

SHB 1494 - H AMD 398

By Representative Hinkle

WITHDRAWN 03/07/2011

1 Strike everything after the enacting clause and insert the
2 following:

3
4 NEW SECTION. Sec. 1. (1) The legislature finds that locating
5 acceptable housing and appropriate care for vulnerable adults is an
6 important aspect of making available an appropriate continuity of
7 care for senior citizens.

8 (2) The legislature further finds that locating appropriate and
9 quality housing and care alternatives is sometimes facilitated by
10 eldercare referral agencies providing or attempting to provide
11 referrals.

12 (3) The legislature further finds that the registration of
13 eldercare referral agencies is in the interest of public health,
14 safety, and welfare.

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16 NEW SECTION. Sec. 2. The definitions in this section apply
17 throughout this chapter unless the context clearly requires
18 otherwise.

19 (1) "Applicant" means an applicant for an eldercare referral
20 agency registration.

21 (2) "Client" means an senior or a vulnerable adult, or, as
22 applicable, a person, if any, seeking a referral for supportive
23 housing or care services on behalf of a senior or vulnerable adult
24 through an eldercare referral agency. A "client" does not include a
25 person only seeking information.

26 (3) "Department" means the department of health.

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1 (4) "Eldercare referral agency" and "agency" means a business or
2 person:

3 (i) Who receives a fee from or on behalf of a vulnerable adult
4 seeking a referral to a provider; or

5 (ii) Who receives a fee from a care services provider or
6 supportive housing provider because of any referral provided to a
7 client.

8 (5) "Fee" means anything of value. "Fee" includes money or other
9 valuable consideration or services or the promise of money or other
10 valuable consideration or services, received directly or indirectly by
11 an eldercare referral agency.

12 (6) "Information" means general information provided by an
13 agency to a person about the types of supportive housing or care
14 services available in the area that may meet the needs of an elderly
15 or vulnerable adult. "Information" includes specific names of
16 providers of care services or supportive housing if provided to a
17 person, but only if such information is provided as general
18 advertising or is provided solely based on general data such as a
19 person's geographic location, preferred geographic location,
20 preferred language, and other data that does not include medical
21 records or similar detailed health information.

22 (7) "Person" includes any individual, firm, corporation,
23 partnership, association, company, society, manager, contractor,
24 subcontractor, bureau, agency, service, office, or an agent or any
25 of their employees.

26 (8) "Provider" means any entity or person that both:

27 (i) Provides supportive housing or care services to a vulnerable
28 adult for a fee, and

29 (ii) Provides or is required to provide such housing or services
30 under a state or local business license specific to such housing or
31 services.

32 (9) "Referral" means (i) the act of an agency giving a client
33 the name or names of specific providers that may meet the needs of
34 the senior or vulnerable adult, or (ii) the act of an agency giving

1 a provider the name of a client for the purposes of enabling the
2 provider to contact the client regarding care services or supportive
3 housing provided by that provider. However, a "referral" does not
4 include the providing of information alone to a person.

5 (10) "Secretary" means the secretary of health.

6 (11) "Supportive housing" means any type of housing that both:

7 (i) Includes services for care needs, and

8 (ii) Is designed for prospective residents who are vulnerable
9 adults. Supportive housing means nursing homes licensed under
10 chapter 18.51 RCW, boarding homes licensed under chapter 18.20 RCW,
11 adult family homes licensed under chapter 70.128 RCW, and continuing
12 care retirement communities under RCW 70.38.025.

13 (11) "Vulnerable adult" has the same meaning as in RCW
14 74.34.020.

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16 NEW SECTION. Sec. 3. After July 1, 2012, a person operating or
17 maintaining an agency in this state must be registered by the
18 department.

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20 NEW SECTION. Sec. 4. (1) The secretary shall administer the
21 provisions of this chapter and adopt reasonable rules for enforcing
22 and carrying out the provisions of this chapter.

23 (2) The secretary has supervisory and investigative authority
24 over eldercare referral agencies' compliance with this chapter. Upon
25 receiving a complaint against any agency, the secretary has the
26 right to examine the books, documents, or records in the possession
27 of an agency solely in order to determine the agency's compliance
28 with this chapter.

29
30 NEW SECTION. Sec. 5. (1) As a condition of obtaining and
31 maintaining a valid agency registration, each agency must provide
32 evidence of having general liability insurance.

33 (2) The minimum amount of general liability insurance required
34 is one million dollars annual aggregate.

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NEW SECTION. **Sec. 6.** It is a misdemeanor for any person to operate an agency business in this state unless he or she has an agency registration issued under this chapter.

NEW SECTION. **Sec. 7.** An employee of an agency who provides referrals to clients must pass a criminal background check every twenty-four months. To pass such criminal background check, the employee must not have been convicted of any crime that is disqualifying under RCW 43.43.830 or 43.43.842, or been found by a court of law or disciplinary authority to have abused, neglected, financially exploited, or abandoned a vulnerable adult. The rules adopted under this section shall permit the licensee to consider the criminal history of an applicant for employment in a licensed facility when the applicant has one or more convictions for a past offense described in this chapter. An individual responding to a criminal background inquiry request from his or her employer or potential employer shall disclose the information about his or her criminal history under penalty of perjury. The secretaries shall use any such information provided by an agency or agency employee solely for the purpose of determining an agency's compliance with the requirements of this chapter. Criminal justice agencies shall provide the secretaries such information as they may have and that the secretaries may require for such purpose. The secretary and any agency enforcing this chapter will not deny or revoke a license that is required by this chapter unless it demonstrates (a) an intentional and substantial pattern of noncompliance by an eldercare referral agency that was known or should have, through reasonable diligence, been known by an officer or owner of the agency prior to receiving notice from the secretary or enforcing agency, or (b) a failure by an eldercare referral agency to timely cure any noncompliance of this chapter of which the eldercare referral agency receives written notice by the secretary or an enforcing agency or which was known by an officer or owner of the agency.

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2 NEW SECTION. **Sec. 8.** An applicant for an eldercare referral
3 agency registration or a renewal must file with the secretary a
4 written application stating (1) the name and address of the
5 applicant, (2) the street address of the agency, (3) the name of the
6 general manager of the office, and (4) the name of the business. The
7 application must be signed by the applicant. If the applicant is a
8 corporation, the application must identify the state of
9 incorporation of the corporation and be signed by an officer
10 thereof. If the applicant is a partnership, the application must
11 also state the names and addresses of all partners and must be
12 signed by all of them. At the time of the application for or renewal
13 of a registration or provisional registration the applicant must
14 pay a registration fee as established by the secretary. Each
15 registration is valid for a period of twelve months.

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17 NEW SECTION. **Sec. 9.** In addition to any other authority provided
18 by law, the secretary has the authority to:

19 (1) Set all elder placement agency initial registration and
20 renewal fees in accordance with 43.70.250 and to collect and deposit
21 all such fees in the health professions account established under
22 RCW 43.70.320. The secretary may waive the fees when, in the
23 discretion of the secretary, the fees would not be in the best
24 interest of public health and safety, or when the fees would be to
25 the financial disadvantage of the state. Fees charged shall be based
26 on, but shall not exceed, the cost to the department for the
27 licensure of the activity and may include costs of necessary records
28 inspection. Department of health advisory committees may review fees
29 established by the secretary for licenses and comment upon the
30 appropriateness of the level of such fees.

31 (2) Establish forms and procedures necessary to administer this
32 chapter;

33 (3) Hire clerical, administrative, and investigative staff as
34 needed to implement this chapter;

1 (4) Issue an eldercare agency registration to any applicant who
2 has met the requirements of this chapter and deny a registration to
3 any applicant who fails to meet these requirements;

4 (5) Maintain the official record for the department of all
5 applicants and persons with registrations and certificates under
6 this chapter; and

7 (6) Deny or revoke agency licenses issued under this chapter if
8 an agency fails to comply with the provisions hereof.

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10 NEW SECTION. Sec. 10. The uniform disciplinary act, chapter
11 18.130 RCW, governs unregistered practice and the issuance and
12 denial of registrations. However, agencies are not health care
13 providers and 18.130.080, 18.130.160, and 18.130.180 RCW will not
14 apply to agencies. The secretary is the disciplining authority under
15 this chapter.

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17 NEW SECTION. Sec. 11. Agencies and their employees, owners, and
18 officers will not be considered providers and will not be liable or
19 responsible for the acts or omissions of a provider.

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21 NEW SECTION. Sec. 12. Nothing in this chapter will limit,
22 specify, or otherwise regulate the fees charged by an agency to a
23 provider for a referral.

24
25 NEW SECTION. Sec. 13. This chapter may be known and cited as the
26 "eldercare referral act."

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28 NEW SECTION. Sec. 14. Sections 1 through 13 of this act
29 constitute a new chapter under Title 18 RCW.

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31 NEW SECTION. Sec. 15. If any provision of this act or its
32 application to any person or circumstance is held invalid, the
33 remainder of the act or the application of the provision to other
34 persons or circumstances is not affected.

1 **Sec. 16.** RCW 18.130.040 and 2010 c 286 s 18 are each amended to
2 read as follows:

3 (1) This chapter applies only to the secretary and the boards and
4 commissions having jurisdiction in relation to the professions
5 licensed under the chapters specified in this section. This chapter
6 does not apply to any business or profession not licensed under the
7 chapters specified in this section.

8 (2)(a) The secretary has authority under this chapter in relation
9 to the following professions:

10 (i) Dispensing opticians licensed and designated apprentices under
11 chapter 18.34 RCW;

12 (ii) Naturopaths licensed under chapter 18.36A RCW;

13 (iii) Midwives licensed under chapter 18.50 RCW;

14 (iv) Ocularists licensed under chapter 18.55 RCW;

15 (v) Massage operators and businesses licensed under chapter 18.108
16 RCW;

17 (vi) Dental hygienists licensed under chapter 18.29 RCW;

18 (vii) East Asian medicine practitioners licensed under chapter
19 18.06 RCW;

20 (viii) Radiologic technologists certified and X-ray technicians
21 registered under chapter 18.84 RCW;

22 (ix) Respiratory care practitioners licensed under chapter 18.89
23 RCW;

24 (x) Hypnotherapists and agency affiliated counselors registered
25 and advisors and counselors certified under chapter 18.19 RCW;

26 (xi) Persons licensed as mental health counselors, mental health
27 counselor associates, marriage and family therapists, marriage and
28 family therapist associates, social workers, social work associates--
29 advanced, and social work associates--independent clinical under
30 chapter 18.225 RCW;

31 (xii) Persons registered as nursing pool operators under chapter
32 18.52C RCW;

33 (xiii) Nursing assistants registered or certified under chapter
34 18.88A RCW;

1 (xiv) Health care assistants certified under chapter 18.135 RCW;
2 (xv) Dietitians and nutritionists certified under chapter 18.138
3 RCW;
4 (xvi) Chemical dependency professionals and chemical dependency
5 professional trainees certified under chapter 18.205 RCW;
6 (xvii) Sex offender treatment providers and certified affiliate
7 sex offender treatment providers certified under chapter 18.155 RCW;
8 (xviii) Persons licensed and certified under chapter 18.73 RCW or
9 RCW 18.71.205;
10 (xix) Denturists licensed under chapter 18.30 RCW;
11 (xx) Orthotists and prosthetists licensed under chapter 18.200
12 RCW;
13 (xxi) Surgical technologists registered under chapter 18.215 RCW;
14 (xxii) Recreational therapists;
15 (xxiii) Animal massage practitioners certified under chapter
16 18.240 RCW;
17 (xxiv) Athletic trainers licensed under chapter 18.250 RCW;
18 (xxv) Home care aides certified under chapter 18.88B RCW; (~~and~~)
19 (xxvi) Genetic counselors licensed under chapter 18.290 RCW; and
20 (xxvii) Eldercare referral agencies registered under chapter --
21 RCW (the new chapter established by section 15 of this act).

22 (b) The boards and commissions having authority under this chapter
23 are as follows:

24 (i) The podiatric medical board as established in chapter 18.22
25 RCW;

26 (ii) The chiropractic quality assurance commission as established
27 in chapter 18.25 RCW;

28 (iii) The dental quality assurance commission as established in
29 chapter 18.32 RCW governing licenses issued under chapter 18.32 RCW
30 and licenses and registrations issued under chapter 18.260 RCW;

31 (iv) The board of hearing and speech as established in chapter
32 18.35 RCW;

33 (v) The board of examiners for nursing home administrators as
34 established in chapter 18.52 RCW;

1 (vi) The optometry board as established in chapter 18.54 RCW
2 governing licenses issued under chapter 18.53 RCW;

3 (vii) The board of osteopathic medicine and surgery as established
4 in chapter 18.57 RCW governing licenses issued under chapters 18.57
5 and 18.57A RCW;

6 (viii) The board of pharmacy as established in chapter 18.64 RCW
7 governing licenses issued under chapters 18.64 and 18.64A RCW;

8 (ix) The medical quality assurance commission as established in
9 chapter 18.71 RCW governing licenses and registrations issued under
10 chapters 18.71 and 18.71A RCW;

11 (x) The board of physical therapy as established in chapter 18.74
12 RCW;

13 (xi) The board of occupational therapy practice as established in
14 chapter 18.59 RCW;

15 (xii) The nursing care quality assurance commission as established
16 in chapter 18.79 RCW governing licenses and registrations issued under
17 that chapter;

18 (xiii) The examining board of psychology and its disciplinary
19 committee as established in chapter 18.83 RCW; and

20 (xiv) The veterinary board of governors as established in chapter
21 18.92 RCW.

22 (3) In addition to the authority to discipline license holders,
23 the disciplining authority has the authority to grant or deny
24 licenses. The disciplining authority may also grant a license subject
25 to conditions.

26 (4) All disciplining authorities shall adopt procedures to ensure
27 substantially consistent application of this chapter, the Uniform
28 Disciplinary Act, among the disciplining authorities listed in
29 subsection (2) of this section."

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31 Correct the title.

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EFFECT: Eliminates elements of the underlying bill relating to
"elder and vulnerable adult referral agencies," including disclosure

statements, intake forms, recordkeeping requirements, refund policies, and Consumer Protection Act enforcement.

Requires that "eldercare referral agencies" be registered by the Department of Health. Authorizes the Secretary of Health to establish fees for registration, issue and deny registrations, and take disciplinary actions for complaints of unprofessional conduct. Violations of eldercare referral agency regulations are subject to the Uniform Disciplinary Act. Unregistered operation of an eldercare referral agency is a misdemeanor. Requires all employees of eldercare referral agencies that provide referrals to clients must pass a criminal background check every two years.

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