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SECOND SUBSTITUTE HOUSE BILL 1935

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State of Washington

61st Legislature

2009 Regular Session

**By** House Health & Human Services Appropriations (originally sponsored by Representatives Morrell, Walsh, Cody, Orwall, Kenney, Bailey, Miloscia, Green, Kelley, and Williams)

READ FIRST TIME 03/02/09.

1 AN ACT Relating to adult family homes; amending RCW 70.128.040,  
2 70.128.005, and 70.128.060; adding a new section to chapter 70.128 RCW;  
3 and adding a new section to chapter 64.38 RCW.

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

5 **Sec. 1.** RCW 70.128.040 and 2007 c 184 s 8 are each amended to read  
6 as follows:

7 (1) The department shall adopt rules and standards with respect to  
8 adult family homes and the operators thereof to be licensed under this  
9 chapter to carry out the purposes and requirements of this chapter.  
10 The rules and standards relating to applicants and operators shall  
11 address the differences between individual providers and providers that  
12 are partnerships, corporations, associations, or companies. The rules  
13 and standards shall also recognize and be appropriate to the different  
14 needs and capacities of the various populations served by adult family  
15 homes such as but not limited to persons who are developmentally  
16 disabled or elderly. In developing rules and standards the department  
17 shall recognize the residential family-like nature of adult family  
18 homes and not develop rules and standards which by their complexity  
19 serve as an overly restrictive barrier to the development of the adult

1 family homes in the state. Procedures and forms established by the  
2 department shall be developed so they are easy to understand and comply  
3 with. Paper work requirements shall be minimal. Easy to understand  
4 materials shall be developed for applicants and providers explaining  
5 licensure requirements and procedures.

6 (2)(a) In developing the rules and standards, the department shall  
7 consult with all divisions and administrations within the department  
8 serving the various populations living in adult family homes, including  
9 the division of developmental disabilities and the aging and adult  
10 services administration. Involvement by the divisions and  
11 administration shall be for the purposes of assisting the department to  
12 develop rules and standards appropriate to the different needs and  
13 capacities of the various populations served by adult family homes.  
14 During the initial stages of development of proposed rules, the  
15 department shall provide notice of development of the rules to  
16 organizations representing adult family homes and their residents, and  
17 other groups that the department finds appropriate. The notice shall  
18 state the subject of the rules under consideration and solicit written  
19 recommendations regarding their form and content.

20 (b) In addition, the department shall engage in negotiated rule  
21 making pursuant to RCW 34.05.310(2)(a) with the exclusive  
22 representative of the adult family home licensees selected in  
23 accordance with RCW 70.128.043 and with other affected interests before  
24 adopting requirements that affect adult family home licensees.

25 (3) Except where provided otherwise, chapter 34.05 RCW shall govern  
26 all department rule-making and adjudicative activities under this  
27 chapter.

28 (4) The department shall establish a specialty license to include  
29 geriatric specialty certification for providers who have successfully  
30 completed the University of Washington school of nursing certified  
31 geriatric certification program and testing.

32 **Sec. 2.** RCW 70.128.005 and 2001 c 319 s 1 are each amended to read  
33 as follows:

34 (1) The legislature finds that:

35 (a) Adult family homes are an important part of the state's long-  
36 term care system. Adult family homes provide an alternative to

1 institutional care and promote a high degree of independent living for  
2 residents.

3 (b) Persons with functional limitations have broadly varying  
4 service needs. Adult family homes that can meet those needs are an  
5 essential component of a long-term system. ~~((The legislature further  
6 finds that))~~ Different populations living in adult family homes, such  
7 as ~~((the developmentally disabled))~~ persons with developmental  
8 disabilities and ~~((the))~~ elderly persons, often have significantly  
9 different needs and capacities from one another.

10 (c) Restrictive covenants must be updated to take into  
11 consideration the legislative findings cited in (a) and (b) of this  
12 subsection; the need to prevent or reduce institutionalization; and the  
13 legislative and judicial mandates to provide care and services in the  
14 least restrictive setting appropriate to the needs of the individual.  
15 Restrictive covenants which directly or indirectly restrict or prohibit  
16 the use of property for adult family homes (i) are contrary to the  
17 public interest served by establishing adult family homes and (ii)  
18 discriminate against individuals with disabilities in violation of RCW  
19 49.60.224.

20 (2) It is the legislature's intent that department rules and  
21 policies relating to the licensing and operation of adult family homes  
22 recognize and accommodate the different needs and capacities of the  
23 various populations served by the homes. Furthermore, the development  
24 and operation of adult family homes that can provide quality personal  
25 care and special care services should be encouraged.

26 (3) The legislature finds that many residents of community-based  
27 long-term care facilities are vulnerable and their health and well-  
28 being are dependent on their caregivers. The quality, skills, and  
29 knowledge of their caregivers are the key to good care. The  
30 legislature finds that the need for well-trained caregivers is growing  
31 as the state's population ages and residents' needs increase. The  
32 legislature intends that current training standards be enhanced.

33 (4) The legislature finds that the state of Washington has a  
34 compelling interest in protecting and promoting the health, welfare,  
35 and safety of vulnerable adults residing in adult family homes. The  
36 health, safety, and well-being of vulnerable adults must be the  
37 paramount concern in determining whether to issue a license to an

1 applicant, whether to suspend or revoke a license, or whether to take  
2 other licensing actions.

3 NEW SECTION. **Sec. 3.** A new section is added to chapter 70.128 RCW  
4 to read as follows:

5 (1) To effectuate the public policies of this chapter, restrictive  
6 covenants may not limit, in any way, directly or indirectly:

7 (a) Persons with disabilities from living in an adult family home  
8 licensed under this chapter; or

9 (b) Persons and legal entities from operating adult family homes  
10 licensed under this chapter as for-profit businesses to provide  
11 services covered under this chapter.

12 (2) This section applies retroactively to all restrictive covenants  
13 in effect on the effective date of this section. Any provision in a  
14 restrictive covenant in effect on or after the effective date of this  
15 section that is inconsistent with this section is void and  
16 unenforceable.

17 NEW SECTION. **Sec. 4.** A new section is added to chapter 64.38 RCW  
18 to read as follows:

19 (1) To effectuate the public policy of chapter 70.128 RCW, the  
20 governing documents may not limit, directly or indirectly:

21 (a) Persons with disabilities from living in an adult family home  
22 licensed under chapter 70.128 RCW; or

23 (b) Persons and legal entities from operating adult family homes  
24 licensed under chapter 70.128 RCW as for-profit businesses to provide  
25 services covered under chapter 70.128 RCW.

26 (2) This section applies retroactively to any governing documents  
27 in effect on the effective date of this section. Any provision in a  
28 governing document in effect on or after the effective date of this  
29 section that is inconsistent with this section is void and  
30 unenforceable.

31 **Sec. 5.** RCW 70.128.060 and 2004 c 140 s 3 are each amended to read  
32 as follows:

33 (1) An application for license shall be made to the department upon  
34 forms provided by it and shall contain such information as the  
35 department reasonably requires.

1           (2) Subject to the provisions of this section, the department shall  
2 issue a license to an adult family home if the department finds that  
3 the applicant and the home are in compliance with this chapter and the  
4 rules adopted under this chapter, unless (a) the applicant or a person  
5 affiliated with the applicant has prior violations of this chapter  
6 relating to the adult family home subject to the application or any  
7 other adult family home, or of any other law regulating residential  
8 care facilities within the past five years that resulted in revocation,  
9 suspension, or nonrenewal of a license or contract with the department;  
10 or (b) the applicant or a person affiliated with the applicant has a  
11 history of significant noncompliance with federal, state, or local  
12 laws, rules, or regulations relating to the provision of care or  
13 services to vulnerable adults or to children. A person is considered  
14 affiliated with an applicant if the person is listed on the license  
15 application as a partner, officer, director, resident manager, or  
16 majority owner of the applying entity, or is the spouse of the  
17 applicant.

18           (3) The license fee shall be submitted with the application.

19           (4) The department shall serve upon the applicant a copy of the  
20 decision granting or denying an application for a license. An  
21 applicant shall have the right to contest denial of his or her  
22 application for a license as provided in chapter 34.05 RCW by  
23 requesting a hearing in writing within twenty-eight days after receipt  
24 of the notice of denial.

25           (5) The department shall not issue a license to a provider if the  
26 department finds that the provider or spouse of the provider or any  
27 partner, officer, director, managerial employee, or majority owner has  
28 a history of significant noncompliance with federal or state  
29 regulations, rules, or laws in providing care or services to vulnerable  
30 adults or to children.

31           (6) The department shall license an adult family home for the  
32 maximum level of care that the adult family home may provide. The  
33 department shall define, in rule, license levels based upon the  
34 education, training, and caregiving experience of the licensed provider  
35 or staff.

36           (7) The department shall establish, by rule, standards used to  
37 license nonresident providers and multiple facility operators.

1 (8) The department shall establish, by rule, for multiple facility  
2 operators educational standards substantially equivalent to recognized  
3 national certification standards for residential care administrators.

4 (9) The license fee shall be set (~~(at fifty dollars per year)~~) in  
5 an amount specified in the biennial operating budget for each home. A  
6 (~~fifty dollar~~) processing fee in an amount specified in the biennial  
7 operating budget shall also be charged each home when the home is  
8 initially licensed.

9 (10) A provider who receives notification of the department's  
10 initiation of a denial, suspension, nonrenewal, or revocation of an  
11 adult family home license may, in lieu of appealing the department's  
12 action, surrender or relinquish the license. The department shall not  
13 issue a new license to or contract with the provider, for the purposes  
14 of providing care to vulnerable adults or children, for a period of  
15 twenty years following the surrendering or relinquishment of the former  
16 license. The licensing record shall indicate that the provider  
17 relinquished or surrendered the license, without admitting the  
18 violations, after receiving notice of the department's initiation of a  
19 denial, suspension, nonrenewal, or revocation of a license.

20 (11) The department shall establish, by rule, the circumstances  
21 requiring a change in the licensed provider, which include, but are not  
22 limited to, a change in ownership or control of the adult family home  
23 or provider, a change in the provider's form of legal organization,  
24 such as from sole proprietorship to partnership or corporation, and a  
25 dissolution or merger of the licensed entity with another legal  
26 organization. The new provider is subject to the provisions of this  
27 chapter, the rules adopted under this chapter, and other applicable  
28 law. In order to ensure that the safety of residents is not  
29 compromised by a change in provider, the new provider is responsible  
30 for correction of all violations that may exist at the time of the new  
31 license.

32 NEW SECTION. **Sec. 6.** If any provision of this act or its  
33 application to any person or circumstance is held invalid, the  
34 remainder of the act or the application of the provision to other  
35 persons or circumstances is not affected.

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