

HOUSE BILL REPORT

SSB 6401

As Reported By House Committee On:
Criminal Justice & Corrections
Appropriations

Title: An act relating to protecting vulnerable adults.

Brief Description: Protecting vulnerable adults.

Sponsors: Senate Committee on Health & Long-Term Care (originally sponsored by Senators Kohl-Welles, Costa, Hargrove, Winsley, Rasmussen and McAuliffe; by request of Governor Locke).

Brief History:

Committee Activity:

Criminal Justice & Corrections: 2/23/00, 2/25/00 [DPA];
Appropriations: 2/26/00, 2/28/00 [DPA(APP w/o CJC)s].

**Brief Summary of Substitute Bill
(As Amended by House Committee)**

- The state must conduct federal and state background checks on any individuals who have lived in Washington less than three years and whose employment is with vulnerable adults.
- The list of crimes that disqualify a person from being employed as an individual provider or a provider in a home care agency is expanded.
- The Department of Social and Health Services (DSHS), not just the Area Agency on Aging, is allowed to terminate a contract when the individual provider is not providing adequate care.
- The DSHS may, by rule, adopt guidelines for implementing provisions of the bill that authorize the department to terminate the contract of an individual provider if the provider is unable to, or has failed to, provide appropriate care.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: Do pass as amended. Signed by 8 members: Representatives Ballasiotes, Republican Co-Chair; O'Brien, Democratic Co-Chair; Cairnes, Republican Vice Chair; Lovick, Democratic Vice Chair; B. Chandler; Constantine; Kagi and Koster.

Staff: Antonio Sanchez (786-7383).

Background: The DSHS is required to seek criminal background information from any employee or potential employee, contracted individual, or employee of a licensed agency or facility, who is directly responsible for the care, supervision, or treatment of children, developmentally disabled persons, or vulnerable adults. These include individuals who are paid by the state for in-home services and hired by individuals with physical disabilities, developmental disabilities, mental illness or mental impairment.

Background checks disclose convictions for crimes against children or other persons, financial exploitation of vulnerable persons, civil findings of child abuse, any protection orders against the applicant, disciplinary board's final decisions, and criminal charges filed subsequent to a disciplinary board's final decision.

Individuals listed above who are found to have committed these offenses are permanently disqualified from employment. If individuals contract with providers who have criminal backgrounds, DSHS is authorized to withhold payment.

The Washington State Patrol (WSP) maintains a fingerprint database of felony arrests and the outcomes of those arrests for offenses committed in Washington State. Access to national conviction data from the Federal Bureau of Investigation (FBI) is regulated by federal law.

In 1999 the Legislature authorized DSHS to establish, by rule, a registry of persons who serve as "personal care aides" for people with functional disabilities under contract with the department. The department maintains a registry of nurse aides who work in nursing homes, their qualifications and any negative history is registered there. Currently, this program does not extend to other care settings, including in-home care, adult family homes and boarding homes.

Summary of Amended Bill:

The department is required to conduct federal and state background checks on any individual provider or home care agency provider who has lived in Washington less than three years and whose employment allows for unsupervised access to vulnerable adults. It requires that these individuals be fingerprinted to check the conviction record.

The list of crimes that disqualify a person from being employed as an individual provider or a provider in a home care agency is expanded. Individuals whose conviction record shows that they have committed a drug-related crime are disqualified from working with vulnerable persons. These include, a drug conviction related to the manufacture, delivery or possession with intent to manufacture or deliver a controlled substance.

The DSHS, not just the Area Agency on Aging, is allowed to terminate a contract when the individual provider is not providing adequate care. It allows the department to reject a family member for good cause that indicates that the family member is unable to provide adequate care.

The personal aide registry for self directed care is repealed, and the duties are assumed under the new registry. The due process provisions for that registry are also repealed.

The department is directed to establish a statewide registry with the names of anyone who has abandoned, abused, financially exploited or neglected vulnerable adults. Allows an officer in an adjudicative proceeding to base their decision upon a preponderance of the evidence for the finding of abandonment, abuse, financial exploitation, or neglect. Out-of-state findings of abandonment, abuse, financial exploitation, or neglect of vulnerable adults or minor children can be used to place an individual's name on the registry.

The registry is required to sunset in the year 2004.

The department will not have a finding until the person being investigated has had due process rights as established in the bill and under the Administrative Procedures Act. During the initial part of the hearing process the person being accused of abandonment, financial exploitation, abuse, or neglect of a vulnerable adult is able to provide in person response to allegations.

The preponderance of the evidence is established as the burden of proof throughout the process.

An individual who has been placed on the registry is allowed to petition for removal from the registry. After 10 years of being on the registry an individual can also petition for removal. The terms and conditions for the removal are outlined.

The provider is granted limited immunity from liability related to the use of registry information. The department is granted limited immunity from liability when in good faith the department removes a name from the registry.

The home telephone number, home address, and social security number are considered confidential information that cannot be disclosed by the department.

Employers are given civil and criminal immunity when acting in good faith when disclosing relevant care-giving information about a former or current employee to a prospective long-term care employer. Employees are allowed to recover their attorney's fees from their employer, if they successfully challenge their presumption of good faith in a court of law.

The department's rule-making authority is removed regarding their ability to terminate a contract between the department and a care-giver in the individual provider program.

Amended Bill Compared to Substitute Bill: The department is directed to establish a statewide registry with the names of anyone who has abandoned, abused, financially exploited or neglected vulnerable adults. This allows an officer in an adjudicative proceeding to base their decision upon a preponderance of the evidence for the finding of abandonment, abuse, financial exploitation, or neglect. Out-of-state findings of abandonment, abuse, financial exploitation, or neglect of vulnerable adults or minor children can be used to place an individual's name on the registry.

The registry is required to sunset in the year 2004.

Clarifies that the department will not have a finding until the person being investigated has had due process rights as established in the bill and under the Administrative Procedures Act. During the initial part of the hearing process the person being accused of abandonment, financial exploitation, abuse, or neglect of a vulnerable adult is able to provide in person response to allegations.

The preponderance of the evidence is established as the burden-of-proof throughout the process.

An individual who has been placed on the registry is allowed to petition for removal from the registry. After 10 years of being on the registry an individual can also petition for removal. The terms and conditions for the removal are outlined.

The provider is granted limited immunity from liability related to the use of registry information. The department is granted limited immunity from liability when in good faith the department removes a name from the registry.

The home telephone number, home address, and social security number are considered confidential information that cannot be disclosed by the department.

Employers are given civil and criminal immunity when acting in good faith when disclosing relevant care-giving information about a former or current employee to a prospective long-term care employer. Employees are allowed to recover their attorney's fees from their employer if they successfully challenge their presumption of good faith in a court of law.

The department's rule-making authority is removed regarding their ability to terminate a contract between the department and a care-giver in the individual provider program.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: This measure is needed to eliminate persons from being care-givers who have a proven history of abusing vulnerable persons. It will keep us from having another incident like the one that happened recently where the individual had a previous history of abusing vulnerable persons and the state was unable to quickly remove the bad care-giver.

Testimony Against: None.

Testified: Senator Kohl-Wells, prime sponsor; Cathy Wiggins, Governor's Office; Pat Lashway, Department of Social and Health Services; Kary Hyre, Washington State Long-term Care Ombudsman; Deb Murphy, Washington Health Care Authority; Tom Stankey, Northwest Assisted Living Facilities Association; and Majken Ryherd, Washington Association of Home Care Services.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Appropriations and without amendment by Committee on Criminal Justice & Corrections. Signed by 30 members: Representatives Huff, Republican Co-Chair; H. Sommers, Democratic Co-Chair; Barlean, Republican Vice Chair; Doumit, Democratic Vice Chair; D. Schmidt, Republican Vice Chair; Alexander; Benson; Clements; Cody; Crouse; Gombosky; Grant; Kagi; Keiser; Kenney; Kessler; Lambert; Linville; Lisk; Mastin; McIntire; McMorris; Mulliken; Parlette; Rockefeller; Ruderman; Sullivan; Sump; Tokuda and Wensman.

Staff: Dave Johnson (786-7154).

Summary of Recommendation of Committee on Appropriations Compared to Recommendation of Committee on Criminal Justice & Corrections: The provision that would have repealed the existing registry for personal care aides is eliminated. The provisions that would have created the new abuse registry are eliminated. The Department of Social and Health Services is authorized to adopt guidelines for terminating a contract between the state and an individual provider when the provider is providing inadequate care, or for declining to enter into a contract with an individual provider because it is thought the provider would provide inadequate care. A provision was added making the bill null and void unless funded in the budget.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: Ninety days after adjournment of session in which bill is passed; however, the bill is null and void unless funded in the budget.

Testimony For: None.

Testimony Against: None.

Testified: None.