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**SUBSTITUTE HOUSE BILL 1494**

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**State of Washington                      62nd Legislature                      2011 Regular Session**

**By House Health Care & Wellness (originally sponsored by Representative Moeller)**

READ FIRST TIME 02/17/11.

1            AN ACT Relating to elder placement referrals; adding a new chapter  
2 to Title 18 RCW; creating a new section; and prescribing penalties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4            NEW SECTION.    **Sec. 1.**    (1) The legislature finds that locating  
5 acceptable housing and appropriate care for vulnerable adults is an  
6 important aspect of providing an appropriate continuity of care for  
7 senior citizens.

8            (2) The legislature further finds that locating appropriate and  
9 quality housing alternatives sometimes depends on elder and vulnerable  
10 adult referral agencies attempting to assist with information or  
11 referral.

12           (3) The legislature further finds that vulnerable adult referral  
13 professionals should be required to meet certain minimum requirements  
14 to promote better integration of vulnerable adult housing choices.

15           (4) The legislature further finds that the requirement that elder  
16 and vulnerable adult referral agencies meet minimum standards of  
17 conduct is in the interest of public health, safety, and welfare.

1            NEW SECTION.    **Sec. 2.**    The definitions in this section apply

2 throughout this chapter unless the context clearly requires otherwise.

3            (1) "Care services" means any combination of services, including  
4 in-home care, private duty care, or private duty nursing designed for  
5 or with the goal of allowing vulnerable adults to receive care and  
6 services at home or in a home-like setting. Care service providers  
7 must include home health agencies and in-home service agencies licensed  
8 under chapter 70.127 RCW.

9            (2) "Client" means an elder person or a vulnerable adult, and his  
10 or her representative if any, seeking information or entering into an  
11 arrangement for supportive housing or care services through an elder  
12 and vulnerable adult referral agency. For purposes of this chapter,  
13 the "client's representative" means the person authorized under RCW  
14 7.70.065 or other laws to provide informed consent for an individual  
15 unable to do so.

16            (3) "Elder and vulnerable adult referral agency" or "agency" means  
17 a business or person who receives a fee from or on behalf of a  
18 vulnerable adult seeking information about, or a referral to, care  
19 services or supportive housing, or who receives a fee from a care  
20 services provider or supportive housing provider because of any  
21 information or referral provided to or on behalf of a vulnerable adult.

22            (4) "Fee" means anything of value. "Fee" includes money or other  
23 valuable consideration or services or the promise of money or other  
24 valuable consideration or services, received directly or indirectly by  
25 an elder and vulnerable adult referral agency.

26            (5) "Information" means the provision of general information by an  
27 agency to a client about the types of supportive housing or care  
28 services available in the area that may meet the needs of the client  
29 identified in the intake form described in section 7 of this act  
30 without giving the client the names of specific providers of care  
31 services or supportive housing.

32            (6) "Person" includes any individual, firm, corporation,  
33 partnership, association, company, society, manager, contractor,  
34 subcontractor, bureau, agency, organization, service, office, or an  
35 agent or any of their employees.

36            (7) "Provider" means any entity or person that provides supportive  
37 housing or care services to a vulnerable adult for a fee.

1 (8) "Referral" means the act of an agency giving a client the name  
2 or names of specific providers of care services or supportive housing  
3 that may meet the needs of the client identified in the intake form  
4 described in section 7 of this act, or the agency gives a provider the  
5 name of a client.

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

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

14 NEW SECTION. **Sec. 3.** (1) After January 1, 2012, a business or  
15 person may not operate or maintain an agency in this state without  
16 complying with the provisions of this chapter. An agency must maintain  
17 liability insurance to cover the acts and services of the agency. The  
18 combined single limit liability insurance coverage required is one  
19 million dollars.

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

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

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

33 (2) Government entities providing information and assistance to  
34 vulnerable adults;

35 (3) Geriatric case or care managers, professional guardians, or

1 individuals or agencies that charge a fee to the vulnerable adult,  
2 unless the individual or agency charges a commission or fee to a  
3 supportive housing or care services provider;

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

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

11 NEW SECTION. **Sec. 5.** (1) Each agency shall keep records of all  
12 services rendered to or on behalf of clients. These records must  
13 contain:

14 (a) The name, address, and phone number of the client, including  
15 the vulnerable adult's representative, if any;

16 (b) The kind of supportive housing or care services for which  
17 information or referral was sought;

18 (c) The type of services provided to the client, including whether  
19 it was information or referral;

20 (d) The location of the care services or supportive housing for the  
21 client and probable duration, if known;

22 (e) The monthly or unit cost of the supportive housing or care  
23 services;

24 (f) The amount of the agency's fee to the client or to the  
25 provider;

26 (g) The dates and amounts of refund of the agency's fee, if any,  
27 and reason for such refund; and

28 (h) The client's disclosure and intake forms described in sections  
29 6 and 7 of this act.

30 (2) Each agency shall also keep records of any contract or written  
31 agreement entered into with any provider for services rendered to or on  
32 behalf of a vulnerable adult, including any referrals to a provider.

33 (3) The agency must maintain the records covered by this chapter  
34 for a period of six years. The agency's records concerning a client  
35 are considered "health care information" and the provisions of chapter  
36 70.02 RCW apply. The client must have access upon request to the  
37 agency's records concerning the client and covered by this chapter.

1        NEW SECTION.    **Sec. 6.**    (1) An agency must provide a disclosure  
2 statement to each client.    The disclosure statement must be  
3 acknowledged by the client and the agency shall retain a copy of the  
4 disclosure statement and acknowledgment.    Acknowledgment may be in the  
5 form of:

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

8        (b) An electronic signature that includes the date, time, internet  
9 provider address, and displaying the exact disclosure statement  
10 document;

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

13       (d) In instances where a vulnerable adult chooses not to sign  
14 acknowledgment of the disclosure statement, the referral professional  
15 or agency must document the client's refusal to sign.

16       (2) The disclosure statement must be dated and must contain the  
17 following information:

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

19       (b) The name of the client;

20       (c) The amount of the fee to be charged or received from the client  
21 or the provider, the method of computation of the fee, and the time and  
22 method of payment;

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

25       (e) A clear description of the services not provided by the agency;

26       (f) If the agency is providing referral services, a statement that  
27 the agency will be acting as a representative of the client seeking  
28 care services or residence in supportive housing;

29       (g) A provision stating that the agency may not require or request  
30 clients to sign waivers of potential liability for losses of personal  
31 property or injury, or to sign waivers of any rights of the client  
32 established in state or federal law;

33       (h) A provision stating that the agency works with both the client  
34 and the care services or supportive housing provider in the same  
35 transaction, and an explanation that the agency will need the client's  
36 authorization to obtain or disclose confidential health care  
37 information;

1 (i) A listing of the qualifications of the agency personnel who  
2 will be working with the client, including their years of experience in  
3 the fields of supportive housing and care services, their experience  
4 working with vulnerable adults, and their education level and relevant  
5 certifications or licenses, if any;

6 (j) A provision stating that the client is not required to use the  
7 services of the agency and may, without cause, stop using the agency or  
8 switch to another agency without penalty or cancellation fee to the  
9 client or the provider;

10 (k) An explanation of the agency's refund of fees policy, which  
11 must be consistent with section 9 of this act;

12 (l) An explanation of how to file a complaint with the attorney  
13 general's office, including the name, address, and telephone number of  
14 the consumer protection division of that office; and

15 (m) A provision stating whether the agency or its personnel or  
16 immediate family members have an ownership interest in the supportive  
17 housing or care services to which the client is given referral  
18 services, and, if such ownership interest exists, an explanation of  
19 that interest.

20 NEW SECTION. **Sec. 7.** (1) The agency shall use a standardized  
21 intake form for all clients. The intake form must, at a minimum,  
22 contain the following information regarding the vulnerable adult:

23 (a) Recent medical history;

24 (b) Known medications and medication management needs;

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

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

29 (e) Mental illness, dementia, or developmental disability  
30 diagnosis, if any;

31 (f) Level and types of personal care needs;

32 (g) Particular culture needs and accommodations;

33 (h) Activities and service preferences;

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

35 (j) Notation of any unique personality traits that may be important  
36 to the supportive housing or care services provider;

1 (k) Basic understanding of the financial situation of the  
2 vulnerable adult;

3 (l) Knowledge of any long-term care insurance or financial  
4 assistance available from the vulnerable adult's family, friends, or  
5 others which may be helpful in defining supportive housing and care  
6 services options for the vulnerable adult; and

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

9 (2) The agency shall obtain the intake information from the best  
10 available sources, such as from the client, the client's  
11 representative, or a health care professional, and shall allow the  
12 vulnerable adult to participate to the maximum extent possible. The  
13 agency may not obtain or disclose health care information, as defined  
14 in RCW 70.02.010, without the authorization of the client or the  
15 client's representative.

16 (3) The agency may provide information to a client about the types  
17 of supportive housing or care services available in the area that may  
18 meet the needs of the vulnerable adult identified in the intake form  
19 without giving the client the names of specific providers of care  
20 services or supportive housing, and without giving the client's name to  
21 specific providers. The information may contain the general  
22 recommendation by the agency as to the type of care services or  
23 supportive housing that may be appropriate for the vulnerable adult.

24 NEW SECTION. **Sec. 8.** (1) The agency may choose to provide a  
25 referral for the client by either giving the client the name or names  
26 of specific providers who may meet the needs of the vulnerable adult  
27 identified in the intake form or by giving a provider or providers the  
28 name of the client after obtaining the written consent of the client or  
29 the client's representative.

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

34 (a) The type of license held by the provider and license number;

35 (b) Whether the provider is authorized to provide care to  
36 individuals with a mental illness, dementia, or developmental  
37 disability;

1 (c) Sources of payment accepted, including whether medicaid is  
2 accepted;

3 (d) Level of medication management services provided;

4 (e) Level and types of personal care services provided;

5 (f) Particular cultural needs that may be accommodated;

6 (g) Activities typically provided;

7 (h) Behavioral problems or symptoms that can or cannot be met;

8 (i) Food preferences and special diets that can be accommodated;

9 and

10 (j) Other special care or services available.

11 The agency shall update this information regarding the provider at  
12 least annually. Referrals made by the agency shall be to providers who  
13 appear able to meet the vulnerable adult's identified needs.

14 (3) Prior to making a referral of a supportive housing provider,  
15 the agency shall conduct a search of the department of social and  
16 health service's web site to see if the provider is in enforcement  
17 status for violation of its licensing regulations. Prior to making a  
18 referral of a care services provider, the agency shall conduct a search  
19 of the department of health's web site to determine if the provider is  
20 in enforcement status for violation of its licensing regulations. The  
21 searches required by this subsection must be considered timely if done  
22 within thirty days before the referral. The information obtained by  
23 the agency from the searches must be disclosed in writing to the client  
24 if the referral includes that provider.

25 NEW SECTION. **Sec. 9.** (1) The agency shall clearly disclose its  
26 fees and refund policies to clients and providers. The refund policy  
27 applicable to referral or placement services for supportive housing  
28 must be consistent with the following requirements:

29 (a) If the agency receives a fee regarding a client who was  
30 provided referral or placement services for supportive housing, and the  
31 vulnerable adult dies, is hospitalized, or is transferred to another  
32 supportive housing setting for more appropriate care within the first  
33 thirty days of admission, then the agency shall refund a portion of its  
34 fee to the person who paid it, whether that is the client or the  
35 supportive housing provider;

36 (b) If the agency fees are based on the monthly charges by the



1 supportive housing provider, then the amount refunded must be equal to  
2 half of the amount the supportive housing provider is required to  
3 refund to the client under RCW 70.129.150 or other applicable law; and

4 (c) If the agency fees are a flat fee or based on a per diem  
5 calculation, the amount refunded must be a prorated portion of the  
6 agency's fees.

7 (2) A refund policy inconsistent with this section is void and  
8 unenforceable.

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

11 NEW SECTION. **Sec. 10.** An employee of an agency must pass a  
12 criminal background check every twenty-four months and not have been  
13 convicted of any crime that is disqualifying under RCW 43.43.830 or  
14 43.43.842, or been found by a court of law or disciplinary authority to  
15 have abused, neglected, financially exploited, or abandoned a minor or  
16 vulnerable adult.

17 NEW SECTION. **Sec. 11.** An agency may not charge or accept a fee or  
18 other consideration from a client, care services provider, or  
19 supportive housing provider unless the agency complies with the terms  
20 of this chapter.

21 NEW SECTION. **Sec. 12.** (1) The provisions of this chapter relating  
22 to the regulation of private elder and vulnerable adult referral  
23 agencies are exclusive.

24 (2) This chapter may not be construed to affect or reduce the  
25 authority of any political subdivision of the state of Washington to  
26 provide for the licensing of private elder and vulnerable adult  
27 referral agencies solely for revenue purposes.

28 NEW SECTION. **Sec. 13.** In accordance with RCW 74.09.240, the  
29 agency may not solicit or receive any remuneration directly or  
30 indirectly, overtly or covertly, in cash or in kind, in return for  
31 referring an individual to a person for the furnishing or arranging for  
32 the furnishing of any item or service for which payment may be made in  
33 whole or in part under chapter 74.09 RCW.

1        NEW SECTION.    **Sec. 14.**    The legislature finds that the operation of  
2 an agency in violation of this chapter is a matter vitally affecting  
3 the public interest for the purpose of applying the consumer protection  
4 act, chapter 19.86 RCW.  Such a violation is an unfair or deceptive act  
5 in trade or commerce and an unfair method of competition for the  
6 purpose of applying the consumer protection act, chapter 19.86 RCW.

7        NEW SECTION.    **Sec. 15.**    This chapter may be known and cited as the  
8 "elder and vulnerable adult referral agency act."

9        NEW SECTION.    **Sec. 16.**    Sections 1 through 15 of this act  
10 constitute a new chapter in Title 18 RCW.

11       NEW SECTION.    **Sec. 17.**    If any provision of this act or its  
12 application to any person or circumstance is held invalid, the  
13 remainder of the act or the application of the provision to other  
14 persons or circumstances is not affected.

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