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California has paid scores of criminals to care for residents

The rules of the state's home healthcare program, as interpreted by a judge this year, permit such felons to work as aides. Among their crimes are rape, assault and theft.

By Evan Halper, Los Angeles Times

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Reporting from Sacramento

Scores of people convicted of crimes such as rape, elder abuse and assault with a deadly weapon are permitted to care for some of California's most vulnerable residents as part of the government's home health aide program.

Data provided by state officials show that at least 210 workers and applicants flagged by investigators as unsuitable to work in the program are nonetheless scheduled to resume or begin employment.

State and county investigators have not reported many whose backgrounds include violent crimes because the rules of the program, as interpreted by a judge earlier this year, permit felons to work as home care aides. Thousands of current workers have had no background checks.

Only a history of specific types of child abuse, elder abuse or defrauding of public assistance programs can disqualify a person under the court ruling. But not all perpetrators of even those crimes can be blocked.

In addition, privacy laws prevent investigators from cautioning the program's elderly, infirm and disabled clients that they may end up in the care of someone who has committed violent or financial crimes.

"We are allowing these people into the homes of vulnerable individuals without supervision," said John Wagner, director of the state Department of Social Services. "It is dangerous.... These are serious convictions."

Alarmed administrators and law enforcement officials have warned lawmakers, who have the power to change the program's rules, that the system may be inviting predators to exploit program enrollees. But efforts to address the problem have stalled in the Legislature.

Lawmakers with ties to unions representing home care workers are wary of making more changes to a program they have cut deeply under pressure from Gov. Arnold Schwarzenegger. Relatively new restrictions on who can work in the program or receive its benefits, also implemented at the governor's urging, have already created unnecessary obstacles, lawmakers and activists say.

State and county investigators have identified 996 convicted felons working or seeking jobs in the program since background checks were launched last year; 786 of them were removed or declared ineligible, according to the state Department of Social Services.

The rest are expected to be employed in the program despite the investigators' concerns. Among them is a woman convicted of false imprisonment, assault with a deadly weapon, forging drug prescriptions and selling drugs who continues to work as a caregiver, according to state officials. Another person was convicted of welfare fraud, willfully threatening bodily harm, drug possession and two counts of burglary.

Advocates and unions note that nearly half of the 400,000 employees of the In Home Supportive Services program, which is intended to provide the state a cost-efficient alternative to nursing homes for low-income people who need certain kinds of help, are caring for their own relatives.

"We don't want to put anybody at risk of abuse or theft, but sometimes your options of who you can get to work for you are very narrow," said John Wilkins, a recipient of the services and co-chairman of a coalition of advocacy groups and unions.

Further, he said, "I've had two providers work for me who had criminal histories who were two of the best providers I have had. There is a lot of gray area. It is just not black and white."

A spokesman for the Service Employees International Union, which represents most of the state's home healthcare workers, referred questions to Wilkins. SEIU is consistently one of the biggest donors to the Democrats who dominate the Legislature, contributing millions of dollars to political committees that the state Democratic Party and its leaders use to win legislative seats, register voters and even fund lawmaker retreats.

Members' wages from the home aide program provide millions of dollars in dues revenue that the union can use to fund such operations.

At a recent meeting of an advisory panel made up of administrators, investigators, caregivers and others, one county official raised the case of a man working in the program who had been convicted of raping a 3-year old, said Laura West, a Sacramento County prosecutor who was at the meeting.

"Can you do this job if you burned down someone's house? Yes. Murdered someone? Yes. Raped a 3-year-old child? Yes," West said.

West said she is prosecuting three caregivers for fraud against the system. One has been convicted of armed robbery and assault with a deadly weapon; another committed identity theft; the third was a drug dealer.

"These are all good indicators that the person steals," she said. "Yet they were able to work in the program and went on to steal from it."

In Los Angeles County, investigators are frustrated after coming across numerous cases of convicted welfare cheats working in the program who, under current rules, cannot be removed.

"It is so unfair that we can't even tell the [IHSS] consumer about this," said Philip Browning, director of the Los Angeles County Department of Public Social Services. "We have our hands tied. We asked our lawyers if we could share this information. They said, 'Absolutely not,' " due to privacy restrictions.

The strict limits on who can be barred from the program stem from a lawsuit that advocates won in March in Alameda County Superior Court. They sued after the Schwarzenegger administration launched an effort to purge all convicted felons from employment in the program. Exactly who could be barred had been unclear until the court ruling; the restrictions had been lobbed into legislation drafted hastily as part of a late budget deal.

The court sided with the advocates, who represented mostly workers caring for relatives or friends. They argued that the legislation limited those who could be expelled to a narrow group of offenders, so people in need would not lose a trusted provider who had committed an offense such as theft or drunk driving.

Administration officials say they are pushing to root out only the most dangerous felons, and they complain that the effort has met a chilly reception in the Legislature. Union members have argued at legislative hearings that more restrictions would cause people like the plaintiffs in the Alameda County case to lose their jobs and force their family members into institutions.

The battle is part of a larger dispute over the recently implemented anti-fraud measures that Schwarzenegger championed. Advocates say the rules, which in addition to background checks for employees involve fingerprinting of care recipients and spot checks by investigators, are invasive and don't root out fraud because little is being committed.

Assemblywoman Noreen Evans (D-Santa Rosa) said lawmakers would consider a reasonable proposal to block potentially dangerous people from the program if that were all the administration was seeking. But she said the administration also wants to save money by slashing the aides' wages and cutting 200,000 recipients from the program and has even proposed eliminating the services altogether.

"The administration is interested in nothing less than destroying IHSS," said Evans, who has chaired oversight hearings on the program.

Senate Budget Committee Chairwoman Denise Moreno Ducheny (D- San Diego) said the budget discussions in which the administration's proposed restrictions have been raised are not an appropriate venue.

"They need to draft a bill, get an author and bring it up in the public safety and human services committees," she said.

Administration officials cited many meetings they have had with lawmakers and their staffs in which they said they raised the issue of criminals working in the program.

Meanwhile, Eileen Carroll, deputy director of adult programs for the state Department of Social Services, says she fields calls from puzzled county investigators who are seeking to keep potential predators out of the program.

"We tell them they have to approve someone who has a murder conviction," she said. "We tell them they have to approve the rapist. They call the state and ask for our help, and all we can tell them is: If it is beyond the [court-approved] list, you cannot deny them. "