings of abandonment, abuse,
7 financial exploitation, or neglect by an individual who is a vulnerable
8 adult and who has the functional, mental, or physical inability to care
9 for himself or herself or who has been found incapacitated under
10 chapter 11.88 RCW.

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

13 In the case of a single finding of neglect, at least one year after
14 an individual's name has been placed on the registry, the individual
15 may petition the department for removal of his or her name from the
16 registry, or the individual may petition the department to be allowed
17 to work in a licensed nursing home, boarding home, or adult family
18 home. The rules developed by the department shall describe how the
19 petition can be filed, and shall identify factors that the department
20 will consider before rendering a decision on the petition. If the
21 department acted in good faith and in accordance with established
22 procedures when it removed an individual's name from the registry, or
23 when it allowed an individual whose name is on the registry to work in
24 a nursing home, boarding home, or adult family home setting, it shall
25 be immune from liability for the future actions of the individual.

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

28 A preliminary determination of abandonment, abuse, financial
29 exploitation, or neglect shall be sustained in an adjudicative
30 proceeding if the presiding officer finds it is supported by a
31 preponderance of the evidence. The presiding officer's decision must
32 be rendered within one hundred twenty days of the date the individual's
33 hearing request was received by the office of administrative hearings.
34 However, if the presiding officer finds that extenuating circumstances
35 exist that will prevent the decision from being made within the one
36 hundred twenty-day time period, the presiding officer may extend the
37 deadline only as long as is reasonably necessary.

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

3 When the department learns that any in-state or out-of-state
4 agency, disciplining authority, or court has taken an action that would
5 prevent the individual from being employed in the care of and having
6 unsupervised access to vulnerable adults in accordance with RCW
7 74.39A.050(8), the department shall place identifying information about
8 the individual on the state registry.

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

11 The department shall disclose, upon request from any person,
12 findings of abuse, neglect, financial exploitation or abandonment, and
13 other information entered on the state registry except an individual's
14 social security number, home telephone number, and home address shall
15 not be disclosed.

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

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

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

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

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

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

35 (5) Monitoring should be outcome based and responsive to consumer
36 complaints and a clear set of health, quality of care, and safety

1 standards that are easily understandable and have been made available
2 to providers.

3 (6) Prompt and specific enforcement remedies shall also be
4 implemented without delay, pursuant to RCW 74.39A.080, RCW 70.128.160,
5 chapter 18.51 RCW, or chapter 74.42 RCW, for providers found to have
6 delivered care or failed to deliver care resulting in problems that are
7 serious, recurring, or uncorrected, or that create a hazard that is
8 causing or likely to cause death or serious harm to one or more
9 residents. These enforcement remedies may also include, when
10 appropriate, reasonable conditions on a contract or license. In the
11 selection of remedies, the safety, health, and well-being of residents
12 shall be of paramount importance.

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

22 (8) No provider or staff, or prospective provider or staff, with a
23 stipulated finding of fact, conclusion of law, an agreed order, or
24 finding of fact, conclusion of law, or final order issued by a
25 disciplining authority, a court of law, or entered into a state
26 registry finding him or her guilty of abuse, neglect, exploitation, or
27 abandonment of a minor or a vulnerable adult as defined in chapter
28 74.34 RCW shall be employed in the care of and have unsupervised access
29 to vulnerable adults except as permitted in section 4 of this act.

30 ~~(9) ((The department shall establish, by rule, a state registry
31 which contains identifying information about personal care aides
32 identified under this chapter who have substantiated findings of abuse,
33 neglect, financial exploitation, or abandonment of a vulnerable adult
34 as defined in RCW 74.34.020. The rule must include disclosure,
35 disposition of findings, notification, findings of fact, appeal rights,
36 and fair hearing requirements. The department shall disclose, upon
37 request, substantiated findings of abuse, neglect, financial
38 exploitation, or abandonment to any person so requesting this
39 information.~~

1 ~~(10)~~) The department shall by rule develop training requirements
2 for individual providers and home care agency providers. The
3 department shall deny payment to an individual provider or a home care
4 provider who does not complete the training requirement within the time
5 limit specified by the department by rule.

6 ~~((11))~~ (10) The department shall establish, by rule, training,
7 background checks, and other quality assurance requirements for
8 personal aides who provide in-home services funded by medicaid personal
9 care as described in RCW 74.09.520, community options program entry
10 system waiver services as described in RCW 74.39A.030, or chore
11 services as described in RCW 74.39A.110 that are equivalent to
12 requirements for individual providers.

13 ~~((12))~~ (11) Under existing funds the department shall establish
14 internally a quality improvement standards committee to monitor the
15 development of standards and to suggest modifications.

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

1 training programs. The department may develop a review process for
2 determining what previous experience and training may be used to waive
3 some or all of the mandatory training. The department of social and
4 health services and the nursing care quality assurance commission shall
5 work together to develop an implementation plan by December 12, 1998.

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

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

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

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

13 (c) All files, reports, records, communications, and working papers
14 used or developed in the investigation or provision of protective
15 services.

16 (2) Information considered confidential may be disclosed only for
17 a purpose consistent with this chapter or as authorized by chapter
18 18.20, 18.51, or 74.39A RCW, or as authorized by the long-term care
19 ombudsman programs under federal law or state law, chapter 43.190 RCW.

20 (3) A court or presiding officer in an administrative proceeding
21 may order disclosure of confidential information only if the court, or
22 presiding officer in an administrative proceeding, determines that
23 disclosure is essential to the administration of justice and will not
24 endanger the life or safety of the vulnerable adult or individual who
25 made the report. The court or presiding officer in an administrative
26 hearing may place restrictions on such disclosure as the court or
27 presiding officer deems proper.

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

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

34 (1) In carrying out case management responsibilities established
35 under RCW 74.39A.090 for consumers who are receiving services under the
36 medicaid personal care, community options programs entry system or
37 chore services program through an individual provider, each area agency

1 on aging shall provide adequate oversight of the care being provided to
2 consumers receiving services under this section. Such oversight shall
3 include, but is not limited to:

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

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

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

9 (d) Reassessment and reauthorization of services;

10 (e) Monitoring of individual provider performance; and

11 (f) Conducting criminal background checks or verifying that
12 criminal background checks have been conducted.

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

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

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

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

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

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

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

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

1 (h)(i) Except as provided in (h)(ii) of this subsection, a clear
2 statement indicating that a consumer receiving services under this
3 section has the right to waive any of the case management services
4 offered by the area agency on aging under this section, and a clear
5 indication of whether the consumer has, in fact, waived any of these
6 services.

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

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

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

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

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

24 (7) If the department or area agency on aging case manager finds
25 that an individual provider's inadequate performance or inability to
26 deliver quality care is jeopardizing the health, safety, or well-being
27 of a consumer receiving service under this section, the department or
28 the area agency on aging may take action to terminate the contract
29 between the department and the individual provider. If the department
30 or the area agency on aging has a reasonable, good faith belief that
31 the health, safety, or well-being of a consumer is in imminent
32 jeopardy, the department or area agency on aging may summarily suspend
33 the contract pending a fair hearing. The consumer may request a fair
34 hearing to contest the planned action of the case manager, as provided
35 in chapter 34.05 RCW. The department may by rule adopt guidelines for
36 implementing this subsection.

37 (8) The department or area agency on aging may reject a request by
38 ((an-[a])) a consumer receiving services under this section to have a
39 family member or other person serve as his or her individual provider

1 if the case manager has a reasonable, good faith belief that the family
2 member or other person will be unable to appropriately meet the care
3 needs of the consumer. The consumer may request a fair hearing to
4 contest the decision of the case manager, as provided in chapter 34.05
5 RCW. The department may by rule adopt guidelines for implementing this
6 subsection.

7 NEW SECTION. **Sec. 11.** STATE REGISTRY--TERMINATION. The state
8 registry established in section 2 of this act shall be terminated on
9 June 30, 2004, as provided in section 12 of this act.

10 NEW SECTION. **Sec. 12.** STATE REGISTRY--REPEAL. Section 2 of this
11 act, as now existing or hereafter amended, is repealed effective June
12 30, 2005.

13 NEW SECTION. **Sec. 13.** Captions used in this act are not any part
14 of the law.

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