

SENATE BILL REPORT

SB 5047

As Reported by Senate Committee On:
Health & Long-Term Care, February 7, 2011

Title: An act relating to prohibiting requests for waivers of rights of residents of long-term care facilities.

Brief Description: Prohibiting requests for waivers of rights of residents of long-term care facilities.

Sponsors: Senators Kline, Chase, Harper, Nelson, Keiser and Shin.

Brief History:

Committee Activity: Health & Long-Term Care: 1/19/11, 2/07/11 [DPS, w/oRec].

SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

Majority Report: That Substitute Senate Bill No. 5047 be substituted therefor, and the substitute bill do pass.

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: Currently in state law, nursing facilities, boarding homes, and adult family homes are not permitted to request or require residents to sign waivers of potential liability for losses of personal property or injury, or to sign waivers of their rights under the state residents' rights statute. These rights covered in 70.129 RCW include all aspects of life within a long-term care facility – including such things as visitation, privacy, transfer, discharge, personal property storage, and prohibitions against physical or chemical restraint. Other rights that protect vulnerable adults against exploitation, abuse, neglect, and abandonment are laid out in some detail in the abuse of vulnerable adults statute. In this chapter, 74.34 RCW, there is no right to waive legal action that may be taken should a vulnerable adult become victimized.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Typically, long-term care facilities may ask residents to agree to sign arbitration agreements which replace their right to sue if they are victims of abuse or neglect. These agreements provide for faster, less expensive resolution of disputes. There is concern, however, that arbitration agreements are misunderstood by residents, who may sign them without knowing that they limit legal action and reduce the potential recovery of costs including attorney's fees, and other forms of relief typically achievable through a jury trial, should they become victims of abuse or neglect in a facility.

Summary of Bill (Recommended Substitute): No long-term care facility or nursing facility may require or request residents to sign an agreement on binding arbitration unless the agreement is in writing, the resident has been given the opportunity to consult with his or her attorney or representative, and the request is made after the dispute arises.

The act applies prospectively only and not retroactively. It applies only to a written document signed on or after the effective date of this act.

EFFECT OF CHANGES MADE BY HEALTH & LONG-TERM CARE COMMITTEE (Recommended Substitute): No long-term care facility or nursing facility may require or request residents to sign an agreement on binding arbitration unless the agreement is in writing, the resident has been given the opportunity to consult with his or her attorney or representative, and the request is made after the dispute arises.

The act applies prospectively only and not retroactively. It applies only to a written document signed on or after the effective date of this act.

Appropriation: None.

Fiscal Note: Not requested.

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 Original Bill: PRO: These arbitration agreements are part of a stack of documents that new residents are asked to sign at a time when they are very stressed and probably anxious. It is wrong to ask people to sign away their legal rights when they are dealing with so much and probably not informed enough to know what they are doing.

OTHER: Most Medicaid residents don't have attorneys. This puts an unfair burden on them. This will cause liability insurance premiums to go up for facilities if they can not protect themselves against extremely expensive lawsuits.

Persons Testifying: PRO: Louise Ryan, LTC Ombudsman; Jeff Crollard, LTC Ombudsman attorney.

OTHER: Dave Knutson, WA Health Care Assn.; Julie Peterson, Aging Services of Washington.