

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1277

62nd Legislature
2011 1st Special Session

Passed by the House May 2, 2011
Yeas 50 Nays 45

Speaker of the House of Representatives

Passed by the Senate May 10, 2011
Yeas 33 Nays 12

President of the Senate

Approved

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 1277** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1277

Passed Legislature - 2011 1st Special Session

State of Washington 62nd Legislature 2011 1st Special Session

By House Ways & Means (originally sponsored by Representative Cody; by request of Department of Social and Health Services)

READ FIRST TIME 03/24/11.

1 AN ACT Relating to oversight of licensed or certified long-term
2 care settings for vulnerable adults; amending RCW 70.128.005,
3 70.128.050, 70.128.065, 70.128.070, 70.128.120, 70.128.130, 70.128.140,
4 70.128.160, 70.128.220, 70.129.040, 70.128.125, 18.20.180, 18.51.050,
5 18.20.050, and 70.128.060; adding new sections to chapter 74.39A RCW;
6 creating new sections; repealing RCW 70.128.175; prescribing penalties;
7 providing an effective date; and declaring an emergency.

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

9 **PART I**

10 **INTENT**

11 NEW SECTION. **Sec. 101.** The legislature finds that Washington's
12 long-term care system should more aggressively promote protections for
13 the vulnerable populations it serves. The legislature intends to
14 address current statutes and funding levels that limit the department
15 of social and health services' ability to promote vulnerable adult
16 protections. The legislature further intends that the cost of facility
17 oversight should be supported by an appropriate license fee paid by the
18 regulated businesses, rather than by the general taxpayers.

1 PART II

2 ADULT FAMILY HOME REQUIREMENTS

3 Sec. 201. RCW 70.128.005 and 2009 c 530 s 2 are each amended to
4 read as follows:

5 (1) The legislature finds that:

6 (a) Adult family homes are an important part of the state's long-
7 term care system. Adult family homes provide an alternative to
8 institutional care and promote a high degree of independent living for
9 residents.

10 (b) Persons with functional limitations have broadly varying
11 service needs. Adult family homes that can meet those needs are an
12 essential component of a long-term system. Different populations
13 living in adult family homes, such as persons with developmental
14 disabilities and elderly persons, often have significantly different
15 needs and capacities from one another.

16 (c) There is a need to update certain restrictive covenants to take
17 into consideration the legislative findings cited in (a) and (b) of
18 this subsection; the need to prevent or reduce institutionalization;
19 and the legislative and judicial mandates to provide care and services
20 in the least restrictive setting appropriate to the needs of the
21 individual. Restrictive covenants which directly or indirectly
22 restrict or prohibit the use of property for adult family homes (i) are
23 contrary to the public interest served by establishing adult family
24 homes and (ii) discriminate against individuals with disabilities in
25 violation of RCW 49.60.224.

26 (2) It is the legislature's intent that department rules and
27 policies relating to the licensing and operation of adult family homes
28 recognize and accommodate the different needs and capacities of the
29 various populations served by the homes. Furthermore, the development
30 and operation of adult family homes that (~~can~~) promote the health,
31 welfare, and safety of residents, and provide quality personal care and
32 special care services should be encouraged.

33 (3) The legislature finds that many residents of community-based
34 long-term care facilities are vulnerable and their health and well-
35 being are dependent on their caregivers. The quality, skills, and
36 knowledge of their caregivers are the key to good care. The
37 legislature finds that the need for well-trained caregivers is growing

1 as the state's population ages and residents' needs increase. The
2 legislature intends that current training standards be enhanced.

3 (4) The legislature finds that the state of Washington has a
4 compelling interest in (~~protecting and promoting~~) developing and
5 enforcing standards that promote the health, welfare, and safety of
6 vulnerable adults residing in adult family homes. The health, safety,
7 and well-being of vulnerable adults must be the paramount concern in
8 determining whether to issue a license to an applicant, whether to
9 suspend or revoke a license, or whether to take other licensing
10 actions.

11 **Sec. 202.** RCW 70.128.050 and 1989 c 427 s 19 are each amended to
12 read as follows:

13 (1) After July 1, 1990, no person shall operate or maintain an
14 adult family home in this state without a license under this chapter.

15 (2) Couples legally married or state registered domestic partners:

16 (a) May not apply for separate licenses; and

17 (b) May apply jointly to be coproviders if they are both qualified.

18 One person may apply to be a provider without requiring the other
19 person to apply.

20 **Sec. 203.** RCW 70.128.065 and 1996 c 81 s 6 are each amended to
21 read as follows:

22 (1) A multiple facility operator must successfully demonstrate to
23 the department financial solvency and management experience for the
24 homes under its ownership and the ability to meet other relevant
25 safety, health, and operating standards pertaining to the operation of
26 multiple homes, including ways to mitigate the potential impact of
27 vehicular traffic related to the operation of the homes.

28 (2) The department shall only accept an application for licensure
29 of an additional home when:

30 (a) A period of no less than twenty-four months has passed since
31 the issuance of the initial adult family home license; and

32 (b) The department has taken no enforcement actions against the
33 applicant's currently licensed adult family homes during the twenty-
34 four months prior to application.

35 (3) The department shall only accept an additional application for
36 licensure of other adult family homes when twelve months has passed

1 since the previous adult family home license, and the department has
2 taken no enforcement actions against the applicant's currently licensed
3 adult family homes during the twelve months prior to application.

4 (4) In the event of serious noncompliance leading to the imposition
5 of one or more actions listed in RCW 70.128.160(2) for violation of
6 federal, state, or local laws, or regulations relating to provision of
7 care or services to vulnerable adults or children, the department is
8 authorized to take one or more actions listed in RCW 70.128.160(2)
9 against any home or homes operated by the provider if there is a
10 violation in the home or homes.

11 (5) In the event of serious noncompliance in a home operated by a
12 provider with multiple adult family homes, leading to the imposition of
13 one or more actions listed in RCW 70.128.160(2), the department shall
14 inspect the other homes operated by the provider to determine whether
15 the same or related deficiencies are present in those homes. The cost
16 of these additional inspections may be imposed on the provider as a
17 civil penalty up to a maximum of three hundred dollars per additional
18 inspection.

19 (6) A provider is ultimately responsible for the day-to-day
20 operations of each licensed home.

21 **Sec. 204.** RCW 70.128.070 and 2004 c 143 s 1 are each amended to
22 read as follows:

23 (1) A license shall remain valid unless voluntarily surrendered,
24 suspended, or revoked in accordance with this chapter.

25 (2)(a) Homes applying for a license shall be inspected at the time
26 of licensure.

27 (b) Homes licensed by the department shall be inspected at least
28 every eighteen months, (~~subject to available funds~~) with an annual
29 average of fifteen months. However, an adult family home may be
30 allowed to continue without inspection for two years if the adult
31 family home had no inspection citations for the past three consecutive
32 inspections and has received no written notice of violations resulting
33 from complaint investigations during that same time period.

34 (c) The department may make an unannounced inspection of a licensed
35 home at any time to assure that the home and provider are in compliance
36 with this chapter and the rules adopted under this chapter.

1 (3) If the department finds that the home is not in compliance with
2 this chapter, it shall require the home to correct any violations as
3 provided in this chapter.

4 **Sec. 205.** RCW 70.128.120 and 2006 c 249 s 1 are each amended to
5 read as follows:

6 Each adult family home provider, applicant, and each resident
7 manager shall have the following minimum qualifications, except that
8 only (~~providers~~) applicants are required to meet the provisions of
9 subsections (10) and (11) of this section:

10 (1) Twenty-one years of age or older;

11 (2) For those applying after September 1, 2001, to be licensed as
12 providers, and for resident managers whose employment begins after
13 September 1, 2001, a United States high school diploma or general
14 educational development (GED) certificate or any English or translated
15 government documentation of the following:

16 (a) Successful completion of government-approved public or private
17 school education in a foreign country that includes an annual average
18 of one thousand hours of instruction over twelve years or no less than
19 twelve thousand hours of instruction;

20 (b) A foreign college, foreign university, or United States
21 community college two-year diploma;

22 (c) Admission to, or completion of coursework at, a foreign
23 university or college for which credit was granted;

24 (d) Admission to, or completion of coursework at, a United States
25 college or university for which credits were awarded;

26 (e) Admission to, or completion of postgraduate coursework at, a
27 United States college or university for which credits were awarded; or

28 (f) Successful passage of the United States board examination for
29 registered nursing, or any professional medical occupation for which
30 college or university education preparation was required;

31 (3) Good moral and responsible character and reputation;

32 (4) Literacy and the ability to communicate in the English
33 language(~~(, however, a person not literate in the English language may~~
34 ~~meet the requirements of this subsection by assuring that there is a~~
35 ~~person on staff and available who is able to communicate or make~~
36 ~~provisions for communicating with the resident in his or her primary~~

1 ~~language and capable of understanding and speaking English well enough~~
2 ~~to be able to respond appropriately to emergency situations and be able~~
3 ~~to read and understand resident care plans));~~

4 (5) Management and administrative ability to carry out the
5 requirements of this chapter;

6 (6) Satisfactory completion of department-approved basic training
7 and continuing education training as (~~specified by the department in~~
8 ~~rule, based on recommendations of the community long-term care training~~
9 ~~and education steering committee and working in collaboration with~~
10 ~~providers, consumers, caregivers, advocates, family members, educators,~~
11 ~~and other interested parties in the rule-making process)) required by
12 RCW 74.39A.073, and in rules adopted by the department;~~

13 (7) Satisfactory completion of department-approved, or equivalent,
14 special care training before a provider may provide special care
15 services to a resident;

16 (8) Not been convicted of any crime (~~listed in~~) that is
17 disqualifying under RCW 43.43.830 ((and)) or 43.43.842, or department
18 rules adopted under this chapter, or been found to have abused,
19 neglected, exploited, or abandoned a minor or vulnerable adult as
20 specified in RCW 74.39A.050(8);

21 (9) For those applying (~~after September 1, 2001,~~) to be licensed
22 as providers, and for resident managers whose employment begins after
23 (~~September 1, 2001~~) the effective date of this section, at least
24 (~~three hundred twenty~~) one thousand hours in the previous sixty
25 months of successful, direct caregiving experience obtained after age
26 eighteen to vulnerable adults in a licensed or contracted setting prior
27 to operating or managing an adult family home. The applicant or
28 resident manager must have credible evidence of the successful, direct
29 caregiving experience or, currently hold one of the following
30 professional licenses: Physician licensed under chapter 18.71 RCW;
31 osteopathic physician licensed under chapter 18.57 RCW; osteopathic
32 physician assistant licensed under chapter 18.57A RCW; physician
33 assistant licensed under chapter 18.71A RCW; registered nurse, advanced
34 registered nurse practitioner, or licensed practical nurse licensed
35 under chapter 18.79 RCW; ((and))

36 (10) (~~Prior to being granted a license, providers applying after~~
37 ~~January 1, 2007,~~) For applicants, proof of financial solvency, as
38 defined in rule; and

1 (11) Applicants must successfully complete ((a department approved
2 forty-eight hour)) an adult family home administration and business
3 planning class, prior to being granted a license. The class must be a
4 minimum of forty-eight hours of classroom time and approved by the
5 department. The department shall promote and prioritize bilingual
6 capabilities within available resources and when materials are
7 available for this purpose.

8 **Sec. 206.** RCW 70.128.130 and 2000 c 121 s 6 are each amended to
9 read as follows:

10 (1) The provider is ultimately responsible for the day-to-day
11 operations of each licensed adult family home.

12 (2) The provider shall promote the health, safety, and well-being
13 of each resident residing in each licensed adult family home.

14 (3) Adult family homes shall be maintained internally and
15 externally in good repair and condition. Such homes shall have safe
16 and functioning systems for heating, cooling, hot and cold water,
17 electricity, plumbing, garbage disposal, sewage, cooking, laundry,
18 artificial and natural light, ventilation, and any other feature of the
19 home.

20 ((+2)) (4) In order to preserve and promote the residential home-
21 like nature of adult family homes, adult family homes licensed after
22 the effective date of this section shall:

23 (a) Have sufficient space to accommodate all residents at one time
24 in the dining and living room areas;

25 (b) Have hallways and doorways wide enough to accommodate residents
26 who use mobility aids such as wheelchairs and walkers; and

27 (c) Have outdoor areas that are safe and accessible for residents
28 to use.

29 (5) The adult family home must provide all residents access to
30 resident common areas throughout the adult family home including, but
31 not limited to, kitchens, dining and living areas, and bathrooms, to
32 the extent that they are safe under the resident's care plan.

33 (6) Adult family homes shall be maintained in a clean and sanitary
34 manner, including proper sewage disposal, food handling, and hygiene
35 practices.

36 ((+3)) (7) Adult family homes shall develop a fire drill plan for
37 emergency evacuation of residents, shall have working smoke detectors

1 in each bedroom where a resident is located, shall have working fire
2 extinguishers on each floor of the home, and shall not keep
3 nonambulatory patients above the first floor of the home.

4 ~~((+4))~~ (8) The adult family home shall ensure that all residents
5 can be safely evacuated in an emergency.

6 (9) Adult family homes shall have clean, functioning, and safe
7 household items and furnishings.

8 ~~((+5))~~ (10) Adult family homes shall provide a nutritious and
9 balanced diet and shall recognize residents' needs for special diets.

10 ~~((+6))~~ (11) Adult family homes shall establish health care
11 procedures for the care of residents including medication
12 administration and emergency medical care.

13 (a) Adult family home residents shall be permitted to self-
14 administer medications.

15 (b) Adult family home providers may administer medications and
16 deliver special care only to the extent authorized by law.

17 ~~((+7))~~ (12) Adult family home providers shall either: (a) Reside
18 at the adult family home; or (b) employ or otherwise contract with a
19 qualified resident manager to reside at the adult family home. The
20 department may exempt, for good cause, a provider from the requirements
21 of this subsection by rule.

22 ~~((+8))~~ (13) A provider will ensure that any volunteer, student,
23 employee, or person residing within the adult family home who will have
24 unsupervised access to any resident shall not have been convicted of a
25 crime listed under RCW 43.43.830 or 43.43.842, or been found to have
26 abused, neglected, exploited, or abandoned a minor or vulnerable adult
27 as specified in RCW 74.39A.050(8). ~~((Except that))~~ A provider may
28 conditionally employ a person ~~((may be conditionally employed))~~ pending
29 the completion of a criminal conviction background inquiry, but may not
30 allow the person to have unsupervised access to any resident.

31 ~~((+9))~~ (14) A provider shall offer activities to residents under
32 care as defined by the department in rule.

33 ~~((+10))~~ (15) An adult family home must be financially solvent, and
34 upon request for good cause, shall provide the department with detailed
35 information about the home's finances. Financial records of the adult
36 family home may be examined when the department has good cause to
37 believe that a financial obligation related to resident care or
38 services will not be met.

1 (16) An adult family home provider must ensure that staff are
2 competent and receive necessary training to perform assigned tasks.
3 Staff must satisfactorily complete department-approved staff
4 orientation, basic training, and continuing education as specified by
5 the department by rule. The provider shall ensure that a qualified
6 caregiver is on-site whenever a resident is at the adult family home.
7 Notwithstanding RCW 70.128.230, until orientation and basic training
8 are successfully completed, a caregiver may not provide hands-on
9 personal care to a resident without on-site supervision by a person who
10 has successfully completed basic training or been exempted from the
11 training pursuant to statute.

12 (17) The provider and resident manager must assure that there is:

13 (a) A mechanism to communicate with the resident in his or her
14 primary language either through a qualified person on-site or readily
15 available at all times, or other reasonable accommodations, such as
16 language lines; and

17 (b) Staff on-site at all times capable of understanding and
18 speaking English well enough to be able to respond appropriately to
19 emergency situations and be able to read and understand resident care
20 plans.

21 **Sec. 207.** RCW 70.128.140 and 1995 1st sp.s. c 18 s 26 are each
22 amended to read as follows:

23 (1) Each adult family home shall meet applicable local licensing,
24 zoning, building, and housing codes, and state and local fire safety
25 regulations as they pertain to a single-family residence. It is the
26 responsibility of the home to check with local authorities to ensure
27 all local codes are met.

28 (2) An adult family home must be considered a residential use of
29 property for zoning and public and private utility rate purposes.
30 Adult family homes are a permitted use in all areas zoned for
31 residential or commercial purposes, including areas zoned for single-
32 family dwellings.

33 **Sec. 208.** RCW 70.128.160 and 2001 c 193 s 5 are each amended to
34 read as follows:

35 (1) The department is authorized to take one or more of the actions

1 listed in subsection (2) of this section in any case in which the
2 department finds that an adult family home provider has:

3 (a) Failed or refused to comply with the requirements of this
4 chapter or the rules adopted under this chapter;

5 (b) Operated an adult family home without a license or under a
6 revoked license;

7 (c) Knowingly or with reason to know made a false statement of
8 material fact on his or her application for license or any data
9 attached thereto, or in any matter under investigation by the
10 department; or

11 (d) Willfully prevented or interfered with any inspection or
12 investigation by the department.

13 (2) When authorized by subsection (1) of this section, the
14 department may take one or more of the following actions:

15 (a) Refuse to issue a license;

16 (b) Impose reasonable conditions on a license, such as correction
17 within a specified time, training, and limits on the type of clients
18 the provider may admit or serve;

19 (c) Impose civil penalties of (~~not more than~~) at least one
20 hundred dollars per day per violation;

21 (d) Impose civil penalties of up to three thousand dollars for each
22 incident that violates adult family home licensing laws and rules,
23 including, but not limited to, chapters 70.128, 70.129, 74.34, and
24 74.39A RCW and related rules. Each day upon which the same or
25 substantially similar action occurs is a separate violation subject to
26 the assessment of a separate penalty;

27 (e) Impose civil penalties of up to ten thousand dollars for a
28 current or former licensed provider who is operating an unlicensed
29 home;

30 (f) Suspend, revoke, or refuse to renew a license; or

31 (~~(+e)~~) (g) Suspend admissions to the adult family home by imposing
32 stop placement.

33 (3) When the department orders stop placement, the facility shall
34 not admit any person until the stop placement order is terminated. The
35 department may approve readmission of a resident to the facility from
36 a hospital or nursing home during the stop placement. The department
37 shall terminate the stop placement when: (a) The violations
38 necessitating the stop placement have been corrected; and (b) the

1 provider exhibits the capacity to maintain correction of the violations
2 previously found deficient. However, if upon the revisit the
3 department finds new violations that the department reasonably believes
4 will result in a new stop placement, the previous stop placement shall
5 remain in effect until the new stop placement is imposed.

6 (4) After a department finding of a violation for which a stop
7 placement has been imposed, the department shall make an on-site
8 revisit of the provider within fifteen working days from the request
9 for revisit, to ensure correction of the violation. For violations
10 that are serious or recurring or uncorrected following a previous
11 citation, and create actual or threatened harm to one or more
12 residents' well-being, including violations of residents' rights, the
13 department shall make an on-site revisit as soon as appropriate to
14 ensure correction of the violation. Verification of correction of all
15 other violations may be made by either a department on-site revisit or
16 by written or photographic documentation found by the department to be
17 credible. This subsection does not prevent the department from
18 enforcing license suspensions or revocations. Nothing in this
19 subsection shall interfere with or diminish the department's authority
20 and duty to ensure that the provider adequately cares for residents,
21 including to make departmental on-site revisits as needed to ensure
22 that the provider protects residents, and to enforce compliance with
23 this chapter.

24 (5) Chapter 34.05 RCW applies to department actions under this
25 section, except that orders of the department imposing license
26 suspension, stop placement, or conditions for continuation of a license
27 are effective immediately upon notice and shall continue in effect
28 pending any hearing.

29 (6) A separate adult family home account is created in the custody
30 of the state treasurer. All receipts from civil penalties imposed
31 under this chapter must be deposited into the account. Only the
32 director or the director's designee may authorize expenditures from the
33 account. The account is subject to allotment procedures under chapter
34 43.88 RCW, but an appropriation is not required for expenditures. The
35 department shall use the special account only for promoting the quality
36 of life and care of residents living in adult family homes.

37 (7) The department shall by rule specify criteria as to when and
38 how the sanctions specified in this section must be applied. The

1 criteria must provide for the imposition of incrementally more severe
2 penalties for deficiencies that are repeated, uncorrected, pervasive,
3 or present a threat to the health, safety, or welfare of one or more
4 residents. The criteria shall be tiered such that those homes
5 consistently found to have deficiencies will be subjected to
6 increasingly severe penalties. The department shall implement prompt
7 and specific enforcement remedies without delay for providers found to
8 have delivered care or failed to deliver care resulting in problems
9 that are repeated, uncorrected, pervasive, or present a threat to the
10 health, safety, or welfare of one or more residents. In the selection
11 of remedies, the health, safety, and well-being of residents must be of
12 paramount importance.

13 **Sec. 209.** RCW 70.128.220 and 2002 c 223 s 3 are each amended to
14 read as follows:

15 Adult family homes have developed rapidly in response to the health
16 and social needs of the aging population in community settings,
17 especially as the aging population has increased in proportion to the
18 general population. The growing demand for elder care with a new focus
19 on issues affecting senior citizens, including persons with
20 developmental disabilities, mental illness, or dementia, has prompted
21 a growing professionalization of adult family home providers to address
22 quality care and quality of life issues consistent with standards of
23 accountability and regulatory safeguards for the health and safety of
24 the residents. ~~((The establishment of an advisory committee to the~~
25 ~~department of social and health services under RCW 70.128.225~~
26 ~~formalizes a stable process for discussing and considering these issues~~
27 ~~among residents and their advocates, regulatory officials, and adult~~
28 ~~family home providers. The dialogue among all stakeholders interested~~
29 ~~in maintaining a healthy option for the aging population in community~~
30 ~~settings assures the highest regard for the well-being of these~~
31 ~~residents within a benign and functional regulatory environment. The~~
32 ~~secretary shall be advised by an advisory committee on adult family~~
33 ~~homes established under RCW 70.128.225.))~~

34 NEW SECTION. **Sec. 210.** RCW 70.128.175 (Definitions) and 1997 c
35 392 s 401, 1995 1st sp.s. c 18 s 29, & 1989 1st ex.s. c 9 s 815 are
36 each repealed.

1 PART III

2 PROTECTION OF RESIDENTS' FUNDS

3 Sec. 301. RCW 70.129.040 and 1995 1st sp.s. c 18 s 66 are each
4 amended to read as follows:

5 (1) The resident has the right to manage his or her financial
6 affairs, and the facility may not require residents to deposit their
7 personal funds with the facility.

8 (2) Upon written authorization of a resident, if the facility
9 agrees to manage the resident's personal funds, the facility must hold,
10 safeguard, manage, and account for the personal funds of the resident
11 deposited with the facility as specified in this section.

12 (a) The facility must deposit a resident's personal funds in excess
13 of one hundred dollars in an interest-bearing account or accounts that
14 is separate from any of the facility's operating accounts, and that
15 credits all interest earned on residents' funds to that account. In
16 pooled accounts, there must be a separate accounting for each
17 resident's share.

18 (b) The facility must maintain a resident's personal funds that do
19 not exceed one hundred dollars in a noninterest-bearing account,
20 interest-bearing account, or petty cash fund.

21 (3) The facility must establish and maintain a system that assures
22 a full and complete and separate accounting of each resident's personal
23 funds entrusted to the facility on the resident's behalf.

24 (a) The system must preclude any commingling of resident funds with
25 facility funds or with the funds of any person other than another
26 resident.

27 (b) The individual financial record must be available on request to
28 the resident or his or her legal representative.

29 (4) Upon the death of a resident with ((a)) personal funds
30 deposited with the facility, the facility must convey within ((~~forty-~~
31 ~~five~~)) thirty days the resident's funds, and a final accounting of
32 those funds, to the individual or probate jurisdiction administering
33 the resident's estate; but in the case of a resident who received long-
34 term care services paid for by the state, the funds and accounting
35 shall be sent to the state of Washington, department of social and
36 health services, office of financial recovery. The department shall
37 establish a release procedure for use for burial expenses.

1 (5) If any funds in excess of one hundred dollars are paid to an
2 adult family home by the resident or a representative of the resident,
3 as a security deposit for performance of the resident's obligations, or
4 as prepayment of charges beyond the first month's residency, the funds
5 shall be deposited by the adult family home in an interest-bearing
6 account that is separate from any of the home's operating accounts, and
7 that credits all interest earned on the resident's funds to that
8 account. In pooled accounts, there must be a separate accounting for
9 each resident's share. The account or accounts shall be in a financial
10 institution as defined by RCW 30.22.041, and the resident shall be
11 notified in writing of the name, address, and location of the
12 depository. The adult family home may not commingle resident funds
13 from these accounts with the adult family home's funds or with the
14 funds of any person other than another resident. The individual
15 resident's account record shall be available upon request by the
16 resident or the resident's representative.

17 (6) The adult family home shall provide the resident or the
18 resident's representative full disclosure in writing, prior to the
19 receipt of any funds for a deposit, security, prepaid charges, or any
20 other fees or charges, specifying what the funds are paid for and the
21 basis for retaining any portion of the funds if the resident dies, is
22 hospitalized, or is transferred or discharged from the adult family
23 home. The disclosure must be in a language that the resident or the
24 resident's representative understands, and be acknowledged in writing
25 by the resident or the resident's representative. The adult family
26 home shall retain a copy of the disclosure and the acknowledgment. The
27 adult family home may not retain funds for reasonable wear and tear by
28 the resident or for any basis that would violate RCW 70.129.150.

29 (7) Funds paid by the resident or the resident's representative to
30 the adult family home, which the adult family home in turn pays to a
31 placement agency or person, shall be governed by the disclosure
32 requirements of this section. If the resident then dies, is
33 hospitalized, or is transferred or discharged from the adult family
34 home, and is entitled to any refund of funds under this section or RCW
35 70.129.150, the adult family home shall refund the funds to the
36 resident or the resident's representative within thirty days of the
37 resident leaving the adult family home, and may not require the
38 resident to obtain the refund from the placement agency or person.

1 (8) If, during the stay of the resident, the status of the adult
2 family home licensee or ownership is changed or transferred to another,
3 any funds in the resident's accounts affected by the change or transfer
4 shall simultaneously be deposited in an equivalent account or accounts
5 by the successor or new licensee or owner, who shall promptly notify
6 the resident or the resident's representative in writing of the name,
7 address, and location of the new depository.

8 (9) Because it is a matter of great public importance to protect
9 residents who need long-term care from deceptive disclosures and unfair
10 retention of deposits, fees, or prepaid charges by adult family homes,
11 a violation of this section or RCW 70.129.150 shall be construed for
12 purposes of the consumer protection act, chapter 19.86 RCW, to
13 constitute an unfair or deceptive act or practice or an unfair method
14 of competition in the conduct of trade or commerce. The resident's
15 claim to any funds paid under this section shall be prior to that of
16 any creditor of the adult family home, its owner, or licensee, even if
17 such funds are commingled.

18 **Sec. 302.** RCW 70.128.125 and 1994 c 214 s 24 are each amended to
19 read as follows:

20 RCW 70.129.005 through 70.129.030, 70.129.040(~~((+1))~~), and
21 70.129.050 through 70.129.170 apply to this chapter and persons
22 regulated under this chapter.

23 **Sec. 303.** RCW 18.20.180 and 1994 c 214 s 21 are each amended to
24 read as follows:

25 RCW 70.129.005 through 70.129.030, 70.129.040(~~((+1))~~), and
26 70.129.050 through 70.129.170 apply to this chapter and persons
27 regulated under this chapter.

28 **PART IV**
29 **LONG-TERM CARE LICENSING FEES**

30 **Sec. 401.** RCW 18.51.050 and 1991 sp.s. c 8 s 1 are each amended to
31 read as follows:

32 (1)(a) Upon receipt of an application for a license, the department
33 (~~shall~~) may issue a license if the applicant and the nursing (~~home~~)
34 home's facilities meet the requirements established under this chapter,

1 except that the department shall issue a temporary license to a court-
2 appointed receiver for a period not to exceed six months from the date
3 of appointment. (~~Prior to the issuance or renewal of the license, the~~
4 ~~licensee shall pay a license fee as established by the department.~~)

5 (b)(i) Except as provided in (b)(ii) of this subsection, prior to
6 the issuance or renewal of the license, the licensee shall pay a
7 license fee. Beginning July 1, 2011, and thereafter, the per bed
8 license fee must be established in the omnibus appropriations act and
9 any amendment or additions made to that act. The license fees
10 established in the omnibus appropriations act and any amendment or
11 additions made to that act may not exceed the department's annual
12 licensing and oversight activity costs and shall include the
13 department's cost of paying providers for the amount of the license fee
14 attributed to medicaid clients.

15 (ii) No fee shall be required of government operated institutions
16 or court-appointed receivers. ((All))

17 (c) A license((s)) issued under ((the provisions of)) this chapter
18 ((shall)) may not exceed twelve months in duration and expires on a
19 date ((to be)) set by the department((, but no license issued pursuant
20 to this chapter shall exceed thirty six months in duration. When)).

21 (d) In the event of a change of ownership ((occurs, the entity
22 becoming the licensed operating entity of the facility shall pay a fee
23 established by the department at the time of application for the
24 license.)), the previously ((determined date of)) established license

25 expiration date shall not change. ((The department shall establish
26 license fees at an amount adequate to reimburse the department in full
27 for all costs of its licensing activities for nursing homes, adjusted
28 to cover the department's cost of reimbursing such fees through
29 medicaid.))

30 (2) All applications and fees for renewal of the license shall be
31 submitted to the department not later than thirty days prior to the
32 date of expiration of the license. All applications and fees, if any,
33 for change of ownership ((licenses)) shall be submitted to the
34 department not later than sixty days before the date of the proposed
35 change of ownership. ((Each)) A nursing home license shall be issued
36 only to the ((operating entity and those persons named in the license
37 application)) person who applied for the license. The license is valid
38 only for the operation of the facility at the location specified in the

1 license application. Licenses are not transferable or assignable.
2 Licenses shall be posted in a conspicuous place on the licensed
3 premises.

4 **Sec. 402.** RCW 18.20.050 and 2004 c 140 s 1 are each amended to
5 read as follows:

6 (1)(a) Upon receipt of an application for license, if the applicant
7 and the boarding ~~((home))~~ home's facilities meet the requirements
8 established under this chapter, the department ~~((shall))~~ may issue a
9 license. If there is a failure to comply with the provisions of this
10 chapter or the ~~((standards and))~~ rules adopted ~~((pursuant thereto))~~
11 under this chapter, the department may in its discretion issue a
12 provisional license to an applicant for a license~~((τ))~~ or for the
13 renewal of a license~~((τ))~~. A provisional license ~~((which will))~~
14 permits the operation of the boarding home for a period to be
15 determined by the department, but not to exceed twelve months~~((τ, which~~
16 ~~provisional license shall not be))~~ and is not subject to renewal. The
17 department may also place conditions on the license under RCW
18 18.20.190. ~~((At the time of the application for or renewal of a~~
19 ~~license or provisional license the licensee shall pay a license fee as~~
20 ~~established by the department under RCW 43.20B.110. All licenses~~
21 ~~issued under the provisions of this chapter shall expire on a date to~~
22 ~~be set by the department, but no license issued pursuant to this~~
23 ~~chapter shall exceed twelve months in duration. However, when the~~
24 ~~annual license renewal date of a previously licensed boarding home is~~
25 ~~set by the department on a date less than twelve months prior to the~~
26 ~~expiration date of a license in effect at the time of reissuance, the~~
27 ~~license fee shall be prorated on a monthly basis and a credit be~~
28 ~~allowed at the first renewal of a license for any period of one month~~
29 ~~or more covered by the previous license.))~~

30 (b) At the time of the application for or renewal of a license or
31 provisional license, the licensee shall pay a license fee. Beginning
32 July 1, 2011, and thereafter, the per bed license fee must be
33 established in the omnibus appropriations act and any amendment or
34 additions made to that act. The license fees established in the
35 omnibus appropriations act and any amendment or additions made to that
36 act may not exceed the department's annual licensing and oversight

1 activity costs and must include the department's cost of paying
2 providers for the amount of the license fee attributed to medicaid
3 clients.

4 (c) A license issued under this chapter may not exceed twelve
5 months in duration and expires on a date set by the department. A
6 boarding home license must be issued only to the person that applied
7 for the license. All applications for renewal of a license shall be
8 made not later than thirty days prior to the date of expiration of the
9 license. Each license shall be issued only for the premises and
10 persons named in the application, and no license shall be transferable
11 or assignable. Licenses shall be posted in a conspicuous place on the
12 licensed premises.

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

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

35 (4) The department may deny, suspend, modify, revoke, or refuse to
36 renew a license when the department finds that the applicant or
37 licensee or any partner, officer, director, managerial employee, or
38 majority owner of the applicant or licensee:

1 (a) Operated a boarding home without a license or under a revoked
2 or suspended license; or

3 (b) Knowingly or with reason to know made a false statement of a
4 material fact (i) in an application for license or any data attached to
5 the application, or (ii) in any matter under investigation by the
6 department; or

7 (c) Refused to allow representatives or agents of the department to
8 inspect (i) the books, records, and files required to be maintained, or
9 (ii) any portion of the premises of the boarding home; or

10 (d) Willfully prevented, interfered with, or attempted to impede in
11 any way (i) the work of any authorized representative of the
12 department, or (ii) the lawful enforcement of any provision of this
13 chapter; or

14 (e) Has a history of significant noncompliance with federal or
15 state regulations in providing care or services to vulnerable adults or
16 children. In deciding whether to deny, suspend, modify, revoke, or
17 refuse to renew a license under this section, the factors the
18 department considers shall include the gravity and frequency of the
19 noncompliance.

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

26 **Sec. 403.** RCW 70.128.060 and 2009 c 530 s 5 are each amended to
27 read as follows:

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

31 (2) Subject to the provisions of this section, the department shall
32 issue a license to an adult family home if the department finds that
33 the applicant and the home are in compliance with this chapter and the
34 rules adopted under this chapter(~~(, unless)~~). The department may not
35 issue a license if (a) the applicant or a person affiliated with the
36 applicant has prior violations of this chapter relating to the adult
37 family home subject to the application or any other adult family home,

1 or of any other law regulating residential care facilities within the
2 past ~~((five))~~ ten years that resulted in revocation, suspension, or
3 nonrenewal of a license or contract with the department; or (b) the
4 applicant or a person affiliated with the applicant has a history of
5 significant noncompliance with federal, state, or local laws, rules, or
6 regulations relating to the provision of care or services to vulnerable
7 adults or to children. A person is considered affiliated with an
8 applicant if the person is listed on the license application as a
9 partner, officer, director, resident manager, or majority owner of the
10 applying entity, or is the spouse of the applicant.

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

12 (4) Proof of financial solvency must be submitted when requested by
13 the department.

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

20 ~~((+5))~~ (6) The department shall not issue a license to a provider
21 if the department finds that the provider or spouse of the provider or
22 any partner, officer, director, managerial employee, or majority owner
23 has a history of significant noncompliance with federal or state
24 regulations, rules, or laws in providing care or services to vulnerable
25 adults or to children.

26 ~~((+6))~~ (7) The department shall license an adult family home for
27 the maximum level of care that the adult family home may provide. The
28 department shall define, in rule, license levels based upon the
29 education, training, and caregiving experience of the licensed provider
30 or staff.

31 ~~((+7))~~ (8) The department shall establish, by rule, standards used
32 to license nonresident providers and multiple facility operators.

33 ~~((+8))~~ (9) The department shall establish, by rule, for multiple
34 facility operators educational standards substantially equivalent to
35 recognized national certification standards for residential care
36 administrators.

37 ~~((+9)) The license fee shall be set at one hundred dollars per year~~
38 ~~for each home. An eight hundred dollar processing fee shall also be~~

1 charged each home when the home is initially licensed. The processing
2 fee will be applied toward the license renewal in the subsequent three
3 years. A five hundred dollar rebate will be returned to any home that
4 renews after four years in operation.))

5 (10) At the time of an application for an adult family home license
6 and upon the annual fee renewal date set by the department, the
7 licensee shall pay a license fee. Beginning July 1, 2011, the per bed
8 license fee and any processing fees, including the initial license fee,
9 must be established in the omnibus appropriations act and any amendment
10 or additions made to that act. The license fees established in the
11 omnibus appropriations act and any amendment or additions made to that
12 act may not exceed the department's annual licensing and oversight
13 activity costs and must include the department's cost of paying
14 providers for the amount of the license fee attributed to medicaid
15 clients.

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

27 ~~((+11))~~ (12) The department shall establish, by rule, the
28 circumstances requiring a change in the licensed provider, which
29 include, but are not limited to, a change in ownership or control of
30 the adult family home or provider, a change in the provider's form of
31 legal organization, such as from sole proprietorship to partnership or
32 corporation, and a dissolution or merger of the licensed entity with
33 another legal organization. The new provider is subject to the
34 provisions of this chapter, the rules adopted under this chapter, and
35 other applicable law. In order to ensure that the safety of residents
36 is not compromised by a change in provider, the new provider is
37 responsible for correction of all violations that may exist at the time
38 of the new license.

1 **PART V**

2 **DEPARTMENT DUTIES**

3 NEW SECTION. **Sec. 501.** Subject to funding provided for this
4 specific purpose, the department of social and health services shall
5 use additional investigative resources to address a significant growth
6 in the long-term care complaint workload. The department shall use the
7 resulting licensor resources to meet current statutory requirements and
8 timelines. "Complaints," as used in this section, include both
9 complaints about provider practice, under chapters 70.128, 18.20,
10 18.51, and 74.42 RCW, and complaints about individuals alleged to have
11 abused, neglected, abandoned, or exploited residents or clients, under
12 chapter 74.34 RCW.

13 NEW SECTION. **Sec. 502.** (1) Subject to funding provided for this
14 specific purpose, the department of social and health services shall
15 develop for phased-in implementation a statewide internal quality
16 review and accountability program for residential care services. The
17 program must be designed to enable the department to improve the
18 accountability of staff and the consistent application of investigative
19 activities across all long-term care settings, and must allow the
20 systematic monitoring and evaluation of long-term care licensing and
21 certification. The program must be designed to improve and standardize
22 investigative outcomes for the vulnerable individuals at risk of abuse
23 and neglect, and coordinate outcomes across the department to prevent
24 perpetrators from changing settings and continuing to work with
25 vulnerable adults.

26 (2) The department shall convene a quality assurance panel to
27 review problems in the quality of care in adult family homes and to
28 reduce incidents of abuse, neglect, abandonment, and financial
29 exploitation. The state's long-term care ombudsman shall chair the
30 panel and identify appropriate stakeholders to participate. The panel
31 must consider inspection, investigation, public complaint, and
32 enforcement issues that relate to adult family homes. The panel must
33 also focus on oversight issues to address de minimus violations,
34 processes for handling unresolved citations, and better ways to oversee
35 new providers. The panel shall meet at least quarterly, and provide a
36 report with recommendations to the governor's office, the senate health

1 and long-term care committee, and the house of representatives health
2 and wellness committee by December 1, 2012.

3 **PART VI**
4 **MISCELLANEOUS**

5 NEW SECTION. **Sec. 601.** If specific funding for the purposes of
6 implementing sections 501 and 502 of this act, referencing sections 501
7 and 502 of this act by bill or chapter or section number, is not
8 provided by June 30, 2011, in the omnibus operating appropriations act,
9 sections 501 and 502 of this act are null and void.

10 NEW SECTION. **Sec. 602.** Sections 501 and 502 of this act are each
11 added to chapter 74.39A RCW.

12 NEW SECTION. **Sec. 603.** Sections 401 through 403 of this act are
13 necessary for the immediate preservation of the public peace, health,
14 or safety, or support of the state government and its existing public
15 institutions, and take effect July 1, 2011.

--- END ---