

SHB 1494 - H AMD 244

By Representative Moeller

ADOPTED AS AMENDED 03/07/2011

1 Strike everything after the enacting clause and insert the
2 following:

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

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

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

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

16 NEW SECTION. **Sec. 2.** The definitions in this section apply
17 throughout this chapter unless the context clearly requires otherwise.

18 (1) "Care services" means any combination of services, including
19 in-home care, private duty care, or private duty nursing designed for
20 or with the goal of allowing vulnerable adults to receive care and
21 related services at home or in a home-like setting. Care service
22 providers must include home health agencies and in-home service
23 agencies licensed under chapter 70.127 RCW.

24 (2) "Client" means an elder person or a vulnerable adult, and his
25 or her representative if any, seeking a referral or assistance with
26 entering into an arrangement for supportive housing or care services
27 through an elder and vulnerable adult referral agency. For purposes of
28 this chapter, the "client's representative" means the person authorized

1 under RCW 7.70.065 or other laws to provide informed consent for an
2 individual unable to do so.

3 (3) "Elder and vulnerable adult referral agency" or "agency" means
4 a business or person who receives a fee from or on behalf of a
5 vulnerable adult seeking a referral to care services or supportive
6 housing, or who receives a fee from a care services provider or
7 supportive housing provider because of any referral provided to or on
8 behalf of a vulnerable adult. "Elder and vulnerable adult referral
9 agency" or "agency" includes government agencies that provide referrals
10 to care services or supportive housing and geriatric case and care
11 managers that receive a fee from a client to whom they have provided a
12 referral.

13 (4) "Fee" means anything of value. "Fee" includes money or other
14 valuable consideration or services or the promise of money or other
15 valuable consideration or services, received directly or indirectly by
16 an elder and vulnerable adult referral agency.

17 (5) "Information" means the provision of general information by an
18 agency to a person about the types of supportive housing or care
19 services available in the area that may meet the needs of elderly or
20 vulnerable adults without giving the person the names of specific
21 providers of care services or supportive housing, or giving a provider
22 the name of the person or vulnerable adult. Information also means the
23 provision by an agency of the names of specific providers to a social
24 worker, discharge planner, case manager, professional guardian, nurse,
25 or other professional who is assisting a vulnerable adult locate
26 supportive housing or care services, where the agency does not request
27 or receive any fee.

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

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

36 (8) "Referral" means the act of an agency giving a client the name
37 or names of specific providers of care services or supportive housing
38 that may meet the needs of the vulnerable adult identified in the

1 intake form described in section 7 of this act, or the agency gives a
2 provider the name of a client for the purposes of enabling the provider
3 to contact the client regarding care services or supportive housing
4 provided by that provider.

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

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

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

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

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

32 (4) All owners, operators, and employees of an agency shall be
33 considered mandated reporters under the vulnerable adults act, chapter
34 74.34 RCW. No agency may develop or enforce any policies or procedures
35 that interfere with the reporting requirements of chapter 74.34 RCW.

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

3 (1) Any home health or hospice agency while providing counseling to
4 patients on placement options in the normal course of practice as long
5 as no fee or other compensation is provided to the home health or
6 hospice agency for such counseling;

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

10 (3) Professional guardians providing services under authority of
11 their guardianship appointment;

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

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

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

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

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

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

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

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

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

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

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

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

6 (3) The agency must maintain the records covered by this chapter
7 for a period of six years. The agency's records identifying a client
8 are considered "health care information" and the provisions of chapter
9 70.02 RCW apply. The client must have access upon request to the
10 agency's records concerning the client and covered by this chapter.

11 NEW SECTION. **Sec. 6.** (1) An agency must provide a disclosure
12 statement to each client prior to making a referral. A disclosure
13 statement is not required when the agency is only providing information
14 to a person. The disclosure statement must be acknowledged by the
15 client prior to the referral and the agency shall retain a copy of the
16 disclosure statement and acknowledgment. Acknowledgment may be in the
17 form of:

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

20 (b) An electronic signature that includes the date, time, internet
21 provider address, and displaying the exact disclosure statement
22 document;

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

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

30 (2) The disclosure statement must be dated and must contain the
31 following information:

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

33 (b) The name of the client;

34 (c) The amount of the fee to be received from the client, if any.
35 Alternatively, if the fee is to be received from the provider, the
36 method of computation of the fee and the time and method of payment.

1 In addition, the agency shall disclose to the client the amount of fee
2 to be received from the provider, if the client requests such
3 information;

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

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

7 (f) A provision stating that the agency may not require or request
8 clients to sign waivers of potential liability for losses of personal
9 property or injury, or to sign waivers of any rights of the client
10 established in state or federal law;

11 (g) A provision stating that the agency works with both the client
12 and the care services or supportive housing provider in the same
13 transaction, and an explanation that the agency will need the client's
14 authorization to obtain or disclose confidential health care
15 information;

16 (h) A listing of the qualifications of the agency personnel who
17 will be working with the client, including their years of experience in
18 the fields of supportive housing and care services, their experience
19 working with vulnerable adults, and their education level and relevant
20 certifications or licenses, if any, or alternatively, a statement
21 informing the client how to obtain such information from the agency;

22 (i) A provision stating that the client is not required to use the
23 services of the agency and may, without cause, stop using the agency or
24 switch to another agency without penalty or cancellation fee to the
25 client;

26 (j) An explanation of the agency's refund of fees policy, which
27 must be consistent with section 9 of this act;

28 (k) A statement that the client may file a complaint with the
29 attorney general's office for violations of this chapter, including the
30 name, address, and telephone number of the consumer protection division
31 of that office; and

32 (l) If the agency or its personnel who are directly involved in
33 providing referrals to clients, including the personnel's immediate
34 family members, have an ownership interest in the supportive housing or
35 care services to which the client is given a referral, a provision
36 stating that the agency or such personnel or their immediate family
37 members have an ownership interest in the supportive housing or care

1 services to which the client is given referral services, and, if such
2 ownership interest exists, an explanation of that interest.

3 NEW SECTION. **Sec. 7.** (1) The agency shall use a standardized
4 intake form for all clients prior to making a referral. The intake
5 form must, at a minimum, contain the following data regarding the
6 vulnerable adult:

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

28 (2) The agency shall obtain the intake information from the most
29 available sources, such as from the client, the client's
30 representative, or a health care professional, and shall allow the
31 vulnerable adult to participate to the maximum extent possible. The
32 agency may not obtain or disclose health care information, as defined
33 in RCW 70.02.010, without the authorization of the client or the
34 client's representative.

35 (3) The agency may provide information to a person about the types
36 of supportive housing or care services available in the area that may
37 meet the needs of elderly or vulnerable adults without the need to

1 complete an intake form or provide a disclosure statement, if the
2 agency does not make a referral or request or receive any fee. In
3 addition, the agency may provide the names of specific providers to a
4 social worker, discharge planner, case manager, professional guardian,
5 nurse, or other professional who is assisting a vulnerable adult locate
6 supportive housing or care services, provided the agency does not
7 request or receive any fee.

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

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

- 18 (i) The type of license held by the provider and license number;
- 19 (ii) Whether the provider is authorized by license to provide care
20 to individuals with a mental illness, dementia, or developmental
21 disability;
- 22 (iii) Sources of payment accepted, including whether medicaid is
23 accepted;
- 24 (iv) General level of medication management services provided;
- 25 (v) General level and types of personal care services provided;
- 26 (vi) Particular cultural needs that may be accommodated;
- 27 (vii) Activities typically provided;
- 28 (viii) Behavioral problems or symptoms that can or cannot be met;
- 29 (ix) Food preferences and special diets that can be accommodated;
- 30 and
- 31 (x) Other special care or services available.

32 (b) The agency shall update this information regarding the provider
33 at least annually. Referrals made by the agency shall be to providers
34 who appear able to meet the vulnerable adult's identified needs.

35 (3) Prior to making a referral of a supportive housing provider,
36 the agency shall conduct a search, and inform the client that a search
37 was conducted, of the department of social and health service's web

1 site to see if the provider is in enforcement status for violation of
2 its licensing regulations. Prior to making a referral of a care
3 services provider, the agency shall conduct a search, and inform the
4 client that a search was conducted, of the department of health's web
5 site to determine if the provider is in enforcement status for
6 violation of its licensing regulations. The searches required by this
7 subsection must be considered timely if done within thirty days before
8 the referral. The information obtained by the agency from the searches
9 must be disclosed in writing to the client if the referral includes
10 that provider.

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

22 (2) A refund policy inconsistent with this section is void and
23 unenforceable.

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

26 NEW SECTION. **Sec. 10.** Any employee, owner, or operator of an
27 agency that works with vulnerable adults must pass a criminal
28 background check every twenty-four months and not have been convicted
29 of any crime that is disqualifying under RCW 43.43.830 or 43.43.842, or
30 been found by a court of law or disciplinary authority to have abused,
31 neglected, financially exploited, or abandoned a minor or vulnerable
32 adult.

33 NEW SECTION. **Sec. 11.** An agency may not charge or accept a fee or
34 other consideration from a client, care services provider, or

1 supportive housing provider unless the agency substantially complies
2 with the terms of this chapter.

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

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

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

16 NEW SECTION. **Sec. 14.** The legislature finds that the operation of
17 an agency in violation of this chapter is a matter vitally affecting
18 the public interest for the purpose of applying the consumer protection
19 act, chapter 19.86 RCW. Such a violation is an unfair or deceptive act
20 in trade or commerce and an unfair method of competition for the
21 purpose of applying the consumer protection act, chapter 19.86 RCW.

22 NEW SECTION. **Sec. 15.** Nothing in this chapter is intended to make
23 an agency liable for the acts or omissions of a provider.

24 NEW SECTION. **Sec. 16.** This chapter may be known and cited as the
25 "elder and vulnerable adult referral agency act."

26 NEW SECTION. **Sec. 17.** Sections 1 through 16 of this act
27 constitute a new chapter in Title 18 RCW.

28 NEW SECTION. **Sec. 18.** This act takes effect January 1, 2012.

29 NEW SECTION. **Sec. 19.** If any provision of this act or its

1 application to any person or circumstance is held invalid, the
2 remainder of the act or the application of the provision to other
3 persons or circumstances is not affected."

4 Correct the title.

EFFECT: Expands the definition of "information" to include a referral agency providing the names of providers to professionals that assist vulnerable adults seeking supportive housing or care services (such as social workers, discharge planners, professional guardians) without charging a fee. Specifies that requirements related to disclosure statements and intake forms do not apply to the provision of information by a referral agency (the requirements only apply to referrals).

Specifies that (1) government entities are only exempt when making a referral without charging a fee; and (2) people providing "information" to another person are exempt.

Removes the requirement that disclosure statements from referral agencies (1) state the amount of the fee if the agency receives its fee from a provider, unless the client requests to know the actual amount and (2) state that the agency will be acting as a representative of the client. Allows referral agencies to meet the requirement to disclose staff qualifications by notifying the client regarding the disclosure statement as to how such information may be obtained. Specifies that the requirement to disclose ownership interests only applies if such an interest exists.

Adds items to be considered in an intake form to include the client's current living situation and geographic location preference. Limits medical history requirements to that information relevant to the referral process. Eliminates the collection of intake information related to available financial assistance from the vulnerable adult's family and friends.

Specifies that the background check requirement applies to those agency owners, operators, and employees that have contact with vulnerable adults.

Removes the minimum referral agency refund policy related to agency fees based upon monthly charges (leaves the refund policy as a standard pro rata share of the agency fee for the number of days that the client resided with the housing provider).

Requires referral agencies to "substantially comply" with the bill in order to collect a fee (changed from the requirement that they comply).

Identifies owners, operators, and employees as mandated reporters under the Vulnerable Adults Act.

Requires marketing materials and web sites owned or operated by a referral agency to clearly identify the agency.

States that the bill does not intend to establish liability for referral agencies for the acts or omissions of a provider.

Establishes an effective date of January 1, 2012.

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