

CERTIFICATION OF ENROLLMENT

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1935

Chapter 530, Laws of 2009

61st Legislature
2009 Regular Session

ADULT FAMILY HOMES--LICENSURE--COVENANTS

EFFECTIVE DATE: 07/26/09

Passed by the House April 24, 2009
Yeas 70 Nays 24

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 22, 2009
Yeas 32 Nays 16

BRAD OWEN

President of the Senate

Approved May 18, 2009, 3:29 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1935** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

May 20, 2009

**Secretary of State
State of Washington**

ENGROSSED SECOND SUBSTITUTE HOUSE BILL 1935

AS AMENDED BY THE SENATE

Passed Legislature - 2009 Regular Session

State of Washington

61st Legislature

2009 Regular Session

By House Health & Human Services Appropriations (originally sponsored by Representatives Morrell, Walsh, Cody, Orwall, Kenney, Bailey, Miloscia, Green, Kelley, and Williams)

READ FIRST TIME 03/02/09.

1 AN ACT Relating to adult family homes; amending RCW 70.128.040,
2 70.128.005, and 70.128.060; adding a new section to chapter 70.128 RCW;
3 and adding a new section to chapter 64.38 RCW.

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

5 **Sec. 1.** RCW 70.128.040 and 2007 c 184 s 8 are each amended to read
6 as follows:

7 (1) The department shall adopt rules and standards with respect to
8 adult family homes and the operators thereof to be licensed under this
9 chapter to carry out the purposes and requirements of this chapter.
10 The rules and standards relating to applicants and operators shall
11 address the differences between individual providers and providers that
12 are partnerships, corporations, associations, or companies. The rules
13 and standards shall also recognize and be appropriate to the different
14 needs and capacities of the various populations served by adult family
15 homes such as but not limited to persons who are developmentally
16 disabled or elderly. In developing rules and standards the department
17 shall recognize the residential family-like nature of adult family
18 homes and not develop rules and standards which by their complexity
19 serve as an overly restrictive barrier to the development of the adult

1 family homes in the state. Procedures and forms established by the
2 department shall be developed so they are easy to understand and comply
3 with. Paper work requirements shall be minimal. Easy to understand
4 materials shall be developed for applicants and providers explaining
5 licensure requirements and procedures.

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

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

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

28 (4) The department shall establish a specialty license to include
29 geriatric specialty certification for providers who have successfully
30 completed the University of Washington school of nursing certified
31 geriatric certification program and testing.

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

34 (1) The legislature finds that:

35 (a) Adult family homes are an important part of the state's long-
36 term care system. Adult family homes provide an alternative to

1 institutional care and promote a high degree of independent living for
2 residents.

3 (b) Persons with functional limitations have broadly varying
4 service needs. Adult family homes that can meet those needs are an
5 essential component of a long-term system. ~~((The legislature further
6 finds that))~~ Different populations living in adult family homes, such
7 as ~~((the — developmentally — disabled))~~ persons with developmental
8 disabilities and ~~((the))~~ elderly persons, often have significantly
9 different needs and capacities from one another.

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

20 (2) It is the legislature's intent that department rules and
21 policies relating to the licensing and operation of adult family homes
22 recognize and accommodate the different needs and capacities of the
23 various populations served by the homes. Furthermore, the development
24 and operation of adult family homes that can provide quality personal
25 care and special care services should be encouraged.

26 (3) The legislature finds that many residents of community-based
27 long-term care facilities are vulnerable and their health and well-
28 being are dependent on their caregivers. The quality, skills, and
29 knowledge of their caregivers are the key to good care. The
30 legislature finds that the need for well-trained caregivers is growing
31 as the state's population ages and residents' needs increase. The
32 legislature intends that current training standards be enhanced.

33 (4) The legislature finds that the state of Washington has a
34 compelling interest in protecting and promoting the health, welfare,
35 and safety of vulnerable adults residing in adult family homes. The
36 health, safety, and well-being of vulnerable adults must be the
37 paramount concern in determining whether to issue a license to an

1 applicant, whether to suspend or revoke a license, or whether to take
2 other licensing actions.

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

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

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

9 (b) Persons and legal entities from operating adult family homes
10 licensed under this chapter, whether for-profit or nonprofit, to
11 provide services covered under this chapter. However, this subsection
12 does not prohibit application of reasonable nondiscriminatory
13 regulation, including but not limited to landscaping standards or
14 regulation of sign location or size, that applies to all residential
15 property subject to the restrictive covenant.

16 (2) This section applies retroactively to all restrictive covenants
17 in effect on the effective date of this section. Any provision in a
18 restrictive covenant in effect on or after the effective date of this
19 section that is inconsistent with subsection (1) of this section is
20 unenforceable to the extent of the conflict.

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

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

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

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

34 (2) This section applies retroactively to any governing documents
35 in effect on the effective date of this section. Any provision in a

1 governing document in effect on or after the effective date of this
2 section that is inconsistent with subsection (1) of this section is
3 unenforceable to the extent of the conflict.

4 **Sec. 5.** RCW 70.128.060 and 2004 c 140 s 3 are each amended to read
5 as follows:

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

9 (2) Subject to the provisions of this section, the department shall
10 issue a license to an adult family home if the department finds that
11 the applicant and the home are in compliance with this chapter and the
12 rules adopted under this chapter, unless (a) the applicant or a person
13 affiliated with the applicant has prior violations of this chapter
14 relating to the adult family home subject to the application or any
15 other adult family home, or of any other law regulating residential
16 care facilities within the past five years that resulted in revocation,
17 suspension, or nonrenewal of a license or contract with the department;
18 or (b) the applicant or a person affiliated with the applicant has a
19 history of significant noncompliance with federal, state, or local
20 laws, rules, or regulations relating to the provision of care or
21 services to vulnerable adults or to children. A person is considered
22 affiliated with an applicant if the person is listed on the license
23 application as a partner, officer, director, resident manager, or
24 majority owner of the applying entity, or is the spouse of the
25 applicant.

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

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

33 (5) The department shall not issue a license to a provider if the
34 department finds that the provider or spouse of the provider or any
35 partner, officer, director, managerial employee, or majority owner has
36 a history of significant noncompliance with federal or state

1 regulations, rules, or laws in providing care or services to vulnerable
2 adults or to children.

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

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

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

13 (9) The license fee shall be set at (~~(fifty)~~) one hundred dollars
14 per year for each home. (~~(A fifty)~~) An eight hundred dollar processing
15 fee shall also be charged each home when the home is initially
16 licensed. The processing fee will be applied toward the license
17 renewal in the subsequent three years. A five hundred dollar rebate
18 will be returned to any home that renews after four years in operation.

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

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

1 compromised by a change in provider, the new provider is responsible
2 for correction of all violations that may exist at the time of the new
3 license.

4 NEW_SECTION. **Sec. 6.** If any provision of this act or its
5 application to any person or circumstance is held invalid, the
6 remainder of the act or the application of the provision to other
7 persons or circumstances is not affected.

Passed by the House April 24, 2009.

Passed by the Senate April 22, 2009.

Approved by the Governor May 18, 2009.

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