
SECOND SUBSTITUTE SENATE BILL 5092

State of Washington

62nd Legislature

2011 Regular Session

By Senate Ways & Means (originally sponsored by Senators Keiser and McAuliffe; by request of Department of Social and Health Services)

READ FIRST TIME 03/31/11.

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 previous 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) In the event of serious noncompliance leading to the imposition
36 of one or more actions listed in RCW 70.128.160(2) for violation of

1 federal, state, or local laws, or regulations relating to provision of
2 care or services to vulnerable adults or children, the department is
3 authorized to take one or more actions listed in RCW 70.128.160(2)
4 against any home or homes operated by the provider if there is a
5 violation in the home or homes.

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

14 (5) A provider is ultimately responsible for the day-to-day
15 operations of each licensed home.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (4) Literacy and the ability to communicate in the English
28 language(~~(, however, a person not literate in the English language may~~
29 ~~meet the requirements of this subsection by assuring that there is a~~
30 ~~person on staff and available who is able to communicate or make~~
31 ~~provisions for communicating with the resident in his or her primary~~
32 ~~language and capable of understanding and speaking English well enough~~
33 ~~to be able to respond appropriately to emergency situations and be able~~
34 ~~to read and understand resident care plans));~~

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

37 (6) Satisfactory completion of department-approved basic training
38 and continuing education training as (~~specified by the department in~~

1 rule, based on recommendations of the community long-term care training
2 and education steering committee and working in collaboration with
3 providers, consumers, caregivers, advocates, family members, educators,
4 and other interested parties in the rule-making process)) required by
5 RCW 74.39A.073, and in rules adopted by the department;

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

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

14 (9) For those applying ((~~after September 1, 2001,~~)) to be licensed
15 as providers, and for resident managers whose employment begins after
16 ((~~September 1, 2001~~)) the effective date of this section, at least
17 ((~~three hundred twenty~~)) one thousand hours in the previous thirty-six
18 months of successful, direct caregiving experience obtained after age
19 eighteen to vulnerable adults in a licensed or contracted setting prior
20 to operating or managing an adult family home. The applicant or
21 resident manager must have credible evidence of the successful, direct
22 caregiving experience; ((and))

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

26 (11) Applicants must successfully complete ((a department-approved
27 forty-eight hour)) an adult family home administration and business
28 planning class, prior to being granted a license. The class must be a
29 minimum of forty-eight hours of classroom time and approved by the
30 department. The department shall promote and prioritize bilingual
31 capabilities within available resources and when materials are
32 available for this purpose.

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

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

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

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

9 ~~((+2))~~ (4) In order to preserve and promote the residential home-
10 like nature of adult family homes, adult family homes licensed after
11 the effective date of this section shall:

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

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

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

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

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

25 ~~((+3))~~ (7) Adult family homes shall develop a fire drill plan for
26 emergency evacuation of residents, shall have working smoke detectors
27 in each bedroom where a resident is located, shall have working fire
28 extinguishers on each floor of the home, and shall not keep
29 nonambulatory patients above the first floor of the home.

30 ~~((+4))~~ (8) The adult family home shall ensure that all residents
31 can be safely evacuated in an emergency.

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

34 ~~((+5))~~ (10) Adult family homes shall provide a nutritious and
35 balanced diet and shall recognize residents' needs for special diets.

36 ~~((+6))~~ (11) Adult family homes shall establish health care
37 procedures for the care of residents including medication
38 administration and emergency medical care.

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

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

5 ~~((+7))~~ (12) Adult family home providers shall either: (a) Reside
6 at the adult family home; or (b) employ or otherwise contract with a
7 qualified resident manager to reside at the adult family home. The
8 department may exempt, for good cause, a provider from the requirements
9 of this subsection by rule.

10 ~~((+8))~~ (13) A provider will ensure that any volunteer, student,
11 employee, or person residing within the adult family home who will have
12 unsupervised access to any resident shall not have been convicted of a
13 crime listed under RCW 43.43.830 or 43.43.842, or been found to have
14 abused, neglected, exploited, or abandoned a minor or vulnerable adult
15 as specified in RCW 74.39A.050(8). ~~((Except that))~~ A provider may
16 conditionally employ a person ~~((may be conditionally employed))~~ pending
17 the completion of a criminal conviction background inquiry, but may not
18 allow the person to have unsupervised access to any resident.

19 ~~((+9))~~ (14) A provider shall offer activities to residents under
20 care as defined by the department in rule.

21 ~~((+10))~~ (15) An adult family home must be financially solvent, and
22 upon request for good cause, shall provide the department with detailed
23 information about the home's finances. Financial records of the adult
24 family home may be examined when the department has good cause to
25 believe that a financial obligation related to resident care or
26 services will not be met.

27 (16) An adult family home provider must ensure that staff are
28 competent and receive necessary training to perform assigned tasks.
29 Staff must satisfactorily complete department-approved staff
30 orientation, basic training, and continuing education as specified by
31 the department by rule. The provider shall ensure that a qualified
32 caregiver is on-site whenever a resident is at the adult family home.
33 Notwithstanding RCW 70.128.230, until orientation and basic training
34 are successfully completed, a caregiver may not provide hands-on
35 personal care to a resident without on-site supervision by a person who
36 has successfully completed basic training or been exempted from the
37 training pursuant to statute.

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

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

5 (b) Staff on-site at all times capable of understanding and
6 speaking English well enough to be able to respond appropriately to
7 emergency situations and be able to read and understand resident care
8 plans.

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

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

16 (2) An adult family home must be considered a residential use of
17 property for zoning and public and private utility rate purposes.
18 Adult family homes are a permitted use in all areas zoned for
19 residential or commercial purposes, including areas zoned for single-
20 family dwellings.

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

23 (1) The department is authorized to take one or more of the actions
24 listed in subsection (2) of this section in any case in which the
25 department finds that an adult family home provider has:

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

28 (b) Operated an adult family home without a license or under a
29 revoked license;

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

34 (d) Willfully prevented or interfered with any inspection or
35 investigation by the department.

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

3 (a) Refuse to issue a license;

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

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

9 (d) Impose civil penalties of up to three thousand dollars for each
10 incident that violates adult family home licensing laws and rules,
11 including, but not limited to, chapters 70.128, 70.129, 74.34, and
12 74.39A RCW and related rules. Each day upon which the same or
13 substantially similar action occurs is a separate violation subject to
14 the assessment of a separate penalty;

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

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

19 ((+e)) (g) Suspend admissions to the adult family home by imposing
20 stop placement.

21 (3) When the department orders stop placement, the facility shall
22 not admit any person until the stop placement order is terminated. The
23 department may approve readmission of a resident to the facility from
24 a hospital or nursing home during the stop placement. The department
25 shall terminate the stop placement when: (a) The violations
26 necessitating the stop placement have been corrected; and (b) the
27 provider exhibits the capacity to maintain correction of the violations
28 previously found deficient. However, if upon the revisit the
29 department finds new violations that the department reasonably believes
30 will result in a new stop placement, the previous stop placement shall
31 remain in effect until the new stop placement is imposed.

32 (4) After a department finding of a violation for which a stop
33 placement has been imposed, the department shall make an on-site
34 revisit of the provider within fifteen working days from the request
35 for revisit, to ensure correction of the violation. For violations
36 that are serious or recurring or uncorrected following a previous
37 citation, and create actual or threatened harm to one or more
38 residents' well-being, including violations of residents' rights, the

1 department shall make an on-site revisit as soon as appropriate to
2 ensure correction of the violation. Verification of correction of all
3 other violations may be made by either a department on-site revisit or
4 by written or photographic documentation found by the department to be
5 credible. This subsection does not prevent the department from
6 enforcing license suspensions or revocations. Nothing in this
7 subsection shall interfere with or diminish the department's authority
8 and duty to ensure that the provider adequately cares for residents,
9 including to make departmental on-site revisits as needed to ensure
10 that the provider protects residents, and to enforce compliance with
11 this chapter.

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

17 (6) A separate adult family home account is created in the custody
18 of the state treasurer. All receipts from civil penalties imposed
19 under this chapter must be deposited into the account. Only the
20 director or the director's designee may authorize expenditures from the
21 account. The account is subject to allotment procedures under chapter
22 43.88 RCW, but an appropriation is not required for expenditures. The
23 department shall use the special account only for promoting the quality
24 of life and care of residents living in adult family homes.

25 (7) The department shall by rule specify criteria as to when and
26 how the sanctions specified in this section must be applied. The
27 criteria must provide for the imposition of incrementally more severe
28 penalties for deficiencies that are repeated, uncorrected, pervasive,
29 or present a threat to the health, safety, or welfare of one or more
30 residents. The criteria shall be tiered such that those homes
31 consistently found to have deficiencies will be subjected to
32 increasingly severe penalties. The department shall implement prompt
33 and specific enforcement remedies without delay for providers found to
34 have delivered care or failed to deliver care resulting in problems
35 that are repeated, uncorrected, pervasive, or present a threat to the
36 health, safety, or welfare of one or more residents. In the selection
37 of remedies, the health, safety, and well-being of residents must be of
38 paramount importance.

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

3 Adult family homes have developed rapidly in response to the health
4 and social needs of the aging population in community settings,
5 especially as the aging population has increased in proportion to the
6 general population. The growing demand for elder care with a new focus
7 on issues affecting senior citizens, including persons with
8 developmental disabilities, mental illness, or dementia, has prompted
9 a growing need for professionalization of adult family home providers
10 to address quality care and quality of life issues consistent with
11 standards of accountability and regulatory safeguards for the health
12 and safety of the residents. (~~The establishment of an advisory
13 committee to the department of social and health services under RCW
14 70.128.225 formalizes a stable process for discussing and considering
15 these issues among residents and their advocates, regulatory officials,
16 and adult family home providers. The dialogue among all stakeholders
17 interested in maintaining a healthy option for the aging population in
18 community settings assures the highest regard for the well-being of
19 these residents within a benign and functional regulatory environment.
20 The secretary shall be advised by an advisory committee on adult family
21 homes established under RCW 70.128.225.~~)

22 NEW SECTION. **Sec. 210.** RCW 70.128.175 (Definitions) and 1997 c
23 392 s 401, 1995 1st sp.s. c 18 s 29, & 1989 1st ex.s. c 9 s 815 are
24 each repealed.

25 **PART III**
26 **PROTECTION OF RESIDENTS' FUNDS**

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

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

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

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

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

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

13 (a) The system must preclude any commingling of resident funds with
14 facility funds or with the funds of any person other than another
15 resident.

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

18 (4) Upon the death of a resident with ((a)) personal funds
19 deposited with the facility, the facility must convey within ((forty-
20 five)) thirty days the resident's funds, and a final accounting of
21 those funds, to the individual or probate jurisdiction administering
22 the resident's estate; but in the case of a resident who received long-
23 term care services paid for by the state, the funds and accounting
24 shall be sent to the state of Washington, department of social and
25 health services, office of financial recovery. The department shall
26 establish a release procedure for use for burial expenses.

27 (5) If any funds in excess of one hundred dollars are paid to an
28 adult family home by the resident or a representative of the resident,
29 as a security deposit for performance of the resident's obligations, or
30 as prepayment of charges beyond the first month's residency, the funds
31 shall be deposited by the adult family home in an interest-bearing
32 account that is separate from any of the home's operating accounts, and
33 that credits all interest earned on the resident's funds to that
34 account. In pooled accounts, there must be a separate accounting for
35 each resident's share. The account or accounts shall be in a financial
36 institution as defined by RCW 30.22.041, and the resident shall be
37 notified in writing of the name, address, and location of the
38 depository. The adult family home shall not commingle resident funds

1 from these accounts with the adult family home's funds or with the
2 funds of any person other than another resident. The individual
3 resident's account record shall be available upon request by the
4 resident or the resident's representative.

5 (6) The adult family home shall provide the resident or the
6 resident's representative full disclosure in writing, prior to the
7 receipt of any funds for a deposit, security, prepaid charges, or any
8 other fees or charges, specifying what the funds are paid for and the
9 basis for retaining any portion of the funds if the resident dies, is
10 hospitalized, or is transferred or discharged from the adult family
11 home. The disclosure must be in a language that the resident or the
12 resident's representative understands, and be acknowledged in writing
13 by the resident or the resident's representative. The adult family
14 home shall retain a copy of the disclosure and the acknowledgment. The
15 adult family home cannot retain funds for reasonable wear and tear by
16 the resident or for any basis that would violate RCW 70.129.150.

17 (7) Funds paid by the resident or the resident's representative to
18 the adult family home, which the adult family home in turn pays to a
19 placement agency or person, shall be governed by the disclosure
20 requirements of this section. If the resident then dies, is
21 hospitalized, or is transferred or discharged from the adult family
22 home, and is entitled to any refund of funds under this section or RCW
23 70.129.150, the adult family home shall refund the funds to the
24 resident or the resident's representative within thirty days of the
25 resident leaving the adult family home, and shall not require the
26 resident to obtain the refund from the placement agency or person.

27 (8) If, during the stay of the resident, the status of the adult
28 family home licensee or ownership is changed or transferred to another,
29 any funds in the resident's accounts affected by the change or transfer
30 shall simultaneously be deposited in an equivalent account or accounts
31 by the successor or new licensee or owner, who shall promptly notify
32 the resident or the resident's representative in writing of the name,
33 address, and location of the new depository.

34 (9) Because it is a matter of great public importance to protect
35 residents who need long-term care from deceptive disclosures and unfair
36 retention of deposits, fees, or prepaid charges by adult family homes,
37 a violation of this section or RCW 70.129.150 shall be construed for
38 purposes of the consumer protection act, chapter 19.86 RCW, to

1 constitute an unfair or deceptive act or practice or an unfair method
2 of competition in the conduct of trade or commerce. The resident's
3 claim to any funds paid under this section shall be prior to that of
4 any creditor of the adult family home, its owner, or licensee, even if
5 such funds are commingled.

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

8 RCW 70.129.005 through 70.129.030, 70.129.040(~~(+1)~~), and
9 70.129.050 through 70.129.170 apply to this chapter and persons
10 regulated under this chapter.

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

13 RCW 70.129.005 through 70.129.030, 70.129.040(~~(+1)~~), and
14 70.129.050 through 70.129.170 apply to this chapter and persons
15 regulated under this chapter.

16 **PART IV**

17 **LONG-TERM CARE LICENSING FEES**

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

20 (1)(a) Upon receipt of an application for a license, the department
21 (~~shall~~) may issue a license if the applicant and the nursing (~~home~~)
22 home's facilities meet the requirements established under this chapter,
23 except that the department shall issue a temporary license to a court-
24 appointed receiver for a period not to exceed six months from the date
25 of appointment. (~~Prior to the issuance or renewal of the license, the~~
26 licensee shall pay a license fee as established by the department.)

27 (b)(i) Except as provided in (b)(ii) of this subsection, prior to
28 the issuance or renewal of the license, the licensee shall pay a
29 license fee. Beginning July 1, 2011, and thereafter, the per bed
30 license fee must be established in the omnibus appropriations act and
31 any amendment or additions made to that act. The license fees
32 established in the omnibus appropriations act and any amendment or
33 additions made to that act may not exceed the department's annual

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

4 (ii) No fee shall be required of government operated institutions
5 or court-appointed receivers. ~~((All))~~

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

10 (d) In the event of a change of ownership ~~((occurs, the entity~~
11 ~~becoming the licensed operating entity of the facility shall pay a fee~~
12 ~~established by the department at the time of application for the~~
13 ~~license.)),~~ the previously ((determined date of)) established license
14 expiration date shall not change. ((The department shall establish
15 license fees at an amount adequate to reimburse the department in full
16 for all costs of its licensing activities for nursing homes, adjusted
17 to cover the department's cost of reimbursing such fees through
18 medicaid.))

19 (2) All applications and fees for renewal of the license shall be
20 submitted to the department not later than thirty days prior to the
21 date of expiration of the license. All applications and fees, if any,
22 for change of ownership ~~((licenses))~~ shall be submitted to the
23 department not later than sixty days before the date of the proposed
24 change of ownership. ~~((Each))~~ A nursing home license shall be issued
25 only to the ~~((operating entity and those persons named in the license~~
26 ~~application))~~ person who applied for the license. The license is valid
27 only for the operation of the facility at the location specified in the
28 license application. Licenses are not transferable or assignable.
29 Licenses shall be posted in a conspicuous place on the licensed
30 premises.

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

33 (1)(a) Upon receipt of an application for license, if the applicant
34 and the boarding ~~((home))~~ home's facilities meet the requirements
35 established under this chapter, the department ~~((shall))~~ may issue a
36 license. If there is a failure to comply with the provisions of this
37 chapter or the ~~((standards and))~~ rules adopted ~~((pursuant thereto))~~

1 under this chapter, the department may in its discretion issue a
2 provisional license to an applicant for a license((~~τ~~)) or for the
3 renewal of a license((~~τ~~)). A provisional license ((~~which will~~))
4 permits the operation of the boarding home for a period to be
5 determined by the department, but not to exceed twelve months((~~τ~~, ~~which~~
6 ~~provisional license shall not be~~)) and is not subject to renewal. The
7 department may also place conditions on the license under RCW
8 18.20.190. ((~~At the time of the application for or renewal of a~~
9 ~~license or provisional license the licensee shall pay a license fee as~~
10 ~~established by the department under RCW 43.20B.110.~~ All licenses
11 ~~issued under the provisions of this chapter shall expire on a date to~~
12 ~~be set by the department, but no license issued pursuant to this~~
13 ~~chapter shall exceed twelve months in duration.~~ However, when the
14 annual license renewal date of a previously licensed boarding home is
15 set by the department on a date less than twelve months prior to the
16 expiration date of a license in effect at the time of reissuance, the
17 license fee shall be prorated on a monthly basis and a credit be
18 allowed at the first renewal of a license for any period of one month
19 or more covered by the previous license.))

20 (b) At the time of the application for or renewal of a license or
21 provisional license, the licensee shall pay a license fee. Beginning
22 July 1, 2011, and thereafter, the per bed license fee must be
23 established in the omnibus appropriations act and any amendment or
24 additions made to that act. The license fees established in the
25 omnibus appropriations act and any amendment or additions made to that
26 act may not exceed the department's annual licensing and oversight
27 activity costs and must include the department's cost of paying
28 providers for the amount of the license fee attributed to medicaid
29 clients.

30 (c) A license issued under this chapter may not exceed twelve
31 months in duration and expires on a date set by the department. A
32 boarding home license must be issued only to the person that applied
33 for the license. All applications for renewal of a license shall be
34 made not later than thirty days prior to the date of expiration of the
35 license. Each license shall be issued only for the premises and
36 persons named in the application, and no license shall be transferable
37 or assignable. Licenses shall be posted in a conspicuous place on the
38 licensed premises.

1 (2) A licensee who receives notification of the department's
2 initiation of a denial, suspension, nonrenewal, or revocation of a
3 boarding home license may, in lieu of appealing the department's
4 action, surrender or relinquish the license. The department shall not
5 issue a new license to or contract with the licensee, for the purposes
6 of providing care to vulnerable adults or children, for a period of
7 twenty years following the surrendering or relinquishment of the former
8 license. The licensing record shall indicate that the licensee
9 relinquished or surrendered the license, without admitting the
10 violations, after receiving notice of the department's initiation of a
11 denial, suspension, nonrenewal, or revocation of a license.

12 (3) The department shall establish, by rule, the circumstances
13 requiring a change in licensee, which include, but are not limited to,
14 a change in ownership or control of the boarding home or licensee, a
15 change in the licensee's form of legal organization, such as from sole
16 proprietorship to partnership or corporation, and a dissolution or
17 merger of the licensed entity with another legal organization. The new
18 licensee is subject to the provisions of this chapter, the rules
19 adopted under this chapter, and other applicable law. In order to
20 ensure that the safety of residents is not compromised by a change in
21 licensee, the new licensee is responsible for correction of all
22 violations that may exist at the time of the new license.

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

27 (a) Operated a boarding home without a license or under a revoked
28 or suspended license; or

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

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

36 (d) Willfully prevented, interfered with, or attempted to impede in
37 any way (i) the work of any authorized representative of the

1 department, or (ii) the lawful enforcement of any provision of this
2 chapter; or

3 (e) Has a history of significant noncompliance with federal or
4 state regulations in providing care or services to vulnerable adults or
5 children. In deciding whether to deny, suspend, modify, revoke, or
6 refuse to renew a license under this section, the factors the
7 department considers shall include the gravity and frequency of the
8 noncompliance.

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

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

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

20 (2) Subject to the provisions of this section, the department shall
21 issue a license to an adult family home if the department finds that
22 the applicant and the home are in compliance with this chapter and the
23 rules adopted under this chapter(~~(, unless)~~). The department may not
24 issue a license if (a) the applicant or a person affiliated with the
25 applicant has prior violations of this chapter relating to the adult
26 family home subject to the application or any other adult family home,
27 or of any other law regulating residential care facilities within the
28 past (~~(five))~~ ten years that resulted in revocation, suspension, or
29 nonrenewal of a license or contract with the department; or (b) the
30 applicant or a person affiliated with the applicant has a history of
31 significant noncompliance with federal, state, or local laws, rules, or
32 regulations relating to the provision of care or services to vulnerable
33 adults or to children. A person is considered affiliated with an
34 applicant if the person is listed on the license application as a
35 partner, officer, director, resident manager, or majority owner of the
36 applying entity, or is the spouse of the applicant.

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

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

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

9 ~~((+5))~~ (6) The department shall not issue a license to a provider
10 if the department finds that the provider or spouse of the provider or
11 any partner, officer, director, managerial employee, or majority owner
12 has a history of significant noncompliance with federal or state
13 regulations, rules, or laws in providing care or services to vulnerable
14 adults or to children.

15 ~~((+6))~~ (7) The department shall license an adult family home for
16 the maximum level of care that the adult family home may provide. The
17 department shall define, in rule, license levels based upon the
18 education, training, and caregiving experience of the licensed provider
19 or staff.

20 ~~((+7))~~ (8) The department shall establish, by rule, standards used
21 to license nonresident providers and multiple facility operators.

22 ~~((+8))~~ (9) The department shall establish, by rule, for multiple
23 facility operators educational standards substantially equivalent to
24 recognized national certification standards for residential care
25 administrators.

26 ~~((+9) The license fee shall be set at one hundred dollars per year~~
27 ~~for each home. An eight hundred))~~ (10)(a) Beginning July 1, 2011, and
28 thereafter, the per bed annual renewal license fee must be established
29 in the omnibus appropriations act and any amendment or additions made
30 to that act. The license fees established in the omnibus
31 appropriations act and any amendment or additions made to that act,
32 when combined with the initial license fee specified in subsection (b)
33 of this section, shall not exceed the department's annual licensing and
34 oversight activity costs and must include the department's cost of
35 paying providers for the amount of the annual renewal license fee
36 attributed to medicaid clients.

37 (b) A two thousand seven hundred fifty dollar processing fee shall
38 ~~((also))~~ be charged each home when the home is initially licensed.

1 (~~The processing fee will be applied toward the license renewal in the~~
2 ~~subsequent three years. A five hundred dollar rebate will be returned~~
3 ~~to any home that renews after four years in operation.~~

4 ~~(10))~~ (11) A provider who receives notification of the
5 department's initiation of a denial, suspension, nonrenewal, or
6 revocation of an adult family home license may, in lieu of appealing
7 the department's action, surrender or relinquish the license. The
8 department shall not issue a new license to or contract with the
9 provider, for the purposes of providing care to vulnerable adults or
10 children, for a period of twenty years following the surrendering or
11 relinquishment of the former license. The licensing record shall
12 indicate that the provider relinquished or surrendered the license,
13 without admitting the violations, after receiving notice of the
14 department's initiation of a denial, suspension, nonrenewal, or
15 revocation of a license.

16 ~~((11))~~ (12) The department shall establish, by rule, the
17 circumstances requiring a change in the licensed provider, which
18 include, but are not limited to, a change in ownership or control of
19 the adult family home or provider, a change in the provider's form of
20 legal organization, such as from sole proprietorship to partnership or
21 corporation, and a dissolution or merger of the licensed entity with
22 another legal organization. The new provider is subject to the
23 provisions of this chapter, the rules adopted under this chapter, and
24 other applicable law. In order to ensure that the safety of residents
25 is not compromised by a change in provider, the new provider is
26 responsible for correction of all violations that may exist at the time
27 of the new license.

28 **PART V**

29 **DEPARTMENT DUTIES**

30 NEW SECTION. **Sec. 501.** Subject to funding provided for this
31 specific purpose, the department of social and health services shall
32 use additional investigative resources to address a significant growth
33 in the long-term care complaint workload. The department shall use the
34 resulting licensor resources to meet current statutory requirements and
35 timelines. "Complaints," as used in this section, include both
36 complaints about provider practice, under chapters 70.128, 18.20,

1 18.51, and 74.42 RCW, and complaints about individuals alleged to have
2 abused, neglected, abandoned, or exploited residents or clients, under
3 chapter 74.34 RCW.

4 NEW SECTION. **Sec. 502.** Subject to funding provided for this
5 specific purpose, the department of social and health services shall
6 develop for phased-in implementation a statewide internal quality
7 review and accountability program for residential care services. The
8 program must be designed to enable the department to improve the
9 accountability of staff and the consistent application of investigative
10 activities across all long-term care settings, and must allow the
11 systematic monitoring and evaluation of long-term care licensing and
12 certification. The program must be designed to improve and standardize
13 investigative outcomes for the vulnerable individuals at risk of abuse
14 and neglect, and coordinate outcomes across the department to prevent
15 perpetrators from changing settings and continuing to work with
16 vulnerable adults.

17 NEW SECTION. **Sec. 503.** (1) Subject to funding provided for this
18 specific purpose, the Washington state long-term care ombudsman shall
19 convene an adult family home quality assurance panel to review problems
20 concerning the quality of care of residents and abuse and neglect in
21 adult family homes, and the oversight of adult family homes by the
22 department of social and health services. The panel must consist of
23 representatives from the long-term care ombudsman program, Washington
24 state residential care council, adult family homes united, department
25 of social and health services management, department of social and
26 health services enforcement field staff, disability rights of
27 Washington, and members of the community who have personal experiences
28 with adult family homes. There may be no more than two members per
29 organization.

30 (2) The panel must meet bimonthly for one year, beginning in July
31 2011, with meetings both in-person and via conference call. The
32 department of social and health services shall provide the panel an
33 overview of its licensing and inspection processes for adult family
34 homes, its complaint investigation protocols, and its enforcement
35 decision-making procedures. To the extent available, the department
36 shall also provide summary data, as requested, for the prior year. The

1 department shall also provide to the panel a random sample of complaint
2 investigations and corresponding enforcement action files with the
3 names of residents, names and addresses of facilities, and any other
4 named individuals or title redacted. The details of this sample will
5 be negotiated between the panel and the department.

6 (3) The adult family home quality assurance panel shall make
7 recommendations on topics it considers pertinent, including: Ways to
8 improve the prevention of abuse and neglect, and to increase the
9 reporting by facility staff and others of abuse and neglect; steps to
10 reduce citations by the department for de minimis violations and to
11 increase citations and penalties for serious violations; steps to
12 improve resident-centered care through such possible methods as
13 listening forums with residents and their families; greater staff
14 access to quality online materials; and ways for the department to
15 improve its responsiveness to consumers, and the clarity and
16 appropriateness of its inspection and enforcement processes to the
17 provider. Recommendations may include such steps as revisions to
18 current department practices, policies, regulations, or legislative
19 changes; improved training of adult family home staff, ombudsmen, and
20 department staff; and the development of abuse, neglect, and
21 exploitation reporting tools. The panel shall provide a report with
22 its recommendations to the governor's office, the senate health and
23 long-term care committee, and the house of representatives health care
24 and wellness committee by July 1, 2012.

25 **PART VI**
26 **MISCELLANEOUS**

27 NEW SECTION. **Sec. 601.** If specific funding for the purposes of
28 implementing sections 501 through 503 of this act, referencing sections
29 501 through 503 of this act by bill or chapter or section number, is
30 not provided by June 30, 2011, in the omnibus operating appropriations
31 act, sections 501 through 503 of this act are null and void.

32 NEW SECTION. **Sec. 602.** Sections 501 through 503 of this act are
33 each added to chapter 74.39A RCW.

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

--- END ---