
SENATE BILL 5521

State of Washington

57th Legislature

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By Senators Thibaudeau, Deccio, Kohl-Welles and Winsley

Read first time 01/25/2001. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to adult family homes; amending RCW 18.52C.020,
2 70.24.017, 70.128.007, 70.128.010, 70.128.090, 70.128.100, 70.128.120,
3 70.128.125, and 70.128.160; adding new sections to chapter 70.128 RCW;
4 adding a new section to chapter 69.06 RCW; adding a new section to
5 chapter 74.39A RCW; and repealing RCW 70.128.061 and 70.128.062.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 70.128 RCW
8 to read as follows:

9 The department shall develop a temporary management program
10 utilizing community providers licensed under this chapter. This
11 program is established to mitigate dislocation of residents of adult
12 family homes while the department and the licensee, who is subject to
13 departmental sanctions that would result in license revocation and/or
14 a stop placement order, proceed with due process and dispute resolution
15 proceedings as authorized by law.

16 In implementing this section the department shall consult with
17 consumers, advocates, the adult family home advisory committee
18 established under chapter 18.48 RCW, and organizations representing
19 adult family homes.

1 The department shall report back to the legislature on the
2 implementation of this program by December 31, 2002.

3 The department shall retain fees and fines from licensing
4 violations for the purpose of funding this temporary management
5 program.

6 NEW SECTION. **Sec. 2.** A new section is added to chapter 70.128 RCW
7 to read as follows:

8 A provider licensed under this chapter may choose to have a dispute
9 resolution center established under chapter 7.75 RCW resolve licensing
10 disputes, sanctions, citations, and departmental actions. Family
11 members, residents, surrogates, and resident managers of adult family
12 homes may also have disputes with the department resolved by a dispute
13 resolution center utilized through agreement of the parties, or by the
14 request or order of an administrative law judge.

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

17 A provider shall honor a written and properly executed advance
18 directive of a resident or a resident's surrogate as set out in RCW
19 7.70.065, including a do not resuscitate directive of the resident or
20 surrogate. The department shall not intervene with a written directive
21 of a resident or a surrogate nor hold a provider liable for executing
22 such a directive. The provider shall immediately report the incident
23 to the appropriate first responder, emergency medical provider, fire
24 department, coroner, sheriff's department, or hospice nurse pursuant to
25 a hospice care plan.

26 **Sec. 4.** RCW 18.52C.020 and 1997 c 392 s 527 are each amended to
27 read as follows:

28 Unless the context clearly requires otherwise, the definitions in
29 this section apply throughout this chapter.

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

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

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

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

9 (5) "Person" includes an individual, firm, corporation,
10 partnership, or association.

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

13 **Sec. 5.** RCW 70.24.017 and 1991 c 3 s 322 are each amended to read
14 as follows:

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

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

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

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

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

27 (5) "Health care facility" means a hospital, nursing home,
28 neuropsychiatric or mental health facility, home health agency,
29 hospice, child care agency, (~~adult family home,~~) group care facility,
30 family foster home, clinic, blood bank, blood center, sperm bank,
31 laboratory, or other social service or health care institution
32 regulated or operated by the department of health.

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

36 (7) "Human immunodeficiency virus" or "HIV" means all HIV and HIV-
37 related viruses which damage the cellular branch of the human immune or

1 neurological systems and leave the infected person immunodeficient or
2 neurologically impaired.

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

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

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

12 (11) "Person" includes any natural person, partnership,
13 association, joint venture, trust, public or private corporation, or
14 health facility.

15 (12) "Release of test results" means a written authorization for
16 disclosure of any sexually transmitted disease test result which is
17 signed, dated, and which specifies to whom disclosure is authorized and
18 the time period during which the release is to be effective.

19 (13) "Sexually transmitted disease" means a bacterial, viral,
20 fungal, or parasitic disease, determined by the board by rule to be
21 sexually transmitted, to be a threat to the public health and welfare,
22 and to be a disease for which a legitimate public interest will be
23 served by providing for regulation and treatment. The board shall
24 designate chancroid, gonorrhea, granuloma inguinale, lymphogranuloma
25 venereum, genital herpes simplex, chlamydia, nongonococcal urethritis
26 (NGU), trachomitis, genital human papilloma virus infection, syphilis,
27 acquired immunodeficiency syndrome (AIDS), and human immunodeficiency
28 virus (HIV) infection as sexually transmitted diseases, and shall
29 consider the recommendations and classifications of the centers for
30 disease control and other nationally recognized medical authorities in
31 designating other diseases as sexually transmitted.

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

34 **Sec. 6.** RCW 70.128.007 and 1995 1st sp.s. c 18 s 19 are each
35 amended to read as follows:

36 The purposes of this chapter are to:

37 (1) Encourage the establishment and maintenance of adult family
38 homes that provide a humane, safe, and ((homelike)) residential home

1 environment for persons with functional limitations who need personal
2 and special care and who choose to have their care provided in an adult
3 family home;

4 (2) Establish standards for regulating adult family homes that
5 adequately protect residents and allow residents the right to choose
6 the residential placement and care in an adult family home;

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

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

14 (5) Accord each resident the right to participate in the
15 development of the care plan and in other major decisions involving the
16 resident and their care.

17 **Sec. 7.** RCW 70.128.010 and 1995 c 260 s 2 are each amended to read
18 as follows:

19 Unless the context clearly requires otherwise, the definitions in
20 this section apply throughout this chapter.

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

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

30 (3) "Department" means the department of social and health
31 services.

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

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

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

1 (7) "Imminent danger" means serious physical harm to or death of a
2 resident has occurred, or there is a serious threat to resident life,
3 health, or safety or bodily harm as defined in RCW 9A.04.110(4).

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

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

10 **Sec. 8.** RCW 70.128.090 and 1995 1st sp.s. c 18 s 24 are each
11 amended to read as follows:

12 (1) During inspections of an adult family home, the department
13 shall have access and authority to examine areas and articles in the
14 home used to provide care or support to residents, including residents'
15 records, accounts, and the physical premises, including the buildings,
16 grounds, and equipment. However, the personal records of the provider
17 are not subject to department inspection nor is the separate bedroom of
18 the provider, not used in direct care of a client, subject to review.
19 The department may inspect all rooms during the initial licensing of
20 the home. The department also shall have the authority to interview
21 the provider and residents of an adult family home.

22 (2) Whenever an inspection is conducted, the department shall
23 prepare a written report that summarizes all information obtained
24 during the inspection, and if the home is in violation of this chapter,
25 serve a copy of the inspection report upon the provider at the same
26 time as a notice of violation. This notice shall be mailed to the
27 provider within ten working days of the inspection. If the home is not
28 in violation of this chapter, a copy of the inspection report shall be
29 mailed to the provider within ten calendar days of the inspection of
30 the home. All inspection reports shall be made available to the public
31 at the department during business hours. The department is prohibited
32 from releasing any information regarding alleged violations until the
33 provider has been notified of the alleged violations and has been
34 provided due process under this chapter.

35 (3) The provider shall develop corrective measures for any
36 violations found by the department's inspection. The department
37 (~~may~~) shall provide consultation and technical assistance to assist
38 the provider in developing effective corrective measures. The

1 department shall include a statement of the provider's corrective
2 measures in the department's inspection report.

3 (4) The provider may submit a statement for the record on any plans
4 of correction or violation. The statement shall be made available to
5 the public in the inspection report and in any press release initiated
6 by the department.

7 **Sec. 9.** RCW 70.128.100 and 1989 c 427 s 32 are each amended to
8 read as follows:

9 The department has the authority to immediately suspend a license
10 if it finds that conditions there constitute an imminent danger to
11 residents or bodily harm as defined in RCW 9A.04.110(4).

12 **Sec. 10.** RCW 70.128.120 and 2000 c 121 s 5 are each amended to
13 read as follows:

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

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

17 (2) Effective September 1, 2001, a high school diploma or
18 certificate of educational competence for successful completion of
19 general educational development test;

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

21 ~~((3))~~ (4) Literacy in English language, however a person not
22 literate in the English language may meet the requirements of this
23 subsection by assuring that there is a person on staff and available
24 who is literate in English;

25 ~~((4))~~ (5) Management and administrative ability to carry out the
26 requirements of this chapter;

27 ~~((5))~~ (6) Satisfactory completion of department-approved basic
28 training and continuing education training as specified by the
29 department in rule, based on recommendations of the community long-term
30 care training and education steering committee and working in
31 collaboration with providers, consumers, caregivers, advocates, family
32 members, educators, and other interested parties in the rule-making
33 process;

34 ~~((6))~~ (7) Satisfactory completion of department-approved, or
35 equivalent, special care training before a provider may provide special
36 care services to a resident;

1 (~~(7)~~) (8) Not been convicted of any crime listed in RCW 43.43.830
2 and 43.43.842;~~(and~~

3 ~~(8) Effective July 1, 1996,~~) (9) Registered with the department of
4 health;

5 (10) Effective September 1, 2001, at least three hundred twenty
6 hours of successful direct caregiving experience to vulnerable adults
7 prior to operating or managing an adult family home; and

8 (11) Effective September 2001, department licensors and complaint
9 investigators charged with enforcement, inspection, investigation, and
10 licensure of adult family homes pursuant to this chapter must have one
11 hundred sixty hours of successful direct caregiving experience in an
12 adult family home within the first year of employment. Within the
13 first year of employment, wages paid by the adult family home for this
14 purpose may be reverted to the state to offset cost.

15 **Sec. 11.** RCW 70.128.125 and 1994 c 214 s 24 are each amended to
16 read as follows:

17 (1) RCW 70.129.005 through 70.129.030, 70.129.040(1), and
18 70.129.050 through 70.129.170 apply to this chapter and persons
19 regulated under this chapter. The department shall allow each resident
20 to exercise his or her option to stay in an adult family home and to
21 exercise his or her judgment as to activities the resident chooses.

22 (2) No resident of an adult family home shall be removed from an
23 adult family home for any reason by the department without the informed
24 written consent of a resident competent to make such a decision; or
25 without the informed written consent of a resident's legal guardian if
26 the resident has been determined incompetent; or after the provision by
27 the department of adequate written notice to the resident, legal
28 guardian, and the responsible family member or attorney-in-fact and
29 after a meaningful opportunity for an adjudicative hearing pursuant to
30 chapter 34.05 RCW; or after notice and hearing consistent with RCW
31 71A.10.050 for residents with developmental disabilities. The
32 department shall continue all payments, services, and benefits
33 necessary for residential care for medicaid recipients in their current
34 placement pending the final administrative decision on the merits;
35 except that if the department determines with factual findings that a
36 resident is subjected to conditions of imminent danger in the home, the
37 department shall immediately obtain a court order pursuant to RCW
38 70.128.105 authorizing removal of the specific resident of an adult

1 family home it believes in good faith to be subjected to imminent
2 danger, subject to final resolution of the matter in an adjudicative
3 hearing pursuant to chapter 34.05 RCW.

4 **Sec. 12.** RCW 70.128.160 and 1995 1st sp.s. c 18 s 28 are each
5 amended to read as follows:

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

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

11 (b) Operated an adult family home without a license or under a
12 revoked license;

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

17 (d) Willfully prevented or interfered with any inspection or
18 investigation by the department.

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

21 (a) Refuse to issue a license;

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

25 (c) Impose civil penalties of not more than one hundred dollars per
26 day per violation;

27 (d) Suspend, revoke, or refuse to renew a license; or

28 (e) Suspend admissions to the adult family home by imposing stop
29 placement.

30 (3) The department shall promulgate specific remedies and sanctions
31 for deficiencies and violations of this chapter by adult family home
32 licensees similar to other long-term care providers. The remedies and
33 sanctions must be appropriate for the home-like, noninstitutional
34 environment of an adult family home and must be the same as or less
35 than the criteria listed in subsection (5) of this section and
36 consistent with subsections (2)(g) and (5) of WAC 388-98-003, as it
37 exists on January 1, 2001. The department shall ensure that sanctions
38 and remedies in subsection (2)(a) through (e) of this section do not

1 impose summary suspension, stop placement, or revocation if there are
2 no factual findings of serious abuse, serious neglect, serious
3 financial exploitation, or other serious harm by the licensee. No
4 adult family home license shall be revoked for deficiencies or
5 violations of documentation or paperwork compliance requirements. If
6 the department has not implemented the revised regulations required by
7 this subsection by January 1, 2001, the criteria listed in WAC 388-98-
8 003(3) shall be the standard for imposition of sanctions and remedies
9 in adult family home licensing cases until such new regulations are
10 effective.

11 (4) In the event of a citation for a deficiency or violation of the
12 long-term care regulations, if the department establishes that a
13 violation or deficiency occurred, the licensee has the burden of
14 proving that the licensee did what might reasonably be expected of a
15 long-term health care facility licensee, acting under similar
16 circumstances, to comply with the regulation. If the licensee sustains
17 this burden, the citation must be dismissed.

18 (5) When the department orders stop placement, the facility shall
19 not admit any person until the stop placement order is terminated. The
20 department may approve readmission of a resident to the facility from
21 a hospital or nursing home during the stop placement. The department
22 shall terminate the stop placement when: (a) The violations
23 necessitating the stop placement have been corrected; and (b) the
24 provider exhibits the capacity to maintain adequate care and service.

25 ((+4)) (6) Chapter 34.05 RCW applies to department actions under
26 this section, except that orders of the department imposing license
27 suspension, stop placement, or conditions for continuation of a license
28 are effective immediately upon notice and shall continue in effect
29 pending any hearing. However, the temporary management program created
30 in section 1 of this act allows the continuation of the license in
31 accordance with the provisions of the program. The department shall
32 explain in writing to the provider, residents, and residents' families
33 any reasons for not implementing a temporary management program.

34 (7) If the department determines that imminent danger to the
35 residents of an adult family home is present, imposition of summary
36 suspension and stop placement orders pending a hearing shall be
37 implemented by the department only through an order of the superior
38 court in compliance with RCW 70.128.100 and 70.128.105.

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

3 The department shall ensure that state-paid client care plans are
4 funded to the actual cost of services provided, including hours of
5 supervision required for a state-paid client. The hours of required
6 services to be provided by the provider shall be included in the care
7 plan, including hours of required supervision. A provider shall not be
8 required to provide services for which they are not being paid or
9 services not in the care plan.

10 NEW SECTION. **Sec. 14.** A new section is added to chapter 70.128
11 RCW to read as follows:

12 Adult family homes shall comply with the provisions of chapter
13 70.24 RCW.

14 NEW SECTION. **Sec. 15.** A new section is added to chapter 70.128
15 RCW to read as follows:

16 Any residential home currently licensed as an adult family home
17 shall be deemed acceptable and licensable by the department as an adult
18 family home, even when rented, leased, or sold to a different provider.
19 The department may develop a provisional license to facilitate the
20 timely transfer of a license under this section.

21 NEW SECTION. **Sec. 16.** A new section is added to chapter 70.128
22 RCW to read as follows:

23 In any administrative or adjudicative proceeding between the
24 department and a licensee conducted pursuant to chapter 34.05 RCW, the
25 appellant shall be awarded reasonable attorney fees and expenses
26 consistent with RCW 4.84.340 through 4.84.360.

27 NEW SECTION. **Sec. 17.** A new section is added to chapter 69.06 RCW
28 to read as follows:

29 Food handler permits are not required for providers, resident
30 managers, employees, volunteers, or residents of adult family homes.

31 NEW SECTION. **Sec. 18.** A new section is added to chapter 74.39A
32 RCW to read as follows:

33 An employer providing home and community services, including
34 facilities licensed under chapters 18.51, 18.20, and 70.128 RCW, an

1 employer of a program authorized under RCW 71A.12.040(10), or an in-
2 home services agency employer licensed under chapter 70.127 RCW, who
3 discloses information about a former or current employee to a
4 prospective home and community services employer, nursing home
5 employer, or home health, hospice, or home care agency employer, is
6 presumed to be acting in good faith and is immune from civil and
7 criminal liability for such disclosure or its consequences if the
8 disclosed information relates to: (1) The employee's ability to
9 perform his or her job; (2) the diligence, skill, or reliability with
10 which the employee carried out the duties of his or her job; or (3) any
11 illegal or wrongful act committed by the employee when related to his
12 or her ability to care for a vulnerable adult. For purposes of this
13 section, the presumption of good faith may only be rebutted upon a
14 showing by clear and convincing evidence that the information disclosed
15 by the employer was knowingly false or made with reckless disregard for
16 the truth of the information disclosed. Should the employee
17 successfully rebut the presumption of good faith standard in a court of
18 competent jurisdiction, and therefore be the prevailing party, the
19 prevailing party shall be entitled to recover reasonable attorneys'
20 fees against the employer. Nothing in this section shall affect or
21 limit any other state, federal, or constitutional right otherwise
22 available.

23 NEW SECTION. **Sec. 19.** The following acts or parts of acts are
24 each repealed:

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

27 (2) RCW 70.128.062 (Rule-making authority to implement RCW
28 70.128.061) and 1997 c 392 s 403.

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