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**SUBSTITUTE SENATE BILL 5399**

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**State of Washington**

**57th Legislature**

**2001 Regular Session**

**By** Senate Committee on Health & Long-Term Care (originally sponsored by Senators Thibaudeau, Fairley, Franklin, Kohl-Welles, Costa, McAuliffe and Rasmussen; by request of Governor Locke)

Read first time 02/15/2001. Referred to Committee on .

1 AN ACT Relating to history of caregiver performance in long-term  
2 care services; amending RCW 74.39A.050; adding new sections to chapter  
3 74.34 RCW; and adding a new section to chapter 74.39A RCW.

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

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

7 (1) In addition to any registry maintained by the department to  
8 satisfy participation requirements of federally funded programs, the  
9 department shall establish and maintain a state caregiver registry  
10 containing names of, and other identifying information about,  
11 individuals who have been found to have abandoned, abused, financially  
12 exploited, or neglected vulnerable adults. The department shall remove  
13 the name of any individual from the caregiver registry who: (a) Later  
14 is found by the office of appeals under chapter 34.05 RCW, or a court  
15 of law not to have abandoned, abused, financially exploited, or  
16 neglected vulnerable adults; or (b) was erroneously placed upon the  
17 registry.

18 (2) The department shall adopt rules that are necessary to  
19 implement the caregiver registry. At a minimum, the rules shall

1 address: (a) Disclosure; (b) disposition; (c) notification of  
2 findings, appeal rights, and fair hearing requirements; (d) the  
3 opportunity for the individual who is the subject of the investigation  
4 to provide information orally or in writing prior to the preliminary  
5 determination; and (e) requirements for employers to check the  
6 caregiver registry.

7 (3) When a nursing home, boarding home, adult family home, or in-  
8 home services agency under chapter 70.127 RCW or services authorized  
9 under RCW 71A.12.040(10) and 74.09.520, reasonably relies on  
10 information obtained from the caregiver registry, the employer shall be  
11 immune from liability for an employment decision based exclusively upon  
12 information obtained directly from the registry.

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

15 (1) If following an investigation into allegations that an  
16 individual abandoned, abused, financially exploited, or neglected a  
17 vulnerable adult, the department determines that a preponderance of  
18 evidence exists to support the allegation, the department shall make a  
19 preliminary determination of abandonment, abuse, financial  
20 exploitation, or neglect. Prior to making a preliminary determination,  
21 the department must make reasonable efforts to notify the individual of  
22 the investigation and of the opportunity to provide information orally  
23 or in writing, regarding the allegations under investigation. The  
24 department shall not make a preliminary determination of neglect if the  
25 individual demonstrates that the neglect was caused by factors beyond  
26 his or her control. If the nursing care quality assurance commission  
27 and the department of health have completed a full investigation and  
28 have taken no action against a nurse licensed under chapter 18.79 RCW,  
29 the department shall not initiate an investigation into the same  
30 allegation of abuse, neglect, or financial exploitation in an in-home  
31 setting or in a facility operated by an entity licensed under chapter  
32 70.127, 18.51, 70.128, or 18.20 RCW that may result in an individual's  
33 name being placed on the caregiver registry. The individual shall be  
34 notified of the preliminary determination and shall be entitled to  
35 appeal the preliminary finding in an adjudicative proceeding under  
36 chapter 34.05 RCW. If the individual does not request an adjudicative  
37 proceeding within the time allowed for appeal, or if a presiding  
38 officer issues an initial order upholding the department's

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

9 (2) Nothing in this section shall be construed as prohibiting the  
10 department from activities that are authorized under chapter 18.20,  
11 18.51, or 70.128 RCW, this chapter, or Titles XVIII and XIX of the  
12 federal social security act.

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

15 In the case of a single finding of neglect, and at least one year  
16 after the individual's name has been placed on the caregiver registry,  
17 the individual may petition the department for removal of his or her  
18 name from the caregiver registry, or the individual may petition the  
19 department to be allowed to work in a licensed nursing home, boarding  
20 home, or adult family home unless the individual has been convicted of  
21 a crime that disqualifies him or her from working in such a facility.  
22 The rules developed by the department shall describe how the petition  
23 can be filed, and shall identify criteria that the department will  
24 apply when making a decision on the petition.

25 Any individual whose name has been on the caregiver registry for  
26 ten consecutive years may petition for the removal of his or her name  
27 from the caregiver registry for any reason. In determining whether to  
28 remove the individual's name from the caregiver registry, the  
29 department shall consider the following information if reasonably  
30 available: (1) The nature of the conduct that caused the person's name  
31 to be placed on the caregiver registry; (2) the severity of harm in the  
32 original investigated incident; (3) the conduct of the individual since  
33 the individual's name was placed on the caregiver registry, including  
34 any treatment received, criminal convictions, and employment history;  
35 (4) any disqualifying criminal convictions; and (5) such other  
36 information as the department determines to be relevant.

37 If the department determines the individual's name can be removed  
38 from the caregiver registry, the department shall immediately remove

1 the individual's name. The department's decision to grant an  
2 individual's petition for removal of findings applies only to the  
3 caregiver registry and does not apply to any registry that is  
4 maintained by the department in order to ensure receipt of federal  
5 funds.

6 The department shall maintain records related to the petition for  
7 removal in accordance with state government records retention  
8 requirements, however, such records may not be disclosed, except to the  
9 individual who filed the petition, or under the order of a Washington  
10 state superior court. Any disclosure of records made under this  
11 section is subject to privacy, safety, and confidentiality protections  
12 provided in laws related to vulnerable adults and public records.

13 If the department acted in good faith and in accordance with  
14 established procedures when it removed an individual's name from the  
15 caregiver registry, or when it allowed an individual whose name is on  
16 the caregiver registry to work in a nursing home, boarding home, or  
17 adult family home setting, it shall be immune from liability for the  
18 future actions of the individual.

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

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

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

34 When the department learns that any in-state or out-of-state  
35 program or agency, disciplining authority, or court has taken an action  
36 that would prevent the individual from being employed in the care of  
37 and having unsupervised access to vulnerable adults in accordance with

1 RCW 74.39A.050(8), the department shall place the individual's name and  
2 other identifying information about the individual on the caregiver  
3 registry and if appropriate, on any other registry that is maintained  
4 by the department in order to ensure receipt of federal funds.

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

7 Subject to the following conditions, the department shall disclose  
8 caregiver registry findings of abuse, neglect, abandonment, and  
9 financial exploitation to: (1) Any employer providing home and  
10 community services as defined in chapter 74.39A RCW, including entities  
11 licensed under chapters 18.51, 18.20, 70.127, and 70.128 RCW; (2) any  
12 employer of a program authorized under RCW 71A.12.040(10); (3) any  
13 person who is employing, staffing, licensing, or contracting for the  
14 provision of long-term care or protective services to a vulnerable  
15 adult; and (4) the long-term care ombudsman. The person requesting  
16 such information must provide the department with the individual's  
17 correct legal name, social security number, gender, and date of birth.  
18 The department may request additional information necessary to ensure  
19 the accurate identification of the individual on the caregiver  
20 registry. The department shall not release an individual's home  
21 address, social security number, or home telephone number.

22 Nothing in this act is to be construed to prevent anyone from  
23 obtaining any information about themselves that is in the possession of  
24 the department. The department may withhold information regarding  
25 other persons as provided by law or when release of such information  
26 could reasonably result in a violation or threat to any person's  
27 privacy, health, or safety and such information is known by the  
28 department.

29 The person requesting caregiver registry findings shall use this  
30 information only for making decisions regarding employment, staffing,  
31 contracting, or licensing, or the provision of care or services to  
32 vulnerable adults or services authorized under RCW 74.09.520 and  
33 71A.12.040(10). Further dissemination or use of the findings is  
34 prohibited.

35 NEW SECTION. **Sec. 7.** A new section is added to chapter 74.39A RCW  
36 to read as follows:

1 An employer providing home and community services, including  
2 facilities licensed under chapters 18.51, 18.20, and 70.128 RCW, an  
3 employer of a program authorized under RCW 71A.12.040(10), or an in-  
4 home services agency employer licensed under chapter 70.127 RCW, who  
5 discloses information about a former or current employee to a  
6 prospective home and community services employer, nursing home  
7 employer, or home health, hospice, or home care agency employer, is  
8 presumed to be acting in good faith and is immune from civil and  
9 criminal liability for such disclosure or its consequences if the  
10 disclosed information relates to: (1) The employee's ability to  
11 perform his or her job; (2) the diligence, skill, or reliability with  
12 which the employee carried out the duties of his or her job; or (3) any  
13 illegal or wrongful act committed by the employee when related to his  
14 or her ability to care for a vulnerable adult. For purposes of this  
15 section, the presumption of good faith may only be rebutted upon a  
16 showing by clear and convincing evidence that the information disclosed  
17 by the employer was knowingly false or made with reckless disregard for  
18 the truth of the information disclosed. Should the employee  
19 successfully rebut the presumption of good faith standard in a court of  
20 competent jurisdiction, and therefore be the prevailing party, the  
21 prevailing party shall be entitled to recover reasonable attorneys'  
22 fees against the employer. Nothing in this section shall affect or  
23 limit any other state, federal, or constitutional right otherwise  
24 available.

25 **Sec. 8.** RCW 74.39A.050 and 2000 c 121 s 10 are each amended to  
26 read as follows:

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

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

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

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

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

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

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

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

29 (8) No provider or staff, or prospective provider or staff, with a  
30 stipulated finding of fact, conclusion of law, an agreed order, or  
31 finding of fact, conclusion of law, or final order issued by a  
32 disciplining authority, a court of law, or entered into a state  
33 registry (~~(finding him or her guilty)~~) with a finding of abuse,  
34 neglect, financial exploitation, or abandonment of a minor or a  
35 vulnerable adult as defined in chapter 74.34 RCW shall be employed in  
36 the care of and have unsupervised access to vulnerable adults except as  
37 provided in section 3 of this act.

38 (9) (~~The department shall establish, by rule, a state registry~~  
39 ~~which contains identifying information about personal care aides~~

1 identified under this chapter who have substantiated findings of abuse,  
2 neglect, financial exploitation, or abandonment of a vulnerable adult  
3 as defined in RCW 74.34.020. The rule must include disclosure,  
4 disposition of findings, notification, findings of fact, appeal rights,  
5 and fair hearing requirements. The department shall disclose, upon  
6 request, substantiated findings of abuse, neglect, financial  
7 exploitation, or abandonment to any person so requesting this  
8 information.

9       (~~10~~)) The department shall by rule develop training requirements  
10 for individual providers and home care agency providers. Effective  
11 March 1, 2002, individual providers and home care agency providers must  
12 satisfactorily complete department-approved orientation, basic  
13 training, and continuing education within the time period specified by  
14 the department in rule. The department shall adopt rules by March 1,  
15 2002, for the implementation of this section based on the  
16 recommendations of the community long-term care training and education  
17 steering committee established in RCW 74.39A.190. The department shall  
18 deny payment to an individual provider or a home care provider who does  
19 not complete the training requirements within the time limit specified  
20 by the department by rule.

21       (~~(11)~~) (10) In an effort to improve access to training and  
22 education and reduce costs, especially for rural communities, the  
23 coordinated system of long-term care training and education must  
24 include the use of innovative types of learning strategies such as  
25 internet resources, videotapes, and distance learning using satellite  
26 technology coordinated through community colleges or other entities, as  
27 defined by the department.

28       (~~(12)~~) (11) The department shall create an approval system by  
29 March 1, 2002, for those seeking to conduct department-approved  
30 training. In the rule-making process, the department shall adopt rules  
31 based on the recommendations of the community long-term care training  
32 and education steering committee established in RCW 74.39A.190.

33       (~~(13)~~) (12) 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       (~~(14)~~) (13) 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       (~~(15)~~) (14) 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.

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