

HOUSE BILL REPORT

HB 2569

As Reported By House Committee On:
Health Care

Title: An act relating to protecting vulnerable adults.

Brief Description: Protecting vulnerable adults.

Sponsors: Representatives Edmonds, Pflug, McDonald, Lovick, Veloria, Morris, Keiser, Rockefeller and Kagi; by request of Governor Locke.

Brief History:

Committee Activity:

Health Care: 1/27/00, 2/4/00 [DPS].

Brief Summary of Substitute Bill

- The Department of Social and Health Services (DSHS) must conduct federal and state background checks on any in-home care worker who has lived in the state less than three years.
- The list of crimes that disqualifies a person from conducting in-home work is expanded to include a drug conviction related to the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance.
- Creates a statewide registry with the names of anyone who has abandoned, abused, or neglected vulnerable adults.
- Due process system is created before a finding is made for persons suspected of having abandoned, abused, or neglected vulnerable adults.

HOUSE COMMITTEE ON HEALTH CARE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Cody, Democratic Co-Chair; Parlette, Republican Co-Chair; Pflug, Republican Vice Chair; Schual-Berke, Democratic Vice Chair; Alexander; Campbell; Conway; Edmonds; Edwards; Pennington and Ruderman.

Minority Report: Do not pass. Signed by 1 member: Representative Mulliken.

Staff: Antonio Sanchez (786-7383).

Background:

The Department of Social and Health Services (DSHS) is required to conduct a criminal background information check on any employee, or contracted individual, 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 the individual provider in-home services and who are hired for that program by individuals with physical disabilities, developmental disabilities, mental illness or mental impairment.

Background checks reveal 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 final decisions, and criminal charges filed subsequent to a disciplinary board 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, the DSHS is authorized to withhold payment.

The Washington State Patrol currently 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 the 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 aids who work in nursing homes. Their qualifications and any negative history is registered there. There is not one registry that combines all care settings. The existing employee registry does not extend to in-home care, adult family homes and boarding homes.

Suggestions found in the Home Care Quality Improvement Report submitted to the Governor by Secretary Quasim on October 1, 1999, and suggestions by the Washington State Long-term Care Ombudsman to the Governor on December 15, 1999, are incorporated in this bill.

Summary of Substitute 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 State 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 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 will sunset July 1, 2004.

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 department is directed to develop rules to implement this new authority.

The department is authorized to adopt rules for the registry which specify the notice and appeal rights that are available to the individuals. Once the department has made a finding, the individual is entitled to an adjudicative proceeding. The registry also includes any relevant actions taken against an individual by an in-state or out-of-state agency, disciplining authority or court.

The personal aide registry for self directed care is repealed. The due process provisions for that registry are also repealed.

Substitute Bill Compared to Original Bill: The due process system for determining who can get on the vulnerable adults registry is modified. Changes are made to clarify that the department will not have a finding until the person being investigated has had due process rights as outlined and as established 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.

The department is allowed to consider removal of an individual from the registry under specific circumstances.

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 is considered confidential information that cannot be disclosed by the department.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: These protections are needed to keep the most vulnerable of our population from having to worry about the background of the persons who provide them with their day-to-day care. It establishes a vulnerable adults registry system that is needed to effectively keep potentially dangerous persons from working with vulnerable adults. Background checks, uniformly across all care settings, are needed.

Testimony Against: The due process established in the vulnerable adults registry does not allow the accused to have sufficient protections and representation through the process. There needs to be changes in the system that will allow persons to get off the registry if they are later found to be not guilty by another court of law or it has been determined that the finding was later found to be incorrect.

Testified: (In support) Representative Edmonds, prime sponsor; Representative Pflug, secondary sponsor; Cathy Wiggins, Governor's Office; Kathy Leitch and Pat Lashway, Department of Social and Health Services; Art Wang, Office of Administrative Hearings; Kary Hyre, Long-term Care Ombudsman; Bruce Reeves, Senior Citizens' Lobby; and Majken Ryherd, Washington State Association of Home Care Services.

(Support with amendments) Jeff Larsen, Washington State Residential Care Council; and Bill Day, Adult Family Home Association of Washington.

(With concerns) Lauri St. Ours, Northwest Adult Living Facilities Association; and
Debbie Murphy, Washington Health Care Association.