

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1320

Chapter 319, Laws of 2001

(partial veto)

57th Legislature
2001 Regular Legislative Session

ADULT FAMILY HOMES

EFFECTIVE DATE: 7/22/01

Passed by the House April 16, 2001
Yeas 93 Nays 0

FRANK CHOPP
Speaker of the House of Representatives

CLYDE BALLARD
Speaker of the House of Representatives

Passed by the Senate April 5, 2001
Yeas 49 Nays 0

BRAD OWEN
President of the Senate

Approved May 15, 2001, with the
exception of sections 11, 12 and 15,
which are vetoed.

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

We, Timothy A. Martin and Cynthia Zehnder, Co-Chief Clerks of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1320** as passed by the House of Representatives and the Senate on the dates hereon set forth.

CYNTHIA ZEHNDER
Chief Clerk

TIMOTHY A. MARTIN
Chief Clerk

FILED

May 15, 2001 - 2:43 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1320

AS AMENDED BY THE SENATE

Passed Legislature - 2001 Regular Session

State of Washington 57th Legislature 2001 Regular Session

By House Committee on Health Care (originally sponsored by Representatives Edmonds, Skinner, Pennington, Cody, Gombosky, Campbell, Darneille, Ruderman, Conway, Schual-Berke, Edwards, Mielke, Linville, Kenney, Jackley and Kagi)

Read first time 02/27/2001. Referred to Committee on .

1 AN ACT Relating to adult family homes; amending RCW 70.128.005,
2 70.128.010, 18.52C.020, 70.24.017, 70.128.007, 70.128.010, 70.128.090,
3 and 70.128.120; adding new sections to chapter 70.128 RCW; adding a new
4 section to chapter 74.39A RCW; repealing RCW 70.128.061 and 70.128.062;
5 and providing an effective date.

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

7 **Sec. 1.** RCW 70.128.005 and 2000 c 121 s 4 are each amended to read
8 as follows:

9 The legislature finds that adult family homes are an important part
10 of the state's long-term care system. Adult family homes provide an
11 alternative to institutional care and promote a high degree of
12 independent living for residents. Persons with functional limitations
13 have broadly varying service needs. Adult family homes that can meet
14 those needs are an essential component of a long-term system. The
15 legislature further finds that different populations living in adult
16 family homes, such as the developmentally disabled and the elderly,
17 often have significantly different needs and capacities from one
18 another.

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

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

14 The legislature finds that the state of Washington has a compelling
15 interest in protecting and promoting the health, welfare, and safety of
16 vulnerable adults residing in adult family homes. The health, safety,
17 and well-being of vulnerable adults must be the paramount concern in
18 determining whether to issue a license to an applicant, whether to
19 suspend or revoke a license, or whether to take other licensing
20 actions.

21 **Sec. 2.** RCW 70.128.010 and 1995 c 260 s 2 are each amended to read
22 as follows:

23 Unless the context clearly requires otherwise, the definitions in
24 this section apply throughout this chapter.

25 (1) "Adult family home" means a regular family abode in which a
26 person or persons provide personal care, special care, room, and board
27 to more than one but not more than six adults who are not related by
28 blood or marriage to the person or persons providing the services.

29 (2) "Provider" means any person who is licensed under this chapter
30 to operate an adult family home. For the purposes of this section,
31 "person" means any individual, partnership, corporation, association,
32 or limited liability company.

33 (3) "Department" means the department of social and health
34 services.

35 (4) "Resident" means an adult in need of personal or special care
36 in an adult family home who is not related to the provider.

37 (5) "Adults" means persons who have attained the age of eighteen
38 years.

1 (6) "Home" means an adult family home.

2 (7) "Imminent danger" means serious physical harm to or death of a
3 resident has occurred, or there is a serious threat to resident life,
4 health, or safety.

5 (8) "Special care" means care beyond personal care as defined by
6 the department, in rule.

7 (9) "Capacity" means the maximum number of persons in need of
8 personal or special care permitted in an adult family home at a given
9 time. This number shall include related children or adults in the home
10 and who received special care.

11 (10) "Resident manager" means a person employed or designated by
12 the provider to manage the adult family home.

13 **Sec. 3.** RCW 18.52C.020 and 1997 c 392 s 527 are each amended to
14 read as follows:

15 Unless the context clearly requires otherwise, the definitions in
16 this section apply throughout this chapter.

17 (1) "Secretary" means the secretary of the department of health.

18 (2) "Health care facility" means a nursing home, hospital, hospice
19 care facility, home health care agency, hospice agency, boarding home,
20 (~~adult family home,~~) group home, or other entity for the delivery of
21 health care or long-term care services, including chore services
22 provided under chapter 74.39A RCW.

23 (3) "Nursing home" means any nursing home facility licensed
24 pursuant to chapter 18.52 RCW.

25 (4) "Nursing pool" means any person engaged in the business of
26 providing, procuring, or referring health care or long-term care
27 personnel for temporary employment in health care facilities, such as
28 licensed nurses or practical nurses, nursing assistants, and chore
29 service providers. "Nursing pool" does not include an individual who
30 only engages in providing his or her own services.

31 (5) "Person" includes an individual, firm, corporation,
32 partnership, or association.

33 (6) "Adult family home" means a residential home licensed pursuant
34 to chapter 70.128 RCW.

35 **Sec. 4.** RCW 70.24.017 and 1991 c 3 s 322 are each amended to read
36 as follows:

1 Unless the context clearly requires otherwise, the definitions in
2 this section apply throughout this chapter:

3 (1) "Acquired immunodeficiency syndrome" or "AIDS" means the
4 clinical syndrome of HIV-related illness as defined by the board of
5 health by rule.

6 (2) "Board" means the state board of health.

7 (3) "Department" means the department of health, or any successor
8 department with jurisdiction over public health matters.

9 (4) "Health care provider" means any person who is a member of a
10 profession under RCW 18.130.040 or other person providing medical,
11 nursing, psychological, or other health care services regulated by the
12 department of health.

13 (5) "Health care facility" means a hospital, nursing home,
14 neuropsychiatric or mental health facility, home health agency,
15 hospice, child care agency, (~~adult family home,~~) group care facility,
16 family foster home, clinic, blood bank, blood center, sperm bank,
17 laboratory, or other social service or health care institution
18 regulated or operated by the department of health.

19 (6) "HIV-related condition" means any medical condition resulting
20 from infection with HIV including, but not limited to, seropositivity
21 for HIV.

22 (7) "Human immunodeficiency virus" or "HIV" means all HIV and HIV-
23 related viruses which damage the cellular branch of the human immune or
24 neurological systems and leave the infected person immunodeficient or
25 neurologically impaired.

26 (8) "Test for a sexually transmitted disease" means a test approved
27 by the board by rule.

28 (9) "Legal guardian" means a person appointed by a court to assume
29 legal authority for another who has been found incompetent or, in the
30 case of a minor, a person who has legal custody of the child.

31 (10) "Local public health officer" means the officer directing the
32 county health department or his or her designee who has been given the
33 responsibility and authority to protect the health of the public within
34 his or her jurisdiction.

35 (11) "Person" includes any natural person, partnership,
36 association, joint venture, trust, public or private corporation, or
37 health facility.

38 (12) "Release of test results" means a written authorization for
39 disclosure of any sexually transmitted disease test result which is

1 signed, dated, and which specifies to whom disclosure is authorized and
2 the time period during which the release is to be effective.

3 (13) "Sexually transmitted disease" means a bacterial, viral,
4 fungal, or parasitic disease, determined by the board by rule to be
5 sexually transmitted, to be a threat to the public health and welfare,
6 and to be a disease for which a legitimate public interest will be
7 served by providing for regulation and treatment. The board shall
8 designate chancroid, gonorrhea, granuloma inguinale, lymphogranuloma
9 venereum, genital herpes simplex, chlamydia, nongonococcal urethritis
10 (NGU), trachomitis, genital human papilloma virus infection, syphilis,
11 acquired immunodeficiency syndrome (AIDS), and human immunodeficiency
12 virus (HIV) infection as sexually transmitted diseases, and shall
13 consider the recommendations and classifications of the centers for
14 disease control and other nationally recognized medical authorities in
15 designating other diseases as sexually transmitted.

16 (14) "State public health officer" means the secretary of health or
17 an officer appointed by the secretary.

18 **Sec. 5.** RCW 70.128.007 and 1995 1st sp.s. c 18 s 19 are each
19 amended to read as follows:

20 The purposes of this chapter are to:

21 (1) Encourage the establishment and maintenance of adult family
22 homes that provide a humane, safe, and ((homelike)) residential home
23 environment for persons with functional limitations who need personal
24 and special care;

25 (2) Establish standards for regulating adult family homes that
26 adequately protect residents;

27 (3) Encourage consumers, families, providers, and the public to
28 become active in assuring their full participation in development of
29 adult family homes that provide high quality and cost-effective care;

30 (4) Provide for appropriate care of residents in adult family homes
31 by requiring that each resident have a care plan that promotes the most
32 appropriate level of physical, mental, and psychosocial well-being
33 consistent with client choice; and

34 (5) Accord each resident the right to participate in the
35 development of the care plan and in other major decisions involving the
36 resident and their care.

1 **Sec. 6.** RCW 70.128.010 and 1995 c 260 s 2 are each amended to read
2 as follows:

3 Unless the context clearly requires otherwise, the definitions in
4 this section apply throughout this chapter.

5 (1) "Adult family home" means a ~~((regular—family—abode))~~
6 residential home in which a person or persons provide personal care,
7 special care, room, and board to more than one but not more than six
8 adults who are not related by blood or marriage to the person or
9 persons providing the services.

10 (2) "Provider" means any person who is licensed under this chapter
11 to operate an adult family home. For the purposes of this section,
12 "person" means any individual, partnership, corporation, association,
13 or limited liability company.

14 (3) "Department" means the department of social and health
15 services.

16 (4) "Resident" means an adult in need of personal or special care
17 in an adult family home who is not related to the provider.

18 (5) "Adults" means persons who have attained the age of eighteen
19 years.

20 (6) "Home" means an adult family home.

21 (7) "Imminent danger" means serious physical harm to or death of a
22 resident has occurred, or there is a serious threat to resident life,
23 health, or safety.

24 (8) "Special care" means care beyond personal care as defined by
25 the department, in rule.

26 (9) "Capacity" means the maximum number of persons in need of
27 personal or special care permitted in an adult family home at a given
28 time. This number shall include related children or adults in the home
29 and who received special care.

30 **Sec. 7.** RCW 70.128.090 and 1995 1st sp.s. c 18 s 24 are each
31 amended to read as follows:

32 (1) During inspections of an adult family home, the department
33 shall have access and authority to examine areas and articles in the
34 home used to provide care or support to residents, including residents'
35 records, accounts, and the physical premises, including the buildings,
36 grounds, and equipment. The personal records of the provider are not
37 subject to department inspection nor is the separate bedroom of the
38 provider, not used in direct care of a client, subject to review. The

1 department may inspect all rooms during the initial licensing of the
2 home. However, during a complaint investigation, the department shall
3 have access to the entire premises and all pertinent records when
4 necessary to conduct official business. The department also shall have
5 the authority to interview the provider and residents of an adult
6 family home.

7 (2) Whenever an inspection is conducted, the department shall
8 prepare a written report that summarizes all information obtained
9 during the inspection, and if the home is in violation of this chapter,
10 serve a copy of the inspection report upon the provider at the same
11 time as a notice of violation. This notice shall be mailed to the
12 provider within ten working days of the completion of the inspection
13 process. If the home is not in violation of this chapter, a copy of
14 the inspection report shall be mailed to the provider within ten
15 calendar days of the inspection of the home. All inspection reports
16 shall be made available to the public at the department during business
17 hours.

18 (3) The provider shall develop corrective measures for any
19 violations found by the department's inspection. The department
20 (~~may~~) shall upon request provide consultation and technical
21 assistance to assist the provider in developing effective corrective
22 measures. The department shall include a statement of the provider's
23 corrective measures in the department's inspection report.

24 **Sec. 8.** RCW 70.128.120 and 2000 c 121 s 5 are each amended to read
25 as follows:

26 Each adult family home provider and each resident manager shall
27 have the following minimum qualifications:

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

29 (2) For those applying after September 1, 2001, to be licensed as
30 providers, and for resident managers whose employment begins after
31 September 1, 2001, a high school diploma or general educational
32 development (GED) certificate;

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

34 (~~((3))~~) (4) Literacy in the English language, however, a person not
35 literate in the English language may meet the requirements of this
36 subsection by assuring that there is a person on staff and available
37 who is able to communicate or make provisions for communicating with
38 the resident in his or her primary language and capable of

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

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

6 ~~((5))~~ (6) Satisfactory completion of department-approved basic
7 training and continuing education training as specified by the
8 department in rule, based on recommendations of the community long-term
9 care training and education steering committee and working in
10 collaboration with providers, consumers, caregivers, advocates, family
11 members, educators, and other interested parties in the rule-making
12 process;

13 ~~((6))~~ (7) Satisfactory completion of department-approved, or
14 equivalent, special care training before a provider may provide special
15 care services to a resident;

16 ~~((7))~~ (8) Not been convicted of any crime listed in RCW 43.43.830
17 and 43.43.842;~~((and~~

18 ~~(8) Effective July 1, 1996,))~~ (9) Registered with the department of
19 health; and

20 (10) For those applying after September 1, 2001, to be licensed as
21 providers, and for resident managers whose employment begins after
22 September 1, 2001, at least three hundred twenty hours of successful,
23 direct caregiving experience obtained after age eighteen to vulnerable
24 adults in a licensed or contracted setting prior to operating or
25 managing an adult family home.

26 NEW SECTION. Sec. 9. A new section is added to chapter 70.128 RCW
27 to read as follows:

28 Adult family homes shall comply with the provisions of chapter
29 70.24 RCW.

30 NEW SECTION. Sec. 10. A new section is added to chapter 70.128
31 RCW to read as follows:

32 In order to prevent disruption to current residents, at the request
33 of the current licensed provider, the department shall give processing
34 priority to the application of a person seeking to be licensed as the
35 new provider for the adult family home. The department may issue a
36 provisional license when a currently licensed adult family home
37 provider has applied to be licensed as the new provider for a currently

1 licensed adult family home, the application has been initially
2 processed, and all that remains to complete the application process is
3 an on-site inspection.

4 ***NEW SECTION.** *Sec. 11. A new section is added to chapter 70.128*
5 *RCW to read as follows:*

6 *The department shall implement, as part of the required training*
7 *and continuing education, food safety training integrated into the*
8 *curriculum that meets the standards established by the state board of*
9 *health pursuant to chapter 69.06 RCW. Individual food handler permits*
10 *are not required for persons who successfully complete the training.*

11 **Sec. 11 was vetoed. See message at end of chapter.*

12 ***NEW SECTION.** *Sec. 12. A new section is added to chapter 70.128*
13 *RCW to read as follows:*

14 *The department shall work with the providers and resident*
15 *communities to develop opportunities for licensing and quality*
16 *assurance staff to become familiar with the actual environment and the*
17 *daily hands-on routine of care and services in an adult family home.*

18 **Sec. 12 was vetoed. See message at end of chapter.*

19 **NEW SECTION.** *Sec. 13. A new section is added to chapter 74.39A*
20 *RCW to read as follows:*

21 *An employer providing home and community services, including*
22 *facilities licensed under chapters 18.51, 18.20, and 70.128 RCW, an*
23 *employer of a program authorized under RCW 71A.12.040(10), or an in-*
24 *home services agency employer licensed under chapter 70.127 RCW, who*
25 *discloses information about a former or current employee to a*
26 *prospective home and community services employer, nursing home*
27 *employer, or are an in-home services agency employer, is presumed to be*
28 *acting in good faith and is immune from civil and criminal liability*
29 *for such disclosure or its consequences if the disclosed information*
30 *relates to: (1) The employee's ability to perform his or her job; (2)*
31 *the diligence, skill, or reliability with which the employee carried*
32 *out the duties of his or her job; or (3) any illegal or wrongful act*
33 *committed by the employee when related to his or her ability to care*
34 *for a vulnerable adult. For purposes of this section, the presumption*
35 *of good faith may only be rebutted upon a showing by clear and*
36 *convincing evidence that the information disclosed by the employer was*
37 *knowingly false or made with reckless disregard for the truth of the*

1 information disclosed. Should the employee successfully rebut the
2 presumption of good faith standard in a court of competent
3 jurisdiction, and therefore be the prevailing party, the prevailing
4 party shall be entitled to recover reasonable attorneys' fees against
5 the employer. Nothing in this section shall affect or limit any other
6 state, federal, or constitutional right otherwise available.

7 NEW SECTION. **Sec. 14.** The following acts or parts of acts are
8 each repealed:

9 (1) RCW 70.128.061 (Moratorium on authorization of adult family
10 home licenses) and 1997 c 392 s 402; and

11 (2) RCW 70.128.062 (Rule-making authority to implement RCW
12 70.128.061) and 1997 c 392 s 403.

13 *NEW SECTION. **Sec. 15.** *Section 11 of this act takes effect March*
14 *2, 2002.*

15 ***Sec. 15 was vetoed. See message at end of chapter.**

Passed the House April 16, 2001.

Passed the Senate April 5, 2001.

Approved by the Governor May 15, 2001, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State May 15, 2001.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to sections 11, 12
3 and 15, Substitute House Bill No. 1320 entitled:

4 "AN ACT Relating to adult family homes;"

5 Substitute House Bill No. 1320 strengthens and improves the
6 training, licensing and inspection processes for adult family homes.
7 Adult family homes are an integral part of our long-term care system.
8 I support the efforts to balance the need of the Department of Social
9 and Health Services (DSHS) to ensure a high quality of care, and the
10 need of providers for certainty in the licensing and inspection
11 processes.

12 Section 11 of the bill would have eliminated the requirement that
13 employees in adult family homes have food handler permits from the
14 Department of Health (DOH). Instead, DSHS would have been required to
15 include food safety training in its regular training and continuing
16 education curricula. Asking DSHS to provide education on food safety
17 and to enforce DOH rules is not efficient or effective. In addition,
18 under current law food handler permits must be obtained within fourteen
19 days of employment. The DSHS training must be obtained with six months
20 of the date of employment. Food safety is too important to delay the
21 training in this manner.

1 Section 12 of the bill would have required DSHS to work with
2 providers and resident communities to develop opportunities for its
3 staff to become familiar with the routines of adult family homes. This
4 language is vague and unenforceable. It is also insulting to the
5 agency staff, because it implies that DSHS employees are unfamiliar
6 with the industry they are regulating. Opportunities for exchanges of
7 information and experience can be developed without a statutory
8 requirement. I encourage DSHS to take these steps but it need not be
9 mandated by statute.

10 Section 15 is unnecessary because it sets the implementation date
11 for section 11.

12 For these reasons, I have vetoed sections 11, 12 and 15 of
13 Substitute House Bill No. 1320.

14 With the exception of sections 11, 12 and 15, Substitute House Bill
15 No. 1320 is approved."