

SENATE BILL REPORT

SB 5399

As Reported By Senate Committee On:
Health & Long-Term Care, February 14, 2001

Title: An act relating to history of caregiver performance in long-term care services.

Brief Description: Regarding the history of caregiver performance in long-term care services.

Sponsors: Senators Thibaudeau, Fairley, Franklin, Kohl-Welles, Costa, McAuliffe and Rasmussen.

Brief History:

Committee Activity: Health & Long-Term Care: 1/29/01, 2/14/01 [DPS-WM].

SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

Majority Report: That Substitute Senate Bill No. 5399 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Thibaudeau, Chair; Franklin, Vice Chair; Costa, Deccio, Fraser, Parlette and Winsley.

Staff: Rhoda Donkin (786-7198)

Background: Under current law, the Department of Social and Health Services (DSHS) is required to seek criminal background information from any 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 to provide in-home services.

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 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 being employed as caregivers . If anyone contracts with individuals who have criminal backgrounds, DSHS is authorized to withhold payment.

The Washington State Patrol 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 Substitute Bill: The department is directed to establish and maintain a state caregiver registry listing names and other identifying information about individuals who have been found to have abandoned, abused, financially exploited, or neglected vulnerable adults. The department must adopt rules for the operation of the registry including disclosure, disposition, notification of findings, appeal rights, fair hearing requirements, opportunity for the subject under investigation to provide a defense, and requirements for employers to check the registry.

The subject of an investigation is found to have committed the offense if the department's accumulation of evidence meets the standards of a preponderance of evidence.— The department must make reasonable efforts to notify subjects under investigation prior to this preliminary finding, and must notify them after the department determines the offense has occurred. The subject has the right to appeal the department's finding through an adjudicative proceeding. Barring a request for appeal, the finding becomes permanent and the name is entered on the caregiver registry.

Anyone listed on the registry due to a single finding of neglect may petition the department after one year for removal from the registry, or may petition to be employed in a long-term care facility. Anyone whose name has been on the registry for ten consecutive years may petition for removal from the registry.

The department must disclose names and registry findings to any employer providing home and community services including nursing homes, boarding homes, home care, home health, hospice agencies and centers, adult family homes, or anyone contracting to provide services to developmentally disabled state clients, or the long-term care ombudsman. The information must only be disclosed for reasons related to employment decisions. Further dissemination or use of the findings is prohibited.

Any employer listed above, who discloses information about a former or current employee to a prospective employer of long-term care services, is immune from civil and criminal liability. Sharing this information between employers is presumed to be done in good faith if it relates to the employee's ability to do the job, the diligence, skill, or reliability the employees shows, or any illegal or wrongful act committed by employees in their capacity as caregivers.

The state's personal care registry is eliminated.

Substitute Bill Compared to Original Bill: Technical changes were made referencing in-home services and hospice facilities. Employers who make employment decisions using the registry are immune from liability if the information they use turns out to be incorrect.

Appropriation: None.

Fiscal Note: Requested on January 22, 2001.

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

Testimony For: It should be easy to find out if a caregiver has neglected, abused, abandoned or exploited someone. This registry will provide access to this information.

Testimony Against: None.

Testified: PRO: Pat Lashway, DSHS; Jerry Reilly, WHCA; Donna Patrick, Dev. Disabilities Council; Bruce Reeves, Senior Citizens' Lobby; Kary Hyre, LTCOP; Richard Dorsett, WHA; Jim Hedrick, OFM; Jeff Larsen, WSREC; Tracy Vandewall, PC.