

HOUSE BILL REPORT

HB 1494

As Reported by House Committee On:
Health Care & Wellness
General Government Appropriations & Oversight

Title: An act relating to elder placement referrals.

Brief Description: Concerning elder placement referrals.

Sponsors: Representative Moeller.

Brief History:

Committee Activity:

Health Care & Wellness: 2/2/11, 2/17/11 [DPS];

General Government Appropriations & Oversight: 2/18/11 [DPS(HCW)].

Brief Summary of Substitute Bill

- Establishes requirements for elder and vulnerable adult referral agencies related to fees and refunds, recordkeeping, disclosure statements, and intake forms.
- Declares that a violation of regulations pertaining to elder and vulnerable adult referral agencies are violations of the Consumer Protection Act.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Cody, Chair; Jinkins, Vice Chair; Hinkle, Assistant Ranking Minority Member; Clibborn, Green, Harris, Kelley, Moeller and Van De Wege.

Minority Report: Do not pass. Signed by 2 members: Representatives Schmick, Ranking Minority Member; Bailey.

Staff: Chris Blake (786-7392).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

There are several types of facilities and service agencies that provide a broad spectrum of housing and services to seniors.

The Department of Social and Health Services licenses three primary types of residential long-term care settings for seniors: nursing homes (sometimes referred to as skilled nursing facilities), boarding homes, and adult family homes.

Nursing Homes: Nursing homes provide continuous 24-hour convalescent and chronic care. Such care may include the administration of medications, preparation of special diets, bedside nursing care, application of dressings and bandages, and carrying out treatment prescribed by licensed health care providers.

Boarding Homes: Boarding homes are facilities that provide housing and basic services to seven or more residents. Services provided by boarding homes include housekeeping, meals, snacks, laundry, and activities. They may also provide domiciliary care including assistance with activities of daily living, health support services, and intermittent nursing services.

Adult Family Homes: Adult family homes are facilities licensed to care for up to six individuals who need long-term care. These homes provide room, board, laundry, necessary supervision, and assistance with activities of daily living, personal care, and nursing services.

The Department of Health licenses in-home services agencies which may provide a range of services to people in their place of residence, including home health services, home care services, hospice care services, and hospice care center services.

Home Health Services: Home health services are services provided to sick, disabled, or vulnerable individuals, including nursing services, home health aide services, physical therapy, occupational therapy services, speech therapy services, respiratory therapy services, nutritional services, medical social services, and home medical supplies or equipment services.

Home Care Services: Home care services are nonmedical services and assistance provided to sick, disabled, or vulnerable individuals to allow them to stay in their residences. These services include personal care, homemaker assistance, respite care assistance, or other nonmedical services or delegated nursing tasks.

Hospice Services: Hospice services are symptom and pain management for terminally ill individuals as well as emotional, spiritual, and bereavement support for the individual and his or her family. These services may include home health and home care services.

Hospice Care Center Services: Hospice care center services are hospice services provided in a "home-like" noninstitutional facility.

Summary of Substitute Bill:

"Elder and vulnerable adult referral agencies" (referral agencies) are defined as businesses or persons that either receive a fee from: (1) a vulnerable adult seeking information about, or referral to, supportive housing or care services providers (providers); or (2) a provider as a result of information or referral services provided to a vulnerable adult. "Supportive housing" is defined as any type of housing that includes services or care for residents who are vulnerable adults and includes nursing homes, boarding homes, adult family homes, and continuing care retirement communities. "Care services" are defined as any combination of services designed to allow vulnerable adults to receive care at home or in a home-like setting and includes home health agencies and in-home service agencies.

General Regulation.

After January 1, 2012, any entity that operates a referral agency must comply with requirements related to fees and refunds, recordkeeping, disclosures, and intake forms. A violation of the regulations in the act is an unfair or deceptive act in trade or commerce and an unfair method of competition under the Consumer Protection Act.

Agencies are prohibited from establishing exclusivity agreements between the agency and a client or provider. Agencies may not provide the client with only names of providers in which the agency, its employees, or immediate family members have a financial interest.

Agencies must maintain at least \$1 million of liability insurance. Employees of an agency must pass a criminal background check every two years and not have been found to have abused, neglected, financially exploited, or abandoned a minor or vulnerable adult.

Fees and Refunds.

Referral agencies must disclose fee and refund policies to clients and providers. Minimum requirements for referral agency refund policies are established for situations in which the vulnerable adult dies, is hospitalized, or is transferred to a setting with a more appropriate level of care within the first 30 days of admission. If the agency fees are based upon the monthly charges of the supportive housing provider, then the referral agency must refund half of the amount that the supportive housing provider refunds to the client. If the referral agency's fees are a flat fee or based upon a per diem calculation, then the fee must be a prorated portion of the fee.

Recordkeeping Requirements.

Agencies must keep records of all services provided to the client for at least six years. Such records are covered by the state health information privacy regulations. The records must include:

- the name, address, and phone number of the client;
- the kind of supportive housing or care services that were sought;
- the type of services provided to the client;
- the location and probable duration of the care services or supportive housing;
- the monthly or unit cost of the supportive housing or care services;
- the amount of the agency's fee to the client or the provider;
- the dates and amounts of any refunds to the client and the reason;

- the client's disclosure and intake forms; and
- any contract or written agreement with a provider for services to the vulnerable adult.

Disclosure Statements.

Clients must be provided with a disclosure statement by the agency. The client must acknowledge receipt of the disclosure statement through written signature, electronic signature, or facsimile confirmation. If the vulnerable adult refuses to sign the acknowledgement, the referral professional must document that refusal.

A disclosure statement must include:

- the name and contact information of the referral agency;
- the name of the client;
- the amount of the fee, the method of computing the fee, and the time and method of payment;
- a description of the services that the referral agency generally provides and those to be provided specifically to the client;
- a description of the services that the referral agency does not provide;
- for agencies providing referral services, a statement that the agency will be acting as the client's representative;
- a provision that the referral agency may not request clients to sign waivers of potential liability;
- a provision that the referral agency works with both the client and the supportive housing or care services provider and that the client's authorization will be needed to disclose confidential health information;
- a list of the qualifications of the referral agency's personnel;
- a provision that the client may discontinue the relationship with the referral agency at any time;
- an explanation of the client's refund policy;
- an explanation of how to file a complaint with the Office of the Attorney General; and
- a statement regarding any financial interest that the agency, its employees, or immediate family members have with a provider to which the client is being referred.

Intake Forms.

Referral agencies must use a standardized intake form for each vulnerable adult. Information gathered in the intake form is covered by state health care information confidentiality laws.

The intake form must include at least the following information:

- recent medical history;
- known medications and medication management;
- known diagnoses, health concerns, and the reason for seeking supportive housing or care services;
- behaviors or symptoms that may cause concern or require special care;
- mental illness, dementia, or developmental disabilities;
- level and type of personal care needs;
- cultural needs and accommodations;
- activities and service preferences;
- sleeping habits;

- unique personality traits;
- understanding of the clients financial situation and existence of long-term care insurance and financial assistance; and
- preferences regarding other issues that are important to the client.

Referral Process.

The referral agency may provide a referral to a client by either giving the names of specific providers who may meet the vulnerable adult's needs or submitting the name of the client to the provider. Before a referral agency can make a referral to a provider, the referral agency must obtain information from the provider including the type of license held by the provider; the provider's authority to care for individuals with mental illness, dementia, or developmental disabilities; accepted payment sources; level of medication management services and personal care services provided; cultural accommodations; activities provided; behavioral conditions that cannot be met; and food preference accommodations. In addition, within 30 days of making a referral, the referral agency must also search the Department of Social and Health Services' website and the Department of Health's website to determine the existence of any enforcement actions against the provider.

Exclusions.

The regulations for referral agencies do not apply to home health or hospice agencies providing counseling to patients on placement options; government entities providing information and assistance to vulnerable adults; geriatric case or care managers, professional guardians, or individuals or agencies charging a fee to vulnerable adults, if the fee is not charged to a provider; providers who make referrals to other providers without charge; or social workers, discharge planners or other social service workers helping vulnerable adults in their regular employment activities.

Substitute Bill Compared to Original Bill:

The substitute bill removes the requirements that elder placement referral agencies obtain registration from the Department of Health and all Department of Health registration duties.

The substitute bill changes the name of "elder placement referral agencies" to "elder and vulnerable adult referral agencies" (referral agencies) and defines them as businesses or persons who receive a fee for providing information about, or referrals to a care services or supportive housing provider.

The substitute bill requires referral agencies to provide a disclosure statement to each client and have the client acknowledge its receipt. The contents of the disclosure statement are specified to include such items as a description of services to be provided, the amount of the fee to be charged and the time and method of payment, a statement that the agency will be acting as the client's representative, a statement that the client may stop using the referral agency at any time without penalty, an explanation of the agency's refund policy, and an explanation of how to file a complaint with the Attorney General.

The substitute bill removes the requirement to perform a preliminary assessment and develop a preliminary care plan, and requires the referral agency to complete an intake form for each client. Intake forms must include such items as recent medical history, medications, significant known behaviors needing special care, preferred activities, cultural needs, sleeping habits, personal care needs, and financial circumstances.

The substitute bill requires referral agencies to contact providers prior to referring a client to them.

The substitute bill requires referral agencies to maintain records of all services provided to a client, including such information as the cost of the housing or services, the amount of the agency's fee to the client or provider, any refunds, and the disclosure statement and intake forms. Health information received by the agency is declared confidential under state privacy laws.

The substitute bill provides that a violation of regulations regarding vulnerable adult referral agencies is a Consumer Protection Act violation.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 1, 2011.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill attempts to put some sidebars around referral services. While some do an excellent job providing a valuable service in finding placements for senior citizens, others have tried to take advantage of seniors. It is critical to start to establish some basic standards for regulating referral agencies. There have been times when clients have been told that the assessment is free when it is not. Assessments have been conducted over the phone and inappropriate placements have been made. There should be a requirement that referral agencies have liability insurance. Placement agencies are completely unregulated in Washington. There needs to be protections for the residents and the facilities that are receiving these people.

(In support with concerns) While the bill is good, there should be clarification around the role of home health and hospice services provided in the normal business.

(Opposed) This bill does not accurately portray how referral agencies operate. The requirement for the referral agency to perform an assessment and care plan is burdensome and impractical for the agencies to undertake and it is redundant to what boarding homes and adult family homes must already do. Referral agencies should be involved in the development of regulations. Referral agencies are not case managers and they look to families and physicians to be the decisionmakers in selecting housing and care services. This

bill came up very quickly and could benefit from additional input from referral agencies. Requiring a full assessment and care plan by the care agency prior to the referral is not necessary because this will be done by the housing provider. The issues in this bill could limit options for seniors and reduce, if not eliminate, available health care options.

Persons Testifying: (In support) Representative Moeller, prime sponsor; Louise Ryan, Office of the Long-Term Care Ombudsman; and Cindi Laws, Washington State Residential Care Council of Adult Family Homes.

(In support with concerns) Leslie Emerick, Home Care Association of Washington.

(Opposed) Michelle Graham, Graham and Graham Eldercare Consultants; Les Ostermeier, Choice Advisory Services Inc.; and David Mellen, A Place for Mom.

Persons Signed In To Testify But Not Testifying: (In support) Hope Reffet, Frankie Valdez, and Bonnie Bruce, Washington State Residential Care Council of Adult Family Homes.

(Opposed) Pamala Temple, A Place for Mom; Heidi Sheldon, Options for Seniors; Nancy Watkins, Assisted Living Options, Sara Shelton, Seattle Aging Solutions; Tami Rego, Stacy Gibson, Brittany Noggle, and William Graham, Graham and Graham Eldercare Consultants; and Beth Spran, Divine Resources Adult Family Home.

HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS & OVERSIGHT

Majority Report: The substitute bill by Committee on Health Care & Wellness be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Hudgins, Chair; Miloscia, Vice Chair; McCune, Ranking Minority Member; Blake, Fitzgibbon, Ladenburg, Moscoso, Pedersen, Van De Wege and Wilcox.

Minority Report: Do not pass. Signed by 1 member: Representative Taylor, Assistant Ranking Minority Member.

Staff: Wendy Polzin (786-7137).

Summary of Recommendation of Committee On General Government Appropriations & Oversight Compared to Recommendation of Committee On Health Care & Wellness:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This proposal has been heard by the Legislature before. This is an area of care that needs to be regulated. Numerous seniors have been exploited, some have died, and thousands of dollars have been spent on care in an unregulated field. The state Long-Term Care Ombudsman has been aware of problems with referral programs and thinks there are good provisions in this bill, though there are still additions that could be made.

(Opposed) Legislation would destroy elder referral businesses as they exist now. The current language was not available until executive session in the policy committee. This bill would create more "churn" for the elderly and their families trying to find care.

Persons Testifying: (In support) Cindy Laws, Washington State Residential Care Council; and Louise Ryan, Long-Term Care Ombudsman.

(Opposed) Brad Tower, A Place for Mom.

Persons Signed In To Testify But Not Testifying: None.