

ESHB 1494 - S AMD 294

By Senators Keiser, Becker

ADOPTED AS AMENDED 04/07/2011

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, or his or
25 her representative if any, seeking a referral or assistance with
26 entering into an arrangement for supportive housing or care services in
27 Washington state through an elder and vulnerable adult referral agency.
28 For purposes of this chapter, the "client's representative" means the
29 person authorized under RCW 7.70.065 or other laws to provide informed

1 consent for an individual unable to do so. "Client" may also mean a
2 person seeking a referral for supportive housing or care services on
3 behalf of the elder person or vulnerable adult through an elder care
4 referral service: PROVIDED, That such a person is a family member,
5 relative, or domestic partner of the senior or vulnerable adult.

6 (3) "Elder and vulnerable adult referral agency" or "agency" means
7 a business or person who receives a fee from or on behalf of a
8 vulnerable adult seeking a referral to care services or supportive
9 housing, or who receives a fee from a care services provider or
10 supportive housing provider because of any referral provided to or on
11 behalf of a vulnerable adult.

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

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

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

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

35 (8) "Referral" means the act of an agency giving a client the name
36 or names of specific providers of care services or supportive housing
37 that may meet the needs of the vulnerable adult identified in the
38 intake form described in section 7 of this act, or the agency gives a

1 provider the name of a client for the purposes of enabling the provider
2 to contact the client regarding care services or supportive housing
3 provided by that provider.

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

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

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

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

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

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

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

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

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

6 (3) Professional guardians providing services under authority of
7 their guardianship appointment;

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

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

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

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

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

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

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

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

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

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

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

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

1 Any provision in a contract or written agreement not consistent with
2 this chapter is void and unenforceable.

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

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

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

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

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

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

26 (2) The disclosure statement must be dated and must contain the
27 following information:

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

29 (b) The name of the client;

30 (c) The amount of the fee to be received from the client, if any.
31 Alternatively, if the fee is to be received from the provider, the
32 method of computation of the fee and the time and method of payment.
33 In addition, the agency shall disclose to the client the amount of fee
34 to be received from the provider, if the client requests such
35 information;

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

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

5 (f) A provision stating that the agency works with both the client
6 and the care services or supportive housing provider in the same
7 transaction, and an explanation that the agency will need the client's
8 authorization to obtain or disclose confidential health care
9 information;

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

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

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

20 (j) A statement that the client may file a complaint with the
21 attorney general's office for violations of this chapter, including the
22 name, address, and telephone number of the consumer protection division
23 of that office; and

24 (k) If the agency or its personnel who are directly involved in
25 providing referrals to clients, including the personnel's immediate
26 family members, have an ownership interest in the supportive housing or
27 care services to which the client is given a referral, a provision
28 stating that the agency or such personnel or their immediate family
29 members have an ownership interest in the supportive housing or care
30 services to which the client is given referral services, and, if such
31 ownership interest exists, an explanation of that interest.

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

36 (a) Recent medical history, as relevant to the referral process;

37 (b) Known medications and medication management needs;

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

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

5 (e) Mental illness, dementia, or developmental disability
6 diagnosis, if any;

7 (f) Assistance needed for daily living;

8 (g) Particular cultural or language access needs and
9 accommodations;

10 (h) Activity preferences;

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

12 (j) Basic information about the financial situation of the
13 vulnerable adult and the availability of any long-term care insurance
14 or financial assistance, including medicaid, which may be helpful in
15 defining supportive housing and care services options for the
16 vulnerable adult;

17 (k) Current living situation of the client;

18 (l) Geographic location preferences; and

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

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

25 (3) The agency may provide information to a person about the types
26 of supportive housing or care services available in the area that may
27 meet the needs of elderly or vulnerable adults without the need to
28 complete an intake form or provide a disclosure statement, if the
29 agency does not make a referral or request or receive any fee. In
30 addition, the agency may provide the names of specific providers to a
31 social worker, discharge planner, case manager, professional guardian,
32 nurse, or other professional who is assisting a vulnerable adult locate
33 supportive housing or care services, provided the agency does not
34 request or receive any fee.

35 NEW SECTION. **Sec. 8.** (1) The agency may choose to provide a
36 referral for the client by either giving the client the name or names
37 of specific providers who may meet the needs of the vulnerable adult

1 identified in the intake form or by giving a provider or providers the
2 name of the client after obtaining the authorization of the client or
3 the client's representative.

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

8 (i) The type of license held by the provider and license number;

9 (ii) Whether the provider is authorized by license to provide care
10 to individuals with a mental illness, dementia, or developmental
11 disability;

12 (iii) Sources of payment accepted, including whether medicaid is
13 accepted;

14 (iv) General level of medication management services provided;

15 (v) General level and types of personal care services provided;

16 (vi) Particular cultural needs that may be accommodated;

17 (vii) Primary language spoken by care providers;

18 (viii) Activities typically provided;

19 (ix) Behavioral problems or symptoms that can or cannot be met;

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

21 and

22 (xi) Other special care or services available.

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

27 (3) Prior to making a referral of a supportive housing provider,
28 the agency shall conduct a search, and inform the client that a search
29 was conducted, of the department of social and health service's web
30 site to see if the provider is in enforcement status for violation of
31 its licensing regulations. Prior to making a referral of a care
32 services provider, the agency shall conduct a search, and inform the
33 client that a search was conducted, of the department of health's web
34 site to determine if the provider is in enforcement status for
35 violation of its licensing regulations. The searches required by this
36 subsection must be considered timely if done within thirty days before
37 the referral. The information obtained by the agency from the searches

1 must be disclosed in writing to the client if the referral includes
2 that provider.

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

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

17 (2) A refund policy inconsistent with this section is void and
18 unenforceable.

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

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

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

32 NEW SECTION. **Sec. 13.** (1) The provisions of this chapter relating

1 to the regulation of private elder and vulnerable adult referral
2 agencies are exclusive.

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

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

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

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

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

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

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

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

1 NEW SECTION. **Sec. 21.** If any provision of this act or its
2 application to any person or circumstance is held invalid, the
3 remainder of the act or the application of the provision to other
4 persons or circumstances is not affected."

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5 On page 1, line 1 of the title, after "referrals;" strike the
6 remainder of the title and insert "adding a new chapter to Title 18
7 RCW; prescribing penalties; and providing an effective date."

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