

SENATE BILL REPORT

ESHB 1494

As Reported by Senate Committee On:
Health & Long-Term Care, March 23, 2011

Title: An act relating to elder placement referrals.

Brief Description: Concerning vulnerable adult referral agencies.

Sponsors: House Committee on Health Care & Wellness (originally sponsored by Representative Moeller).

Brief History: Passed House: 3/07/11, 53-43.

Committee Activity: Health & Long-Term Care: 3/16/11, 3/23/11 [DPA, w/oRec].

SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

Majority Report: Do pass as amended.

Signed by Senators Keiser, Chair; Conway, Vice Chair; Kline, Murray, Pflug and Pridemore.

Minority Report: That it be referred without recommendation.

Signed by Senators Becker, Ranking Minority Member; Carrell and Parlette.

Staff: Rhoda Donkin (786-7465)

Background: Long-term care services are provided in this state in a variety of settings and under different types of licenses, and contracts. The state regulates nursing homes, adult family homes, and boarding homes, all of which offer some variation of daily support, convalescent care, meals, nursing care, supervision, and other services, either on a temporary basis or in a permanent residential setting. The state also regulates in-home services, both home health services which provides medical and therapy care, or home care services which provides personal care and respite.

Currently there is no specific regulation of entities that connect people looking for long term care with available services in the community. Families may seek help placing a loved one who is leaving a hospital from discharge planners who may be familiar with available residential settings in a community; or, they may seek help from either the Area Agencies on Aging or state operated information services. They may also turn to elder referral agencies, pay a fee, follow the company's procedures and be matched with a care facility or get their

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information through the company's referral system. There is concern that some of the practices of these elder care referral agencies may not be in the best interests of consumers and need to be regulated.

Summary of Bill (Recommended Amendments): Referral agencies must disclose fee and refunds to clients and providers. Minimum requirements for referral agency refunds are established for situations where some change occurs within 30 days of admission, such as when a new resident dies, is hospitalized, or is transferred. Different formulas for refunds are described.

Agencies must keep records of all services provided to the client for at least six years. These records are protected by state health information privacy regulations, and must include such information as the type of housing and care sought, the services provided, its duration, the monthly cost, the amount of attorneys' fees and any refunds.

Clients of referral agencies must be given a disclosure statement by the agency, which must be acknowledged upon receipt by the client. The disclosure document must include information pertaining to the referral fee and refund policies, services provided, and whether or not the referral agency has visited the providers to whom they are referring clients. The disclosure must also include a statement that the agency will be acting on behalf of the client, information about how to file a complaint, a statement regarding any financial interest that the agency may have with the referral being made, and other information.

Referral agencies must use a standardized intake form for each client and this information will be protected by state health care information confidentiality laws. The intake form must include recent medical history, medications, behaviors or symptoms that require special care, personal care needs, cultural and language accommodations, and other information related to daily needs.

The referral agency must obtain certain information about providers to whom they will be referring clients. They must know the kind of license held, the authorizations for specialized care including mental illness, dementia or developmental disabilities, and specific accommodations that may be available. Within 30 days of making a referral, the referral agency must search state websites to determine any enforcement actions against the provider.

The regulations for referral agencies do not apply to home health or hospice agencies providing counseling to patients on placement options; government entities providing information and assistance to vulnerable adults, geriatric case or care managers, professional guardians and several other entities described in the act.

It is stated that nothing in the act regulates fees charged by referral agencies.

After January 1, 2012, an entity that operates a referral agency must comply with requirements related to fees, refunds, recordkeeping, disclosures and intake forms. A violation of the regulations in the act is an unfair or deceptive practice under the state's Consumer Protection Act.

The Department of Licensing (DOL) must convene a workgroup on the feasibility of licensing the agencies described in this act, and make recommendations to the Legislature this year.

EFFECT OF CHANGES MADE BY HEALTH & LONG-TERM CARE COMMITTEE (Recommended Amendments):

- It is clarified that government agencies are not considered elder and vulnerable adult referral agencies.
- Home health and hospice agencies are exempt from the provisions of the act.
- The disclosure statement to referral clients must include a statement as to whether or not the referral agency has visited the providers to whom they are referring clients. The disclosure does not have to describe the services the agency does not provide, or state that the client is not required to use the services of the agency.
- The agency's referral intake form must include any specific language needs of the client.
- Nothing in this act regulates fees charged by referral agencies. Agencies are not liable or responsible for the actions of providers. DOL is directed to convene a workgroup on the feasibility of licensing the agencies described in this act and make recommendations to the Legislature this year.

Appropriation: None.

Fiscal Note: Available.

[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Engrossed Substitute House Bill: PRO: This is a completely unregulated industry, one that deals with the fates of very vulnerable individuals and often their families who are experiencing a period of great stress finding placements for their elderly loved ones. Basic disclosure information that is personalized to the services to be expected and those that aren't provided should be required. Intake information that includes enough facts to make a safe and appropriate placement should also be required. This is an important service, dealing with fragile people. They should be regulated at least as much as tanning salons, and they aren't. Lots of money changes hands. There should be real value received for the amount paid out. This referral business has very aggressive finders fees, and that does not work well with protecting vulnerable people.

CON: Where is the human outcry? We have been operating for years with hundreds of letters of gratitude for the work we do. This is an essential service and, if this bill passes, it will definitely reduce access to care for seniors and their families. The liability costs involved with being put under the Consumer Protection Act will drive very good players out of the business. We should be regulated under DOL. We support disclosure and we do it now. The bill is too prescriptive and overall the changes to our industry will be overwhelming. The process requirements in this bill are illogical. We won't be able to give

free advice. As a provider of care, I depend on referral agencies; otherwise, I would be spending way too much time marketing my home.

OTHER: The reference to state agencies should be removed. We don't want to put state agencies in the position of being sued for providing referrals.

Persons Testifying: PRO: Representative Moeller, prime sponsor; Cindi Laws, Washington State Residential Care Council; Don Moreland, State Council on Aging; Ingrid McDonald, AARP; Debra Everson, Sound Transitions; Louise Ryan LTC Ombudsman; Jeff Crollard, Attorney LTC Ombudsman; Jerry Reilly, Eldercare Alliance; Dennis Mahar, Area Agencies on Aging; Heidi Sheldon, Options for Seniors; Walt Bowen, Senior Lobby.

CON: Stacy Kriebaum, Brad Tower, Pamela Temple, Colleen Hughes-Kraft, A Place for Mom; Janis Olson, consumer; Michelle Graham, Graham & Graham.

OTHER: Doug Walsh, Attorney General/Consumer Protection Division.