

ESHB 1494 - S COMM AMD

By Committee on Health & Long-Term Care

NOT ADOPTED 04/07/2011

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, and his
25 or 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

1 person authorized under RCW 7.70.065 or other laws to provide informed
2 consent for an individual unable to do so.

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

9 (4) "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 by
12 an elder and vulnerable adult referral agency.

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

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

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

32 (8) "Referral" means the act of an agency giving a client the name
33 or names of specific providers of care services or supportive housing
34 that may meet the needs of the vulnerable adult identified in the
35 intake form described in section 7 of this act, or the agency gives a
36 provider the name of a client for the purposes of enabling the provider
37 to contact the client regarding care services or supportive housing
38 provided by that provider.

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

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

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

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

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

28 (4) All owners, operators, and employees of an agency shall be
29 considered mandated reporters under the vulnerable adults act, chapter
30 74.34 RCW. No agency may develop or enforce any policies or procedures
31 that interfere with the reporting requirements of chapter 74.34 RCW.

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

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

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

4 (3) Professional guardians providing services under authority of
5 their guardianship appointment;

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

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

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

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

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

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

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

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

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

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

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

32 (2) Each agency shall also keep records of any contract or written
33 agreement entered into with any provider for services rendered to or on
34 behalf of a vulnerable adult, including any referrals to a provider.
35 Any provision in a contract or written agreement not consistent with
36 this chapter is void and unenforceable.

1 (3) The agency must maintain the records covered by this chapter
2 for a period of six years. The agency's records identifying a client
3 are considered "health care information" and the provisions of chapter
4 70.02 RCW apply. The client must have access upon request to the
5 agency's records concerning the client and covered by this chapter.

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

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

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

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

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

24 (2) The disclosure statement must be dated and must contain the
25 following information:

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

27 (b) The name of the client;

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

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

36 (e) A provision stating that the agency may not require or request

1 clients to sign waivers of potential liability for losses of personal
2 property or injury, or to sign waivers of any rights of the client
3 established in state or federal law;

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

9 (g) A provision stating whether the agency has visited the
10 supportive housing provider or providers to whom they will be referring
11 the client and, if so, when that visit took place;

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

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

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

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

29 NEW SECTION. **Sec. 7.** (1) The agency shall use a standardized
30 intake form for all clients prior to making a referral. The intake
31 form must, at a minimum, contain the following data regarding the
32 vulnerable adult:

33 (a) Recent medical history, as relevant to the referral process;

34 (b) Known medications and medication management needs;

35 (c) Known medical diagnoses, health concerns, and the reasons the
36 client is seeking supportive housing or care services;

1 (d) Significant known behaviors or symptoms that may cause concern
2 or require special care;

3 (e) Mental illness, dementia, or developmental disability
4 diagnosis, if any;

5 (f) Assistance needed for daily living;

6 (g) Particular cultural or language access needs and
7 accommodations;

8 (h) Activity preferences;

9 (i) Sleeping habits of the vulnerable adult, if known;

10 (j) Basic information about the financial situation of the
11 vulnerable adult and the availability of any long-term care insurance
12 or financial assistance, including medicaid, which may be helpful in
13 defining supportive housing and care services options for the
14 vulnerable adult;

15 (k) Current living situation of the client;

16 (l) Geographic location preferences; and

17 (m) Preferences regarding other issues important to the client,
18 such as food and daily routine.

19 (2) The agency shall obtain the intake information from the most
20 available sources, such as from the client, the client's
21 representative, or a health care professional, and shall allow the
22 vulnerable adult to participate to the maximum extent possible. The
23 agency may not obtain or disclose health care information, as defined
24 in RCW 70.02.010, without the authorization of the client or the
25 client's representative.

26 (3) The agency may provide information to a person about the types
27 of supportive housing or care services available in the area that may
28 meet the needs of elderly or vulnerable adults without the need to
29 complete an intake form or provide a disclosure statement, if the
30 agency does not make a referral or request or receive any fee. In
31 addition, the agency may provide the names of specific providers to a
32 social worker, discharge planner, case manager, professional guardian,
33 nurse, or other professional who is assisting a vulnerable adult locate
34 supportive housing or care services, provided the agency does not
35 request or receive any fee.

36 NEW SECTION. **Sec. 8.** (1) The agency may choose to provide a
37 referral for the client by either giving the client the name or names

1 of specific providers who may meet the needs of the vulnerable adult
2 identified in the intake form or by giving a provider or providers the
3 name of the client after obtaining the authorization of the client or
4 the client's representative.

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

9 (i) The type of license held by the provider and license number;

10 (ii) Whether the provider is authorized by license to provide care
11 to individuals with a mental illness, dementia, or developmental
12 disability;

13 (iii) Sources of payment accepted, including whether medicaid is
14 accepted;

15 (iv) General level of medication management services provided;

16 (v) General level and types of personal care services provided;

17 (vi) Particular cultural needs that may be accommodated;

18 (vii) Primary language spoken by care providers;

19 (viii) Activities typically provided;

20 (ix) Behavioral problems or symptoms that can or cannot be met;

21 (x) Food preferences and special diets that can be accommodated;

22 and

23 (xi) Other special care or services available.

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

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

1 the referral. The information obtained by the agency from the searches
2 must be disclosed in writing to the client if the referral includes
3 that provider.

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

7 NEW SECTION. **Sec. 10.** (1) The agency shall clearly disclose its
8 fees and refund policies to clients and providers. If the agency
9 receives a fee regarding a client who was provided referral services
10 for supportive housing, and the vulnerable adult dies, is hospitalized,
11 or is transferred to another supportive housing setting for more
12 appropriate care within the first thirty days of admission, then the
13 agency shall refund a portion of its fee to the person who paid it,
14 whether that is the client or the supportive housing provider. The
15 amount refunded must be a prorated portion of the agency's fees, based
16 upon a per diem calculation for the days that the client resided or
17 retained a bed in the supportive housing.

18 (2) A refund policy inconsistent with this section is void and
19 unenforceable.

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

22 NEW SECTION. **Sec. 11.** Any employee, owner, or operator of an
23 agency that works with vulnerable adults must pass a criminal
24 background check every twenty-four months and not have been convicted
25 of any crime that is disqualifying under RCW 43.43.830 or 43.43.842, or
26 been found by a court of law or disciplinary authority to have abused,
27 neglected, financially exploited, or abandoned a minor or vulnerable
28 adult.

29 NEW SECTION. **Sec. 12.** An agency may not charge or accept a fee or
30 other consideration from a client, care services provider, or
31 supportive housing provider unless the agency substantially complies
32 with the terms of this chapter.

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

2 NEW SECTION. **Sec. 21.** If any provision of this act or its
3 application to any person or circumstance is held invalid, the
4 remainder of the act or the application of the provision to other
5 persons or circumstances is not affected."

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

--- END ---