

SENATE BILL REPORT

SB 5732

As Reported By Senate Committee On:
Health & Long-Term Care, February 4, 2004

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

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

Sponsors: Senators Deccio, Rasmussen, Brandland and Winsley.

Brief History:

Committee Activity: Health & Long-Term Care: 2/18/03; 1/15/04, 2/4/04 [DPS].

SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

Majority Report: That Substitute Senate Bill No. 5732 be substituted therefor, and the substitute bill do pass.

Signed by Senators Deccio, Chair; Winsley, Vice Chair; Brandland, Franklin, Keiser, Parlette and Thibaudeau.

Staff: Tanya Karwaki (786-7447)

Background: Under the doctrine of joint and several liability, multiple defendants whose negligent acts caused a plaintiff's injury are each individually liable for all of the plaintiff's damages. Jointly and severally liable defendants may have rights of contribution among themselves; thus, a defendant who pays more than his or her share can seek reimbursement from those defendants who paid less than their share. The plaintiff, however, may seek all of the damages from any one of the defendants.

With certain exceptions, Washington has abolished joint and several liability in cases involving the fault of multiple parties. One of these exceptions occurs when a plaintiff suffering bodily injury or incurring property damage is found to be not at fault; then, each defendant against whom judgment is entered is jointly and severally liable for the plaintiff's total damages.

There is concern that for potential defendants, such as Area Agencies on Aging, the existence of joint and several liability provides an incentive for plaintiffs to litigate.

Summary of Substitute Bill: Case management responsibilities include verifying that the client's plan of care adequately meets the needs of the client. The plan of care shall include a statement by the individual provider that he or she has the ability to carry out his or her responsibilities.

Substitute Bill Compared to Original Bill: The substitute bill leaves current law in place regarding joint and several liability.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: This bill would relieve obligations traditionally imposed by joint and several liability. There is a system of caregivers, i.e., third parties, over whom Area Agencies on Aging do not have immediate control. Additionally, Area Agencies on Aging cannot ensure that a client's plan of care adequately meets the needs of the client; changing "ensure" to "verify" more accurately reflects what Area Agencies on Aging can do.

Testimony Against: This bill puts the burden of any uncollectable share on the innocent fault free person.

Testified: Richard Dorsett, HIEA Agencies on Aging (pro); Dan Murphy, DSHS/ADSA (pro); Larry Shannon, WSTLA (con).