

History of APS State wide abuse registry

In 1999 SHB 1620 Section 19 requested that DSHS “shall conduct a feasibility study to determine the need, use, role of due process, and cost of developing and maintaining a registry relating to incident of abuse, neglect, abandonment, and financial exploitation of vulnerable adults. The results of the study are due by November 30, 1999.” The bill passed with 1 nay and 5 absent. Signed by House April 20, 1999 and by the Senate April 21, 1999 and signed by the Governor May 5, 1999.

At the same time so as to put the cart before the horse by unanimous vote (4 absent) by the House April 22, the Senate April 23 and the Governor May 14, 1999, RCW 74.39A.050 (9) was legislated as a new section so that “the department [DSHS] shall establish, by rule, a state registry which contains identifying information about personal care aides identified under this chapter who have substantiated finding of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult” SHB 1880 Section 5 (9).

The following year (March 2000) the registry was legislated (RCW 74.39A.050(9) was stricken) by unanimous vote by SHB 2637 Section 3, but Governor Gary Locke section Vetoed Section 3 back into existence thus giving into the hands of Social Workers the ability to ruin the lives of thousands of people Legislator could have overturned the veto probably easily, but they didn’t attempt it and thus the beginning of the greatest law suit against DSHS ever.

VETO MESSAGE ON HB 2637-S2

March 24, 2000

To the Honorable Speaker and Members,

The House of Representatives of the State of Washington Ladies and Gentlemen:

I am returning herewith, without my approval as to section 3, Second Substitute House Bill No. 2637 entitled: "AN ACT Relating to background checks on persons in contact with vulnerable adults;"

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

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

For these reasons, I have vetoed section 3 of Second Substitute House Bill No. 2637. With the exception of section 3, Second Substitute House Bill No. 2637 is approved.

Respectfully submitted,
Gary Locke
Governor

Notice what every word so far talks about a registry for “**personal care aides**.”

What did the 1999 DSHS feasibility study state? Did the legislators really intent to have a registry that APS agents could put anyone on?

DSHS calls it's report: ADULT ABUSE REGISTRY FEASIBILITY STUDY REPORT TO THE LEGISLATURE.

The 4 pages of writing by Ralph W Smith, then Assistant Secretary of DSHS would hardly be considered a study. In the write up it already assuming that the "personal care aide" registry to be a done deal and states the existence of Omnibus Budget Reconciliation Act (OBRA) nursing assistant registry.

DSHS asks for \$1.27 million to have a full adult registry with more agents, more attorneys and a data base. No where in legislation then or since is there mentioned an all encompassing "adult abuse registry" as requested by DSHS.

"The department would like to expand upon the existing registries to develop and maintain a registry relating to incidents of abuse, neglect, abandonment, and financial exploitation of vulnerable adults. The existing registries are too limited in their application. The Nursing Assistant Registry is limited to specific nursing home staff and affords protection only to residents of nursing homes. The personal care aid registry is limited only to specific in-home providers who are employed by disabled clients who self-direct their own care. Development of a more encompassing Adult Abuse Registry would provide more protections for vulnerable adults, regardless of service setting or provider type. As a result, the department has recommended legislation, estimated costs, and processes necessary to establish an Adult Abuse Registry.

The department recommends that Chapter 74.39A or Chapter 74.34 be amended to provide the department the authority to develop and maintain an Adult Abuse Registry.....The department has drafted legislation for consideration, which addresses these issues."

"Due process" which is outlined in the report and which is essentially what is available now is an Administrative Law hearing. Lisa Broodoff has an excellent report on the lack of due process in an administrative hearing and will be further explained in Section ???

AT this point, 2000, there has been legislated a registry for "personal care aides" which DSHS has been using as a registry for anyone.

WACs 388-71-??? >>> are created which state "personal care aides" with the definition being "

Here's what happens:

A. A social worker called an APS agent will decide if there is neglect, abandonment, exploitation and/or abuse of a vulnerable adult

1. An APS agent (person with a social worker degree) gets a report of neglect, abandonment, exploitation and/or abuse from anyone and this may be anonymous.

2. The APS social worker can freeze bank account and access all medical records of the alleged vulnerable adult.

3. The APS social worker may take the word of any person she talks to as either true or false without proving which it is.

4. The APS social worker may decide NOT to talk to friends, relatives or medical professionals

5. The APS social worker who may not be able to balance their own check book will decide without a bookkeeper, auditor, accountant or other knowledgeable person who can do math looking over the banking records, trust accounts, investment portfolios and real-estate if and who has been financially abusive.

6. The APS social worker will look over medical records without having a knowledge of medical terminology and hear what who ever the agent decides to trust says if the correct medical procedure and decide if there is physical abuse.

7. The APS social worker may administer an 13 question mental exam (MMSE) and decide from that exam if the AIP is incompetent. Mini Mental Status Exam is a little test which is just to clue lesser professionals that further mental testing may be needed. It was never to “diagnose” mental disorders although it is repeatedly used by social workers to do so. I have continued to say that any person who thinks that a 13 question exam is all that is needed to diagnose dementia should be checked for dementia.

B. The APS social worker (by law in 10 days) will write up a report “substantiated findings” which will be the precursor of a letter of abuse which if not appealed in 30 days will ruin the reputation and ability to work of any person who is attacked by it, the alleged perpetrator.

C. If you appeal by the 30 day deadline the alleged perpetrator. supposedly can fight the accusations in an administrative review by proving he/she is innocent which we all know is virtually impossible. The standard of an administrative review is preponderance of the evidence which translates to:

I. If you have talked loudly to (yelled) once at an AVA* you are on the registry.

II. If you appeared to have been given money by the AVA* you will be considered as having taken it from the AVA and are on the registry.

Iii. If you think that the doctor is not prescribing the right medications and you complain about it you have “denied” the AVA* medical care and are on the registry.

IV. If the AVA wanted to leave the hospital AMA* and you were his DPOA and signed for release you are on the registry.

VA= Vulnerable Adult, AVA= Alleged Vulnerable Adult, In guardianship proceedings and often by APS they are referred to as AIP= Alleged Incapacitated Person

D. During the Administrative Law Hearing:

1. This is called a quasi-criminal civil case. You will judges on an issue which has criminal repercussions but the judge will use civil standards for determining if guilty: i.e. preponderance of the evidence that the alleged perpetrators did anything wrong and they are on the registry.

2. The alleged perpetrator is an “appellant” so that

The Administrative Law Judge will allow APS to dig through the AVA’s medical records and come up with any particular bit of evidence and refuse to all the alleged perpetrator access to the medical records to refute the accusations