

SHB 1494 - H AMD 431

By Representative Hinkle

OUT OF ORDER 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 (a) a senior or a vulnerable adult seeking a
22 referral for supportive housing or care services through an
23 eldercare referral agency, or, (b) as applicable, a person seeking a
24 referral for supportive housing or care services on behalf of a
25 senior or vulnerable adult through an eldercare referral agency. A
26 "Client" does not include a person only seeking information or any
27 person who is not a resident of Washington State.

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

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

4 (a) Who receives a fee from or on behalf of a vulnerable adult
5 seeking a referral to a provider, or

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

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

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

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

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

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

30 (b) Provides or is required to provide such housing or services
31 under a state or local business license that is specific to such
32 housing or services; and

33 (c) Operates a supportive housing or care services business in
34 Washington State.

1 (9) "Referral" means (a) the act of an agency giving a client
2 the name or names of specific providers that may meet the needs of
3 the senior or vulnerable adult, or (b) the act of an agency giving a
4 provider the name of a client for the purposes of enabling the
5 provider to contact the client regarding care services or supportive
6 housing provided by that provider. However, a "Referral" does not
7 include the providing of information alone to a person.

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

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

10 (a) includes services for care needs, and

11 (b) is designed for prospective residents who are vulnerable
12 adults. Supportive housing means nursing homes licensed under
13 chapter 18.51 RCW, boarding homes licensed under chapter 18.20 RCW,
14 adult family homes licensed under chapter 70.128 RCW, and continuing
15 care retirement communities under RCW 70.38.025.

16 (12) "Vulnerable adult" has the same meaning as in RCW
17 74.34.020.

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19 NEW SECTION. **Sec. 3.** After July 1, 2012, a person operating or
20 maintaining an agency in this state must be registered by the
21 department.

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23 NEW SECTION. **Sec. 4.** (1) The secretary shall administer the
24 provisions of this chapter and adopt reasonable rules for enforcing
25 and carrying out the provisions of this chapter.

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

32 (3) The secretary and any agency enforcing this chapter will not
33 deny or revoke a registration that is required by this chapter
34 unless it demonstrates an intentional and substantial pattern of

1 noncompliance by an eldercare referral agency that was known or
2 should have, through reasonable diligence, been known by an officer
3 or owner of the agency. Without limitation, regular employee
4 training regarding the requirements of this chapter and reasonable
5 employee supervision regarding the same will be decisive evidence
6 that an agency has not intended to violate this chapter.

7 (4) Prior to the department's revocation of an agency's
8 registration or denial of the agency's registration renewal under
9 subsection (3) of this section, the agency will be permitted a
10 reasonable opportunity to correct any curable noncompliance and
11 institute measures designed to avoid future noncompliance. In this
12 case, the agency will cooperate with the department and secretary to
13 develop a reasonable compliance plan and reporting processes as
14 necessary to avoid future noncompliance with this chapter.

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16 NEW SECTION. **Sec. 5.** (1) As a condition of obtaining and
17 maintaining a valid agency registration, each agency must provide
18 evidence of having general liability insurance.

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

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22 NEW SECTION. **Sec. 6.** It is a misdemeanor for any person to
23 operate an agency in this state unless he or she has registered with
24 the department under this chapter.

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26 NEW SECTION. **Sec. 7.** (1) An agency must provide a
27 disclosure statement to each client prior to providing the first
28 referral to the client.

29 (2) The disclosure statement must contain the following to the
30 extent known to the agency:

- 31 (a) The name, address, and telephone number of the agency;
32 (b) As applicable, a statement that the agency will receive a
33 fee from the provider, the client, or both, if the client moves into
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1 the referred-provider's property or receives care services from the
2 provider as a result of the referral;

3 (c) A general description of the services provided by the
4 agency;

5 (d) A general description of the qualifications of the agency
6 personnel who will be working with the client, or, alternatively, a
7 statement informing the client how to obtain such information from
8 the agency online or otherwise;

9 (e) If the agency or its personnel who are directly involved in
10 providing referrals to clients (including such personnel's immediate
11 family members) have an ownership interest in the supportive housing
12 or care services to which the client is given a referral, a
13 provision stating that the agency or such personnel or their
14 immediate family members have an ownership interest in the
15 supportive housing or care services to which the client is given
16 referral services, and, if such ownership interest exists, an
17 explanation of that interest.

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19 NEW SECTION. **Sec. 8.** The agency shall use an intake form
20 for all clients for whom the agency provides a referral. The intake
21 form must, at a minimum, contain questions addressing the following
22 information about the vulnerable adult:

- 23 (1) Age;
- 24 (2) Information about physical health, including any know
25 diagnoses, diseases, health concerns medical needs or recent medical
26 procedures;
- 27 (3) Any significant known behaviors or symptoms that may cause
28 concern or require special care;
- 29 (4) Information about cognition concerns, including any
30 dementia, mental illness or developmental disability, if any;
- 31 (5) Any assistance needed for activities of daily living;
- 32 (6) Activity preferences;
- 33 (7) Geographic location preferences;

1 (8) Basic understanding of the financial situation of the
2 vulnerable adult, including any long-term care insurance or
3 financial or assistance available from other sources;

4 (9) Preferences regarding other issues important to the
5 vulnerable adult, such as special cultural needs, special dietary
6 needs or other special daily routine needs.

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8 NEW SECTION. **Sec. 9.** An employee of an agency who provides
9 referrals to clients or who works directly with vulnerable adults on
10 behalf of the agency must pass a criminal background check every
11 twenty-four months. To pass such criminal background check, the
12 employee must not have been convicted of any crime that is
13 disqualifying under RCW 43.43.830 or 43.43.842, or been found by a
14 court of law or disciplinary authority to have abused, neglected,
15 financially exploited, or abandoned a vulnerable adult. The rules
16 adopted under this section shall permit the eldercare referral
17 agency to consider the criminal history of an applicant for
18 employment when the applicant has one or more convictions for a past
19 offense described in this chapter. An individual responding to a
20 criminal background inquiry request from his or her employer or
21 potential employer shall disclose the information about his or her
22 criminal history under penalty of perjury. The secretary shall use
23 any such information provided by an agency or agency employee solely
24 for the purpose of determining an agency's compliance with the
25 requirements of this chapter. Criminal justice agencies shall
26 provide the secretaries such information as they may have and that
27 the secretaries may require for such purpose.

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29 NEW SECTION. **Sec. 10.** An applicant for an eldercare referral
30 agency registration or a renewal must file with the secretary a
31 written registration application stating (1) the name and address of
32 the applicant, (2) the street address of the agency, (3) the name of
33 the general manager of the office, and (4) the name of the
34 business. The application must be signed by the applicant. If the

1 applicant is a corporation, the application must identify the state
2 of incorporation of the corporation and be signed by an officer
3 thereof. If the applicant is a partnership, the application must
4 also state the names and addresses of all partners and must be
5 signed by all of them. At the time of the application for or renewal
6 of a registration or provisional registration the applicant must pay
7 a registration fee as established by the secretary. Each
8 registration is valid for a period of twelve months.

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10 NEW SECTION. **Sec. 11.** In addition to any other authority
11 provided by law, the secretary has the authority to:

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

24 (2) Establish forms and procedures necessary to administer this
25 chapter;

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

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

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

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1 (6) Deny or revoke agency registration issued under this chapter
2 if an agency fails to comply with the provisions hereof.

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4 NEW SECTION. **Sec. 12.** The secretary has authority under this
5 chapter in relation to eldercare referral agencies. No chapter
6 within Title 18 RCW will apply to an eldercare referral agency or
7 its registration with the department other than this chapter.

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9 NEW SECTION. **Sec. 13.** Agencies and their employees, owners, and
10 officers will not be considered providers and will not be liable or
11 responsible for the acts or omissions of a provider.

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13 NEW SECTION. **Sec. 14.** Nothing in this chapter will limit,
14 specify, or otherwise regulate the fees charged by an agency to a
15 provider for a referral.

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17 NEW SECTION. **Sec. 15.** This chapter may be known and cited as the
18 "eldercare referral act."

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20 NEW SECTION. **Sec. 16.** If any provision of this act or its
21 application to any person or circumstance is held invalid, the
22 remainder of the act or the application of the provision to other
23 persons or circumstances is not affected."

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25 NEW SECTION. **Sec. 17.** Sections 1 through 17 of this act
26 constitute a new chapter in Title 18 RCW."

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28 Correct the title.

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EFFECT: Eliminates elements of the underlying bill relating to
"elder and vulnerable adult referral agencies," including
acknowledgements of disclosure statements, 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, deny, or revoke registrations. Certain disclosure and intake form requirements must be conducted with the client. 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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