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SENATE BILL 5856

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State of Washington

58th Legislature

2003 Regular Session

By Senators Parlette, Zarelli and Shin

Read first time 02/17/2003. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to regulatory reform for adult family homes;  
2 amending RCW 18.79.260, 70.128.060, 70.128.064, 70.128.140, 70.128.040,  
3 and 70.128.090; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature recognizes that adult family  
6 homes are a vital and integral component of the long-term care system  
7 in Washington state. The legislature further recognizes that  
8 regulations for the provision of care and the requirements of licensees  
9 for building code and fire safety adherence should be uniform  
10 throughout Washington state. The legislature further recognizes that  
11 elderly and disabled residents in adult family homes have uniform  
12 access to neighborhoods throughout the state of Washington.

13 **Sec. 2.** RCW 18.79.260 and 2000 c 95 s 3 are each amended to read  
14 as follows:

15 (1) A registered nurse under his or her license may perform for  
16 compensation nursing care, as that term is usually understood, of the  
17 ill, injured, or infirm.

1 (2) A registered nurse may, at or under the general direction of a  
2 licensed physician and surgeon, dentist, osteopathic physician and  
3 surgeon, naturopathic physician, podiatric physician and surgeon,  
4 physician assistant, osteopathic physician assistant, or advanced  
5 registered nurse practitioner acting within the scope of his or her  
6 license, administer medications, treatments, tests, and inoculations,  
7 whether or not the severing or penetrating of tissues is involved and  
8 whether or not a degree of independent judgment and skill is required.  
9 Such direction must be for acts which are within the scope of  
10 registered nursing practice.

11 (3) A registered nurse may delegate tasks of nursing care to other  
12 individuals where the registered nurse determines that it is in the  
13 best interest of the patient.

14 (a) The delegating nurse shall:

15 (i) Determine the competency of the individual to perform the  
16 tasks;

17 (ii) Evaluate the appropriateness of the delegation;

18 (iii) Supervise the actions of the person performing the delegated  
19 task; and

20 (iv) Delegate only those tasks that are within the registered  
21 nurse's scope of practice.

22 (b) A registered nurse may not delegate acts requiring substantial  
23 skill, the administration of medications, or piercing or severing of  
24 tissues except to registered or certified nursing assistants who  
25 provide care to individuals in community-based care settings as  
26 authorized under (d) of this subsection. Acts that require nursing  
27 judgment shall not be delegated.

28 (c) No person may coerce a nurse into compromising patient safety  
29 by requiring the nurse to delegate if the nurse determines that it is  
30 inappropriate to do so. Nurses shall not be subject to any employer  
31 reprisal or disciplinary action by the nursing care quality assurance  
32 commission for refusing to delegate tasks or refusing to provide the  
33 required training for delegation if the nurse determines delegation may  
34 compromise patient safety.

35 (d) For delegation in community-based care settings, a registered  
36 nurse may delegate nursing care tasks only to registered or certified  
37 nursing assistants. Simple care tasks such as blood pressure  
38 monitoring, personal care service, the use of common over-the-counter

1 medications, the application of topical ointments, medications, and ear  
2 and eye drops, or other tasks as defined by the nursing care quality  
3 assurance commission are exempted from this requirement. "Community-  
4 based care settings" includes: Community residential programs for the  
5 developmentally disabled, certified by the department of social and  
6 health services under chapter 71A.12 RCW; adult family homes licensed  
7 under chapter 70.128 RCW; and boarding homes licensed under chapter  
8 18.20 RCW. Community-based care settings do not include acute care or  
9 skilled nursing facilities.

10 (i) Delegation of nursing care tasks in community-based care  
11 settings is only allowed for individuals who have a stable and  
12 predictable condition. "Stable and predictable condition" means a  
13 situation in which the individual's clinical and behavioral status is  
14 known and does not require the frequent presence and evaluation of a  
15 registered nurse.

16 (ii) The determination of the appropriateness of delegation of a  
17 nursing task is at the discretion of the registered nurse. However,  
18 the administration of medications by injection, sterile procedures, and  
19 central line maintenance may never be delegated.

20 (iii) The registered nurse shall verify that the nursing assistant  
21 has completed the required core nurse delegation training required in  
22 chapter 18.88A RCW prior to authorizing delegation.

23 (iv) The nurse is accountable for his or her own individual actions  
24 in the delegation process. Nurses acting within the protocols of their  
25 delegation authority are immune from liability for any action performed  
26 in the course of their delegation duties.

27 (v) On or before June 30, 2001, the nursing care quality assurance  
28 commission, in conjunction with the professional nursing organizations  
29 and the department of social and health services, shall make any needed  
30 revisions or additions to nurse delegation protocols by rule, including  
31 standards for nurses to obtain informed consent prior to the delegation  
32 of nursing care tasks. Nursing task delegation protocols are not  
33 intended to regulate the settings in which delegation may occur, but  
34 are intended to ensure that nursing care services have a consistent  
35 standard of practice upon which the public and the profession may rely,  
36 and to safeguard the authority of the nurse to make independent  
37 professional decisions regarding the delegation of a task.

1 (e) The nursing care quality assurance commission may adopt rules  
2 to implement this section.

3 (4) Only a person licensed as a registered nurse may instruct  
4 nurses in technical subjects pertaining to nursing.

5 (5) Only a person licensed as a registered nurse may hold herself  
6 or himself out to the public or designate herself or himself as a  
7 registered nurse.

8 **Sec. 3.** RCW 70.128.060 and 2001 c 193 s 9 are each amended to read  
9 as follows:

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

13 (2) The department shall issue a license to an adult family home if  
14 the department finds that the applicant and the home are in compliance  
15 with this chapter and the rules adopted under this chapter, unless (a)  
16 the applicant has prior violations of this chapter relating to the  
17 adult family home subject to the application or any other adult family  
18 home, or of any other law regulating residential care facilities within  
19 the past five years that resulted in revocation or nonrenewal of a  
20 license; or (b) the applicant has a history of significant  
21 noncompliance with federal, state, or local laws, rules, or regulations  
22 relating to the provision of care or services to vulnerable adults or  
23 to children.

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

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

31 (5) The department shall not issue a license to a provider if the  
32 department finds that the provider or any partner, officer, director,  
33 managerial employee, or owner of five percent or more if the provider  
34 has a history of significant noncompliance with federal or state  
35 regulations, rules, or laws in providing care or services to vulnerable  
36 adults or to children.

1 (6) The department shall license an adult family home for the  
2 maximum level of care that the adult family home may provide. The  
3 department shall define, in rule, license levels based upon the  
4 education, training, and caregiving experience of the licensed provider  
5 or staff.

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

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

11 (9) The license fee shall be set at fifty dollars per year for each  
12 home. A fifty dollar processing fee shall also be charged each home  
13 when the home is initially licensed.

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

25 (11) The department, the adult family home, a resident or a  
26 resident's legal representative, or the long-term care ombudsman may  
27 utilize the services of a qualified third-party dispute resolution  
28 center or organization currently contracted for services by the  
29 department under existing funds, if the informal dispute resolution  
30 process fails to produce an agreement by the parties. This subsection  
31 does not preclude the utilization of dispute resolution centers or  
32 organizations that may provide pro bono services, whether or not the  
33 entity is currently contracted by the department.

34 **Sec. 4.** RCW 70.128.064 and 2001 c 319 s 10 are each amended to  
35 read as follows:

36 In order to prevent disruption to current residents, at the request  
37 of the current licensed provider, the department shall give processing

1 priority to the application of a person seeking to be licensed as the  
2 new provider for the adult family home. The department may issue a  
3 provisional license when a currently licensed adult family home  
4 provider has applied to be licensed as the new provider for a currently  
5 licensed adult family home, the application has been initially  
6 processed, and all that remains to complete the application process is  
7 an on-site inspection. This section applies if a name on an adult  
8 family home license is changed due to the death of a spouse, divorce,  
9 or changes of corporate officers or partnerships. Provisional licenses  
10 must be available while the remaining parties on the license verify  
11 qualifications and capabilities necessary to qualify as the responsible  
12 entity on the license. Licenses must be processed by the department  
13 within sixty days of the submission of a completed application.  
14 Applications reviewed by the department must include a comprehensive  
15 list of omissions or errors and a corresponding list of necessary  
16 corrections before the application is returned to the provider.

17 **Sec. 5.** RCW 70.128.140 and 1995 1st sp.s. c 18 s 26 are each  
18 amended to read as follows:

19 Each adult family home shall meet applicable local licensing,  
20 zoning, building, and housing codes, and state and local fire safety  
21 regulations as they pertain to a single-family residence. (~~It is the~~  
22 ~~responsibility of the home to check with local authorities to ensure~~  
23 ~~all local codes are met.)) Adult family homes are subject to uniform  
24 application of state building code requirements by local jurisdictions  
25 as applied to residential group 3 designation. The state building code  
26 council may make reasonable and affordable stipulations for residents'  
27 rights under chapter 70.129 RCW and safety pursuant to the federal fair  
28 housing act, other applicable federal laws, and RCW 36.70A.410,  
29 provided that these stipulations accommodate uniform application of  
30 adult family homes in neighborhoods.~~

31 **Sec. 6.** RCW 70.128.040 and 1995 c 260 s 3 are each amended to read  
32 as follows:

33 (1) The department shall adopt rules and standards with respect to  
34 adult family homes and the operators thereof to be licensed under this  
35 chapter to carry out the purposes and requirements of this chapter.  
36 The rules and standards relating to applicants and operators shall

1 address the differences between individual providers and providers that  
2 are partnerships, corporations, associations, or companies. The rules  
3 and standards shall also recognize and be appropriate to the different  
4 needs and capacities of the various populations served by adult family  
5 homes such as but not limited to the developmentally disabled and the  
6 elderly. In developing rules and standards the department shall  
7 recognize the residential family-like nature of adult family homes and  
8 not develop rules and standards which by their complexity serve as an  
9 overly restrictive barrier to the development of the adult family homes  
10 in the state. Procedures and forms established by the department shall  
11 be developed so they are easy to understand and comply with. Paper  
12 work requirements shall be minimal. Easy to understand materials shall  
13 be developed for applicants and providers explaining licensure  
14 requirements and procedures.

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

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

32 (4) Liability insurance requirements are subject to the  
33 availability and affordability of liability insurance in the  
34 marketplace.

35 **Sec. 7.** RCW 70.128.090 and 2001 c 319 s 7 are each amended to read  
36 as follows:

37 (1) During inspections of an adult family home, the department

1 shall have access and authority to examine areas and articles in the  
2 home used to provide care or support to residents, including residents'  
3 records, accounts, and the physical premises, including the buildings,  
4 grounds, and equipment. The personal records of the provider are not  
5 subject to department inspection nor is the separate bedroom of the  
6 provider, not used in direct care of a client, subject to review. The  
7 department may inspect all rooms during the initial licensing of the  
8 home. However, during a complaint investigation, the department shall  
9 have access to the entire premises and all pertinent records when  
10 necessary to conduct official business. The department also shall have  
11 the authority to interview the provider and residents of an adult  
12 family home.

13 (2) An inspection must be conducted every eighteen months unless an  
14 adult family home is in good standing with previous inspection  
15 complaint investigations and citations, in which case the adult family  
16 home will be allowed to continue without inspection for two years.  
17 Whenever an inspection is conducted, the department shall prepare a  
18 written report that summarizes all information obtained during the  
19 inspection, and if the home is in violation of this chapter, serve a  
20 copy of the inspection report upon the provider at the same time as a  
21 notice of violation. This notice shall be mailed to the provider  
22 within ten working days of the completion of the inspection process.  
23 If the home is not in violation of this chapter, a copy of the  
24 inspection report shall be mailed to the provider within ten calendar  
25 days of the inspection of the home. All inspection reports shall be  
26 made available to the public at the department during business hours.  
27 Upon completion of an inspection, a copy of the inspection report must  
28 be left with the adult family home prior to leaving. The inspection  
29 must also include a consultation with the adult family home on how to  
30 improve performance.

31 (3) The provider shall develop corrective measures for any  
32 violations found by the department's inspection. The department shall  
33 upon request provide consultation and technical assistance to assist  
34 the provider in developing effective corrective measures. The  
35 department shall include a statement of the provider's corrective  
36 measures in the department's inspection report.

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