

ESHB 1494 - S AMD  
By Senator Keiser

ADOPTED AND ENGROSSED 4/7/11

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

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

7 (2) The legislature further finds that locating appropriate and  
8 quality housing alternatives sometimes depends on elder and vulnerable  
9 adult referral agencies attempting to assist with referral.

10 (3) The legislature further finds that vulnerable adult referral  
11 professionals should be required to meet certain minimum requirements  
12 to promote better integration of vulnerable adult housing choices.

13 (4) The legislature further finds that the requirement that elder  
14 and vulnerable adult referral agencies meet minimum standards of  
15 conduct is in the interest of public health, safety, and welfare.

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

18 (1) "Care services" means any combination of services, including  
19 in-home care, private duty care, or private duty nursing designed for  
20 or with the goal of allowing vulnerable adults to receive care and  
21 related services at home or in a home-like setting. Care service  
22 providers must include home health agencies and in-home service  
23 agencies licensed under chapter 70.127 RCW.

24 (2) "Client" means an elder person or a vulnerable adult, or his or  
25 her representative if any, seeking a referral or assistance with  
26 entering into an arrangement for supportive housing or care services in  
27 Washington state through an elder and vulnerable adult referral agency.  
28 For purposes of this chapter, the "client's representative" means the  
29 person authorized under RCW 7.70.065 or other laws to provide informed

1 consent for an individual unable to do so. "Client" may also mean a  
2 person seeking a referral for supportive housing or care services on  
3 behalf of the elder person or vulnerable adult through an elder care  
4 referral service: PROVIDED, That such a person is a family member,  
5 relative, or domestic partner of the senior or vulnerable adult.

6 (3) "Elder and vulnerable adult referral agency" or "agency" means  
7 a business or person who receives a fee from or on behalf of a  
8 vulnerable adult seeking a referral to care services or supportive  
9 housing, or who receives a fee from a care services provider or  
10 supportive housing provider because of any referral provided to or on  
11 behalf of a vulnerable adult.

12 (4) "Fee" means anything of value. "Fee" includes money or other  
13 valuable consideration or services or the promise of money or other  
14 valuable consideration or services, received directly or indirectly by  
15 an elder and vulnerable adult referral agency.

16 (5) "Information" means the provision of general information by an  
17 agency to a person about the types of supportive housing or care  
18 services available in the area that may meet the needs of elderly or  
19 vulnerable adults without giving the person the names of specific  
20 providers of care services or supportive housing, or giving a provider  
21 the name of the person or vulnerable adult. Information also means the  
22 provision by an agency of the names of specific providers to a social  
23 worker, discharge planner, case manager, professional guardian, nurse,  
24 or other professional who is assisting a vulnerable adult locate  
25 supportive housing or care services, where the agency does not request  
26 or receive any fee.

27 (6) "Person" includes any individual, firm, corporation,  
28 partnership, association, company, society, manager, contractor,  
29 subcontractor, bureau, agency, organization, service, office, or an  
30 agent or any of their employees.

31 (7) "Provider" means any entity or person that both provides  
32 supportive housing or care services to a vulnerable adult for a fee and  
33 provides or is required to provide such housing or services under a  
34 state or local business license specific to such housing or services.

35 (8) "Referral" means the act of an agency giving a client the name  
36 or names of specific providers of care services or supportive housing  
37 that may meet the needs of the vulnerable adult identified in the  
38 intake form described in section 7 of this act, or the agency gives a

1 provider the name of a client for the purposes of enabling the provider  
2 to contact the client regarding care services or supportive housing  
3 provided by that provider.

4 (9) "Supportive housing" means any type of housing that includes  
5 services for care needs and is designed for prospective residents who  
6 are vulnerable adults. Supportive housing includes, but is not limited  
7 to, nursing homes licensed under chapter 18.51 RCW, boarding homes  
8 licensed under chapter 18.20 RCW, adult family homes licensed under  
9 chapter 70.128 RCW, and continuing care retirement communities under  
10 RCW 70.38.025.

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

12 NEW SECTION. **Sec. 3.** (1) As of January 1, 2012, a business or  
13 person operating or maintaining an agency in this state is subject to  
14 the provisions of this chapter. An agency must maintain general and  
15 professional liability insurance to cover the acts and services of the  
16 agency. The combined liability insurance coverage required is one  
17 million dollars.

18 (2) The agency may not create an exclusive agreement between the  
19 agency and the client, or between the agency and a provider. The  
20 agency cannot provide referral services to a client where the only  
21 names given to the client are of providers in which the agency or its  
22 personnel or immediate family members have an ownership interest in  
23 those providers. An agreement entered into between an agency and a  
24 provider must allow either the provider or the agency to cancel the  
25 agreement with specific payment terms regarding pending fees or  
26 commissions outlined in the agreement.

27 (3) The marketing materials, informational brochures, and web sites  
28 owned or operated by an agency, and concerning information or referral  
29 services for elderly or vulnerable adults, must include a clear  
30 identification of the agency.

31 (4) All owners, operators, and employees of an agency shall be  
32 considered mandated reporters under the vulnerable adults act, chapter  
33 74.34 RCW. No agency may develop or enforce any policies or procedures  
34 that interfere with the reporting requirements of chapter 74.34 RCW.

35 NEW SECTION. **Sec. 4.** Nothing in this chapter may be construed to  
36 prohibit, restrict, or apply to:

1 (1) Any home health or hospice agency while providing counseling to  
2 patients on placement options in the normal course of practice;

3 (2) Government entities providing information and assistance to  
4 vulnerable adults unless making a referral in which a fee is received  
5 from a client;

6 (3) Professional guardians providing services under authority of  
7 their guardianship appointment;

8 (4) Supportive housing or care services providers who make  
9 referrals to other supportive housing or care services providers where  
10 no monetary value is exchanged;

11 (5) Social workers, discharge planners, or other social services  
12 staff assisting a vulnerable adult to define supportive housing or care  
13 services providers in the course of their employment responsibilities  
14 if they do not receive any monetary value from a provider; or

15 (6) Any person to the extent that he or she provides information to  
16 another person.

17 NEW SECTION. **Sec. 5.** (1) Each agency shall keep records of all  
18 referrals rendered to or on behalf of clients. These records must  
19 contain:

20 (a) The name of the vulnerable adult, and the address and phone  
21 number of the client or the client's representative, if any;

22 (b) The kind of supportive housing or care services for which  
23 referral was sought;

24 (c) The location of the care services or supportive housing  
25 referred to the client and probable duration, if known;

26 (d) The monthly or unit cost of the supportive housing or care  
27 services, if known;

28 (e) If applicable, the amount of the agency's fee to the client or  
29 to the provider;

30 (f) If applicable, the dates and amounts of refund of the agency's  
31 fee, if any, and reason for such refund; and

32 (g) A copy of the client's disclosure and intake forms described in  
33 sections 6 and 7 of this act.

34 (2) Each agency shall also keep records of any contract or written  
35 agreement entered into with any provider for services rendered to or on  
36 behalf of a vulnerable adult, including any referrals to a provider.

1 Any provision in a contract or written agreement not consistent with  
2 this chapter is void and unenforceable.

3 (3) The agency must maintain the records covered by this chapter  
4 for a period of six years. The agency's records identifying a client  
5 are considered "health care information" and the provisions of chapter  
6 70.02 RCW apply but only to the extent that such information meets the  
7 definition of "health care information" under RCW 70.02.010(7). The  
8 client must have access upon request to the agency's records concerning  
9 the client and covered by this chapter.

10 NEW SECTION. **Sec. 6.** (1) An agency must provide a disclosure  
11 statement to each client prior to making a referral. A disclosure  
12 statement is not required when the agency is only providing information  
13 to a person. The disclosure statement must be acknowledged by the  
14 client prior to the referral and the agency shall retain a copy of the  
15 disclosure statement and acknowledgment. Acknowledgment may be in the  
16 form of:

17 (a) A signature of the client or legal representative on the exact  
18 disclosure statement;

19 (b) An electronic signature that includes the date, time, internet  
20 provider address, and displays the exact disclosure statement document;

21 (c) A faxed confirmation that includes the date, time, and fax  
22 number and displaying the exact disclosure statement document; or

23 (d) In instances where a vulnerable adult chooses not to sign or  
24 otherwise provide acknowledgment of the disclosure statement, the  
25 referral professional or agency may satisfy the acknowledgment  
26 requirement of this subsection (1) by documenting the client's refusal  
27 to sign.

28 (2) The disclosure statement must be dated and must contain the  
29 following information:

30 (a) The name, address, and telephone number of the agency;

31 (b) The name of the client;

32 (c) The amount of the fee to be received from the client, if any.  
33 Alternatively, if the fee is to be received from the provider, the  
34 method of computation of the fee and the time and method of payment.  
35 In addition, the agency shall disclose to the client the amount of fee  
36 to be received from the provider, if the client requests such  
37 information;

1 (d) A clear description of the services provided by the agency in  
2 general, and to be provided specifically for the client;

3 (e) A provision stating that the agency may not require or request  
4 clients to sign waivers of potential liability for losses of personal  
5 property or injury, or to sign waivers of any rights of the client  
6 established in state or federal law;

7 (f) A provision stating that the agency works with both the client  
8 and the care services or supportive housing provider in the same  
9 transaction, and an explanation that the agency will need the client's  
10 authorization to obtain or disclose confidential health care  
11 information;

12 (g) A statement indicating the frequency on which the agency  
13 regularly tours provider facilities, and that, at the time of referral,  
14 the agency will inform the client in writing or by electronic means if  
15 the agency has toured the referred supportive housing provider or  
16 providers, and if so, the most recent date that tour took place;

17 (h) A provision stating that the client may, without cause, stop  
18 using the agency or switch to another agency without penalty or  
19 cancellation fee to the client;

20 (i) An explanation of the agency's refund of fees policy, which  
21 must be consistent with section 10 of this act;

22 (j) A statement that the client may file a complaint with the  
23 attorney general's office for violations of this chapter, including the  
24 name, address, and telephone number of the consumer protection division  
25 of that office; and

26 (k) If the agency or its personnel who are directly involved in  
27 providing referrals to clients, including the personnel's immediate  
28 family members, have an ownership interest in the supportive housing or  
29 care services to which the client is given a referral, a provision  
30 stating that the agency or such personnel or their immediate family  
31 members have an ownership interest in the supportive housing or care  
32 services to which the client is given referral services, and, if such  
33 ownership interest exists, an explanation of that interest.

34 NEW SECTION. **Sec. 7.** (1) The agency shall use a standardized  
35 intake form for all clients prior to making a referral. The intake  
36 form must, at a minimum, contain the following information regarding  
37 the vulnerable adult:

- 1 (a) Recent medical history, as relevant to the referral process;  
2 (b) Known medications and medication management needs;  
3 (c) Known medical diagnoses, health concerns, and the reasons the  
4 client is seeking supportive housing or care services;  
5 (d) Significant known behaviors or symptoms that may cause concern  
6 or require special care;  
7 (e) Mental illness, dementia, or developmental disability  
8 diagnosis, if any;  
9 (f) Assistance needed for daily living;  
10 (g) Particular cultural or language access needs and  
11 accommodations;  
12 (h) Activity preferences;  
13 (i) Sleeping habits of the vulnerable adult, if known;  
14 (j) Basic information about the financial situation of the  
15 vulnerable adult and the availability of any long-term care insurance  
16 or financial assistance, including medicaid, which may be helpful in  
17 defining supportive housing and care services options for the  
18 vulnerable adult;  
19 (k) Current living situation of the client;  
20 (l) Geographic location preferences; and  
21 (m) Preferences regarding other issues important to the client,  
22 such as food and daily routine.
- 23 (2) The agency shall obtain the intake information from the most  
24 available sources, such as from the client, the client's  
25 representative, or a health care professional, and shall allow the  
26 vulnerable adult to participate to the maximum extent possible.
- 27 (3) The agency may provide information to a person about the types  
28 of supportive housing or care services available in the area that may  
29 meet the needs of elderly or vulnerable adults without the need to  
30 complete an intake form or provide a disclosure statement, if the  
31 agency does not make a referral or request or receive any fee. In  
32 addition, the agency may provide the names of specific providers to a  
33 social worker, discharge planner, case manager, professional guardian,  
34 nurse, or other professional who is assisting a vulnerable adult locate  
35 supportive housing or care services, provided the agency does not  
36 request or receive any fee.

1        NEW SECTION.    **Sec. 8.**    (1) The agency may choose to provide a  
2 referral for the client by either giving the client the name or names  
3 of specific providers who may meet the needs of the vulnerable adult  
4 identified in the intake form or by giving a provider or providers the  
5 name of the client after obtaining the authorization of the client or  
6 the client's representative.

7        (2)(a) Prior to making a referral to a specific provider, the  
8 agency shall speak with a representative of the provider and obtain, at  
9 a minimum, the following general information, which must be dated and  
10 retained in the agency's records:

- 11        (i) The type of license held by the provider and license number;
- 12        (ii) Whether the provider is authorized by license to provide care  
13 to individuals with a mental illness, dementia, or developmental  
14 disability;
- 15        (iii) Sources of payment accepted, including whether medicaid is  
16 accepted;
- 17        (iv) General level of medication management services provided;
- 18        (v) General level and types of personal care services provided;
- 19        (vi) Particular cultural needs that may be accommodated;
- 20        (vii) Primary language spoken by care providers;
- 21        (viii) Activities typically provided;
- 22        (ix) Behavioral problems or symptoms that can or cannot be met;
- 23        (x) Food preferences and special diets that can be accommodated;
- 24        and
- 25        (xi) Other special care or services available.

26        (b) The agency shall update this information regarding the provider  
27 at least annually. To the extent practicable, referrals shall be made  
28 to providers who appear, in the best judgment of the agency, capable of  
29 meeting the vulnerable adult's identified needs.

30        (3) Prior to making a referral of a supportive housing provider,  
31 the agency shall conduct a search, and inform the client that a search  
32 was conducted, of the department of social and health service's web  
33 site to see if the provider is in enforcement status for violation of  
34 its licensing regulations. Prior to making a referral of a care  
35 services provider, the agency shall conduct a search, and inform the  
36 client that a search was conducted, of the department of health's web  
37 site to determine if the provider is in enforcement status for  
38 violation of its licensing regulations. The searches required by this



1 subsection must be considered timely if done within thirty days before  
2 the referral. The information obtained by the agency from the searches  
3 must be disclosed in writing to the client if the referral includes  
4 that provider.

5 (4) By January 1, 2012, the department of social and health  
6 services and the department of health must convene a work group of  
7 stakeholders to collaboratively identify and implement a uniform  
8 standard for the information pertaining to the enforcement status of a  
9 provider that must be disclosed to the client under subsection (3) of  
10 this section. The uniform standard must clearly identify what elements  
11 of an enforcement action should be included under the disclosure  
12 requirements of subsection (3) of this section. Agencies will have no  
13 liability or responsibility for the accuracy, completeness, timeliness,  
14 or currency of information shared in the prescribed format and are  
15 immune from any cause of action rising from their reliance on, use of,  
16 or distribution of this information.

17 NEW SECTION. **Sec. 9.** Nothing in this chapter will limit, specify,  
18 or otherwise regulate the fees charged by an agency to a provider for  
19 a referral.

20 NEW SECTION. **Sec. 10.** (1) The agency shall clearly disclose its  
21 fees and refund policies to clients and providers. If the agency  
22 receives a fee regarding a client who was provided referral services  
23 for supportive housing, and the vulnerable adult dies, is hospitalized,  
24 or is transferred to another supportive housing setting for more  
25 appropriate care within the first thirty days of admission, then the  
26 agency shall refund a portion of its fee to the person who paid it,  
27 whether that is the client or the supportive housing provider. The  
28 amount refunded must be a prorated portion of the agency's fees, based  
29 upon a per diem calculation for the days that the client resided or  
30 retained a bed in the supportive housing.

31 (2) A refund policy inconsistent with this section is void and  
32 unenforceable.

33 (3) This section does not limit the application of other remedies,  
34 including the consumer protection act, chapter 19.86 RCW.



1        NEW SECTION.    **Sec. 17.**    The department of licensing shall convene  
2 a work group of stakeholders to consider the feasibility of  
3 establishing licensure for elder and vulnerable adult referral agencies  
4 described in this act.    The work group will provide recommendations to  
5 the legislature by December 1, 2011.

6        NEW SECTION.    **Sec. 18.**    This chapter may be known and cited as the  
7 "elder and vulnerable adult referral agency act."

8        NEW SECTION.    **Sec. 19.**    Sections 1 through 18 of this act  
9 constitute a new chapter in Title 18 RCW.

10       NEW SECTION.    **Sec. 20.**    This act takes effect January 1, 2012.

11       NEW SECTION.    **Sec. 21.**    If any provision of this act or its  
12 application to any person or circumstance is held invalid, the  
13 remainder of the act or the application of the provision to other  
14 persons or circumstances is not affected."

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By Senator Keiser

**ADOPTED 4/7/11**

15       On page 1, line 1 of the title, after "referrals;" strike the  
16 remainder of the title and insert "adding a new chapter to Title 18  
17 RCW; prescribing penalties; and providing an effective date."

--- END ---