

2 **2SHB 2637** - S COMM AMD (S4961.2) AMD BY #204
3 By Committee on Human Services & Corrections

4 ADOPTED AS AMENDED 3/1/00

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

7 "Sec. 1. RCW 43.43.832 and 1997 c 392 s 524 are each amended to
8 read as follows:

9 (1) The legislature finds that businesses and organizations
10 providing services to children, developmentally disabled persons, and
11 vulnerable adults need adequate information to determine which
12 employees or licensees to hire or engage. The legislature further
13 finds that many developmentally disabled individuals and vulnerable
14 adults desire to hire their own employees directly and also need
15 adequate information to determine which employees or licensees to hire
16 or engage. Therefore, the Washington state patrol criminal
17 identification system shall disclose, upon the request of a business or
18 organization as defined in RCW 43.43.830, a developmentally disabled
19 person, or a vulnerable adult as defined in RCW 43.43.830 or his or her
20 guardian, an applicant's record for convictions of offenses against
21 children or other persons, convictions for crimes relating to financial
22 exploitation, but only if the victim was a vulnerable adult,
23 adjudications of child abuse in a civil action, the issuance of a
24 protection order against the respondent under chapter 74.34 RCW, and
25 disciplinary board final decisions and any subsequent criminal charges
26 associated with the conduct that is the subject of the disciplinary
27 board final decision.

28 (2) The legislature also finds that the state board of education
29 may request of the Washington state patrol criminal identification
30 system information regarding a certificate applicant's record for
31 convictions under subsection (1) of this section.

32 (3) The legislature also finds that law enforcement agencies, the
33 office of the attorney general, prosecuting authorities, and the
34 department of social and health services may request this same
35 information to aid in the investigation and prosecution of child,

1 developmentally disabled person, and vulnerable adult abuse cases and
2 to protect children and adults from further incidents of abuse.

3 (4) The legislature further finds that the department of social and
4 health services must consider the information listed in subsection (1)
5 of this section in the following circumstances:

6 (a) When considering persons for state ~~((positions directly
7 responsible for the care, supervision, or treatment of children,
8 developmentally disabled persons, or vulnerable adults))~~ employment in
9 positions directly responsible for the supervision, care, or treatment
10 of children, vulnerable adults, or individuals with mental illness or
11 developmental disabilities;

12 (b) When considering persons for state positions involving
13 unsupervised access to vulnerable adults to conduct comprehensive
14 assessments, financial eligibility determinations, licensing and
15 certification activities, investigations, surveys, or case management;
16 or for state positions otherwise required by federal law to meet
17 employment standards;

18 (c) When licensing agencies or facilities with individuals in
19 positions directly responsible for the care, supervision, or treatment
20 of children, developmentally disabled persons, or vulnerable adults,
21 including but not limited to agencies or facilities licensed under
22 chapter 74.15 or 18.51 RCW;

23 ~~((e))~~ (d) When contracting with individuals or businesses or
24 organizations for the care, supervision, case management, or treatment
25 of children, developmentally disabled persons, or vulnerable adults,
26 including but not limited to services contracted for under chapter
27 18.20, 18.48, 70.127, 70.128, 72.36, or 74.39A RCW or Title 71A RCW;

28 (e) When individual providers are paid by the state or providers
29 are paid by home care agencies to provide in-home services involving
30 unsupervised access to persons with physical, mental, or developmental
31 disabilities or mental illness, or to vulnerable adults as defined in
32 chapter 74.34 RCW, including but not limited to services provided under
33 chapter 74.39 or 74.39A RCW.

34 (5) Whenever a state conviction record check is required by state
35 law, persons may be employed or engaged as volunteers or independent
36 contractors on a conditional basis pending completion of the state
37 background investigation. Whenever a national criminal record check
38 through the federal bureau of investigation is required by state law,
39 a person may be employed or engaged as a volunteer or independent

1 contractor on a conditional basis pending completion of the national
2 check. The Washington personnel resources board shall adopt rules to
3 accomplish the purposes of this subsection as it applies to state
4 employees.

5 (6)(a) For purposes of facilitating timely access to criminal
6 background information and to reasonably minimize the number of
7 requests made under this section, recognizing that certain health care
8 providers change employment frequently, health care facilities may,
9 upon request from another health care facility, share copies of
10 completed criminal background inquiry information.

11 (b) Completed criminal background inquiry information may be shared
12 by a willing health care facility only if the following conditions are
13 satisfied: The licensed health care facility sharing the criminal
14 background inquiry information is reasonably known to be the person's
15 most recent employer, no more than twelve months has elapsed from the
16 date the person was last employed at a licensed health care facility to
17 the date of their current employment application, and the criminal
18 background information is no more than two years old.

19 (c) If criminal background inquiry information is shared, the
20 health care facility employing the subject of the inquiry must require
21 the applicant to sign a disclosure statement indicating that there has
22 been no conviction or finding as described in RCW 43.43.842 since the
23 completion date of the most recent criminal background inquiry.

24 (d) Any health care facility that knows or has reason to believe
25 that an applicant has or may have a disqualifying conviction or finding
26 as described in RCW 43.43.842, subsequent to the completion date of
27 their most recent criminal background inquiry, shall be prohibited from
28 relying on the applicant's previous employer's criminal background
29 inquiry information. A new criminal background inquiry shall be
30 requested pursuant to RCW 43.43.830 through 43.43.842.

31 (e) Health care facilities that share criminal background inquiry
32 information shall be immune from any claim of defamation, invasion of
33 privacy, negligence, or any other claim in connection with any
34 dissemination of this information in accordance with this subsection.

35 (f) Health care facilities shall transmit and receive the criminal
36 background inquiry information in a manner that reasonably protects the
37 subject's rights to privacy and confidentiality.

38 (g) For the purposes of this subsection, "health care facility"
39 means a nursing home licensed under chapter 18.51 RCW, a boarding home

1 licensed under chapter 18.20 RCW, or an adult family home licensed
2 under chapter 70.128 RCW.

3 (7) If a federal bureau of investigation check is required in
4 addition to the state background check by the department of social and
5 health services, an applicant who is not disqualified based on the
6 results of the state background check shall be eligible for a one
7 hundred twenty day provisional approval to hire, pending the outcome of
8 the federal bureau of investigation check. The department may extend
9 the provisional approval until receipt of the federal bureau of
10 investigation check. If the federal bureau of investigation check
11 disqualifies an applicant, the department shall notify the requestor
12 that the provisional approval to hire is withdrawn and the applicant
13 may be terminated.

14 **Sec. 2.** RCW 43.20A.710 and 1999 c 336 s 7 are each amended to read
15 as follows:

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

18 (a) Persons being considered for state employment in positions
19 directly responsible for the supervision, care, or treatment of
20 children, vulnerable adults, or individuals with mental illness or
21 developmental disabilities; ~~((and))~~

22 (b) Persons being considered for state employment in positions
23 involving unsupervised access to vulnerable adults to conduct
24 comprehensive assessments, financial eligibility determinations,
25 licensing and certification activities, investigations, surveys, or
26 case management; or for state positions otherwise required by federal
27 law to meet employment standards;

28 (c) Individual providers who are paid by the state ~~((for))~~ and
29 providers who are paid by home care agencies to provide in-home
30 services ~~((and hired by individuals))~~ involving unsupervised access to
31 persons with physical ~~((disabilities))~~, mental, or developmental
32 disabilities ~~((or))~~ or mental illness, or ~~((mental impairment))~~ to
33 vulnerable adults as defined in chapter 74.34 RCW, including but not
34 limited to services provided under chapter 74.39 or 74.39A RCW; and

35 (d) Individuals or businesses or organizations for the care,
36 supervision, case management, or treatment of children, developmentally
37 disabled persons, or vulnerable adults, including but not limited to

1 services contracted for under chapter 18.20, 18.48, 70.127, 70.128,
2 72.36, or 74.39A RCW or Title 71A 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 **Sec. 3.** RCW 74.39A.050 and 1999 c 336 s 5 are each amended to read
7 as follows:

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

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

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

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

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

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

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

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

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

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

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

33 ~~((11))~~ (10) The department shall establish, by rule, training,
34 background checks, and other quality assurance requirements for
35 personal aides who provide in-home services funded by medicaid personal
36 care as described in RCW 74.09.520, community options program entry
37 system waiver services as described in RCW 74.39A.030, or chore
38 services as described in RCW 74.39A.110 that are equivalent to
39 requirements for individual providers.

1 (~~(12)~~) (11) Under existing funds the department shall establish
2 internally a quality improvement standards committee to monitor the
3 development of standards and to suggest modifications.

4 (~~(13)~~) (12) Within existing funds, the department shall design,
5 develop, and implement a long-term care training program that is
6 flexible, relevant, and qualifies towards the requirements for a
7 nursing assistant certificate as established under chapter 18.88A RCW.
8 This subsection does not require completion of the nursing assistant
9 certificate training program by providers or their staff. The long-
10 term care teaching curriculum must consist of a fundamental module, or
11 modules, and a range of other available relevant training modules that
12 provide the caregiver with appropriate options that assist in meeting
13 the resident's care needs. Some of the training modules may include,
14 but are not limited to, specific training on the special care needs of
15 persons with developmental disabilities, dementia, mental illness, and
16 the care needs of the elderly. No less than one training module must
17 be dedicated to workplace violence prevention. The nursing care
18 quality assurance commission shall work together with the department to
19 develop the curriculum modules. The nursing care quality assurance
20 commission shall direct the nursing assistant training programs to
21 accept some or all of the skills and competencies from the curriculum
22 modules towards meeting the requirements for a nursing assistant
23 certificate as defined in chapter 18.88A RCW. A process may be
24 developed to test persons completing modules from a caregiver's class
25 to verify that they have the transferable skills and competencies for
26 entry into a nursing assistant training program. The department may
27 review whether facilities can develop their own related long-term care
28 training programs. The department may develop a review process for
29 determining what previous experience and training may be used to waive
30 some or all of the mandatory training. The department of social and
31 health services and the nursing care quality assurance commission shall
32 work together to develop an implementation plan by December 12, 1998.

33 **Sec. 4.** RCW 74.34.095 and 1999 c 176 s 17 are each amended to read
34 as follows:

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

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

1 (b) The identity of the person making the report; and
2 (c) All files, reports, records, communications, and working papers
3 used or developed in the investigation or provision of protective
4 services.

5 (2) Information considered confidential may be disclosed only for
6 a purpose consistent with this chapter or as authorized by chapter
7 18.20, 18.51, or 74.39A RCW, or as authorized by the long-term care
8 ombudsman programs under federal law or state law, chapter 43.190 RCW.

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

17 **Sec. 5.** RCW 74.39A.095 and 1999 c 175 s 3 are each amended to read
18 as follows:

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

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

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

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

31 (d) Reassessment and reauthorization of services;

32 (e) Monitoring of individual provider performance; and

33 (f) Conducting criminal background checks or verifying that
34 criminal background checks have been conducted.

35 (2) The area agency on aging case manager shall work with each
36 consumer to develop a plan of care under this section that identifies
37 and ensures coordination of health and long-term care services that
38 meet the consumer's needs. In developing the plan, they shall utilize,

1 and modify as needed, any comprehensive community service plan
2 developed by the department as provided in RCW 74.39A.040. The plan of
3 care shall include, at a minimum:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 **2SHB 2637** - S COMM AMD

31 By Committee on Human Services & Corrections

32 ADOPTED 3/1/00

33 On page 1, line 2 of the title, after "adults;" strike the
34 remainder of the title and insert "amending RCW 43.43.832, 43.20A.710,
35 74.39A.050, 74.34.095, and 74.39A.095."

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