

HOUSE BILL REPORT

HB 2126

As Reported by House Committee On:
Judiciary

Title: An act relating to in-home long-term care services liability.

Brief Description: Revising provisions for long-term care service options.

Sponsors: Representative Campbell.

Brief History:

Committee Activity:

Judiciary: 3/3/03, 3/4/03 [DPS].

Brief Summary of Substitute Bill

- Eliminates joint liability for certain defendants in tort cases based on in-home long-term care services, even when the plaintiff is not at fault.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Lantz, Chair; Moeller, Vice Chair; Campbell, Flannigan, Kirby and Lovick.

Minority Report: Do not pass. Signed by 3 members: Representatives Carrell, Ranking Minority Member; McMahan, Assistant Ranking Minority Member; and Newhouse.

Staff: Bill Perry (786-7123).

Background:

Joint and Several Liability.

In a tort case based on fault, the trier of facts is generally required to assign a percentage of the fault to every entity causing the claimant's damages. These assigned percentages must add up to 100 percent.

With some exceptions, the Legislature has abolished "joint and several" liability of

defendants. As a result, a defendant in a tort case is generally responsible only for his or her own percentage of fault in causing the claimant's harm. In some instances, however, multiple defendants may be jointly and severally liable for the whole of the claimant's damages. This joint and several liability means that any one defendant can be required to pay all of the damages. (The paying defendant then has a "right of contribution" against any other defendant to recover shares of the damages based on each defendant's fault.)

One of the instances in which joint and several liability still applies is when the claimant was not at fault in causing his or her own harm.

Long-term In-home Care.

Initiative 775, approved in 2001, created the Home Care Quality Authority (HCQA) to regulate and improve long-term in-home care services. The HCQA has a variety of duties including setting standards for and investigating the background of individual providers of long-term in-home care. For purposes of collective bargaining, the HCQA is the employer of these individual providers. An individual care provider, such as a personal aide, may contract with the Department of Social and Health Services (DSHS) to provide personal or respite care to functionally disabled persons under federal and state programs that allow long-term in-home care. A "functionally disabled person" is someone who is dependent upon others for direct care, support, supervision, or monitoring to perform activities of daily living. "Long-term care" is chronic care delivered indefinitely to a person of any age who is disabled by a permanent, non-reversible condition including mental or physical illness, disease, or chemical dependency.

An "area agency on aging" is a public or non-profit private agency or organization selected by the state and recognized under federal law. An area agency consults with and provides advice to the DSHS on the delivery of programs to the elderly. Among an area agency's duties are a variety of functions with regard to the delivery of medicaid personal care and chore services programs through an individual provider.

Summary of Substitute Bill:

The DSHS, the HCQA, area agencies on aging and their contractors are exempt from joint and several liability in any case arising out of in-home case management services where the plaintiff in the case is not at fault.

Substitute Bill Compared to Original Bill:

The substitute removes two sections of the bill that would have amended Initiative 775 provisions relating to area agency responsibility for monitoring care plans and relating to vicarious liability of the HCQA, the DSHS, area agencies and contractors.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: Home health care is entering a whole new phase. Whether or not it can continue in this new direction depends on addressing the issues dealt with in this bill. Virtually every individual contracting provider of these in-home services is judgment proof, leaving the counties and the state responsible for the actions of people whose performance they don't control. While this system of providing care through individual contractors has benefits in flexibility and cost savings that could not be realized otherwise, there is a serious need for relief from the joint and several liability of state and county government. Agencies do not want to avoid liability for their own acts or omissions, and the bill would not release them from that liability.

(With concerns) Exempting entities from joint and several liability may treat innocent injured vulnerable people unfairly. A better approach might be to explore the possibility of requiring informed consent by consumers of these services.

Testimony Against: None.

Testified: (In support) Representative Campbell, prime sponsor; Richard Dorsett, Washington Association of Area Agencies on Aging; Penny Black, Department of Social and Health Services; Dennis Mahar, Lewis, Mason, Thurston Area Agency on Aging; and Jean Wessman, Washington State Association of Counties.

(With concerns) Larry Shannon, Washington State Trial Lawyers Association.