

CERTIFICATION OF ENROLLMENT
SECOND SUBSTITUTE HOUSE BILL 2637

Chapter 87, Laws of 2000

(partial veto)

56th Legislature
2000 Regular Session

VULNERABLE ADULT CAREGIVERS--BACKGROUND CHECKS

EFFECTIVE DATE: 6/8/00

Passed by the House March 8, 2000
Yeas 98 Nays 0

CLYDE BALLARD
Speaker of the House of Representatives

FRANK CHOPP
Speaker of the House of Representatives

Passed by the Senate March 1, 2000
Yeas 43 Nays 0

BRAD OWEN
President of the Senate

Approved March 24, 2000, with the
exception of section 3, which is
vetoed.

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

We, Timothy A. Martin and Cynthia Zehnder, Co-Chief Clerks of the House of Representatives of the State of Washington, do hereby certify that the attached is **SECOND SUBSTITUTE HOUSE BILL 2637** as passed by the House of Representatives and the Senate on the dates hereon set forth.

CYNTHIA ZEHNDER
Chief Clerk

TIMOTHY A. MARTIN
Chief Clerk

FILED

March 24, 2000 - 2:38 p.m.

**Secretary of State
State of Washington**

SECOND SUBSTITUTE HOUSE BILL 2637

AS AMENDED BY THE SENATE

Passed Legislature - 2000 Regular Session

State of Washington 56th Legislature 2000 Regular Session

By House Committee on Appropriations (originally sponsored by Representatives Tokuda, Conway, Cody, Schual-Berke, McIntire, Campbell, Rockefeller, Kenney, Haigh, O'Brien, Kagi, Hurst, Anderson and Van Luven; by request of Department of Social and Health Services)

Read first time 02/07/2000. Referred to Committee on .

1 AN ACT Relating to background checks on persons in contact with
2 vulnerable adults; and amending RCW 43.43.832, 43.20A.710, 74.39A.050,
3 74.34.095, and 74.39A.095.

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

5 **Sec. 1.** RCW 43.43.832 and 1997 c 392 s 524 are each amended to
6 read as follows:

7 (1) The legislature finds that businesses and organizations
8 providing services to children, developmentally disabled persons, and
9 vulnerable adults need adequate information to determine which
10 employees or licensees to hire or engage. The legislature further
11 finds that many developmentally disabled individuals and vulnerable
12 adults desire to hire their own employees directly and also need
13 adequate information to determine which employees or licensees to hire
14 or engage. Therefore, the Washington state patrol criminal
15 identification system shall disclose, upon the request of a business or
16 organization as defined in RCW 43.43.830, a developmentally disabled
17 person, or a vulnerable adult as defined in RCW 43.43.830 or his or her
18 guardian, an applicant's record for convictions of offenses against
19 children or other persons, convictions for crimes relating to financial

1 exploitation, but only if the victim was a vulnerable adult,
2 adjudications of child abuse in a civil action, the issuance of a
3 protection order against the respondent under chapter 74.34 RCW, and
4 disciplinary board final decisions and any subsequent criminal charges
5 associated with the conduct that is the subject of the disciplinary
6 board final decision.

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

11 (3) The legislature also finds that law enforcement agencies, the
12 office of the attorney general, prosecuting authorities, and the
13 department of social and health services may request this same
14 information to aid in the investigation and prosecution of child,
15 developmentally disabled person, and vulnerable adult abuse cases and
16 to protect children and adults from further incidents of abuse.

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

20 (a) When considering persons for state (~~positions directly~~
21 ~~responsible for the care, supervision, or treatment of children,~~
22 ~~developmentally disabled persons, or vulnerable adults~~) employment in
23 positions directly responsible for the supervision, care, or treatment
24 of children, vulnerable adults, or individuals with mental illness or
25 developmental disabilities;

26 (b) When considering persons for state positions involving
27 unsupervised access to vulnerable adults to conduct comprehensive
28 assessments, financial eligibility determinations, licensing and
29 certification activities, investigations, surveys, or case management;
30 or for state positions otherwise required by federal law to meet
31 employment standards;

32 (c) When licensing agencies or facilities with individuals in
33 positions directly responsible for the care, supervision, or treatment
34 of children, developmentally disabled persons, or vulnerable adults,
35 including but not limited to agencies or facilities licensed under
36 chapter 74.15 or 18.51 RCW;

37 (~~(e)~~) (d) When contracting with individuals or businesses or
38 organizations for the care, supervision, case management, or treatment
39 of children, developmentally disabled persons, or vulnerable adults,

1 including but not limited to services contracted for under chapter
2 18.20, 18.48, 70.127, 70.128, 72.36, or 74.39A RCW or Title 71A RCW;

3 (e) When individual providers are paid by the state or providers
4 are paid by home care agencies to provide in-home services involving
5 unsupervised access to persons with physical, mental, or developmental
6 disabilities or mental illness, or to vulnerable adults as defined in
7 chapter 74.34 RCW, including but not limited to services provided under
8 chapter 74.39 or 74.39A RCW.

9 (5) 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 pending completion of the state
12 background investigation. Whenever a national criminal record check
13 through the federal bureau of investigation is required by state law,
14 a person may be employed or engaged as a volunteer or independent
15 contractor on a conditional basis pending completion of the national
16 check. The Washington personnel resources board shall adopt rules to
17 accomplish the purposes of this subsection as it applies to state
18 employees.

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

25 (b) Completed criminal background inquiry information may be shared
26 by a willing health care facility only if the following conditions are
27 satisfied: The licensed health care facility sharing the criminal
28 background inquiry information is reasonably known to be the person's
29 most recent employer, no more than twelve months has elapsed from the
30 date the person was last employed at a licensed health care facility to
31 the date of their current employment application, and the criminal
32 background information is no more than two years old.

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

38 (d) Any health care facility that knows or has reason to believe
39 that an applicant has or may have a disqualifying conviction or finding

1 as described in RCW 43.43.842, subsequent to the completion date of
2 their most recent criminal background inquiry, shall be prohibited from
3 relying on the applicant's previous employer's criminal background
4 inquiry information. A new criminal background inquiry shall be
5 requested pursuant to RCW 43.43.830 through 43.43.842.

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

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

13 (g) For the purposes of this subsection, "health care facility"
14 means a nursing home licensed under chapter 18.51 RCW, a boarding home
15 licensed under chapter 18.20 RCW, or an adult family home licensed
16 under chapter 70.128 RCW.

17 (7) If a federal bureau of investigation check is required in
18 addition to the state background check by the department of social and
19 health services, an applicant who is not disqualified based on the
20 results of the state background check shall be eligible for a one
21 hundred twenty day provisional approval to hire, pending the outcome of
22 the federal bureau of investigation check. The department may extend
23 the provisional approval until receipt of the federal bureau of
24 investigation check. If the federal bureau of investigation check
25 disqualifies an applicant, the department shall notify the requestor
26 that the provisional approval to hire is withdrawn and the applicant
27 may be terminated.

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

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

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

36 (b) Persons being considered for state employment in positions
37 involving unsupervised access to vulnerable adults to conduct
38 comprehensive assessments, financial eligibility determinations,

1 licensing and certification activities, investigations, surveys, or
2 case management; or for state positions otherwise required by federal
3 law to meet employment standards;

4 (c) Individual providers who are paid by the state (~~for~~) and
5 providers who are paid by home care agencies to provide in-home
6 services (~~and hired by individuals~~) involving unsupervised access to
7 persons with physical (~~disabilities~~), mental, or developmental
8 disabilities(~~7~~) or mental illness, or (~~mental impairment~~) to
9 vulnerable adults as defined in chapter 74.34 RCW, including but not
10 limited to services provided under chapter 74.39 or 74.39A RCW; and

11 (d) Individuals or businesses or organizations for the care,
12 supervision, case management, or treatment of children, developmentally
13 disabled persons, or vulnerable adults, including but not limited to
14 services contracted for under chapter 18.20, 18.48, 70.127, 70.128,
15 72.36, or 74.39A RCW or Title 71A RCW.

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

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

31 (4) An individual provider or home care agency provider hired to
32 provide in-home care for and having unsupervised access to a vulnerable
33 adult as defined in chapter 74.34 RCW must have no conviction for a
34 disqualifying crime under RCW 43.43.830 and 43.43.842. An individual
35 or home care agency provider must also have no conviction for a crime
36 relating to drugs as defined in RCW 43.43.830. This subsection applies
37 only with respect to the provision of in-home services funded by
38 medicaid personal care under RCW 74.09.520, community options program

1 entry system waiver services under RCW 74.39A.030, or chore services
2 under RCW 74.39A.110.

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

17 ((+4)) (6) Criminal justice agencies shall provide the secretary
18 such information as they may have and that the secretary may require
19 for such purpose.

20 **Sec. 3. RCW 74.39A.050 and 1999 c 336 s 5 are each amended to*
21 *read as follows:*

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

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

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

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

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

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

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

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

24 (8) No provider or staff, or prospective provider or staff, with a
25 stipulated finding of fact, conclusion of law, an agreed order, or
26 finding of fact, conclusion of law, or final order issued by a
27 disciplining authority, a court of law, or entered into a state
28 registry finding him or her guilty of abuse, neglect, exploitation, or
29 abandonment of a minor or a vulnerable adult as defined in chapter
30 74.34 RCW shall be employed in the care of and have unsupervised access
31 to vulnerable adults.

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

1 exploitation, or abandonment to any person so requesting this
2 information.

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

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

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

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

1 *entry into a nursing assistant training program. The department may*
2 *review whether facilities can develop their own related long-term care*
3 *training programs. The department may develop a review process for*
4 *determining what previous experience and training may be used to waive*
5 *some or all of the mandatory training. The department of social and*
6 *health services and the nursing care quality assurance commission shall*
7 *work together to develop an implementation plan by December 12, 1998.*
8 *Sec. 3 was vetoed. See message at end of chapter.

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

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

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

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

16 (c) All files, reports, records, communications, and working papers
17 used or developed in the investigation or provision of protective
18 services.

19 (2) Information considered confidential may be disclosed only for
20 a purpose consistent with this chapter or as authorized by chapter
21 18.20, 18.51, or 74.39A RCW, or as authorized by the long-term care
22 ombudsman programs under federal law or state law, chapter 43.190 RCW.

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

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

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

1 consumers receiving services under this section. Such oversight shall
2 include, but is not limited to:

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

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

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

8 (d) Reassessment and reauthorization of services;

9 (e) Monitoring of individual provider performance; and

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

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

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

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

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

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

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

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

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

38 (h)(i) Except as provided in (h)(ii) of this subsection, a clear
39 statement indicating that a consumer receiving services under this

1 section has the right to waive any of the case management services
2 offered by the area agency on aging under this section, and a clear
3 indication of whether the consumer has, in fact, waived any of these
4 services.

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

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

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

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

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

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

35 (8) The department or area agency on aging may reject a request by
36 (~~an [a]~~) a consumer receiving services under this section to have a
37 family member or other person serve as his or her individual provider
38 if the case manager has a reasonable, good faith belief that the family
39 member or other person will be unable to appropriately meet the care

1 needs of the consumer. The consumer may request a fair hearing to
2 contest the decision of the case manager, as provided in chapter 34.05
3 RCW. The department may by rule adopt guidelines for implementing this
4 subsection.

Passed the House March 8, 2000.

Passed the Senate March 1, 2000.

Approved by the Governor March 24, 2000, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State March 24, 2000.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to section 3,
3 Second Substitute House Bill No. 2637 entitled:

4 "AN ACT Relating to background checks on persons in contact with
5 vulnerable adults;"

6 This bill expands the requirements for criminal background checks
7 for people who provide care or have unsupervised access to vulnerable
8 adults. This bill gives the Department of Social and Health Services
9 some additional tools to ensure the safety of some of our most
10 vulnerable citizens.

11 Section 3 would have eliminated a current requirement that DSHS
12 maintain a registry of personal care aides against whom there have been
13 substantiated findings of abuse, neglect, financial exploitation, or
14 abandonment of a vulnerable adult. This registry was established only
15 last year, and its elimination would be a step backwards in assuring
16 quality care and safety for people with disabilities.

17 For these reasons, I have vetoed section 3 of Second Substitute
18 House Bill No. 2637.

19 With the exception of section 3, Second Substitute House Bill No.
20 2637 is approved."