
Judiciary Committee

HB 2126

Title: An act relating to in-home long-term care services liability.

Brief Description: Revising provisions for long-term care service options.

Sponsors: Representative Campbell.

Brief Summary of Bill

- Eliminates joint liability for certain defendants in tort cases based on in-home long-term care services, even when the plaintiff is not at fault.

Hearing Date: 3/3/03

Staff: Bill Perry (786-7123).

Background:

Joint and Several Liability.

In a tort case based on fault, the trier of facts is generally required to assign a percentage of the fault to every entity causing the claimant's damages. These assigned percentages must add up to 100 percent.

With some exceptions, the Legislature has abolished "joint and several" liability of defendants. As a result, a defendant in a tort case is generally responsible only for his or her own percentage of fault in causing the claimant's harm. In some instances, however, multiple defendants may be jointly and severally liable for the whole of the claimant's damages. This joint and several liability means that any one defendant can be required to pay all of the damages. (The paying defendant then has a "right of contribution" against any other defendant to recover shares of the damages based on each defendant's fault.)

One of the instances in which joint and several liability still applies is when the claimant was not at fault in causing his or her own harm.

Vicarious Liability.

Generally, persons and entities are not responsible for the actions or omissions of others. In some cases, however, principles of "agency" or other doctrines may create what is known as

vicarious liability. One such principle is that of "respondeat superior" which, for example, allows an employer to be held liable for the tort of an employee. This vicarious liability is different from other forms of potential employer liability, such as liability for negligently failing to supervise an employee. Under the notion of respondeat superior, an employer does not have to be shown to have acted negligently, but the employee must be shown to have done so during the course of his or her employment.

Long-term In-home Care.

Initiative 775, approved in 2001, created the Home Care Quality Authority (HCQA) to regulate and improve long-term in-home care services. The HCQA has a variety of duties including setting standards for and investigating the background of individual providers of long-term in-home care. For purposes of collective bargaining, the HCQA is the employer of these individual providers. An individual care provider, such as a personal aide, may contract with the Department of Social and Health Services (DSHS) to provide personal or respite care to functionally disabled persons under federal and state programs that allow long-term in-home care. A "functionally disabled person" is someone who is dependent upon others for direct care, support, supervision, or monitoring to perform activities of daily living. "Long-term care" is chronic care delivered indefinitely to a person of any age who is disabled by a permanent, non-reversible condition including mental or physical illness, disease, or chemical dependency.

An "area agency on aging" is a public or non-profit private agency or organization selected by the state and recognized under federal law. An area agency consults with and provides advice to the DSHS on the delivery of programs to the elderly. Among an area agency's duties are a variety of functions with regard to the delivery of medicaid personal care and chore services programs through an individual provider. One of those duties is to monitor a consumer's plan of care to "ensure" that it adequately meets the consumer's needs.

The HCQA and area agencies on aging cannot be held vicariously liable for the acts or omissions of individual providers.

Summary of Bill:

The DSHS, the HCQA, area agencies on aging and other entities are exempt from joint and several liability in any case arising out of in-home case management services, even if the plaintiff in the case is not at fault.

An area agency is required to "verify" rather than "ensure" that a care plan is meeting the needs of a consumer.

The DSHS is provided the same immunity from vicarious liability as the HCQA and area agencies with respect to the acts or omissions of an individual care provider.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is

passed.