

HOUSE BILL REPORT

ESHB 1494

As Amended by the Senate

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:

Committee Activity:

Health Care & Wellness: 2/2/11, 2/17/11 [DPS];

General Government Appropriations & Oversight: 2/18/11 [DPS(HCW)].

Floor Activity:

Passed House: 3/7/11, 53-43.

Senate Amended.

Passed Senate: 4/7/11, 32-17.

Brief Summary of Engrossed Substitute Bill

- Establishes requirements for elder and vulnerable adult referral agencies related to fees and refunds, recordkeeping, disclosure statements, and intake forms.
- Declares that a violation of regulations pertaining to elder and vulnerable adult referral agencies are violations of the Consumer Protection Act, unless the agency was in substantial compliance with the regulations.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Cody, Chair; Jenkins, Vice Chair; Hinkle, Assistant Ranking Minority Member; Clibborn, Green, Harris, Kelley, Moeller and Van De Wege.

Minority Report: Do not pass. Signed by 2 members: Representatives Schmick, Ranking Minority Member; Bailey.

Staff: Chris Blake (786-7392).

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.

HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS & OVERSIGHT

Majority Report: The substitute bill by Committee on Health Care & Wellness be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Hudgins, Chair; Miloscia, Vice Chair; McCune, Ranking Minority Member; Blake, Fitzgibbon, Ladenburg, Moscoso, Pedersen, Van De Wege and Wilcox.

Minority Report: Do not pass. Signed by 1 member: Representative Taylor, Assistant Ranking Minority Member.

Staff: Wendy Polzin (786-7137).

Background:

There are several types of facilities and service agencies that provide a broad spectrum of housing and services to seniors.

The Department of Social and Health Services licenses three primary types of residential long-term care settings for seniors: nursing homes (sometimes referred to as skilled nursing facilities), boarding homes, and adult family homes.

Nursing Homes: Nursing homes provide continuous 24-hour convalescent and chronic care. Such care may include the administration of medications, preparation of special diets, bedside nursing care, application of dressings and bandages, and carrying out treatment prescribed by licensed health care providers.

Boarding Homes: Boarding homes are facilities that provide housing and basic services to seven or more residents. Services provided by boarding homes include housekeeping, meals, snacks, laundry, and activities. They may also provide domiciliary care including assistance with activities of daily living, health support services, and intermittent nursing services.

Adult Family Homes: Adult family homes are facilities licensed to care for up to six individuals who need long-term care. These homes provide room, board, laundry, necessary supervision, and assistance with activities of daily living, personal care, and nursing services.

The Department of Health licenses in-home services agencies which may provide a range of services to people in their place of residence, including home health services, home care services, hospice care services, and hospice care center services.

Home Health Services: Home health services are services provided to sick, disabled, or vulnerable individuals, including nursing services, home health aide services, physical therapy, occupational therapy services, speech therapy services, respiratory therapy services, nutritional services, medical social services, and home medical supplies or equipment services.

Home Care Services: Home care services are nonmedical services and assistance provided to sick, disabled, or vulnerable individuals to allow them to stay in their residences. These services include personal care, homemaker assistance, respite care assistance, or other nonmedical services or delegated nursing tasks.

Hospice Services: Hospice services are symptom and pain management for terminally ill individuals as well as emotional, spiritual, and bereavement support for the individual and his or her family. These services may include home health and home care services.

Hospice Care Center Services: Hospice care center services are hospice services provided in a "home-like" noninstitutional facility.

Summary of Engrossed Substitute Bill:

"Elder and vulnerable adult referral agencies" (referral agencies) are defined as businesses or persons that either receive a fee from: (1) a vulnerable adult seeking a referral for supportive housing or care services providers (providers), or (2) a provider as a result of referral services provided to a vulnerable adult. The term includes government agencies and geriatric case and care managers that provide referrals for a fee. "Supportive housing" is defined as any type of housing that includes services or care for residents who are vulnerable adults and includes nursing homes, boarding homes, adult family homes, and continuing care retirement communities. "Care services" are defined as any combination of services designed to allow vulnerable adults to receive care at home or in a home-like setting and includes home health agencies and in-home service agencies.

General Regulation.

As of January 1, 2012, any entity that operates a referral agency must comply with requirements related to fees and refunds, recordkeeping, disclosures, and intake forms. A violation of the regulations is an unfair or deceptive act in trade or commerce and an unfair method of competition under the Consumer Protection Act, unless the agency was in substantial compliance with the regulations. These regulations do not apply to entities providing general information about providers without giving the person the names of specific providers.

Agencies are prohibited from establishing exclusivity agreements between the agency and a client or provider. Agencies may not provide the client with only names of providers in which the agency, its employees, or immediate family members have a financial interest.

Agencies must maintain at least \$1 million of liability insurance. The bill is not intended to establish liability for an agency for the acts or omissions of a provider.

Agency owners, operators, and employees who have contact with vulnerable adults must pass a criminal background check every two years and not have been found to have abused, neglected, financially exploited, or abandoned a minor or vulnerable adult. Agency owners, operators, and employees are considered mandated reporters under the Vulnerable Adults Act.

Fees and Refunds.

Referral agencies must disclose fee and refund policies to clients and providers. Minimum requirements for referral agency refund policies are established for situations in which the vulnerable adult dies, is hospitalized, or is transferred to a setting with a more appropriate level of care within the first 30 days of admission. The refund must be a prorated portion of the agency's fees based upon a per diem calculation.

Recordkeeping Requirements.

Agencies must keep records of all services provided to the client for at least six years. Such records are covered by the state health information privacy regulations. The records must include:

- the name, address, and phone number of the client;
- the kind of supportive housing or care services that were sought;
- the type of services provided to the client;
- the location and probable duration of the care services or supportive housing;
- the monthly or unit cost of the supportive housing or care services;
- the amount of the agency's fee to the client or the provider;
- the dates and amounts of any refunds to the client and the reason;
- the client's disclosure and intake forms; and
- any contract or written agreement with a provider for services to the vulnerable adult.

Disclosure Statements.

Clients must be provided with a disclosure statement by the agency. The client must acknowledge receipt of the disclosure statement through written signature, electronic signature, or facsimile confirmation. If the vulnerable adult refuses to sign the acknowledgement, the referral professional must document that refusal.

A disclosure statement must include:

- the name and contact information of the referral agency;
- the name of the client;
- the amount of the fee to be received from the client or, if the fee is received from the provider, the method of computing the fee, and the time and method of payment;
- a description of the services that the referral agency generally provides and those to be provided specifically to the client;
- a description of the services that the referral agency does not provide;
- a provision that the referral agency may not request clients to sign waivers of potential liability;
- a provision that the referral agency works with both the client and the supportive housing or care services provider and that the client's authorization will be needed to disclose confidential health information;
- a list of the qualifications of the referral agency's personnel or a statement of how to obtain such information from the client;
- a provision that the client may discontinue the relationship with the referral agency at any time;
- an explanation of the agency's refund policy;
- a statement that the client may file a complaint with the Office of the Attorney General; and

- if the agency, its employees, or immediate family members have a financial interest with a provider to which the client is being referred, a statement explaining that interest.

Intake Forms.

Referral agencies must use a standardized intake form for each vulnerable adult. Information gathered in the intake form is covered by state health care information confidentiality laws.

The intake form must include at least the following information:

- recent medical history as relevant to the referral process;
- known medications and medication management;
- known diagnoses, health concerns, and the reason for seeking supportive housing or care services;
- behaviors or symptoms that may cause concern or require special care;
- mental illness, dementia, or developmental disabilities;
- assistance needed for daily living;
- cultural needs and accommodations;
- activity preferences;
- sleeping habits;
- understanding of the clients financial situation and existence of long-term care insurance and financial assistance;
- client's current living situation;
- geographic location preferences; and
- preferences regarding other issues that are important to the client.

Referral Process.

The referral agency may provide a referral to a client by either giving the names of specific providers who may meet the vulnerable adult's needs or submitting the name of the client to the provider. Before a referral agency can make a referral to a provider, the referral agency must obtain information from the provider including the type of license held by the provider; the provider's authority to care for individuals with mental illness, dementia, or developmental disabilities; accepted payment sources; level of medication management services and personal care services provided; cultural accommodations; activities provided; behavioral conditions that cannot be met; and food preference accommodations. In addition, within 30 days of making a referral, the referral agency must also search the Department of Social and Health Services' website and the Department of Health's website to determine the existence of any enforcement actions against the provider.

Exclusions.

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; professional guardians; providers who make referrals to other providers without charge; social workers, discharge planners or other social service workers helping vulnerable adults in their regular employment activities; or persons providing information to another person.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment expands the definition of "client" to include persons seeking a referral for supportive housing or care services on behalf of an elder person or vulnerable adult who is a family member, relative, or domestic partner. Government agencies that provide referrals to care services or supportive housing and geriatric case managers receiving a fee are not considered "elder and vulnerable adult referral agencies" (referral agencies).

The Senate amendment specifies that the type of liability insurance that a referral agency must maintain is general and professional liability insurance.

The Senate amendment expands the exemption for counseling regarding placement options by home health and hospice agencies by removing the requirement that the exemption only applies to those not charging a fee.

The Senate amendment specifies that referral agency records are only considered health care information to the extent that it meets the definition of health care information in the Uniform Health Care Information Act.

The Senate amendment eliminates the requirement that disclosure forms contain a description of the services not provided by the referral agency and a listing of the qualifications of the agency personnel who will be working with the client. A statement regarding the frequency on which the agency tours provider facility and whether or not the agency has toured the facility that is the subject of a referral is added to the disclosure form requirements.

The Senate amendment requires referral agencies to collect information on the primary languages spoken by a provider. Intake forms must collect information regarding the language access needs of the vulnerable adult.

The Senate amendment directs the Department of Social and Health Services and the Department of Health to convene a stakeholder work group to identify standards for referral agency reports to clients regarding the enforcement status of a provider.

The Senate amendment specifies that the act shall regulate the fees charged by an agency to provider for a referral.

The Senate amendment removes the exemption from Consumer Protection Act liability for referral agencies that are in substantial compliance with the act.

The Senate amendment exempts agencies and their employees, owners, and officers from being considered providers and excludes them from liability for the acts and omissions of a provider.

The Senate amendment requires the Department of Licensing to convene a work group of stakeholders to consider the feasibility of establishing a licensure for elder and vulnerable adult referral agencies and provide recommendations to the Legislature by December 1, 2011.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on January 1, 2012.

Staff Summary of Public Testimony (Health Care & Wellness):

(In support) This bill attempts to put some sidebars around referral services. While some do an excellent job providing a valuable service in finding placements for senior citizens, others have tried to take advantage of seniors. It is critical to start to establish some basic standards for regulating referral agencies. There have been times when clients have been told that the assessment is free when it is not. Assessments have been conducted over the phone and inappropriate placements have been made. There should be a requirement that referral agencies have liability insurance. Placement agencies are completely unregulated in Washington. There needs to be protections for the residents and the facilities that are receiving these people.

(In support with concerns) While the bill is good, there should be clarification around the role of home health and hospice services provided in the normal business.

(Opposed) This bill does not accurately portray how referral agencies operate. The requirement for the referral agency to perform an assessment and care plan is burdensome and impractical for the agencies to undertake and it is redundant to what boarding homes and adult family homes must already do. Referral agencies should be involved in the development of regulations. Referral agencies are not case managers and they look to families and physicians to be the decisionmakers in selecting housing and care services. This bill came up very quickly and could benefit from additional input from referral agencies. Requiring a full assessment and care plan by the care agency prior to the referral is not necessary because this will be done by the housing provider. The issues in this bill could limit options for seniors and reduce, if not eliminate, available health care options.

Staff Summary of Public Testimony (General Government Appropriations & Oversight):

(In support) This proposal has been heard by the Legislature before. This is an area of care that needs to be regulated. Numerous seniors have been exploited, some have died, and thousands of dollars have been spent on care in an unregulated field. The state Long-Term Care Ombudsman has been aware of problems with referral programs and thinks there are good provisions in this bill, though there are still additions that could be made.

(Opposed) Legislation would destroy elder referral businesses as they exist now. The current language was not available until executive session in the policy committee. This bill would create more "churn" for the elderly and their families trying to find care.

Persons Testifying (Health Care & Wellness): (In support) Representative Moeller, prime sponsor; Louise Ryan, Office of the Long-Term Care Ombudsman; and Cindi Laws, Washington State Residential Care Council of Adult Family Homes.

(In support with concerns) Leslie Emerick, Home Care Association of Washington.

(Opposed) Michelle Graham, Graham and Graham Eldercare Consultants; Les Ostermeier, Choice Advisory Services Inc.; and David Mellen, A Place for Mom.

Persons Testifying (General Government Appropriations & Oversight): (In support) Cindy Laws, Washington State Residential Care Council; and Louise Ryan, Long-Term Care Ombudsman.

(Opposed) Brad Tower, A Place for Mom.

Persons Signed In To Testify But Not Testifying (Health Care & Wellness): (In support) Hope Reffet, Frankie Valdez, and Bonnie Bruce, Washington State Residential Care Council of Adult Family Homes.

(Opposed) Pamala Temple, A Place for Mom; Heidi Sheldon, Options for Seniors; Nancy Watkins, Assisted Living Options, Sara Shelton, Seattle Aging Solutions; Tami Rego, Stacy Gibson, Brittany Noggle, and William Graham, Graham and Graham Eldercare Consultants; and Beth Spran, Divine Resources Adult Family Home.

Persons Signed In To Testify But Not Testifying (General Government Appropriations & Oversight): None.