

CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE HOUSE BILL 1494

Chapter 357, Laws of 2011

62nd Legislature
2011 Regular Session

ELDER AND VULNERABLE ADULT PLACEMENT REFERRALS

EFFECTIVE DATE: 01/01/12

Passed by the House April 14, 2011
Yeas 60 Nays 37

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 7, 2011
Yeas 32 Nays 17

BRAD OWEN

President of the Senate

Approved May 16, 2011, 2:35 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1494** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

May 17, 2011

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1494

AS AMENDED BY THE SENATE

Passed Legislature - 2011 Regular Session

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; prescribing penalties; and providing an effective
3 date.

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

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

9 (2) The legislature further finds that locating appropriate and
10 quality housing alternatives sometimes depends on elder and vulnerable
11 adult referral agencies attempting to assist with 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 related services at home or in a home-like setting. Care service
7 providers must include home health agencies and in-home service
8 agencies licensed under chapter 70.127 RCW.

9 (2) "Client" means an elder person or a vulnerable adult, or his or
10 her representative if any, seeking a referral or assistance with
11 entering into an arrangement for supportive housing or care services in
12 Washington state through an elder and vulnerable adult referral agency.
13 For purposes of this chapter, the "client's representative" means the
14 person authorized under RCW 7.70.065 or other laws to provide informed
15 consent for an individual unable to do so. "Client" may also mean a
16 person seeking a referral for supportive housing or care services on
17 behalf of the elder person or vulnerable adult through an elder care
18 referral service: PROVIDED, That such a person is a family member,
19 relative, or domestic partner of the senior or vulnerable adult.

20 (3) "Elder and vulnerable adult referral agency" or "agency" means
21 a business or person who receives a fee from or on behalf of a
22 vulnerable adult seeking a referral to care services or supportive
23 housing, or who receives a fee from a care services provider or
24 supportive housing provider because of any referral provided to or on
25 behalf of a vulnerable adult.

26 (4) "Fee" means anything of value. "Fee" includes money or other
27 valuable consideration or services or the promise of money or other
28 valuable consideration or services, received directly or indirectly by
29 an elder and vulnerable adult referral agency.

30 (5) "Information" means the provision of general information by an
31 agency to a person about the types of supportive housing or care
32 services available in the area that may meet the needs of elderly or
33 vulnerable adults without giving the person the names of specific
34 providers of care services or supportive housing, or giving a provider
35 the name of the person or vulnerable adult. Information also means the
36 provision by an agency of the names of specific providers to a social
37 worker, discharge planner, case manager, professional guardian, nurse,

1 or other professional who is assisting a vulnerable adult locate
2 supportive housing or care services, where the agency does not request
3 or receive any fee.

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

8 (7) "Provider" means any entity or person that both provides
9 supportive housing or care services to a vulnerable adult for a fee and
10 provides or is required to provide such housing or services under a
11 state or local business license specific to such housing or services.

12 (8) "Referral" means the act of an agency giving a client the name
13 or names of specific providers of care services or supportive housing
14 that may meet the needs of the vulnerable adult identified in the
15 intake form described in section 7 of this act, or the agency gives a
16 provider the name of a client for the purposes of enabling the provider
17 to contact the client regarding care services or supportive housing
18 provided by that provider.

19 (9) "Supportive housing" means any type of housing that includes
20 services for care needs and is designed for prospective residents who
21 are vulnerable adults. Supportive housing includes, but is not limited
22 to, nursing homes licensed under chapter 18.51 RCW, boarding homes
23 licensed under chapter 18.20 RCW, adult family homes licensed under
24 chapter 70.128 RCW, and continuing care retirement communities under
25 RCW 70.38.025.

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

27 NEW SECTION. **Sec. 3.** (1) As of January 1, 2012, a business or
28 person operating or maintaining an agency in this state is subject to
29 the provisions of this chapter. An agency must maintain general and
30 professional liability insurance to cover the acts and services of the
31 agency. The combined liability insurance coverage required is one
32 million dollars.

33 (2) The agency may not create an exclusive agreement between the
34 agency and the client, or between the agency and a provider. The
35 agency cannot provide referral services to a client where the only
36 names given to the client are of providers in which the agency or its
37 personnel or immediate family members have an ownership interest in

1 those providers. An agreement entered into between an agency and a
2 provider must allow either the provider or the agency to cancel the
3 agreement with specific payment terms regarding pending fees or
4 commissions outlined in the agreement.

5 (3) The marketing materials, informational brochures, and web sites
6 owned or operated by an agency, and concerning information or referral
7 services for elderly or vulnerable adults, must include a clear
8 identification of the agency.

9 (4) All owners, operators, and employees of an agency shall be
10 considered mandated reporters under the vulnerable adults act, chapter
11 74.34 RCW. No agency may develop or enforce any policies or procedures
12 that interfere with the reporting requirements of chapter 74.34 RCW.

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

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

17 (2) Government entities providing information and assistance to
18 vulnerable adults unless making a referral in which a fee is received
19 from a client;

20 (3) Professional guardians providing services under authority of
21 their guardianship appointment;

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

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

29 (6) Any person to the extent that he or she provides information to
30 another person.

31 NEW SECTION. **Sec. 5.** (1) Each agency shall keep records of all
32 referrals rendered to or on behalf of clients. These records must
33 contain:

34 (a) The name of the vulnerable adult, and the address and phone
35 number of the client or the client's representative, if any;

1 (b) The kind of supportive housing or care services for which
2 referral was sought;

3 (c) The location of the care services or supportive housing
4 referred to the client and probable duration, if known;

5 (d) The monthly or unit cost of the supportive housing or care
6 services, if known;

7 (e) If applicable, the amount of the agency's fee to the client or
8 to the provider;

9 (f) If applicable, the dates and amounts of refund of the agency's
10 fee, if any, and reason for such refund; and

11 (g) A copy of the client's disclosure and intake forms described in
12 sections 6 and 7 of this act.

13 (2) Each agency shall also keep records of any contract or written
14 agreement entered into with any provider for services rendered to or on
15 behalf of a vulnerable adult, including any referrals to a provider.
16 Any provision in a contract or written agreement not consistent with
17 this chapter is void and unenforceable.

18 (3) The agency must maintain the records covered by this chapter
19 for a period of six years. The agency's records identifying a client
20 are considered "health care information" and the provisions of chapter
21 70.02 RCW apply but only to the extent that such information meets the
22 definition of "health care information" under RCW 70.02.010(7). The
23 client must have access upon request to the agency's records concerning
24 the client and covered by this chapter.

25 NEW SECTION. **Sec. 6.** (1) An agency must provide a disclosure
26 statement to each client prior to making a referral. A disclosure
27 statement is not required when the agency is only providing information
28 to a person. The disclosure statement must be acknowledged by the
29 client prior to the referral and the agency shall retain a copy of the
30 disclosure statement and acknowledgment. Acknowledgment may be in the
31 form of:

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

34 (b) An electronic signature that includes the date, time, internet
35 provider address, and displays the exact disclosure statement document;

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

1 (d) In instances where a vulnerable adult chooses not to sign or
2 otherwise provide acknowledgment of the disclosure statement, the
3 referral professional or agency may satisfy the acknowledgment
4 requirement of this subsection (1) by documenting the client's refusal
5 to sign.

6 (2) The disclosure statement must be dated and must contain the
7 following information:

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

9 (b) The name of the client;

10 (c) The amount of the fee to be received from the client, if any.
11 Alternatively, if the fee is to be received from the provider, the
12 method of computation of the fee and the time and method of payment.
13 In addition, the agency shall disclose to the client the amount of fee
14 to be received from the provider, if the client requests such
15 information;

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

18 (e) A provision stating that the agency may not require or request
19 clients to sign waivers of potential liability for losses of personal
20 property or injury, or to sign waivers of any rights of the client
21 established in state or federal law;

22 (f) A provision stating that the agency works with both the client
23 and the care services or supportive housing provider in the same
24 transaction, and an explanation that the agency will need the client's
25 authorization to obtain or disclose confidential health care
26 information;

27 (g) A statement indicating the frequency on which the agency
28 regularly tours provider facilities, and that, at the time of referral,
29 the agency will inform the client in writing or by electronic means if
30 the agency has toured the referred supportive housing provider or
31 providers, and if so, the most recent date that tour took place;

32 (h) A provision stating that the client may, without cause, stop
33 using the agency or switch to another agency without penalty or
34 cancellation fee to the client;

35 (i) An explanation of the agency's refund of fees policy, which
36 must be consistent with section 10 of this act;

37 (j) A statement that the client may file a complaint with the

1 attorney general's office for violations of this chapter, including the
2 name, address, and telephone number of the consumer protection division
3 of that office; and

4 (k) If the agency or its personnel who are directly involved in
5 providing referrals to clients, including the personnel's immediate
6 family members, have an ownership interest in the supportive housing or
7 care services to which the client is given a referral, a provision
8 stating that the agency or such personnel or their immediate family
9 members have an ownership interest in the supportive housing or care
10 services to which the client is given referral services, and, if such
11 ownership interest exists, an explanation of that interest.

12 NEW SECTION. **Sec. 7.** (1) The agency shall use a standardized
13 intake form for all clients prior to making a referral. The intake
14 form must, at a minimum, contain the following information regarding
15 the vulnerable adult:

- 16 (a) Recent medical history, as relevant to the referral process;
- 17 (b) Known medications and medication management needs;
- 18 (c) Known medical diagnoses, health concerns, and the reasons the
19 client is seeking supportive housing or care services;
- 20 (d) Significant known behaviors or symptoms that may cause concern
21 or require special care;
- 22 (e) Mental illness, dementia, or developmental disability
23 diagnosis, if any;
- 24 (f) Assistance needed for daily living;
- 25 (g) Particular cultural or language access needs and
26 accommodations;
- 27 (h) Activity preferences;
- 28 (i) Sleeping habits of the vulnerable adult, if known;
- 29 (j) Basic information about the financial situation of the
30 vulnerable adult and the availability of any long-term care insurance
31 or financial assistance, including medicaid, which may be helpful in
32 defining supportive housing and care services options for the
33 vulnerable adult;
- 34 (k) Current living situation of the client;
- 35 (l) Geographic location preferences; and
- 36 (m) Preferences regarding other issues important to the client,
37 such as food and daily routine.

1 (2) The agency shall obtain the intake information from the most
2 available sources, such as from the client, the client's
3 representative, or a health care professional, and shall allow the
4 vulnerable adult to participate to the maximum extent possible.

5 (3) The agency may provide information to a person about the types
6 of supportive housing or care services available in the area that may
7 meet the needs of elderly or vulnerable adults without the need to
8 complete an intake form or provide a disclosure statement, if the
9 agency does not make a referral or request or receive any fee. In
10 addition, the agency may provide the names of specific providers to a
11 social worker, discharge planner, case manager, professional guardian,
12 nurse, or other professional who is assisting a vulnerable adult locate
13 supportive housing or care services, provided the agency does not
14 request or receive any fee.

15 NEW SECTION. **Sec. 8.** (1) The agency may choose to provide a
16 referral for the client by either giving the client the name or names
17 of specific providers who may meet the needs of the vulnerable adult
18 identified in the intake form or by giving a provider or providers the
19 name of the client after obtaining the authorization of the client or
20 the client's representative.

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

- 25 (i) The type of license held by the provider and license number;
26 (ii) Whether the provider is authorized by license to provide care
27 to individuals with a mental illness, dementia, or developmental
28 disability;
29 (iii) Sources of payment accepted, including whether medicaid is
30 accepted;
31 (iv) General level of medication management services provided;
32 (v) General level and types of personal care services provided;
33 (vi) Particular cultural needs that may be accommodated;
34 (vii) Primary language spoken by care providers;
35 (viii) Activities typically provided;
36 (ix) Behavioral problems or symptoms that can or cannot be met;

1 (x) Food preferences and special diets that can be accommodated;
2 and

3 (xi) Other special care or services available.

4 (b) The agency shall update this information regarding the provider
5 at least annually. To the extent practicable, referrals shall be made
6 to providers who appear, in the best judgment of the agency, capable of
7 meeting the vulnerable adult's identified needs.

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

21 (4) By January 1, 2012, the department of social and health
22 services and the department of health must convene a work group of
23 stakeholders to collaboratively identify and implement a uniform
24 standard for the information pertaining to the enforcement status of a
25 provider that must be disclosed to the client under subsection (3) of
26 this section. The uniform standard must clearly identify what elements
27 of an enforcement action should be included under the disclosure
28 requirements of subsection (3) of this section. Agencies will have no
29 liability or responsibility for the accuracy, completeness, timeliness,
30 or currency of information shared in the prescribed format and are
31 immune from any cause of action rising from their reliance on, use of,
32 or distribution of this information.

33 NEW SECTION. **Sec. 9.** Nothing in this chapter will limit, specify,
34 or otherwise regulate the fees charged by an agency to a provider for
35 a referral.

1 NEW SECTION. **Sec. 10.** (1) The agency shall clearly disclose its
2 fees and refund policies to clients and providers. If the agency
3 receives a fee regarding a client who was provided referral services
4 for supportive housing, and the vulnerable adult dies, is hospitalized,
5 or is transferred to another supportive housing setting for more
6 appropriate care within the first thirty days of admission, then the
7 agency shall refund a portion of its fee to the person who paid it,
8 whether that is the client or the supportive housing provider. The
9 amount refunded must be a prorated portion of the agency's fees, based
10 upon a per diem calculation for the days that the client resided or
11 retained a bed in the supportive housing.

12 (2) A refund policy inconsistent with this section is void and
13 unenforceable.

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

16 NEW SECTION. **Sec. 11.** Any employee, owner, or operator of an
17 agency that works with vulnerable adults must pass a criminal
18 background check every twenty-four months and not have been convicted
19 of any crime that is disqualifying under RCW 43.43.830 or 43.43.842, or
20 been found by a court of law or disciplinary authority to have abused,
21 neglected, financially exploited, or abandoned a minor or vulnerable
22 adult.

23 NEW SECTION. **Sec. 12.** An agency may not charge or accept a fee or
24 other consideration from a client, care services provider, or
25 supportive housing provider unless the agency substantially complies
26 with the terms of this chapter.

27 NEW SECTION. **Sec. 13.** (1) The provisions of this chapter relating
28 to the regulation of private elder and vulnerable adult referral
29 agencies are exclusive.

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

1 NEW SECTION. **Sec. 14.** In accordance with RCW 74.09.240, the
2 agency may not solicit or receive any remuneration directly or
3 indirectly, overtly or covertly, in cash or in kind, in return for
4 referring an individual to a person for the furnishing or arranging for
5 the furnishing of any item or service for which payment may be made in
6 whole or in part under chapter 74.09 RCW.

7 NEW SECTION. **Sec. 15.** The legislature finds that the operation of
8 an agency in violation of this chapter is a matter vitally affecting
9 the public interest for the purpose of applying the consumer protection
10 act, chapter 19.86 RCW. Such a violation is an unfair or deceptive act
11 in trade or commerce and an unfair method of competition for the
12 purpose of applying the consumer protection act, chapter 19.86 RCW.

13 NEW SECTION. **Sec. 16.** Agencies and their employees, owners, and
14 officers will not be considered providers and will not be liable or
15 responsible for the acts or omissions of a provider.

16 NEW SECTION. **Sec. 17.** The department of licensing shall convene
17 a work group of stakeholders to consider the feasibility of
18 establishing licensure for elder and vulnerable adult referral agencies
19 described in this act. The work group will provide recommendations to
20 the legislature by December 1, 2011.

21 NEW SECTION. **Sec. 18.** This chapter may be known and cited as the
22 "elder and vulnerable adult referral agency act."

23 NEW SECTION. **Sec. 19.** Sections 1 through 18 of this act
24 constitute a new chapter in Title 18 RCW.

25 NEW SECTION. **Sec. 20.** This act takes effect January 1, 2012.

26 NEW SECTION. **Sec. 21.** If any provision of this act or its
27 application to any person or circumstance is held invalid, the
28 remainder of the act or the application of the provision to other
29 persons or circumstances is not affected.

Passed by the House April 14, 2011.

Passed by the Senate April 7, 2011.

Approved by the Governor May 16, 2011.

Filed in Office of Secretary of State May 17, 2011.