

NO. 70411-7-1

**COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON**

WASHINGTON STATE DEPARTMENT OF SOCIAL AND HEALTH
SERVICES,

Appellant,

v.

MARIANA GLIGOR, DBA EVERGREEN SEASONS ADULT
FAMILY HOME,

Respondent.

REPLY BRIEF OF APPELLANT

ROBERT W. FERGUSON
Attorney General

LISA M. ROTH
Assistant Attorney General
WSBA #19312
Office of the Attorney General
800 Fifth Avenue Ste. 2000
Seattle, WA 98104
(206) 464-7045
Office ID #91016

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I. INTRODUCTION

The Department (Appellant) respectfully requests that the Court disregard the numerous alleged statements of facts and arguments that are set forth in the Brief of Respondent without references to the record. The Department also requests that the Court disregard the statements of fact set forth in the Brief of Respondent that are not supported by any evidence in the record. Finally, the Department requests that the Court disregard the legal arguments that are set forth in the Brief of Respondent without any citations to supporting legal authority.

II. AUTHORITY AND ARGUMENT

A. **The Brief of Respondent Sets Forth Numerous Statements Of Facts And Arguments Without References To The Record And Should Be Disregarded Because These Statements of Fact And Arguments Fail To Comply With RAP 10.3(a)(5) And RAP 10.3(a)(6) And RAP 10.3(b)**

The Brief of Respondent sets forth numerous alleged statements of facts and arguments without references to the record. *See*, Brief of Respondent at 8-28, 32-40, 41-46. All of the Respondent's statements of facts and arguments that lack a reference to the record should be disregarded because they do not conform to RAP 10.3(a)(5) and RAP 10.3(a)(6) and RAP 10.3(b). RAP 10.3(b) requires that the Brief of Respondent should conform to RAP 10.3(a). RAP 10.3(a)(5) and RAP 10.3(a)(6) provide:

(5) Statement of the Case. A fair statement of the facts and procedure relevant to the issues presented for review, without argument. *Reference to the record must be included for each factual statement.*

(6) Argument. The argument in support of the issues presented for review, *together with* citations to legal authority and *references to relevant parts of the record.* The argument may be preceded by a summary. The court ordinarily encourages a concise statement of the standard of review as to each issue.

RAP 10.3(a)(5) and RAP 10.3(a)(6) (emphasis added).

RAP 10.7 provides that if a party submits a brief that fails to comply with Title 10 of the Rules of Appellate Procedure, the appellate court may “(1) order the brief returned for correction or replacement within a specified time, (2) order the brief stricken from the files with leave to file a new brief within a specified time, or (3) accept the brief.” RAP 10.7. In this case, the Court of Appeals graciously accepted the Brief of Respondent filed on January 13, 2014, after returning the Brief of Respondent on November 27, 2013 for failure to reference the record in compliance with RAP 10.3(a). *See*, Letter from the Court of Appeals dated November 27, 2013.

Considering that the Court of Appeals already granted the Respondent an opportunity to correct her brief and accepted the Brief of Respondent filed on January 13, 2014, the Department only asks that the

Court disregard the statements of facts and arguments set forth in the Brief of Respondent that fail to comply with RAP 10.3(a).

B. The Brief of Respondent Sets Forth Legal Arguments Without Citations To Legal Authority And These Arguments Should Be Disregarded Because They Fail To Comply With RAP 10.3(a)(6) And RAP 10.3(b)

The Brief of Respondent makes several legal arguments without citations to legal authority. *See*, Brief of Respondent at 32-40, 41-46. For example, the Respondent asserts that the Department failed to demonstrate by clear and convincing evidence that she was professionally unfit. *See*, Brief of Respondent at 26. The Respondent cites no legal authority for this proposition as there is none. In another example, the Respondent asserts that the Court cannot make a retrospective analysis of the facts, but cites no legal authority for her position. *Id.* at 27-28.

In another example, the Respondent argues that DSHS allowed the transfer of residents from Evergreen Seasons to Evergreen adult family home without any supporting legal or factual basis. *Id.* at 26. There is no legal basis or factual basis in the record that establishes that the Department approved or could have prevented the transfer of residents to Evergreen adult family home. At the time of the Department's enforcement action against Evergreen Seasons, the Respondent was already licensed to operate Evergreen adult family home. Tr. 25; AR 293.

Under former RCW 70.128.060, RCW 70.128.065, and RCW 70.128.070(1), a person could be licensed to operate multiple adult family homes at different locations and each of the licenses remained “valid unless voluntarily surrendered, suspended, or revoked in accordance with this chapter.” RCW 70.128.070(1). *See also*, RCW 70.128.060, RCW 70.128.065. Former WAC 388-76-10985(2) only authorized the Department to extend enforcement action to multiple adult family homes if “violations in an adult family home are of such nature as to present a serious risk or harm to residents of other homes operated by the same provider . . .” WAC 388-76-10985(2). Hence, the Department could only have taken enforcement action against Evergreen adult family home, such as impose a stop placement or revocation, if the Department found that violations existing at Evergreen Seasons were of such a nature to present a serious risk or harm to residents at Evergreen.¹ *See*, WAC 388-76-10985(2). There was no evidence presented that established a legal or factual basis for the imposition of enforcement action against Evergreen adult family home under WAC 388-76-10985(2) that could have

¹ Former WAC 388-76-10940 authorized the department to order stop placement, suspend or revoke, impose conditions, or impose civil penalties on an existing adult family home license, “in any case which the department finds that an adult family home failed or refused to comply with the applicable requirements of Ch. 70.128 RCW, Ch.70.129 RCW, or Ch. 74.34 RCW or this chapter. . .” WAC 388-76-10940 (4) and WAC 388-76-10940 (5).

prevented the transfer of residents from Evergreen Seasons to Evergreen adult family home.²

The Respondent also argues that the daughters of Richard (R.J.) were obligated to meet Richard's care needs, but she fails to cite any legal authority that establishes such an obligation. *Id.* at 32-33, 38-39. The Respondent also seems to argue without reference to any supporting legal authority that the family's failure to meet Richard's care needs excused the Respondent from fulfilling the legal obligations of an adult family home provider. The Respondent's argument is erroneous because the adult family home provider was required to have the "understanding, ability," and "emotional stability" that was "necessary to meet the psychological, personal, and special care needs of vulnerable adults;" which included Richard. *See*, former WAC 388-76-10020(1). If the provider could not meet the resident's needs, the provider should have given timely and proper notice of discharge to the resident pursuant to former WAC 388-76-10615.³ WAC 388-76-10615. Further, former

² There was also little to no evidence presented regarding who was residing with and providing daily care to the residents at Evergreen adult family home after the license revocation of Evergreen Seasons. Under former RCW 70.128.130(7), Evergreen Seasons could have had a qualified resident manager who was someone other than the adult family home provider or Respondent. *See*, RCW 70.128.130(7).

³ WAC 388-76-10615(1) provides in part: "The adult family home must allow each resident to stay in the home, and not transfer or discharge the resident unless: (a) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the home; (b) The safety or health of individuals in the home is or

WAC 388-76-10015(2), which was in effect at the time of the Department's enforcement action, explicitly mandated that "[t]he provider is ultimately responsible for the operations of the adult family home." WAC 388-76-10015(2). Hence, it was the responsibility of the Respondent, and not the responsibility of Richard's family, to meet Richard's care needs, and if the Respondent could not meet his needs, it was the Respondent's duty to transfer or discharge Richard with timely and proper notice.

The Respondent further argues without citing any supporting legal authority that Richard's daughters "were in denial that he [Richard] needed [an] updated assessment, and refused to pay for any additional assessments." *See*, Brief of Respondent at 32. The Respondent's argument is without merit because it was the obligation of the adult family home to obtain updated assessments for Richard and to review and revise Richard's negotiated care plan, and not the responsibility of Richard's family. WAC 388-76-10350 provides:

The adult family home must ensure each resident's assessment is reviewed and updated to document the resident's ongoing needs and preferences as follows:

- (1) When there is a significant change in the resident's physical or mental condition;
- (2) When the resident's negotiated care plan no longer reflects the resident's current status, needs and preferences;

would otherwise be endangered . . ." WAC 388-76-10615(1) and WAC 388-76-10615 (2).

- (3) At the resident's request or at the request of the resident's representative; or
- (4) At least every twelve months.

WAC 388-76-10350. WAC 388-76-10380 provides:

The adult family home must ensure that each resident's negotiated care plan is reviewed and revised as follows:

- (1) After an assessment for a significant change in the resident's physical or mental condition;
- (2) When the plan, or parts of the plan, no longer address the resident's needs and preferences;
- (3) At the request of the resident or the resident representative; or
- (4) At least every twelve months.

Hence, it was the obligation of the Respondent to obtain an updated assessment for each resident and to ensure that the negotiated care plan for each resident was reviewed and revised, pursuant to WAC 388-76-10350 and WAC 388-76-10380.

Finally, all of the Respondent's arguments stated without citations to legal authority should be disregarded because they do not conform to RAP 10.3(a)(6). RAP 10.3(a)(6) provides in part:

- (6) Argument. The argument in support of the issues presented for review, *together with citations to legal authority* and references to relevant parts of the record.

RAP 10.3(a)(6) (emphasis added). The Department respectfully requests that the Court disregard the arguments set forth in the Brief of Respondent that fail to comply with RAP 10.3(a)(6) and RAP 10.3(b).

C. The Brief of Respondent Sets Forth Alleged Statements Of Facts That Should Be Disregarded Because They Are Not Supported By Evidence In The Record

The Court's review of factual findings must be based solely on the administrative record. RCW 34.05.558. Unchallenged findings of fact are treated as verities on appeal. *Tapper v. Empl. Sec. Dep't.*, 122 Wn.2d 397, 407, 858 P.2d 494 (1993). . RAP 9. 1(a) provides that the "record on review" may be "(1) a 'report of proceedings', (2) 'clerk's papers', (3) exhibits, and (4) a certified record of administrative adjudicative proceedings." RAP 9.1(a).

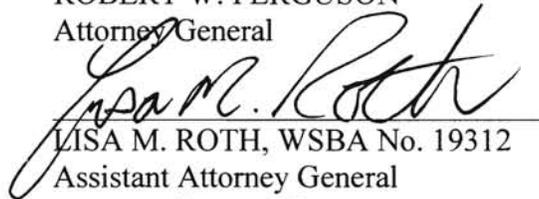
The Brief of Respondent contains statements of facts that should be disregarded because they are not supported by evidence in the record on review. For example, the Respondent asserts that she continued to provide care for resident Yetta (Y.B.) and resident Doug (D.M.) for three years after the Department revoked her adult family home license for Evergreen Seasons. *See*, Brief of Respondent at 34. There is no evidence in the record to support this assertion, especially considering that the Department's enforcement action was taken on April 15, 2010 and the record of the administrative proceedings closed on October 27, 2010. AR 179, 294.

III. CONCLUSION

The Department respectfully submits that upon careful review of the record and after consideration of the statements of facts and arguments properly made by the parties, the Court will have sufficient evidence to affirm the Review Judge's Final Order.

RESPECTFULLY SUBMITTED this 12th day of February, 2014.

ROBERT W. FERGUSON
Attorney General



LISA M. ROTH, WSBA No. 19312
Assistant Attorney General
Attorney for Appellant
Office ID #91016

laws for the joint activities of licensees and their exclusive representative to the extent such activities are authorized by this chapter. [2007 c 184 § 6.]

Part headings not law—Severability—Conflict with federal requirements—2007 c 184: See notes following RCW 41.56.029.

70.128.050 License—Required as of July 1, 1990. After July 1, 1990, no person shall operate or maintain an adult family home in this state without a license under this chapter. [1989 c 427 § 19.]

70.128.055 Operating without a license—Misdemeanor. A person operating or maintaining an adult family home without a license under this chapter is guilty of a misdemeanor. Each day of a continuing violation after conviction is considered a separate offense. [1991 c 40 § 1.]

70.128.057 Operating without a license—Injunction or civil penalty. Notwithstanding the existence or use of any other remedy, the department may, in the manner provided by law, upon the advice of the attorney general who shall represent the department in the proceedings, maintain an action in the name of the state for an injunction, civil penalty, or other process against a person to restrain or prevent the operation or maintenance of an adult family home without a license under this chapter. [1995 1st sp.s. c 18 § 20; 1991 c 40 § 2.]

Additional notes found at www.leg.wa.gov

70.128.058 Operating without a license—Application of consumer protection act. The legislature finds that the operation of an adult family home without a license in violation of this chapter is a matter vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Operation of an adult family home without a license in violation of this chapter is not reasonable in relation to the development and preservation of business. Such a violation is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW. [1995 1st sp.s. c 18 § 21.]

Additional notes found at www.leg.wa.gov

70.128.060 License—Generally—Fees. (1) An application for license shall be made to the department upon forms provided by it and shall contain such information as the department reasonably requires.

(2) Subject to the provisions of this section, the department shall issue a license to an adult family home if the department finds that the applicant and the home are in compliance with this chapter and the rules adopted under this chapter, unless (a) the applicant or a person affiliated with the applicant has prior violations of this chapter relating to the adult family home subject to the application or any other adult family home, or of any other law regulating residential care facilities within the past five years that resulted in revocation, suspension, or nonrenewal of a license or contract with the department; or (b) the applicant or a person affiliated with the applicant has a history of significant noncompliance with federal, state, or local laws, rules, or regulations relating

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to the provision of care or services to vulnerable adults or to children. A person is considered affiliated with an applicant if the person is listed on the license application as a partner, officer, director, resident manager, or majority owner of the applying entity, or is the spouse of the applicant.

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

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

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

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

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

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

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

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

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

(2010 Ed.)

omised by a change in provider, the new provider is responsible for correction of all violations that may exist at the time of the new license. [2009 c 530 § 5; 2004 c 140 § 3; 2001 c 193 § 9; 1995 c 260 § 4; 1989 c 427 § 20.]

70.128.064 Priority processing for license applications—Provisional license. In order to prevent disruption to current residents, at the request of the current licensed provider, the department shall give processing priority to the application of a person seeking to be licensed as the new provider for the adult family home. The department may issue a provisional license when a currently licensed adult family home provider has applied to be licensed as the new provider for a currently licensed adult family home, the application has been initially processed, and all that remains to complete the application process is an on-site inspection. [2001 c 319 § 10.]

70.128.065 Multiple facility operators—Requirements. A multiple facility operator must successfully demonstrate to the department financial solvency and management experience for the homes under its ownership and the ability to meet other relevant safety, health, and operating standards pertaining to the operation of multiple homes, including ways to mitigate the potential impact of vehicular traffic related to the operation of the homes. [1996 c 81 § 6.]

Reviser's note: 1996 c 81 directed that this section be added to chapter 70.128 RCW. However, it appears that placement is erroneous and the appropriate placement is in chapter 70.128 RCW.

Additional notes found at www.leg.wa.gov

70.128.070 License—Inspections—Correction of violations. (1) A license shall remain valid unless voluntarily surrendered, suspended, or revoked in accordance with this chapter.

(2)(a) Homes applying for a license shall be inspected at the time of licensure.

(b) Homes licensed by the department shall be inspected at least every eighteen months, subject to available funds. However, an adult family home may be allowed to continue without inspection for two years if the adult family home had no inspection citations for the past three consecutive inspections and has received no written notice of violations resulting from complaint investigations during that same time period.

(c) The department may make an unannounced inspection of a licensed home at any time to assure that the home and provider are in compliance with this chapter and the rules adopted under this chapter.

(3) If the department finds that the home is not in compliance with this chapter, it shall require the home to correct any violations as provided in this chapter. [2004 c 143 § 1; 1998 c 272 § 4; 1995 1st sp.s. c 18 § 22; 1989 c 427 § 22.]

Findings—Severability—Effective date—1998 c 272: See notes following RCW 18.20.230.

Additional notes found at www.leg.wa.gov

70.128.080 License and inspection report—Availability for review. An adult family home shall have readily available for review by the department, residents, and the public:

(2010 Ed.)

(1) Its license to operate; and

(2) A copy of each inspection report received by the home from the department for the past three years. [1995 1st sp.s. c 18 § 23; 1989 c 427 § 21.]

Additional notes found at www.leg.wa.gov

70.128.090 Inspections—Generally. (1) During inspections of an adult family home, the department shall have access and authority to examine areas and articles in the home used to provide care or support to residents, including residents' records, accounts, and the physical premises, including the buildings, grounds, and equipment. The personal records of the provider are not subject to department inspection nor is the separate bedroom of the provider, not used in direct care of a client, subject to review. The department may inspect all rooms during the initial licensing of the home. However, during a complaint investigation, the department shall have access to the entire premises and all pertinent records when necessary to conduct official business. The department also shall have the authority to interview the provider and residents of an adult family home.

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

(3) The provider shall develop corrective measures for any violations found by the department's inspection. The department shall upon request provide consultation and technical assistance to assist the provider in developing effective corrective measures. The department shall include a statement of the provider's corrective measures in the department's inspection report. [2001 c 319 § 7; 1995 1st sp.s. c 18 § 24; 1989 c 427 § 30.]

Additional notes found at www.leg.wa.gov

70.128.100 Immediate suspension of license when conditions warrant. The department has the authority to immediately suspend a license if it finds that conditions there constitute an imminent danger to residents. [1989 c 427 § 32.]

70.128.105 Injunction if conditions warrant. The department may commence an action in superior court to enjoin the operation of an adult family home if it finds that conditions there constitute an imminent danger to residents. [1991 c 40 § 3.]

70.128.110 Prohibition against recommending unlicensed home—Report and investigation of unlicensed home. (1) No public agency contractor or employee shall place, refer, or recommend placement of a person into an adult family home that is operating without a license.

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by any public agency, including a state medicaid

Has been the subject of a sanction, corrective, or action taken by federal, state, county, or municipal or safety officials related to the care or treatment of or vulnerable adults;

(1) Has obtained or attempted to obtain a license by means or misrepresentation;

(2) Knowingly, or with reason to know, made a false statement of material fact on his or her application for a license or any data attached to the application, or in any material relating to the department;

(3) Permitted, aided, or abetted the commission of any act on the adult family home premises;

(4) Willfully prevented, interfered with, or failed to cooperate with any inspection, investigation, or monitoring made by the department, including refusal to permit authorized department representatives to interview residents or access to their records;

(5) Failed or refused to comply with:

(a) A condition imposed on a license or a stop placement or

(b) The requirements of chapters 70.128, 70.129, 74.34 of this chapter or any other applicable laws.

(6) Misappropriated property of a resident, unless such act requires a remedy under WAC 388-76-10955;

(7) Exceeded licensed capacity in the operation of an adult family home;

(8) Operated a facility for the care of children or adults without a license or with a revoked license;

(9) In connection with the operation of any facility for the care of children or adults, relinquished or returned a license, or did not seek license renewal following written notification that the licensing agency intends to deny, suspend, cancel or revoke the license, unless such action requires imposition of a remedy under WAC 388-76-10955;

(10) When providing care to children or vulnerable adults, has had resident trust funds or assets seized by the Internal Revenue Service or a state entity for failure to pay income or payroll taxes;

(11) Failed to meet financial obligations as the obligations fell due in the normal course of owning or operating a business involved in the provision of care and services to children or vulnerable adults;

(12) Has failed to meet personal financial obligations and that failure has resulted in a failure to provide necessary care and services to the residents;

(13) Interfered with a long-term care ombudsman or department staff in the performance of his or her duties; or

(14) Failed to relinquish or surrender the license as required.

[Statutory Authority: RCW 70.128.040, 10-03-064, § 388-76-10960, filed 1/22/10, effective 2/15/10; 09-03-028, § 388-76-10960, filed 1/12/09, effective 2/12/09. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10960, filed 10/16/07, effective 1/1/08.]

WAC 388-76-10970 Remedies—Specific—Condi-

tion(s) on license. (1) The department may impose reasonable conditions or limits on a new or current license.

(2) Conditions or limits the department may impose on a license include, but are not limited to, the following:

(a) Correction of deficiencies within a specified time;

(b) Training related to the deficiencies;

(c) Limits on the type of residents the adult family home may admit or serve;

(d) Discharge of any resident when the department finds discharge is needed to meet that resident's needs or for the protection of other residents;

(e) Change in license capacity;

(f) Removal of the adult family home's designation as a specialized home;

(g) Prohibition of access to residents by a specified person; and

(h) Demonstration of ability to meet financial obligations necessary to continue operation.

[Statutory Authority: RCW 70.128.040, 10-04-008, § 388-76-10970, filed 1/22/10, effective 2/22/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10970, filed 10/16/07, effective 1/1/08.]

WAC 388-76-10975 Remedies—Specific—Civil pen-

alties. (1) The department may impose civil penalties of not more than one hundred dollars per day per violation except that:

(a) Fines up to one thousand dollars can be issued under RCW 70.128.150 for willful interference with a representative of the long-term care ombudsman; and

(b) Fines up to three thousand dollars can be issued under RCW 74.39A.060 for retaliation against a resident, employee, or any other person making a complaint, providing information to, or cooperating with, the ombudsman, the department, the attorney's general office, or a law enforcement agency.

(2) When the adult family home fails to pay a fine under this chapter when due, the department may, in addition to other remedies, withhold an amount equal to the fine plus interest, if any, from any contract payment due to the provider from the department.

(3) Civil monetary penalties are due twenty-eight days after the adult family home or the owner or operator of an unlicensed adult family home is served with notice of the penalty unless the adult family home requests a hearing in compliance with chapter 34.05 RCW, RCW 43.20A.215, and this chapter. If the hearing is requested, the penalty becomes due ten days after a final decision in the department's favor is issued. Thirty days after the department serves the adult family home with notice of the penalty, interest begins to accrue at a rate of one percent per month as authorized by RCW 43.20B.695.

[Statutory Authority: RCW 70.128.040, 10-04-008, § 388-76-10975, filed 1/22/10, effective 2/22/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10975, filed 10/16/07, effective 1/1/08.]

WAC 388-76-10985 Remedies—May extend to mul-

tiiple homes. (1) If a licensed provider also operates an unlicensed adult family home, the department may impose a remedy or remedies listed in WAC 388-76-10940 on the licensed adult family home or homes.

(2) If violations in an adult family home are of such nature as to present a serious risk or harm to residents of other

homes operated by the same provider, the department may impose remedies on those other homes.

[Statutory Authority: RCW 70.128.040, 10-04-008, § 388-76-10985, filed 1/22/10, effective 2/22/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW, 07-21-080, § 388-76-10985, filed 10/16/07, effective 1/1/08.]

WAC 388-76-10990 Informal dispute resolution (IDR). (1) When an adult family home disagrees with the department's finding of a violation under this chapter, the adult family home has the right to have the violation reviewed by the department under the department's dispute resolution process.

(2) The purpose of the review is to give the adult family home an opportunity to present information that might warrant modification or deletion of a finding of a violation.

(3) The adult family home may submit a written statement for review.

(4) In addition to a written statement, the adult family home may ask to present the information in person to a department designee.

(5) Requests for review must be made in writing to the department at the address provided in the department's certified notice within ten working days of receipt of the written finding of a violation.

(6) Orders of the department imposing license suspension, stop placement, or conditions on a license are effective immediately upon notice and shall continue pending dispute resolution.

[Statutory Authority: RCW 70.128.040, 10-03-064, § 388-76-10990, filed 1/15/10, effective 2/15/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW, 07-21-080, § 388-76-10990, filed 10/16/07, effective 1/1/08.]

WAC 388-76-10995 Notice, hearing rights, and effective dates relating to imposition of remedies. (1) Chapter 34.05 RCW applies to department actions under this chapter and chapter 70.128 RCW, except that orders of the department imposing license suspension, stop placement, or conditions on license are effective immediately upon notice and must continue pending a final administrative decision.

(2) An adult family home contesting the imposition of any remedy by the department must within twenty-eight days of receipt of the decision:

(a) File a written application for an adjudicative proceeding by a method showing proof of receipt to the agency at the mailing address contained in the department's notice imposing the remedy; and

(b) Include in or with the application:

(i) The reasons for contesting the department decision; and

(ii) A copy of the contested department decision.

(3) Administrative proceedings are governed by chapter 34.05 RCW, RCW 43.20A.215, where applicable, this section, and chapter 388-02 WAC. If any provision in this chapter conflicts with chapter 388-02 WAC, the provision in this chapter applies.

[Statutory Authority: RCW 70.128.040, 10-03-064, § 388-76-10995, filed 1/15/10, effective 2/15/10; 09-03-029, § 388-76-10995, filed 1/12/09, effective 2/12/09. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW, 07-21-080, § 388-76-10995, filed 10/16/07, effective 1/1/08.]

[2011 WAC Supp—page 44]

WAC 388-76-11004 Resident protection program—Individual defined. As used in WAC 388-76-11005 through 388-76-11040, the term "individual" means anyone used by the adult family home to provide services to residents who is alleged to have abandoned, abused, neglected, or financially exploited a resident. "Individual" includes, but is not limited to employees, contractors, and volunteers.

[Statutory Authority: RCW 70.128.040, 10-03-064, § 388-76-11004, filed 1/15/10, effective 2/15/10.]

WAC 388-76-11005 Resident protection program—Notice to individual of preliminary finding. (1) The department will serve notice of the preliminary finding as provided in WAC 388-76-11080.

(2) The department may establish proof of service as provided in WAC 388-76-11085.

[Statutory Authority: RCW 70.128.040, 10-03-064, § 388-76-11005, filed 1/15/10, effective 2/15/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW, 08-05-098, § 388-76-11005, filed 2/15/08, effective 3/17/08.]

WAC 388-76-11010 Resident protection program—Notice to others of preliminary finding. Consistent with confidentiality requirements concerning the resident, witnesses, and reporter, the department may provide notification of a preliminary finding to:

(1) Other divisions within the department;

(2) The agency or program identified under RCW 74.34.068 with which the individual was associated as an employee, volunteer or contractor;

(3) The employer or program that is currently associated with the individual, if known;

(4) Law enforcement;

(5) Other entities as authorized by law and this chapter including investigative authorities consistent with chapter 74.34 RCW; and

(6) The appropriate licensing agency.

[Statutory Authority: RCW 70.128.040, 10-03-064, § 388-76-11010, filed 1/15/10, effective 2/15/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW, 08-05-098, § 388-76-11010, filed 2/15/08, effective 3/17/08.]

WAC 388-76-11015 Resident protection program—Disputing a preliminary finding. (1) The individual may request an administrative hearing to challenge a preliminary finding made by the department.

(2) The request must be made in writing to the office of administrative hearings.

(3) The office of administrative hearings must receive the individual's written request for an administrative hearing within thirty calendar days of the date written on the notice of the preliminary finding.

(4) The written request for a hearing must include the individual's full legal name and current mailing address and should include:

(a) The individual's telephone number;

(b) A brief explanation of why the individual disagrees with the preliminary finding;

(c) A description of any assistance needed in the administrative appeal process by the individual, including a foreign

[Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10930, filed 10/16/07, effective 1/1/08.]

RESIDENT ADVOCATE ACCESS

WAC 388-76-10935 Washington protection and advocacy—Long-term care ombudsman—Official duties—Penalty for interference. The adult family home must not willfully interfere with a representative of the following in the performance of official duties:

(1) Washington protection and advocacy system as defined under RCW 71A.10.080; or

(2) Long-term care ombudsman as defined under chapter 43.190 RCW, the state regulations for the long-term care ombudsman and under federal law.

(3) The department must impose a civil penalty as per WAC 388-76-10975 for any such willful interference with a representative of the long-term care ombudsman program.

[Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10935, filed 10/16/07, effective 1/1/08.]

REMEDIES

WAC 388-76-10940 Remedies—Generally. The department may take one or more of the following actions in any case which the department finds that an adult family home failed or refused to comply with the applicable requirements of chapters 70.128, 70.129, or 74.34 RCW or this chapter:

- (1) Denial of an application for a license;
- (2) Impose reasonable conditions on a license;
- (3) Impose civil penalties;
- (4) Order stop placement; and/or
- (5) Suspension or revocation of a license.

[Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10940, filed 10/16/07, effective 1/1/08.]

WAC 388-76-10945 Remedies—Serious risk—Recurring violations—Uncorrected violations. The department must impose a remedy or remedies listed in WAC 388-76-10940 when violations of chapter 70.128, 70.129 and 74.34 RCW and this chapter pose a serious risk to any resident, are recurring or are uncorrected.

[Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10945, filed 10/16/07, effective 1/1/08.]

WAC 388-76-10950 Remedies—History and actions by individuals. The department will consider the history and actions of the following individual or combination of individuals when imposing remedies:

- (1) Applicant;
- (2) Provider;
- (3) Entity representative;
- (4) Person affiliated with the applicant;
- (5) Resident manager;
- (6) A partner, officer, director or managerial employee of the entity;
- (7) Spouse of the provider or entity representative;
- (8) An owner:
 - (a) Of fifty-one percent or more of the entity;

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(b) Who exercises control over the daily operations of the home.

(9) A caregiver; or

(10) Any person who:

(a) Has unsupervised access to residents in the home; and

(b) Lives in the home but who is not a resident.

[Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10950, filed 10/16/07, effective 1/1/08.]

WAC 388-76-10955 Remedies—Department must impose remedies. The department must impose a remedy or remedies if the department finds any person listed in WAC 388-76-10950 has:

(1) A history of prior violations of chapter 70.128 RCW or any law relating to residential care facilities within the past five years that resulted in revocation, suspension, or non-renewal of a license or contract with the department;

(2) When providing care or services to children or vulnerable adults:

(a) Been found to be in significant noncompliance with federal or state regulations; or

(b) Had a license for the care of children or vulnerable adults suspended or revoked.

(3) Been enjoined from operating a facility for the care and services of children or adults;

(4) A stipulated finding of fact, conclusion of law, an agreed order, finding of fact, conclusion of law, final order issued by a disciplining authority or final decision by any federal or state agency or department, a court of law, or entered into a state registry or department or agency list with a finding of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW;

(5) Had a revocation or suspension of a license for the care of children or adults;

(6) Had a revocation, cancellation, suspension or nonrenewal of:

(a) A medicaid or medicare provider agreement by the contracting agency; or

(b) Any agreement with a public agency for the care and treatment of children or vulnerable adults, when the action was taken by the public agency.

(7) Been convicted of any crime listed in RCW 43.43-830 or 43.43.842;

(8) Been found by a court:

(a) In a protection proceeding under chapter 74.34 RCW to have abandoned, neglected, abused, or financially exploited a vulnerable adult; or

(b) In a domestic relations proceeding under Title 26 RCW to have sexually or physically abused, neglected or exploited any minor.

(9) Been found in any final decision issued by a disciplinary board to have:

(a) Sexually or physically abused, neglected or exploited any minor or a person with a developmental disability; or

(b) Abandoned, abused, neglected or financially exploited any vulnerable adult.

(10) Found in any dependency action under RCW 13.34.030 (5)(b) to have sexually or physically abused, neglected or exploited any minor; or

(11) Failed to pay the annual licensing fee.

[Title 388 WAC—p. 461]

[Statutory Authority: RCW 70.128.040, 10-03-064, § 388-76-10002, filed 1/15/10, effective 2/15/10.]

WAC 388-76-10003 Department access. (1) The applicant must allow the department staff to inspect the entire premises including all of the home's rooms, buildings, grounds, and equipment and all pertinent records during the initial licensing of the home.

(2) During inspections, the adult family home must allow the department staff to examine all areas and articles in the home that are used to provide care or support to residents, including the physical premises and residents' records and accounts. The physical premises includes the buildings, grounds, and equipment. The provider's personal records unrelated to the operation of the adult family home are not subject to department review. The provider's separate bedroom will not be subject to review and inspection unless it is used to provide direct care to a resident.

(3) During complaint investigations, the adult family home must give department staff access to the entire premises and all records related to the residents or operation of the home. Department staff are authorized to interview the provider, family members, and individuals residing in the home including residents.

[Statutory Authority: RCW 70.128.040, 10-03-064, § 388-76-10003, filed 1/15/10, effective 2/15/10.]

WAC 388-76-10015 License—Adult family home—Compliance required. (1) The licensed adult family home must comply with all the requirements established in chapters 70.128, 70.129, 74.34 RCW, this chapter and other applicable laws and regulations including chapter 74.39A RCW; and

(2) The provider is ultimately responsible for the operation of the adult family home.

[Statutory Authority: RCW 70.128.040, 10-03-064, § 388-76-10015, filed 1/15/10, effective 2/15/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW, 07-21-080, § 388-76-10015, filed 10/16/07, effective 1/1/08.]

WAC 388-76-10020 License—Ability to provide care and services. The provider must have the:

(1) Understanding, ability, emotional stability and physical health necessary to meet the psychosocial, personal, and special care needs of vulnerable adults; and

(2) Ability to meet all personal and business financial obligations.

[Statutory Authority: RCW 70.128.040, 10-03-064, § 388-76-10020, filed 1/15/10, effective 2/15/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW, 07-21-080, § 388-76-10020, filed 10/16/07, effective 1/1/08.]

WAC 388-76-10030 License capacity. (1) The adult family home capacity includes:

(a) The number of residents which is the resident capacity; plus

(b) The number of related children or adults in the home who receives personal or special care services.

(2) In determining the home's resident capacity, the department must consider the:

(a) Structural design of the house;

(b) Number and accessibility of bathrooms;

(c) Number and qualifications of staff;

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(d) Total number of people living in the home who require personal or special care, including:

(i) Related children and adults; and

(ii) Other household members;

(e) The number of people for whom the home provides adult day care; and

(f) The ability for the home to safely evacuate all people living in the home.

(3) The resident capacity number will be listed on the adult family home license and the home must ensure that the number of residents in the home does not exceed the resident capacity.

(4) The adult family home resident capacity may be adjusted due to changes to the household mix or structure.

[Statutory Authority: RCW 70.128.040, 10-03-064, § 388-76-10030, filed 1/15/10, effective 2/15/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW, 07-21-080, § 388-76-10030, filed 10/16/07, effective 1/1/08.]

WAC 388-76-10035 License requirements—Multiple family home providers. To be licensed to operate more than one adult family home, the applicant must have:

(1) Evidence of successful completion of the forty-eight hour residential care administrator's training to meet the applicable requirements of chapter 388-112 WAC.

(2) Operated an adult family home in Washington for at least one year without a significant violation of chapters 70.128, 70.129 or 74.34 RCW, this chapter or other applicable laws and regulations; and

(3) The ability to operate more than one home.

(4) The following plans for each home the applicant intends to operate:

(a) A twenty-four hour a day, seven day a week staffing plan;

(b) A plan for managing the daily operations of each home; and

(c) A plan for emergencies, deliveries, staff and visitor parking.

(5) A credit history considered if the history relates to the ability to provide care and services.

(6) An entity representative or a resident manager at each home who is responsible for the care of each resident at all times.

[Statutory Authority: RCW 70.128.040, 10-04-008, § 388-76-10035, filed 1/22/10, effective 2/22/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW, 07-21-080, § 388-76-10035, filed 10/16/07, effective 1/1/08.]

WAC 388-76-10036 License requirements—Multiple adult family home management. When there is more than one home licensed to a provider, the adult family home must ensure that:

(1) Each home has one person responsible for managing the overall delivery of care to all residents in the home;

(2) The designated responsible person is the provider, entity representative or a resident manager; and

(3) Each responsible person is designated to manage only one adult family home at a given time.

[Statutory Authority: RCW 70.128.040, 10-04-008, § 388-76-10036, filed 1/22/10, effective 2/22/10; 09-03-030, § 388-76-10036, filed 1/12/09, effective 2/12/09.]

(4) The agency responsible for the protection and advocacy system for developmentally disabled individuals as established under Part C of the developmental disabilities assistance and bill of rights act;

(5) The agency responsible for the protection and advocacy system for mentally ill individuals as established under the protection and advocacy for mentally ill individuals act;

(6) Immediate family or other relatives of the resident and others who are visiting with the consent of the resident, subject to reasonable limits to protect the rights of others and to the resident's right to deny or withdraw consent at any time;

(7) The agency responsible for the protection and advocacy system for individuals with disabilities as established under section 509 of the Rehabilitation Act of 1973, as amended, who are not served under the mandates of existing protection and advocacy systems created under federal law; and

(8) The resident's representative or an entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

[Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10595, filed 10/16/07, effective 1/1/08.]

WAC 388-76-10600 Resident rights—Mail and telephone privacy. The adult family home must ensure each resident's right to privacy in communications, including the right to:

- (1) Send and receive unopened mail without delay;
- (2) Have writing paper, postage, and pens or pencils available that have been paid for by resident; and
- (3) Be able to use a telephone where calls can be made without being overheard.

[Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10600, filed 10/16/07, effective 1/1/08.]

WAC 388-76-10605 Resident rights—Personal property and storage space. The adult family home must ensure each resident's right to keep and use personal possessions, including some furnishings, and appropriate clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents.

[Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10605, filed 10/16/07, effective 1/1/08.]

WAC 388-76-10610 Resident rights—Waiver of liability. The adult family home must not ask the resident for, or make the resident sign waivers of:

- (1) Potential liability for losses of personal property or injury; and
- (2) Residents' rights set forth in chapters 70.128, 70.129, 74.34 RCW, this chapter or in the applicable licensing laws.

[Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10610, filed 10/16/07, effective 1/1/08.]

WAC 388-76-10615 Resident rights—Transfer and discharge. (1) The adult family home must allow each resident to stay in the home, and not transfer or discharge the resident unless:

[Title 388 WAC—p. 452]

(a) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the home;

(b) The safety or health of individuals in the home is or would otherwise be endangered;

(c) The resident has failed to make the required payment for his or her stay; or

(d) The home ceases to operate.

(2) Before a home transfers or discharges a resident, the home must:

(a) First attempt through reasonable accommodations to avoid the transfer or discharge, unless agreed to by the resident;

(b) Notify the resident and representative and make a reasonable effort to notify, if known, an interested family member of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand;

(c) Record the reasons in the resident's record; and

(d) Include in the notice the items described in subsection (5) of this section.

(3) Except as specified in (4) of this section, the home must give notice of the transfer or discharge at least thirty days before the resident is transferred or discharged.

(4) The home may make the notice as soon as practicable before transfer or discharge when:

(a) The safety and health of the individuals in the home would be endangered;

(b) An immediate transfer or discharge is required by the resident's urgent medical needs; or

(c) A resident has not resided in the home for thirty days.

(5) The home must include the following in the written notice specified in subsection (2) of this section:

(a) The reason for transfer or discharge;

(b) The effective date of transfer or discharge;

(c) The location where the resident is transferred or discharged;

(d) The name, address, and telephone number of the state long-term care ombudsman;

(e) For residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals; and

(f) For residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals.

(6) The home must give residents enough preparation and orientation to ensure a safe and orderly transfer or discharge from the home.

(7) If the home discharges a resident in violation of this section, the home must readmit the resident to the home as soon as a gender-appropriate bed becomes available.

[Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10615, filed 10/16/07, effective 1/1/08.]

QUALITY OF LIFE

WAC 388-76-10620 Resident rights—Quality of life—General. (1) The adult family home must promote care for residents in a manner and in an environment that main-

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(2) Any public agency contractor or employee who knows that an adult family home is operating without a license shall report the name and address of the home to the department. The department shall investigate any report filed under this section. [1989 c 427 § 23.]

70.128.120 Adult family home provider, resident manager—Minimum qualifications. Each adult family home provider and each resident manager shall have the following minimum qualifications, except that only providers are required to meet the provisions of subsection (10) of this section:

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

(2) For those applying after September 1, 2001, to be licensed as providers, and for resident managers whose employment begins after September 1, 2001, a United States high school diploma or general educational development (GED) certificate or any English or translated government documentation of the following:

(a) Successful completion of government-approved public or private school education in a foreign country that includes an annual average of one thousand hours of instruction over twelve years or no less than twelve thousand hours of instruction;

(b) A foreign college, foreign university, or United States community college two-year diploma;

(c) Admission to, or completion of coursework at, a foreign university or college for which credit was granted;

(d) Admission to, or completion of coursework at, a United States college or university for which credits were awarded;

(e) Admission to, or completion of postgraduate coursework at, a United States college or university for which credits were awarded; or

(f) Successful passage of the United States board examination for registered nursing, or any professional medical occupation for which college or university education preparation was required;

(3) Good moral and responsible character and reputation;

(4) Literacy in the English language, however, a person not literate in the English language may meet the requirements of this subsection by assuring that there is a person on staff and available who is able to communicate or make provisions for communicating with the resident in his or her primary language and capable of understanding and speaking English well enough to be able to respond appropriately to emergency situations and be able to read and understand resident care plans;

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

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

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

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

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

(10) Prior to being granted a license, providers applying after January 1, 2007, must complete a department-approved forty-eight hour adult family home administration and business planning class. The department shall promote and prioritize bilingual capabilities within available resources and when materials are available for this purpose. [2006 c 249 § 1; 2002 c 223 § 1; 2001 c 319 § 8; 2000 c 121 § 5; 1996 c 81 § 1; 1995 1st sp.s. c 18 § 117; 1995 c 260 § 5; 1989 c 427 § 24.]

Effective date—2002 c 223 § 1: "Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 28, 2002]." [2002 c 223 § 7.]

Additional notes found at www.leg.wa.gov

70.128.122 Adult family homes licensed by Indian tribes. The legislature recognizes that adult family homes located within the boundaries of a federally recognized Indian reservation may be licensed by the Indian tribe. The department may pay for care for persons residing in such homes, if there has been a tribal or state criminal background check of the provider and any staff, and the client is otherwise eligible for services administered by the department. [1995 1st sp.s. c 18 § 25.]

Additional notes found at www.leg.wa.gov

70.128.125 Resident rights. RCW 70.129.005 through 70.129.030, 70.129.040(1), and 70.129.050 through 70.129.170 apply to this chapter and persons regulated under this chapter. [1994 c 214 § 24.]

Additional notes found at www.leg.wa.gov

70.128.130 Adult family homes—Requirements. (1) Adult family homes shall be maintained internally and externally in good repair and condition. Such homes shall have safe and functioning systems for heating, cooling, hot and cold water, electricity, plumbing, garbage disposal, sewage, cooking, laundry, artificial and natural light, ventilation, and any other feature of the home.

(2) Adult family homes shall be maintained in a clean and sanitary manner, including proper sewage disposal, food handling, and hygiene practices.

(3) Adult family homes shall develop a fire drill plan for emergency evacuation of residents, shall have smoke detectors in each bedroom where a resident is located, shall have fire extinguishers on each floor of the home, and shall not keep nonambulatory patients above the first floor of the home.

(4) Adult family homes shall have clean, functioning, and safe household items and furnishings.

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(5) Adult family homes shall provide a nutritious and balanced diet and shall recognize residents' needs for special diets.

(6) Adult family homes shall establish health care procedures for the care of residents including medication administration and emergency medical care.

(a) Adult family home residents shall be permitted to self-administer medications.

(b) Adult family home providers may administer medications and deliver special care only to the extent authorized by law.

(7) Adult family home providers shall either: (a) Reside at the adult family home; or (b) employ or otherwise contract with a qualified resident manager to reside at the adult family home. The department may exempt, for good cause, a provider from the requirements of this subsection by rule.

(8) A provider will ensure that any volunteer, student, employee, or person residing within the adult family home who will have unsupervised access to any resident shall not have been convicted of a crime listed under RCW 43.43.830 or 43.43.842. Except that a person may be conditionally employed pending the completion of a criminal conviction background inquiry.

(9) A provider shall offer activities to residents under care as defined by the department in rule.

(10) An adult family home provider must ensure that staff are competent and receive necessary training to perform assigned tasks. Staff must satisfactorily complete department-approved staff orientation, basic training, and continuing education as specified by the department by rule. [2000 c 121 § 6; 1995 c 260 § 6; 1989 c 427 § 26.]

70.128.135 Compliance with chapter 70.24 RCW.

Adult family homes shall comply with the provisions of chapter 70.24 RCW. [2001 c 319 § 9.]

70.128.140 Compliance with local codes and state and local fire safety regulations. Each adult family home shall meet applicable local licensing, zoning, building, and housing codes, and state and local fire safety regulations as they pertain to a single-family residence. It is the responsibility of the home to check with local authorities to ensure all local codes are met. [1995 1st sp.s. c 18 § 26; 1989 c 427 § 27.]

Additional notes found at www.leg.wa.gov

70.128.150 Adult family homes to work with local quality assurance projects—Interference with representative of ombudsman program—Penalty. Whenever possible adult family homes are encouraged to contact and work with local quality assurance projects such as the volunteer ombudsman with the goal of assuring high quality care is provided in the home.

An adult family home may not willfully interfere with a representative of the long-term care ombudsman program in the performance of official duties. The department shall impose a penalty of not more than one thousand dollars for any such willful interference. [1995 1st sp.s. c 18 § 27; 1989 c 427 § 28.]

Additional notes found at www.leg.wa.gov

2010 Ed.)

70.128.160 Department authority to take actions in response to noncompliance or violations. (1) The department is authorized to take one or more of the actions listed in subsection (2) of this section in any case in which the department finds that an adult family home provider has:

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

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

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

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

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

(a) Refuse to issue a license;

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

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

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

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

(3) When the department orders stop placement, the facility shall not admit any person until the stop placement order is terminated. The department may approve readmission of a resident to the facility from a hospital or nursing home during the stop placement. The department shall terminate the stop placement when: (a) The violations necessitating the stop placement have been corrected; and (b) the provider exhibits the capacity to maintain correction of the violations previously found deficient. However, if upon the revisit the department finds new violations that the department reasonably believes will result in a new stop placement, the previous stop placement shall remain in effect until the new stop placement is imposed.

(4) After a department finding of a violation for which a stop placement has been imposed, the department shall make an on-site revisit of the provider within fifteen working days from the request for revisit, to ensure correction of the violation. For violations that are serious or recurring or uncorrected following a previous citation, and create actual or threatened harm to one or more residents' well-being, including violations of residents' rights, the department shall make an on-site revisit as soon as appropriate to ensure correction of the violation. Verification of correction of all other violations may be made by either a department on-site revisit or by written or photographic documentation found by the department to be credible. This subsection does not prevent the department from enforcing license suspensions or revocations. Nothing in this subsection shall interfere with or diminish the department's authority and duty to ensure that the provider adequately cares for residents, including to make departmental on-site revisits as needed to ensure that the provider protects residents, and to enforce compliance with this chapter.

(5) Chapter 34.05 RCW applies to department actions under this section, except that orders of the department

[Title 70 RCW—page 449]

"**Prescribed medication**" refers to any medication (legend drug, controlled substance, and over-the-counter) that is prescribed by an authorized practitioner.

"**Provider**" means any person or entity that is licensed under this chapter to operate an adult family home.

"**Qualified staff**" means a person who:

(1) Is employed, directly or by contract, by an adult family home; and

(2) Meets all of the requirements of a provider, entity representative, resident manager or caregiver.

"**Resident**" means any adult unrelated to the provider who lives in the adult family home and who is in need of care and for decision-making purposes, the term "resident" includes the resident's surrogate decision maker following state law or at the resident's request.

"**Resident manager**" means a person employed or designated by the provider or entity representative to manage the adult family home.

"**Significant change**" means:

(1) A lasting change, decline or improvement in the resident's baseline physical, mental or psychosocial status;

(2) The change is significant enough so the current assessment and/or negotiated care plan do not reflect the resident's current status; and

(3) A new assessment may be needed when the resident's condition does not return to baseline within a two week period of time.

"**Special care**" means care beyond personal care services as defined in this section.

"**Staff**" means any person who:

(1) Is employed, directly or by contract, by an adult family home; and

(2) Provides care and services to any resident.

"**Unsupervised**" means not in the presence of:

(1) Another employee or volunteer from the same business or organization; or

(2) Any relative or guardian of any of the children or developmentally disabled persons or vulnerable adults to which the employee, student or volunteer has access during the course of his or her employment or involvement with the business or organization.

"**Usable floor space**" means resident bedroom floor space exclusive of:

(1) Toilet rooms;

(2) Closets;

(3) Lockers;

(4) Wardrobes;

(5) Vestibules, and

(6) The space required for the door to swing if the bedroom door opens into the resident bedroom.

"**Willful**" means the deliberate or nonaccidental action or inaction by an alleged perpetrator that he/she knew or reasonably should have known could cause a negative outcome, including harm, injury, pain or anguish.

"**Vulnerable adult**" includes a person:

(1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself;

(2) Found incapacitated under chapter 11.88 RCW;

(3) Who has a developmental disability as defined under RCW 71A.10.020;

(4) Admitted to any facility;

(5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(6) Receiving services from a provider.

[Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10000, filed 10/16/07, effective 1/1/08.]

LICENSE

WAC 388-76-10005 License—Required. (1) Any person or entity must have a license by the department to operate an adult family home.

(2) No person or entity may provide personal care, special care, and room and board for more than one resident without a license.

[Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10005, filed 10/16/07, effective 1/1/08.]

WAC 388-76-10010 License—Valid and not transferable. (1) The adult family home is not required to renew the license each year.

(2) The license remains valid unless:

(a) The department takes enforcement action to suspend or revoke the license per law;

(b) The home voluntarily surrenders the license and closes the home;

(c) The home relinquishes the license; or

(d) The home fails to pay the annual licensing fee.

(3) The home license is:

(a) Not transferable; and

(b) Valid only for the provider and address listed on the license.

[Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10010, filed 10/16/07, effective 1/1/08.]

WAC 388-76-10015 License—Adult family home—Compliance required. (1) The licensed adult family home must comply with all the requirements established in chapters 70.128, 70.129, 74.34 RCW and this chapter or other applicable laws and regulations; and

(2) The provider or entity representative is ultimately responsible for the operation of the adult family home.

[Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10015, filed 10/16/07, effective 1/1/08.]

WAC 388-76-10020 License—Ability to provide care and services. The adult family home must have the understanding, ability, emotional stability and physical health suited to meet the personal and special care needs of vulnerable adults.

[Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10020, filed 10/16/07, effective 1/1/08.]

WAC 388-76-10025 License annual fee. (1) The license fee is fifty dollars per adult family home per year.

(2) The home must send the annual license fee to the department upon receipt of notice of fee due.

(3) If the department does not renew the license, the annual license fee is refundable.

(iv) If a combination of the elements in (i) through (iii) above is required.

(e) Food allergies or sensitivities;

(f) Significant known behaviors or symptoms that may cause concern or require special care, including:

(i) The need for and use of medical devices;

(ii) The refusal of care or treatment; and

(iii) Any mood or behavior symptoms that the resident has had within the last five years.

(g) Cognitive status, including an evaluation of disorientation, memory impairment, and impaired judgment;

(h) History of depression and anxiety;

(i) History of mental illness, if applicable;

(j) Social, physical, and emotional strengths and needs;

(k) Functional abilities in relationship to activities of daily living including:

(i) Eating;

(ii) Toileting;

(iii) Walking;

(iv) Transferring;

(v) Positioning;

(vi) Specialized body care;

(vii) Personal hygiene;

(viii) Dressing; and

(ix) Bathing.

(l) Preferences and choices about daily life that are important to the resident, including but not limited to:

(i) The food that the resident enjoys;

(ii) Meal times; and

(iii) Sleeping and nap times.

(m) Preferences for activities; and

(n) A preliminary service plan.

[Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10335, filed 10/16/07, effective 1/1/08.]

WAC 388-76-10340 Preliminary service plan. The adult family home must ensure that each resident has a preliminary service plan that includes:

(1) The resident's specific problems and needs identified in the assessment;

(2) The needs for which the resident chooses not to accept or refuses care or services;

(3) What the home will do to ensure the resident's health and safety related to the refusal of any care or service;

(4) Resident defined goals and preferences; and

(5) How the home will meet the resident's needs.

[Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10340, filed 10/16/07, effective 1/1/08.]

WAC 388-76-10345 Assessment—Qualified assessor—Required. The adult family home must ensure the person performing resident assessments is:

(1) A qualified assessor; or

(2) For a resident who receives care and services paid for by the department, an authorized department case manager.

[Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10345, filed 10/16/07, effective 1/1/08.]

[Title 388 WAC—p. 444]

WAC 388-76-10350 Assessment—Updates required. The adult family home must ensure each resident's assessment is reviewed and updated to document the resident's ongoing needs and preferences as follows:

(1) When there is a significant change in the resident's physical or mental condition;

(2) When the resident's negotiated care plan no longer reflects the resident's current status, needs and preferences;

(3) At the resident's request or at the request of the resident's representative; or

(4) At least every twelve months.

[Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10350, filed 10/16/07, effective 1/1/08.]

NEGOTIATED CARE PLAN

WAC 388-76-10355 Negotiated care plan. The adult family home must use the resident assessment and preliminary service plan to develop a written negotiated care plan. The home must ensure each resident's negotiated care plan includes:

(1) A list of the care and services to be provided;

(2) Identification of who will provide the care and services;

(3) When and how the care and services will be provided;

(4) How medications will be managed, including how the resident will get their medications when the resident is not in the home;

(5) The resident's activities preferences and how the preferences will be met;

(6) Other preferences and choices about issues important to the resident, including, but not limited to:

(a) Food;

(b) Daily routine;

(c) Grooming; and

(d) How the home will accommodate the preferences and choices.

(7) If needed, a plan to:

(a) Follow in case of a foreseeable crisis due to a resident's assessed needs;

(b) Reduce tension, agitation and problem behaviors;

(c) Respond to resident's special needs, including, but not limited to medical devices and related safety plans;

(d) Respond to a resident's refusal of care or treatment, including when the resident's physician or practitioner should be notified of the refusal;

(8) Identification of any communication barriers the resident may have and how the home will use behaviors and nonverbal gestures to communicate with the resident;

(9) A statement of the ability for resident to be left unattended for a specific length of time; and

(10) A hospice care plan if the resident is receiving services for hospice care delivered by a licensed hospice agency.

[Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10355, filed 10/16/07, effective 1/1/08.]

WAC 388-76-10360 Negotiated care plan—Timing of development—Required. The adult family home must ensure the negotiated care plan is developed and completed within thirty days of the resident's admission.

(2009 Ed.)

[Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10360, filed 10/16/07, effective 1/1/08.]

WAC 388-76-10365 Negotiated care plan—Implementation—Required. The adult family home must implement each resident's negotiated care plan.

[Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10365, filed 10/16/07, effective 1/1/08.]

WAC 388-76-10370 Negotiated care plan—Persons involved in development. The adult family home must involve the following people in developing the negotiated care plan:

- (1) The resident, to the greatest extent he or she can participate;
- (2) The resident's family, if approved by the resident;
- (3) The resident's representative, if the resident has a representative;
- (4) Professionals involved in the care of the resident;
- (5) Other individuals the resident wants included; and
- (6) The department case manager, if the resident is receiving care and services paid for by the department.

[Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10370, filed 10/16/07, effective 1/1/08.]

WAC 388-76-10375 Negotiated care plan—Signatures—Required. The adult family home must ensure that the negotiated care plan is agreed to and signed and dated by the:

- (1) Resident; and
- (2) Adult family home.

[Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10375, filed 10/16/07, effective 1/1/08.]

WAC 388-76-10380 Negotiated care plan—Timing of reviews and revisions. The adult family home must ensure that each resident's negotiated care plan is reviewed and revised as follows:

- (1) After an assessment for a significant change in the resident's physical or mental condition;
- (2) When the plan, or parts of the plan, no longer address the resident's needs and preferences;
- (3) At the request of the resident or the resident representative; or
- (4) At least every twelve months.

[Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10380, filed 10/16/07, effective 1/1/08.]

WAC 388-76-10385 Negotiated care plan—Copy to department case manager—Required. When the resident's services are paid for by the department, the adult family home must give the department case manager a copy of the negotiated care plan each time the plan is completed or updated, and after it has been signed and dated.

[Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10385, filed 10/16/07, effective 1/1/08.]

(2009 Ed.)

CARE AND SERVICES

WAC 388-76-10390 Admission and continuation of services. The adult family home must only admit or continue to provide services to a person when:

- (1) The home can safely and appropriately meet the assessed needs and preferences of the person:
 - (a) With available staff; and
 - (b) Through reasonable accommodation.
- (2) Admitting the resident does not negatively affect the ability of the home to:
 - (a) Meet the needs and does not endanger the safety of other residents; or
 - (b) Safely evacuate all people in the home during an emergency.

[Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10390, filed 10/16/07, effective 1/1/08.]

WAC 388-76-10395 Emergency admissions. (1) The adult family home may only admit a resident to the home without an assessment or a preliminary service plan if a true emergency exists.

(2) To establish that a true emergency exists, the home must verify that the resident's life, health or safety is at serious risk due to circumstances in the resident's current place of residence or harm to the resident has occurred.

(3) After establishing that a true emergency exists, the home must:

- (a) Ensure the assessment and preliminary service plan are completed within five working days after admitting the resident, if the resident pays for services with private funds; or
- (b) Obtain approval from an authorized department case manager before admission if the resident's care and services are paid by the department; and
- (c) If approval is obtained verbally, document the time, date, and name of the case manager who gave approval.

[Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10395, filed 10/16/07, effective 1/1/08.]

WAC 388-76-10400 Care and services. The adult family home must ensure each resident receives:

- (1) The care and services identified in the negotiated care plan.
- (2) The necessary care and services to help the resident reach the highest level of physical, mental, and psychosocial well-being consistent with resident choice, current functional status and potential for improvement or decline.
- (3) The care and services in a manner and in an environment that:
 - (a) Actively supports, maintains or improves each resident's quality of life;
 - (b) Actively supports the safety of each resident; and
 - (c) Reasonably accommodates each resident's individual needs and preferences except when the accommodation endangers the health or safety of the individual or another resident.
- (4) Services by the appropriate professionals based upon the resident's assessment and negotiated care plan, including nurse delegation if needed.

[Title 388 WAC—p. 445]

FILED
COURT OF APPEALS DIVISION I
STATE OF WASHINGTON
2014 FEB 12 PM 3:37

NO. 70411-7-I

**COURT OF APPEALS FOR DIVISION I
STATE OF WASHINGTON**

In Re:

MARIANA GLIGOR, DBA
EVERGREEN SEASONS AFH
Respondent,

v.

WASHINGTON STATE
DEPARTMENT OF SOCIAL AND
HEALTH SERVICES,
Appellant.

DECLARATION OF
SERVICE

I, Patricia Kelley, declare as follows:

I am a legal assistant for the Washington State Attorney General's Office. On February 12, 2014, I sent a copy of: **Reply Brief of Appellant and Declaration of Service.**

Said copy was sent by regular and certified mail, on the 12th day of February, 2014, to:

1. Mariana Gligor dba: Evergreen Seasons AFH
15012 116th Place N.E.
Kirkland, WA 98034

ORIGINAL

I declare under penalty of perjury, under the law of the State of Washington that the foregoing is true and correct.

DATED this 12th day of February, 2014 at Seattle, Washington.



PATRICIA KELLEY
Legal Assistant