

**E2SHB 1935** - S AMD 275

By Senators Marr, Pflug, Keiser

ADOPTED AS AMENDED 04/09/2009

1 Strike everything after the enacting clause and insert the  
2 following:

3 "Sec. 1. RCW 70.128.040 and 2007 c 184 s 8 are each amended to  
4 read as follows:

5 (1) The department shall adopt rules and standards with respect to  
6 adult family homes and the operators thereof to be licensed under this  
7 chapter to carry out the purposes and requirements of this chapter.  
8 The rules and standards relating to applicants and operators shall  
9 address the differences between individual providers and providers that  
10 are partnerships, corporations, associations, or companies. The rules  
11 and standards shall also recognize and be appropriate to the different  
12 needs and capacities of the various populations served by adult family  
13 homes such as but not limited to persons who are developmentally  
14 disabled or elderly. In developing rules and standards the department  
15 shall recognize the residential family-like nature of adult family  
16 homes and not develop rules and standards which by their complexity  
17 serve as an overly restrictive barrier to the development of the adult  
18 family homes in the state. Procedures and forms established by the  
19 department shall be developed so they are easy to understand and comply  
20 with. Paper work requirements shall be minimal. Easy to understand  
21 materials shall be developed for applicants and providers explaining  
22 licensure requirements and procedures.

23 (2)(a) In developing the rules and standards, the department shall  
24 consult with all divisions and administrations within the department  
25 serving the various populations living in adult family homes, including  
26 the division of developmental disabilities and the aging and adult  
27 services administration. Involvement by the divisions and  
28 administration shall be for the purposes of assisting the department to  
29 develop rules and standards appropriate to the different needs and  
30 capacities of the various populations served by adult family homes.

1 During the initial stages of development of proposed rules, the  
2 department shall provide notice of development of the rules to  
3 organizations representing adult family homes and their residents, and  
4 other groups that the department finds appropriate. The notice shall  
5 state the subject of the rules under consideration and solicit written  
6 recommendations regarding their form and content.

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

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

15 (4) The department shall establish a specialty license to include  
16 geriatric specialty certification for providers who have successfully  
17 completed the University of Washington school of nursing certified  
18 geriatric certification program and testing.

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

21 (1) The legislature finds that:

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

26 (b) Persons with functional limitations have broadly varying  
27 service needs. Adult family homes that can meet those needs are an  
28 essential component of a long-term system. ((The legislature further  
29 finds that)) Different populations living in adult family homes, such  
30 as ((the developmentally disabled)) persons with developmental  
31 disabilities and ((the)) elderly persons, often have significantly  
32 different needs and capacities from one another.

33 (c) There is a need to update certain restrictive covenants to take  
34 into consideration the legislative findings cited in (a) and (b) of  
35 this subsection; the need to prevent or reduce institutionalization;  
36 and the legislative and judicial mandates to provide care and services  
37 in the least restrictive setting appropriate to the needs of the

1 individual. Restrictive covenants which directly or indirectly  
2 restrict or prohibit the use of property for adult family homes (i) are  
3 contrary to the public interest served by establishing adult family  
4 homes and (ii) discriminate against individuals with disabilities in  
5 violation of RCW 49.60.224.

6 (2) It is the legislature's intent that department rules and  
7 policies relating to the licensing and operation of adult family homes  
8 recognize and accommodate the different needs and capacities of the  
9 various populations served by the homes. Furthermore, the development  
10 and operation of adult family homes that can provide quality personal  
11 care and special care services should be encouraged.

12 (3) The legislature finds that many residents of community-based  
13 long-term care facilities are vulnerable and their health and well-  
14 being are dependent on their caregivers. The quality, skills, and  
15 knowledge of their caregivers are the key to good care. The  
16 legislature finds that the need for well-trained caregivers is growing  
17 as the state's population ages and residents' needs increase. The  
18 legislature intends that current training standards be enhanced.

19 (4) The legislature finds that the state of Washington has a  
20 compelling interest in protecting and promoting the health, welfare,  
21 and safety of vulnerable adults residing in adult family homes. The  
22 health, safety, and well-being of vulnerable adults must be the  
23 paramount concern in determining whether to issue a license to an  
24 applicant, whether to suspend or revoke a license, or whether to take  
25 other licensing actions.

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

28 (1) To effectuate the public policies of this chapter, restrictive  
29 covenants may not limit, directly or indirectly:

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

32 (b) Persons and legal entities from operating adult family homes  
33 licensed under this chapter, whether for-profit or nonprofit, to  
34 provide services covered under this chapter. However, this subsection  
35 does not prohibit application of reasonable nondiscriminatory  
36 regulation, including but not limited to landscaping standards or

1 regulation of sign location or size, that applies to all residential  
2 property subject to the restrictive covenant.

3 (2) This section applies retroactively to all restrictive covenants  
4 in effect on the effective date of this section. Any provision in a  
5 restrictive covenant in effect on or after the effective date of this  
6 section that is inconsistent with subsection (1) of this section is  
7 unenforceable to the extent of the conflict.

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

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

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

14 (b) Persons and legal entities from operating adult family homes  
15 licensed under chapter 70.128 RCW, whether for-profit or nonprofit, to  
16 provide services covered under chapter 70.128 RCW. However, this  
17 subsection does not prohibit application of reasonable  
18 nondiscriminatory regulation, including but not limited to landscaping  
19 standards or regulation of sign location or size, that applies to all  
20 residential property subject to the governing documents.

21 (2) This section applies retroactively to any governing documents  
22 in effect on the effective date of this section. Any provision in a  
23 governing document in effect on or after the effective date of this  
24 section that is inconsistent with subsection (1) of this section is  
25 unenforceable to the extent of the conflict.

26 **Sec. 5.** RCW 70.128.060 and 2004 c 140 s 3 are each amended to read  
27 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 (a) the applicant or a person  
35 affiliated with the applicant has prior violations of this chapter  
36 relating to the adult family home subject to the application or any

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

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

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

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

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

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

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

35 (9) The license fee shall be set (~~(at fifty dollars per year)~~) in  
36 an amount specified in the biennial operating budget for each home. A  
37 (~~(fifty dollar)~~) processing fee in an amount specified in the biennial

1 operating budget shall also be charged each home when the home is  
2 initially licensed.

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

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

26 NEW SECTION. **Sec. 6.** If any provision of this act or its  
27 application to any person or circumstance is held invalid, the  
28 remainder of the act or the application of the provision to other  
29 persons or circumstances is not affected."

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1        On page 1, line 1 of the title, after "homes;" strike the remainder  
2 of the title and insert "amending RCW 70.128.040, 70.128.005, and  
3 70.128.060; adding a new section to chapter 70.128 RCW; and adding a  
4 new section to chapter 64.38 RCW."

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