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SENATE BILL 6401

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State of Washington

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By Senators Kohl-Welles, Costa, Hargrove, Winsley, Rasmussen and McAuliffe; by request of Governor Locke

Read first time 01/14/2000. Referred to Committee on Health & Long-Term Care.

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

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

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

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

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

13 (b) Individual providers who are paid by the state (~~for~~) and  
14 providers who are paid by home care agencies to provide in-home  
15 services (~~and hired by individuals~~) involving unsupervised access to  
16 persons with physical (~~disabilities~~), mental, or developmental  
17 disabilities(~~(7)~~) or mental illness, or (~~mental impairment~~) to  
18 vulnerable adults as defined in chapter 74.34 RCW, including but not  
19 limited to services provided under chapter 74.39 or 74.39A RCW.

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

5 (3) An individual provider or home care agency provider who has  
6 resided in the state less than three years before applying for  
7 employment involving unsupervised access to a vulnerable adult as  
8 defined in chapter 74.34 RCW must be fingerprinted for the purpose of  
9 investigating conviction records both through the Washington state  
10 patrol and the federal bureau of investigation. This subsection  
11 applies only with respect to the provision of in-home services funded  
12 by medicaid personal care under RCW 74.09.520, community options  
13 program entry system waiver services under RCW 74.39A.030, or chore  
14 services under RCW 74.39A.110. However, this subsection does not  
15 supersede RCW 74.15.020(2)(b).

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

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

1       (~~(4)~~) (6) Criminal justice agencies shall provide the secretary  
2 such information as they may have and that the secretary may require  
3 for such purpose.

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

6       The department shall establish and maintain a state registry  
7 containing names of, and other identifying information about,  
8 individuals who have been found to have abandoned, abused, financially  
9 exploited, or neglected vulnerable adults. The department shall adopt  
10 rules that are necessary to implement the registry. At a minimum, the  
11 rules shall specify the notice and appeal rights that will be available  
12 to the individuals.

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

15       If following an investigation into allegations that an individual  
16 abandoned, abused, financially exploited, or neglected a vulnerable  
17 adult, the department determines that sufficient evidence exists to  
18 support the allegation, the department shall make a finding of  
19 abandonment, abuse, financial exploitation, or neglect. The individual  
20 shall be notified of the finding and shall be entitled to appeal the  
21 finding in an adjudicative proceeding. If the individual does not  
22 request an adjudicative proceeding within the time allowed for appeal,  
23 or if the department's finding is upheld following an adjudicative  
24 proceeding, the department shall place such findings on the state  
25 registry described in section 2 of this act. This section does not  
26 apply to findings of abandonment, abuse, financial exploitation, or  
27 neglect by an individual who is a vulnerable adult and who has the  
28 functional, mental, or physical inability to care for himself or  
29 herself or who has been found incapacitated under chapter 11.88 RCW.

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

32       A finding of abandonment, abuse, financial exploitation, or neglect  
33 shall be sustained in an adjudicative proceeding if the presiding  
34 officer finds it is supported by a preponderance of the evidence.

1        NEW SECTION.    **Sec. 5.**    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        **Sec. 6.**    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) In long-term care services and/or facilities, no provider or  
14 staff, or prospective provider or staff, with a stipulated finding of  
15 fact, conclusion of law, an agreed order, or finding of fact,  
16 conclusion of law, or final order issued by a disciplining authority,  
17 a court of law, or entered into a state registry finding him or her  
18 guilty of abuse, neglect, exploitation, or abandonment of a minor or a  
19 vulnerable adult as defined in chapter 74.34 RCW shall be employed in  
20 the care of and have unsupervised access to vulnerable adults.

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. 7.** 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.

23 **Sec. 8.** RCW 74.39A.095 and 1999 c 175 s 3 are each amended to read  
24 as follows:

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

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

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

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

37 (d) Reassessment and reauthorization of services;

38 (e) Monitoring of individual provider performance; and

1 (f) Conducting criminal background checks or verifying that  
2 criminal background checks have been conducted.

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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