**MEMORANDUM**

|  |  |
| --- | --- |
| **DATE:**  | **October 11, 2019** |
| **TO:** | Interested StakeholdersKatherine Vasquez, DSHS Rules Coordinator |
| **FROM:** | Libby Wagner, Division of Residential Care Services |
| **SUBJECT:** | Small Business Economic Impact Statement and Cost Benefit Analysis for Proposed Amendments to Chapter 388-76, Adult Family Home Minimum Licensing Requirements |

**SUMMARY OF PROPOSED RULES**

The Department of Social and Health Services’ Aging & Long Term Support Administration is proposing amendments to chapter 388-76 WAC, Adult Family Home Minimum Licensing Requirements.

The purpose of this chapter is to implement chapter 70.128 RCW, to promote the safety and well-being of adult family home residents, to specify standards for adult family home providers, and to further establish requirements for operating an adult family home.

The proposed amendments to this chapter include:

* Amending definitions of applicant, entity representative, and provider to be more inclusive of different business structures that may receive a license for an adult family home;
* Clarifying training requirements around orientation and administrator training classes;
* Changing the requirements for a change of ownership application, including removing some requirements;
* Creating a new requirement to submit notice when certain personnel change, which takes the place of a change of ownership for some scenarios;
* Creating a succession plan in case of emergency; and
* Making some general language changes for clarity.

**SMALL BUSINESS ECONOMIC IMPACT STATEMENT – DETERMINATION OF NEED**

Chapter 19.85 RCW, The Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses. The statute defines small businesses as those business entities that employ fifty or fewer people and are independently owned and operated. These proposed rules impact adult family homes, which are generally classified as small businesses. An adult family home is a residential home in which a person or entity is licensed to provide personal care, special care, room, and board to more than one but not more than six adults.

Preparation of a Small Business Economic Impact Statement (SBEIS) is required when a proposed rule has the potential of placing a disproportionate economic impact on small businesses. Residential Care Services (RCS) has analyzed the proposed rule amendments and has determined that some small businesses will be impacted by these changes. However, all of the costs associated with this rule change will be minor or occur rarely.

RCS has determined there are approximately 3,000 adult family homes in the state of Washington, which will be affected by these regulations. Because the adult family home industry is almost entirely comprised of small businesses, this impact will primarily be borne by small business.

**INDUSTRY ANALYSIS**

RCS is responsible for licensing and regulating adult family homes. As part of our monitoring responsibilities, we keep a database with currently licensed facilities. Using this database gives an accurate estimate of the number of businesses affected by these rule changes. Currently, there are approximately 3,000 adult family homes in the state of Washington that meet the criteria of small business under RCW 19.85.020.

**INVOLVEMENT OF SMALL BUSINESS**

This project was requested and initiated by the Adult Family Home Council, the collective bargaining representative for adult family homes. RCS worked with the Council to develop a workgroup for the purpose of getting diverse perspectives, asking clarifying questions, and soliciting feedback on necessary changes. This group included adult family home providers and prospective providers representing different types of entities holding or seeking adult family home licenses. We also consulted with a representative of the Long Term Care Ombuds Program, which advocates for the needs and rights of residents of adult family homes. RCS has also posted the proposed language on the website developed for adult family home providers to receive additional feedback from our licensed providers.

To estimate costs, RCS used information from schools that offer the required trainings, current application fees for change of ownership applications, and feedback from the Adult Family Home Council and other members of the workgroup

**COST OF COMPLIANCE**

Because the proposed change to the rule “establishes, alters, or revokes any qualification or standard for the issuance, suspension, or revocation of a license or permit,” RCS has determined the proposed rules to be “significant” as defined by the legislature. As required by RCW 34.05.328(1)(d), RCS has analyzed the probable costs and benefits of the proposed amendments, taking into account both the qualitative and quantitative benefits and costs. Under Chapter 19.85 RCW, RCShas considered annual costs to small businesses that are fifty dollars or more per client. Our analysis shows that costs above this amount would be rare. The proposed changes are more likely to provide savings to adult family homes.

**Training Costs**

Changes to the requirements for adult family home administrator training and orientation trainings may lead more entity representatives or providers who are completing a change of ownership application to take these courses. It is not expected that this will affect many homes and this would be a one-time expense. If a provider is required to take both courses, the cost would be $623, or $104 per resident in a home licensed for six residents. This is more than a minor cost, but it should be relatively rare. In many cases, this is also an optional cost.

**Administrative Costs**

The proposed changes create a new requirement for homes to create a succession plan, which will cost the provider time. Occasionally, homes may also need to spend time submitting documentation of a change of personnel. If we assume that a home has to complete both of these tasks once per year and the home spends a total of four hours on both tasks, with the average cost of a provider’s time at $17 per hour, this would come out to $68 per year. In a home licensed for six residents, this does not meet the threshold to be more than a minor cost. We believe this represents a high estimate. The change of personnel notice also replaces a change of ownership in some cases, which will save the home money and is discussed more in the next section.

**Change of Ownership Application Costs**

The proposed language changes which events require a home to apply for a change of ownership. As a result, some situations that do not currently require a change of ownership application will require one under the proposed language. However, the opposite effect will be felt in more situations under the proposed language, where the requirement to apply for a change of ownership will be removed. Some events have been eliminated while some of the requirements will now mandate that a home simply submit documentation of a personnel change to the department instead. This means that overall, fewer homes will be required to complete the change of ownership application.

The application fee for a change of ownership is $700. For homes that are now required to complete a change of ownership, this is a more than minor cost. However, on the whole, this is a decrease in costs for the adult family home industry. More homes will save $700 because the home will be able to submit change of personnel documentation rather than a change of ownership application. As estimated above, the high end cost for completing this form is $68 while saving the $700 application fee, giving a total savings of $632.

*Disproportionate Economic Impact Analysis*

When proposed rule changes cause more than minor costs to small businesses, the Regulatory Fairness Act requires an analysis that compares these costs between small businesses and ten percent of the largest businesses. Because the adult family home industry is made up primarily of small businesses, there is no impact of current rules on large businesses. The changes proposed here may reduce some barriers to licensure for large businesses and result in more large business participation in the industry. RCS does not see any disproportionate impact on the proposed changes to small businesses compared to potential entrance of large businesses in the field.

*Mitigating Costs*

The two areas that pose potential costs that are more than minor are training costs and change of ownership application costs.

The training costs may be unavoidable for an adult family home if the person qualified as the entity representative leaves and the home must pay to train someone to replace them. The department does not set and does not have a way to reduce the training costs, as these are charged by the schools conducting the training. This should be a relatively rare cost, though. The requirement for this training also ensures that homes are run effectively and in accordance with the WAC requirements. This may increase a home’s profits and reduce remedies, which cost the home time and money. RCS also added clarifying language that may allow some applicants to skip these training requirements.

The events that trigger a change of ownership in a home should be entirely within the home’s control. A home can avoid those costs by not doing one of those events. In general, homes choose to do those events because they benefit the business in some way. It is up to the home to determine if the benefits of the change outweighs the cost of the change of ownership application fee.

*Benefits for Proposed Rules*

In addition to the benefits listed above, RCS has identified benefits to adult family homes in the following areas:

* By clarifying current WAC language, adult family homes can spend less time interpreting the WAC and increase their compliance, which will result in reduced enforcement costs.
* By changing some of the parameters that the department can consider when evaluating an application, we are reducing the barriers to entry for some entities. We are considering fewer disqualifying factors. This will decrease processing time and decrease denials of applications. Fewer applicants will waste time and money on an application that fails. More applicants will be able to open their businesses faster and begin to make a profit in a timelier manner. This will also increase jobs as more homes will open more quickly and need more staff.
* The change in the definition and requirements for entity representatives means that a home can make an employee its entity representative. For some entities, this removes a burden to entry into the market, and for others, this eliminates some trainings they would otherwise need to complete.
* The change in the definition of nurse delegation clarifies that home care aides may receive delegation in addition to nursing assistants and may reduce barriers to providing nurse delegated care.

In addition to creating these benefits for adult family homes, the proposed changes will further ensure that homes provide qualified personnel and protect resident rights, which will improve the quality of life and care for residents in the home.

**JOBS CREATED OR LOST**

The proposed changes reduce barriers to entry for new adult family home providers. This should increase the number of homes in the state and result in more jobs for providers, entity representatives, resident managers, and caregivers. While it is difficult to estimate exactly how many new homes would open with these proposed changes, we can estimate on the low end ten new homes per year that would not have otherwise opened. On average, each home employs five people, meaning that we estimate these changes will provide at least fifty new jobs per year.

**CONCLUSION**

DSHS, Aging & Long Term Support Administration has given careful consideration to the impact of proposed rules in Chapter 388-76 on small businesses. To comply with the Regulatory Fairness Act, Chapter 19.85 RCW, DSHS, Aging & Long Term Support Administration has analyzed impacts on small businesses and proposed ways to mitigate costs considered more than minor and disproportionate.While some homes may see a cost increase, for most homes, the benefits will outweigh the costs.

Because of the nature of the adult family home industry, small businesses will bear most of the impact of both the costs and the benefits of these proposed changes. Any large businesses licensed for an adult family home now or in the future will face the same regulations and same costs as small businesses do. We do not believe the proposed changes will have any greater impact on small businesses than those few noted above.

Please contact me if you have any questions at (253) 234-6061.