

## **REPORT TO THE LEGISLATURE**

### **Seniors and Vulnerable Individuals' Safety and Financial Crimes Prevention Act**

Initiative 1501  
(RCW 9.35.005; 001; 020; Chapter 42.56 RCW; Chapter 43.17 RCW)

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## **Executive Summary**

Section 9 of Initiative 1501 directs the Department of Social and Health Services (DSHS) to provide a report to the Governor and Attorney General within 180 days of the effective date of the Initiative. This section directs DSHS to identify any additional records that should be made exempt from disclosure in order to provide greater protections to seniors and vulnerable individuals from fraud, identity theft, and other forms of victimization.

This report was prepared by the DSHS Aging and Long-Term Support Administration after consulting with other administrations within the Department that have responsibilities under the Initiative. In preparing this report, DSHS reviewed (1) the laws that protect information about vulnerable individuals from disclosure that existed prior to the Initiative, and (2) the new protections created by the Initiative.

Although the Initiative includes language prohibiting disclosure of “sensitive personal information”, the definition does not specifically include dates of birth and the Department believes adding the complete date of birth for both vulnerable individuals and their care providers to the list of exemptions will further clarify and protect them against fraud, identity theft, and other forms of victimization.

The Initiative does not appear to create any new protections related to information about senior citizens who are not “vulnerable individuals”. For example, it does not add new protections for seniors who are living independently without DSHS services in their own homes or in unlicensed retirement homes. Additional protections for these seniors, who do not have a relationship with DSHS, may be one area to explore further.

## **Report**

Section 9 of Initiative 1501 directs the Department of Social and Health Services (DSHS) to provide a report to the Governor and Attorney General within 180 days of the effective date of the Initiative. This section asks DSHS to identify any additional records that should be made exempt from disclosure in order to provide greater protections to seniors and vulnerable individuals from fraud, identity theft, and other forms of victimization.

This report was prepared by the DSHS Aging and Long-Term Support Administration after consultations with other administrations within the Department that have responsibilities under the Initiative. A meeting with representatives of the Department was held on February 7, 2016. Each participant was asked to:

- Review existing federal and state rules and regulations related to the release of personal information for vulnerable individuals and their care providers;
- Propose additional exemptions to further protect these individuals against fraud and identity theft.

### **The Initiative**

Initiative 1501 prohibits disclosure of “sensitive personal information”, such as names, addresses, GPS coordinates, driver’s license numbers and any other personally identifying information of vulnerable individuals and their care providers. Although it could be assumed that “other personally identifying information” includes dates of birth, dates of birth are not specifically listed in this definition.

The new protections adopted by the Initiative were accomplished by adding new exemptions to the Public Records Act, and by adding a standalone prohibition in Chapter 43.17 RCW. The measure protects the sensitive personal information of vulnerable individuals. The Initiative defines a vulnerable individual as a person:

- (i) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself;
- (ii) Found incapacitated under chapter [11.88](#) RCW;
- (iii) Who has a developmental disability as defined under RCW [71A.10.020](#);
- (iv) Admitted to any facility;
- (v) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter [70.127](#) RCW;
- (vi) Receiving services from an individual provider as defined in RCW [74.39A.240](#); or
- (vii) Who self-directs his or her own care and receives services from a personal aide under chapter [74.39](#) RCW.

The Initiative also attempts to protect these vulnerable individuals by protecting the sensitive personal information about their care providers. Care providers would include individual providers, certified home care aides, and certain family child care providers contracted by the Department. The Initiative does not create any new protections for senior citizens who do not fall within one of the categories listed above. For example, it did not add new protections for seniors who are living independently in their own homes and are not receiving services from the state or from a licensed entity. The measure is also not an absolute prohibition on the release of the information. RCW 42.56.645 creates exceptions to the exemptions. For example, sensitive personal information can be disclosed to other government agencies or collective bargaining representatives.

### **Laws that Prohibited Disclosure Prior to the Initiative**

Laws relevant to the disclosure of records related to Department clients and their care providers are in several laws that existed prior to the Initiative. These laws include chapters 13.50; 26.23; 26.33; 42.56; and 70.02 of the Revised Code of Washington, as well as requirements under the federal Health Insurance Portability and Accountability Act (HIPAA) and Medicare and Medicaid laws. The following statutes are examples of laws that governs the type of information that was already exempt from disclosure:

**RCW 42.56.230(1)** exempts personal information in files for students in public schools, patients or clients of public institutions or public health agencies, or welfare programs.

**RCW 42.56.250(3)** exempts extensive information about state employees and volunteers. It specifically defines "employees" to include Individual Providers as defined in RCW 74.39A.240. The exempt information includes: Residential addresses, residential telephone numbers, personal wireless telephone numbers, personal electronic mail addresses, social security numbers, driver's license numbers, identicard numbers, and emergency contact information of employees or volunteers of a public agency. Note: this section does not exempt the name or birthdate of the employee.

This section also exempts the same information about dependents of employees or volunteers, plus it exempts their names and dates of birth.

**45 CFR 164.514** The Health Insurance Portability and Accountability Act (HIPAA) governs the release of protected health information. 45 CFR 164.514 describes the requirements for disclosure of this information about individuals, including *their relatives and household members*.

(i) The following identifiers of the individual or of relatives, employers, or household members of the individual, are removed:

(A) Names;

(B) All geographic subdivisions smaller than a State, including street address, city, county, precinct, zip code, and their equivalent geocodes, except for the initial three digits of a zip code.

### **Protections Added by the Initiative**

The Initiative added a number of protections for information about care providers (including certain family child care providers) and in-home caregivers who are certified home care aides, but who are not working as Individual Providers. Those protections include prohibiting disclosure of "sensitive personal information" meaning names, addresses, GPS coordinates, telephone numbers,

email addresses, social security numbers, driver's license numbers, or other personally identifying information.

## **Conclusion**

The list of protections in current law that prohibits disclosure of information about vulnerable individuals and their care providers is extensive. This Initiative strengthens existing laws and provides extra protections. Adding the complete date of birth, for both vulnerable individuals and their care providers, to the list of exemptions would further protect them against fraud, identity theft, and other forms of victimization.

The Initiative does not appear to create any new protections related to information about senior citizens who do not meet the definition within the Initiative of "vulnerable individuals". For example, it does not add new protections for seniors who are living independently in their own homes or in unlicensed retirement homes. Additional protections for these seniors, who do not have a relationship with DSHS, may be one area to explore further.