Davies

Market Study of Liability Insurance for Washington State Adult Family Homes

Prepared for the Washington State Office of the Insurance Commissioner

Prepared by Davies Actuarial, Audit & Consulting, Inc.

December 6, 2024 - Preliminary Report
Final Report due June 30, 2025

December 6, 2024

The Honorable Mike Kreidler
Insurance Commissioner, Washington State
302 Sid Snyder Ave. SW
Olympia WA 98504-0258

Re: Market Study of Liability Insurance for Washington State Adult Family Homes ("AFHs")

Dear Commissioner Kreidler:

Please find attached the above-referenced study. Please note that this is preliminary report only which provides an update to the Washington State Legislature ("Legislature") on our activities to date and our work plan for the upcoming months.

Consistent with the requirements of section 142(28) of the 2024 supplemental operating budget (ESSB 5950), we will provide the final report to the Legislature no later than June 30, 2025.

We appreciate the opportunity to work with you and the Washington Office of the Insurance Commissioner and to assist the Legislature. Please do not hesitate to contact us with any comments or questions.

Sincerely,

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Executive Summary

WAC 388-76-10000 defines an "adult family home" as "a residential home in which a person or an entity is licensed to provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood, adoption, or marriage to a provider, entity representative, resident manager, or caregiver, who resides in the home. An adult family home may be licensed to provide care to up to eight adults if the home receives approval under WAC 388-76-10031 or 388-76-10032."[1]

In Washington, adult family homes ("AFHs") are an important part of the state's long-term care system. AFHs provide an alternative to institutional care and promote a high degree of independent living for residents. AFHs serve people with functional limitations who have broadly varying capacities and service needs. They serve a variety of residents, including the elderly, developmentally disabled individuals, and individuals with behavioral health needs. They provide care within the residents' communities.

According to the Washington State Department of Social & Health Services ("DSHS"), AFHs serve approximately 15% of Medicaid long term care clients.[2] AFHs in Washington State are regulated by DSHS.

WAC 388-76-10192 states that AFHs must obtain liability insurance that covers:

- Errors or omissions of the AFH or its employees or volunteers;
- Bodily injury, property damage, and contractual liability; and
- Premises, operations, products-completed operations, personal injury, advertising injury, and liability assumed under an assumed contract.

The required minimum liability limits are $500,000 per occurrence and $1,000,000 in aggregate. The governing statute also requires that such policies provide coverage for the State of Washington, its officials, agents, and employees for claims relating to acts or omissions of an AFH.

This liability insurance is important in that it:

- Provides security for the payment of damages to an injured party (including a resident) if damages occur as a result of the AFH's acts or omissions (or acts or omissions of its employees or volunteers during the course of their work at the AFH);
- Provides security for the payment of damages to an injured party (including a resident) in the event that the AFH is liable for other damages that are unrelated to acts or omissions during the course of its work; and
- Provides financial protection for the AFH, including defense of claims.

Based on information from public work group meetings and interviews, we understand that AFH operators are encountering challenges in obtaining the required liability insurance. These challenges can arise either

[1] See also RCW 70.128.010 and 70.128.066.

[2] See https://www.insurance.wa.gov/adult-family-home-liability-market-study-work-group, June 26 meeting, "DSHS, Department of Social and Health Services, June 26 presentation."

because the liability insurance is unavailable or because it is unaffordable for the AFH operator. Without liability insurance, the AFH may lose its license and cease operations.

Accordingly, in the 2024 supplemental operating budget (ESSB 5950), the Washington State Legislature ("Legislature") directed the Washington State Office of Insurance Commissioner ("OIC") to convene a work group to:

- Review the availability and cost of liability insurance for AFHs;
- Identify obstacles to AFHs' access to liability insurance including underwriting restrictions, market conditions, as well as legal and regulatory requirements;
- Evaluate the financial risk to AFHs, their residents, the state medicaid program, and others that exist as a result of the increased cost of insurance, or in the event AFHs are uninsured due to a lack of access to coverage; and
- Make policy recommendations to improve access to liability insurance coverage for AFHs.

The OIC retained Davies Actuarial, Audit & Consulting, Inc. ("Davies", "we", or "us") to assist the work group in research, actuarial analysis, and the preparation of this study. Attorneys from Verrill Dana, LLP, were also engaged to assist with research and analysis.

This report is a preliminary report of our activities to date. As required in ESSB 5950, a final report will be provided to the Legislature no later than June 30, 2025.

Conditions and Limitations

This is a preliminary report of our work to date, which commenced in September 2024. It is largely based on information from public AFH work group meetings, interviews of interested parties in the Washington AFH market, and research using publicly-available information. As a data call has not yet been issued, assertions made in interviews or in work group meetings regarding pricing and underwriting of policies have not yet been validated. We report these statements but cannot guarantee their accuracy.

This report does not represent any findings, recommendations or conclusions. Our final report, which will be issued no later than June 30, 2025, will include all the information required by ESSB 5950.

This report should be read and distributed in its entirety, as opposed to parts thereof.

Washington AFH Background

Legislative and Administrative Background

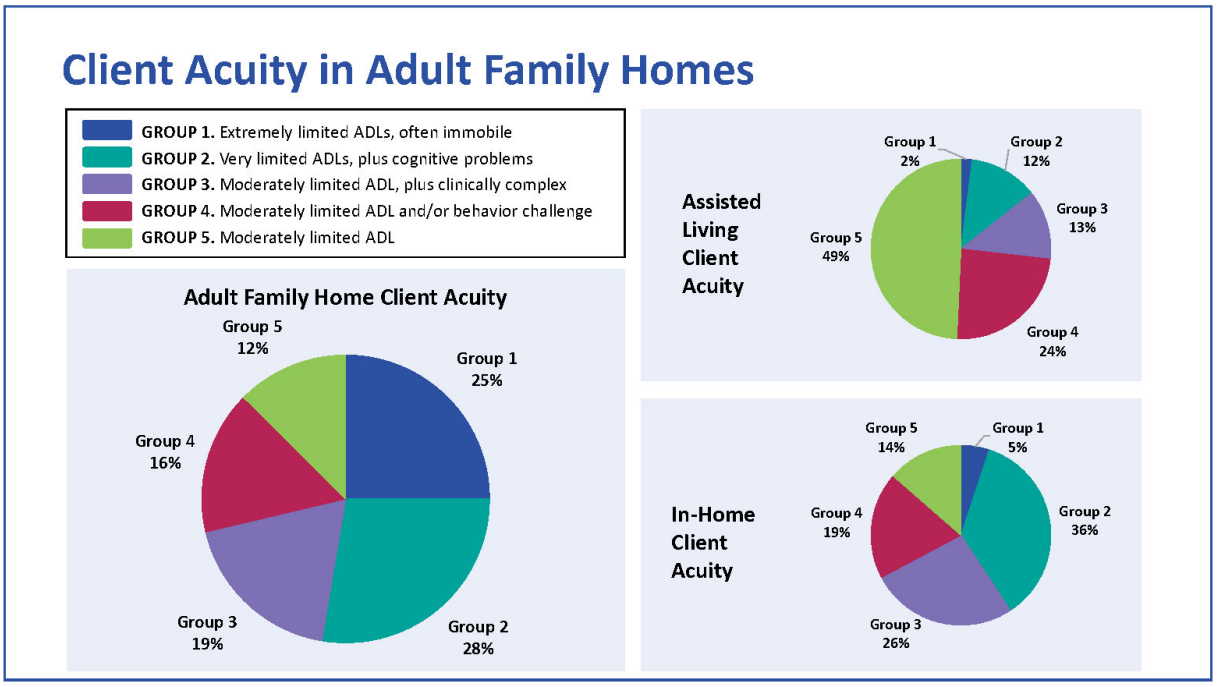
The Legislature has found that "the development and operation of adult family homes that promote the health, welfare, and safety of residents, and provide quality personal care and special care services should be encouraged." At the same time, the Legislature recognized that many residents of community-based long-term care facilities are vulnerable, that their health and well-being are dependent on their caregivers, and that residents' health, safety, and well-being are of paramount concern in the licensing and regulation of AFHs. DSHS, which oversees such licensing, is therefore directed to "more aggressively promote protections for the vulnerable population" that the long-term care system serves.[3]

To these ends, AFHs are licensed in Washington as residential homes in which one or more resident caregivers provide room, board, and services to between one and eight adults not related by blood or marriage to the caregiver(s).[4] The services rendered by a caregiver may include personal care (physical assistance, prompting, and supervising direct personal care tasks excluding tasks performed by a licensed health professional), special care (care "beyond personal care services"), skilled nursing (subject to appropriate staffing and licensure), and nurse-delegated care.[5] Special training is required for AFHs serving residents with special needs such as dementia, developmental disabilities, mental illness, traumatic brain injury, and bariatric care.[6]

Residents of Washington AFHs

Washington AFHs provide services to residents with diverse needs. Residents may be grouped based on the intensity of care required – a classification approach often described in the healthcare context as a patient, resident, or client's "acuity".[7] The Aging and Long-Term Support Administration ("ALTSA"), which is a division of DSHS, provided the following graphic in its June 26, 2024 presentation to the OIC AFH work group.[8] The graphic classifies AFH client acuity based on the level of assistance required to perform activities of daily living ("ADLs"):[9]

[3] See RCW 70.128.005
[4] See RCW 70.128.010.
[5] See WAC 388-76-10000 and 388-76-10400.
[6] See RCW 70.128.060; 70.128.230; and 70.128.040(4).
[7] The Department of Developmental Disabilities, for example, uses a number of "acuity scales" to develop an "objective assessment of a person's support needs." See WAC 388-828-1020 (defining "Accuity Scale"); see also RCW 71.24.648 (Behavioral health treatment facilities to "[e]stablish staffing requirements that provide an appropriate response to the acuity of the residents"); RCW 49.95.005 (Legislative finding that "[t]he average needs and acuity levels of people [receiving long term care] in their homes has increased and become more diverse.")
[8] See https://www.insurance.wa.gov/adult-family-home-liability-market-study-work-group, "DSHS, department of social and health services, June 26 presentation."
[9] ADLs generally include self-care activities including bathing, dressing, eating, personal hygiene, transferring (e.g. from bed to chair), toileting, ambulation/mobility, and medication assistance. See RCW 18.20.310 (Defining ADLs regarding assisted living facilities).



The average acuity in AFHs is substantially higher than the average acuity in assisted living facilities or for those receiving services in home. The combined acuity of Groups 1 and 2, the acuities with the highest needs, represents more than 50% of residents in AFHs.

The nature of AFHs as defined by Washington's legislative and administrative code differs in certain respects from "adult family homes" in other states. Appendix A presents a survey of regulatory structures in other jurisdictions, analyzing areas of similarity or difference with the Washington regulatory structure. The survey suggests, for example, that Washington AFHs are permitted to serve residents with relatively high acuity (e.g. residents requiring feeding tubes or ventilation) who might be required to transition to more intensive care settings (e.g. skilled nursing facilities) in some other jurisdictions. Similarly, some other jurisdictions may have narrower licensing categories – regulating homes with elderly residents under a different regime than homes with residents who are developmentally disabled – than Washington's single broad license which permits a single AFH to serve a broad range of clients.

The diverse needs and higher average acuity of Washington AFHs may be a factor in the availability and affordability of liability insurance.

Economics of AFHs

Based on interviews, we understand that most AFH residents are covered by Medicaid, as opposed to private-pay.

Residents covered by Medicaid may also be eligible for additional Medicaid services that are not provided or paid for by the AFH providers, including nurse delegated care, skilled nursing care, therapies, and adult day health.[10]

The Residential Support Waiver ("RSW") is offered by Residential Care Services ("RCS"), a division of ALTSA. The RSW is intended to provide funding for additional services that some residents may need. According to the DSHS website,

> RSW is a home and community-based program designed to provide personal care, community options, and specialized services for eligible clients with personal care and behavioral support needs. The RSW provides a cohesive and comprehensive continuum of specialized services targeted to adults with extremely challenging behavior who meet the eligibility requirements found in WAC 388-106-0338. [11]

The contracts under the RSW which are most applicable to AFHs are:

1. Expanded Community Services ("ECS") – provides personal care services, medication oversight, and contracted behavior support services.
2. Specialized Behavior Support – services provided in ECS setting plus additional one-to-one staffing for closer supervision and behavioral support.
3. Community Behavioral Supports – services provided to help residents with personal care needs and behavioral challenges remain in community-based settings. Services include personal care, medication oversight, specialized settings, behavior support, and mental health treatment.[12]

Notwithstanding the above, and based on interviews with interested parties, we understand that the economics of AFHs are such that the available Medicaid reimbursement is frequently inadequate or barely adequate to pay for the required operational costs and labor. In this environment, insurance premium increases are very impactful to AFH operators.

[10] See https://www.insurance.wa.gov/adult-family-home-liability-market-study-work-group, June 26 meeting, "DSHS, Department of Social and Health Services, June 26 presentation."
[11] https://www.dshs.wa.gov/altsa/home-and-community-services/residential-long-term-care-facilities-specialty-contracts.
[12] *ibid*

Liability Insurance Environment for Washington AFHs

The Property and Casualty ("P&C") insurance market at large has been experiencing affordability challenges and availability constriction in recent years. This important overall context is described in greater detail in Appendix B.

Providers of Insurance

The following entities were identified in public work group meetings and in our interviews with insurance producers as the primary entities providing liability insurance to Washington AFHs:

- Huntersure LLC
- Nationwide E&S and Specialty Insurance (f.k.a. Scottsdale Insurance Company)
- James River Insurance Company
- Kinsale Insurance Company
- Hamilton
- Richmond National
- Personal Care and Assisted Living Insurance Center ("PCALIC")

Huntersure is a program manager[13] that works with certain Lloyd's syndicates, which are excess and surplus lines ("E&S") insurers. Nationwide E&S and Specialty Insurance,[14] James River Insurance Company,[15] Kinsale Insurance Company,[16] Hamilton,[17] and Richmond National[18] are all E&S insurers. PCALIC[19] is a program manager that places insurance through PCH Mutual Insurance Company, Inc., a risk retention group ("RRG").[20] Both PCALIC and PCH Mutual are owned by Tangram Insurance Services.

All of the identified insurance companies are E&S companies or an RRG.

It is important to distinguish between the regulation of traditional "admitted" insurance and the regulation of insurance written on an E&S basis or by an RRG.

Admitted insurance is written by an insurance company licensed to do business in the state in which the insurance exposure is located.[21] In accordance with WAC 284-20B-030 and WAC 284-24-011, as well as the OIC property and casualty filing instructions, all liability forms and rates, respectively, written on admitted basis for Washington insureds must be filed with the OIC.

If a potential insurance customer cannot obtain insurance coverage in the admitted market, they may be able to obtain it in the E&S market. E&S insurance coverage is intended for specialty, unusual, or riskier

[13] https://www.huntersure.com/.
[14] https://nationwideexcessandsurplus.com/.
[15] https://jrvrgroup.com/james-river-insurance.
[16] https://www.kinsaleins.com/.
[17] https://www.hamiltongroup.com/about/.
[18] https://www.richmondnational.com/.
[19] https://tangramins.com/programs/personal-care-and-assisted-living/.
[20] https://pchmutual.com/contact/.
[21] https://www.irmi.com/term/insurance-definitions/admitted-insurance.

business that insurance companies will not cover on an admitted basis. E&S business is excluded from state guaranty funds.[22]

The OIC does not have direct regulatory authority over forms or premium rates written on an E&S basis. Insurance companies are not required to maintain rate manuals or standard forms nor submit publicly available rate & form filings to the state for insurance written on this basis.[23]

RRGs are formed pursuant to the federal Liability Risk Retention Act, and are "exempt from any State law, rule regulation, or order to the extent that such law, rule, regulation or order would . . . make unlawful, or regulate, directly or indirectly, the operation of a risk retention group."[24] An RRG must have a state of domicile but is not required to file forms or rates in the other states in which it is doing business. RRGs are excluded from state guaranty funds.[25]

As all the identified insurance companies providing coverage to Washington AFHs are E&S companies or RRGs, the OIC has no direct authority over their forms or rates. Additionally, the absence of admitted companies in this space may indicate that liability insurance for this class of business is perceived as difficult to price or riskier in some way.

Based on interviews, we understand that some insurance companies historically provided WA AFH liability coverage, but no longer do so. These include Hanover, Philadelphia, Western National, and a Lloyd's syndicate.

Some members of the Washington Adult Family Home Council ("AFHC") expressed concerns that certain disclosures on the DSHS website (including allegation reports that had not yet been investigated, and de minimis citations issued during inspections) may have been unintentionally impacting the availability and affordability of insurance. Chapter 235, Laws of 2024 amended RCW 70.128.280 effective June 6, 2024, such that the DSHS consumer-oriented website regarding AFHs will not include de minimis citations or allegation reports. Deficiency reports are still included on the website, as are enforcement actions. Additionally, DSHS now posts deficiency-free inspection letters and notices of return to compliance.

Underwriting and Pricing of AFH Liability Policies

The underwriting and pricing information in this section is based on presentations made to the work group on July 24, 2024[26] and June 26, 2024,[27] as well as subsequent interviews with insurance producers and AFH interested parties. As we, in cooperation with the OIC, have not yet issued a data call to insurance companies, we are unable to validate these statements; however, we note that the statements from several parties are consistent with each other. All statements in this section regarding underwriting and pricing

[22] https://www.insurance.wa.gov/surplus-line-insurance
[23] *ibid*
[24] 15 U.S.C. § 3902
[25] https://content.naic.org/insurance-topics/risk-retention-groups.
[26] See https://www.insurance.wa.gov/adult-family-home-liability-market-study-work-group, "July 24, Liability and property presentation."
[27] See https://www.insurance.wa.gov/adult-family-home-liability-market-study-work-group, "June 26 meeting" recording.

should be understood to represent various interested parties' assertions that have not undergone further review or audit.

Each of the aforementioned insurance companies has its own underwriting guidelines for AFH policies, and these guidelines may change over time. A small sample of some underwriting guidelines is provided below:

- Most insurance companies review DSHS inspection reports at initial application and upon every annual renewal.

- One insurance company primarily provides coverage to AFHs that provide elder care. It may not write coverage for AFHs where any resident's primary diagnosis is related to mental illness or where any resident has a developmental disability. It also may exclude AFHs in which any resident is permanently confined to bed.

- A second insurance company accepts AFHs that provide elder care, developmental disability, and behavioral services. However, it will not accept AFHs with residents that are violent or self-harming. It also will not accept AFHs that include residents in need of skilled nursing care. It performs very careful underwriting of any AFH that has one or more residents who are bedridden or are in later stages of Alzheimer's disease.

- A third insurance company accepts AFHs that provide elder care, developmental disability, and behavioral services; however, it requires a staff member to always be awake (known as "24/7 awake staff"). It also requires no historical liability losses in the period reviewed.

- A fourth insurance company accepts AFHs that provide elder care, development disability, and behavioral services but requires no historical liability losses in the period reviewed. It does not write coverage if any of the residents require skilled nursing care. It will accept residents with a mental health issue as the primary diagnosis but will not accept residents with substance use disorder or who have been released directly from prison or involuntary confinement.

As residents' medical or cognitive conditions may change over time, AFHs may encounter challenges with their insurance policies upon renewal if residents no longer meet the underwriting requirements of the insurance company. For instance, at a certain point in time, an AFH may have one or two residents with mild dementia and may qualify for coverage with a specific insurer. However, by the time a renewal application is completed, those residents may be at a later stage of dementia which may disqualify the AFH from that insurer's underwriting guidelines. Similarly, residents may progress from being ambulatory to being non-ambulatory or from being able to eat to being fed via tube. In these events, the AFH may face a substantial increase in premium or even a non-renewal from its insurer.

RCW 70.129.110 prohibits an AFH from discharging or transferring a resident except in limited circumstances. Even when discharge or transfer is statutorily permitted, the resident has certain rights, such as a minimum 30-day notice, and notification of the location to which the resident is being discharged or transferred. The circumstances that allow an AFH to discharge or transfer a resident do not include changes in acuity that may impact the AFH's ability to renew liability insurance or secure replacement coverage. This

can create a difficult situation for all involved and a potential conflict between the legal obligation to maintain liability insurance and the requirement to allow a resident to remain at an AFH.

One interviewed broker noted minimum annual premiums for as low as $2400 and many premiums in the $3500-$5000 range for AFHs meeting certain underwriting criteria. For AFHs that do not meet these underwriting criteria, premiums could be $15,000 or higher per year. An AFH operator that presented at the June 26, 2024 work group noted that he has been quoted annual premiums in the $50,000-$70,000 range. We are hopeful that we will receive data from an expected data call (see "Work Plan" section below). It will be informational to review the premiums over time for a variety of AFHs.

Work Plan

To date, we have gathered information through OIC work group meetings, interviews with interested parties, and research.

Our work plan for the coming months includes the following activities:

1. Conduct additional interviews with:
    a. Underwriters and program managers, to better understand their approach toward this exposure, the data available for review, and what factors, if any, might motivate increased availability and affordability of coverage.
    b. Personnel at DSHS.
    c. Other interested parties, as determined by our interviews and research.

2. Issue a data call requesting the past five years of premium, exposure, and loss data from all insurance companies providing liability insurance to Washington AFHs during that time.

    As noted above, E&S insurers have limited regulatory oversight and RRGs are not under the jurisdiction of the OIC. For this reason, we hope to obtain credible data based on the data call, but this cannot be guaranteed.

3. Perform actuarial analysis of data from the data call. If the data is actuarially credible, we will determine whether current premiums appear to be inadequate or excessive. Additionally, if possible based on the availability and credibility of the data, we will project costs for mechanisms to encourage availability and affordability of liability insurance for AFHs and/or subsidize such insurance.

4. Continue research regarding AFHs in other states, including:

    a. Similarities and differences to Washington AFHs
    b. Insurance availability and affordability
    c. Mechanisms in place in other states to encourage availability and affordability of liability insurance for AFHs and/or subsidize such insurance

5. Receive exemplar anonymized AFH financial statements from AFHC, in order to better understand the threshold for "affordable" insurance in this space.

6. Complete all items in scope assigned for our final report in section 142(28) of the 2024 supplemental operating budget (ESSB 5950), including the development of policy options for legislative consideration.

Appendix A – In-Progress Study of Peer Jurisdiction Regulatory Structures & Insurance Markets

To place the market for AFH liability coverage in context, better understand market dynamics, and develop policy options to improve insurance access in Washington, we are examining the regulatory structure and market experience in other jurisdictions with analogous long-term care facilities. A fifty-state survey would be beyond the scope of this market study so, after review of available literature and preliminary investigation, six states -- California, Florida, Hawaii, Idaho, Oregon, and Texas -- were selected for further review based on their regions and regulatory structures.

California

The California Department of Social Services licenses a broad category of residential facilities providing 24-hour non-medical residential care to the elderly, children and adults with mental, physical, or developmental disabilities, those who require assistance recovering from mental illness, or who have HIV/AIDS or terminal illness.[28] Certain facilities are then specially licensed (Levels 1 through 4) based on the intensity and level of care and supervision required by residents. Additionally, an assisted living waiver program is available for elderly residents of certain facilities -- Residential Care Facilities for the Elderly ("RCFE") and Adult Residential Care Facilities ("ARF") -- to permit them to maintain independence and receive care in a social-based setting rather than a healthcare facility.[29] RCFEs are required by statute to maintain liability insurance coverage with limits of $1,000,000 per occurrence and $3,000,000 in aggregate.[30]

Review of publicly available sources did not disclose information about the availability and affordability of liability coverage for residential facilities analogous to Washington AFHs. In 2018, however, the California Behavioral Health Planning Council published a study addressing the need for ARFs (including ARFs serving seniors and those with mental illness) and focusing in significant part on the financial challenges that these facilities faced.[31] The study did not specifically analyze liability insurance costs but the exemplar financial statements in the report show that insurance (exclusive of workers compensation) was generally a significant expense and large fraction of net income.

Generally speaking, the population served by AFHs in Washington might be served in California by a range of facilities with narrower or more specialized licenses. Notably, these facilities are typically prohibited from

[28] CDSS regulations are available at https://www.cdss.ca.gov/inforesources/letters-regulations/legislation-and-regulations/community-care-licensing-regulations/residential. Narrative description of certain facilities (excluding Residential Care Facilities for the Elderly and Adult Residential Care Facilities) is also available at https://www.cdss.ca.gov/inforesources/adult-care-licensing/resources-for-residents-and-families#:~:text=Social%20Rehabilitation%20Facilities%20(SRF)%3A,need%20assistance%2C%20guidance%20or%20counseling.

[29] https://www.dhcs.ca.gov/services/ltc/Pages/Residential-Care-Facility-and-Adult-Residential-Facility-Provider-Enrollment.aspx.

[30] Cal. Health & Safety Code, § 1569.605.

[31] https://www.dhcs.ca.gov/services/MH/Documents/Legislation-Committee/2018-ARF-Final.pdf.

providing "medical care" (though others may provide such care on-premises) which has two significant implications. First, the residents of California facilities may have less acute care needs than some residents of Washington AFHs.[32] Second, the fact that California facilities may provide lower levels of care in some instances may mean there is also a lower risk of liability claims.

Florida

The Florida Agency for Persons with Disabilities and Agency for Health Care Administration license a number of facilities serving populations similar to those served by Washington AFHs including:

- Group homes that offer supervision and care for the physical, emotional, and social needs of 4 to 15 residents in a family living environment;[33]
- Adult family care homes ("AFCH") in which a resident caregiver provides personal care (but not skilled nursing) services to up to 5 individuals in a home environment.[34] Residents may include persons with physical/mental disabilities, young adults aging out of foster care, seniors, individuals experiencing homelessness, and individuals with HIV/AIDs;
- Assisted living facilities ("Florida ALF") which may be larger facilities but which are operated and regulated as residential environments and which provide routine personal care service and may (with "specialty licenses") offer more intensive care with the objective of permitting residents to age in place;[35] and
- Residential treatment facilities which provide a long-term homelike environment for individuals suffering from mental illness (excluding, among other things, substance use disorders) and are licensed at different levels based on the level of care/supervision required.[36]

These Florida facilities typically do not provide medical care, though there are exceptions, and they may not admit or retain residents requiring higher levels of care (e.g. bedridden individuals, those with stage 2+ pressure sores). AFCH may be the facilities most analogous to a Washington AFH and Florida has a comparatively small number of these entities (fewer than 300). In contrast, however, there are a large number of Florida ALF (nearly 3,000) which, due to their greater size, serve a significant population.[37] For both categories, there is a legislative focus on regulatory flexibility and the avoidance of obstacles to establishment.[38]

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[32] California regulations specifically prohibit adults with certain health conditions -- naso-gastric or naso-duodenal tubes, active/communicable TB, conditions that require 24-hour monitoring, stage 3/4 dermal ulcers, and any other conditions requiring licensure as a health facility -- may not be admitted to or retained in any community care facility. See Cal. Code Regs., tit. 22, § 80091.

[33] See Fla. Stat. Ann., § 393.063 *et seq.*; Fla. Admin. Code 65G-2.

[34] See Fla. Stat. Ann., § 429.060 *et seq.*; Fla. Admin. Code 59A-37.

[35] See Fla. Stat. Ann., § 429.01 *et seq.*; Fla. Admin. Code 59A-36.

[36] See Fla. Admin. Code 65E-4.016.

[37] Facility search returns (https://quality.healthfinder.fl.gov/Facility-Search/FacilityLocateSearch) show 217 licensed AFCH and 2,972 Fla. ALF as of November 2024.

[38] See Fla. Stat. Ann. § 429.63 ("Regulations governing adult family-care homes must be sufficiently flexible to allow residents to age in place if resources are available to meet their needs and accommodate their preferences" and "Rules of the agency relating to adult family-care homes shall be as minimal and flexible as possible to ensure the protection of residents while minimizing the obstacles that could inhibit the establishment of adult family-care

It does not appear that there are any publicly available formal studies as to the health of the liability insurance market for AFCH or Florida ALF. With regard to AFCH, this is unsurprising given that these providers are not required to maintain professional liability insurance.[39] Florida statutes do require Florida ALFs to maintain liability insurance but the minimum limits are unclear.[40]

While Florida licenses a number of facilities providing care to targeted populations, it also licenses AFCH which may serve a broad population similar to that of a Washington AFH. Florida regulations, however, limit the acuity level of residents in all community residential homes – requiring bedridden individuals and those requiring higher levels of care to transition to facilities subject to medical regulation. As discussed with regard to California, this may mean that Florida residential care facilities have a lower overall risk profile than some Washington AFHs.

Hawaii

The Hawaii Department of Health licenses several facility types that are, to some degree, analogous to a Washington AFH including:

- Adult Residential Care Homes ("ARCH") are facilities serving adults who require at least minimal assistance with ADLs but not the professional health services of an intermediate, skilled, or acute care facility. ARCHs are divided into Type I (five or fewer residents) and Type II (six or more residents). In addition there are "Expanded ARCHs" ("E-ARCH") which offer some care consistent with an intermediate care or skilled nursing facility. All ARCHs must have a primary care giver present at all times. Type I ARCHs must have a resident care giver and may have up to two non-ambulatory residents if they meet certain staffing and fire safety criteria.[41]
- Community Care Foster Family Homes in which a resident caregiver provides accommodations, personal care, and homemaker services for no more than two adults (three under special license), both of whom are SSI recipients (if eligible) and at least one of whom is a Medicaid recipient requiring a level of care equivalent to that provided in an intermediate or skilled nursing facility.[42]
- Developmental Disabilities Domiciliary Homes which provide supervision or care, but not nursing services, to five or fewer adults with developmental disabilities in a home setting with a resident caregiver.[43]

homes."); Fla. Stat. Ann. § 429.01 ("In support of the goal of aging in place… assisted living facilities should be operated and regulated as residential environments with supportive services and not as medical or nursing facilities" and "Regulations governing these facilities must be sufficiently flexible to allow facilities to adopt policies that enable residents to age in place when resources are available to meet their needs and accommodate their preferences."). See also Fla. Stat. § 419.001(1)(a) (Regarding zoning/siting of "community residential homes").

[39] https://www.afchtraining.com/faq. https://ahca.myflorida.com/content/download/7236/file/Adult_Family_Care_Home_ST_F.pdf (Regulation set for AFCH does not reference insurance).

[40] Fla. Stat. Ann. § 429.275 (insurance requirement); Fla. Admin. Code 59A-36.013(4) (Documentation of liability insurance must "include the name and street address of the facility, a reference that the facility is an assisted living facility, the facility's licensed capacity, and the dates of coverage"; there is no reference to minimum limits.)

[41] Haw. Admin. Rules 11-100.1.

[42] Haw. Admin. Rules 11-800.

[43] Haw. Admin. Rules 11-89.

The number of each type of facility licensed in Hawaii is not clear but, in 2023, the Hawaii Long-Term Care Ombudsman reported that the total number of nursing homes, assisted living facilities, ARCH (and Expanded ARCH), and community care foster family homes was approximately 1,790 with nearly 13,000 beds.[44] ARCH facilities appear to constitute approximately 450 of these facilities with nearly 2,700 beds.[45] Hawaii statutes require that operators of certain community-care homes (including all of the entities listed above, except Assisted Living Facilities) maintain liability and auto insurance but the required limits of that insurance are unclear.[46]

The regulatory structure for Hawaii community-based care facilities appears similar to that in Washington with the notable exception that Hawaii regulations subdivide ARCH facilities by type (I and II) and also require specific licensure for E-ARCH facilities providing higher levels of care. This subdivision may be relevant to the affordability and availability of liability insurance if the regulatory differentiation permits insurers to better understand the nature of the risks presented by each facility. (An E-ARCH, for example, provides service to residents with greater medical needs such that it may present a greater severity risk than some other facilities.)

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Research is in progress for Oregon, Idaho, and Texas.

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Resources for further research regarding residential long-term care include:

- *Compendium of Residential Care and Assisted Living Regulations and Policy* (2015).[47] This report (prepared by the Office of Disability, Aging and Long-Term Care Policy for the U.S. Department of Health and Human Services, Assistant Secretary for Planning and Evaluation) focuses on group residential care settings that serve a population of older adults or working-age adults with physical disabilities. The compendium provides a digest of the regulatory structure in each jurisdiction and a helpful nationwide overview. The compendium contains only limited information regarding adult foster care, a category which substantially overlaps with Washington AFH and excludes residential care settings regulated by state mental health or developmental disabilities.

- *Adult Family Care: A Viable Alternative to Nursing Homes* (2021).[48] This whitepaper, published by the AARP Public Policy institute describes the history of adult family care and key features for

[44] https://health.hawaii.gov/opppd/files/2024/03/16_EOA-Annual-Legislative-Report-SFY2023_Final.pdf.
[45] https://health.hawaii.gov/ohca/state-licensing-section/ (The total count of capacity reported in the August 2024 "Combined ARCH-Expanded ARCH Vacancy Report-By Area" was 2,690).
[46] The insurance requirement is established in Haw. Rev. Stat., § 321-11.8 but it does not appear that accompanying regulations have been adopted for ARCHs, Community Care Foster Homes, or Developmental Disabilities Domiciliary Homes. Regulations applicable to a separate license category -- Adult Foster Homes, which provide care for up to two developmentally disabled adults in a private family home – require minimum liability insurance of $1 million occurrence/$2 million aggregate and automobile liability coverage of $100,000 occurrence/$300,000 aggregate. Haw. Admin. Rules § 11-148.1-8. The State of Hawaii must be named as an additional insured on such policies. Id.
[47] https://aspe.hhs.gov/sites/default/files/migrated_legacy_files//73501/15alcom.pdf
[48] https://ltsschoices.aarp.org/sites/default/files/documents/doi/adult-family-care.doi.10.26419-2Fppi.00128.001.pdf

potential residents to consider in various jurisdictions. The report also includes appendices with tables comparing/contrasting regulatory approaches across multiple jurisdictions.

- *Adult Residential Facilities* (2018).[49] This report, issued by the California Behavioral Health Planning Council, addressed the barriers to and need for increased access to appropriately staffed and maintained Adult Residential Facilities in the State of California. The study demonstrates some of the challenges faced by facilities that are analogous, at least in part, to Washington AFH with particular focus on the challenging finances of a business model with significant labor costs and revenue constrained by the benefits available under Social Security and State Supplemental Payment programs.

- *Long-Term Care in Hawaii* (S. Suzuki, Hawaii Bar Journal vo. 19, no. 13, 2015). This journal article, while focusing on a single state's experience, provides a helpful history of the development of formal and informal long-term care facilities, the types of facilities now available, and financing considerations.

[49] https://www.dhcs.ca.gov/services/MH/Documents/Legislation-Committee/2018-ARF-Final.pdf

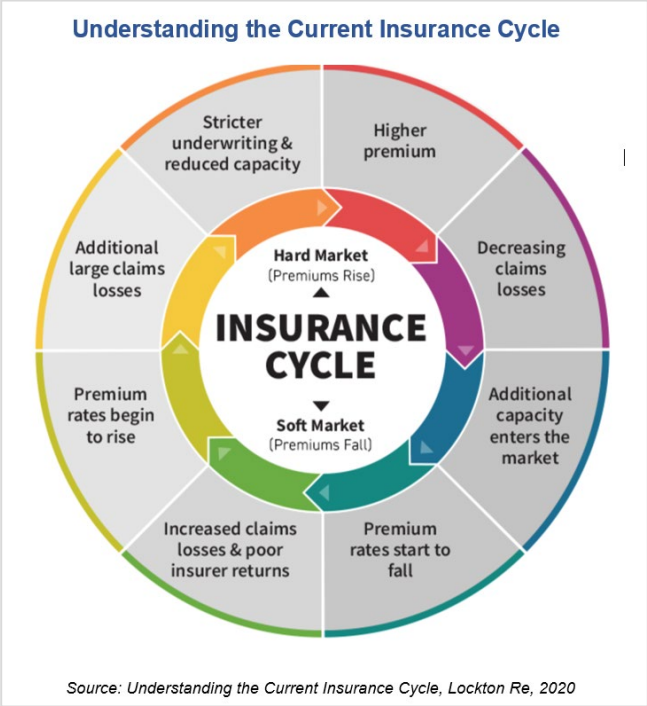
Appendix B - Property and Casualty ("P&C") Insurance Market

Below, we explain how many facets of the P&C insurance market have seen increased underwriting restrictions, decreased availability, and increased premiums since 2019. The liability coverage required for AFHs falls under the "casualty" category of the P&C insurance market.

The U.S. Property & Casualty Market is Cyclical, and Has Been in a Hard Market Since 2019

The P&C industry is both highly competitive and notably cyclic, involving periods of "soft" market conditions when insurance is readily available and premium rates are stable, and "hard" markets when coverage is more difficult to find, and rates increase.

Understanding the Current Insurance Cycle: Global insurance broker Lockton Re provided this graphic illustrating the phases of the insurance cycle.



Source: Understanding the Current Insurance Cycle, Lockton Re, 2020

Since 2019, the P&C industry in the U.S. has been in a sustained hard market. While there are some signs of improvement, hard market conditions persisted into 2024, forcing higher rates and continued restrictions in availability as insurers look to de-risk.

In 2019, analysts from the National Association of Insurance Commissioners ("NAIC") identified the shift from a 12 year-long soft market that was just beginning to change: "[s]oft market conditions are characterized by flat or declining rates, relaxed underwriting standards, abundant capacity and increased competition among insurers. Although soft market conditions have existed in the U.S. property and casualty insurance industry since 2007, the market is beginning to show signs of firming in most lines. This comes as the industry reported record catastrophe losses in 2017 and above average catastrophe losses in 2018."[50]

According to industry data compiled by the NAIC, in 2023 the industry experienced total underwriting losses of $18.4 billion. This compares to a reported $27.4 billion in losses in 2022.[51]
In March of 2024, AM Best attributed downgrades of 55 U.S. P&C insurers in 2023, compared to 30 in 2022, to "higher reinsurance costs, worsening economic and social inflation and rising loss costs in 2023. Many struggled to navigate the uncertain economic environment and reported deteriorating results."[52]

[50] See *U.S. Property & Casualty and Title Insurance Industries - 2019 Full Year Results, NAIC.*
[51] See *U.S. Property & Casualty and Title Insurance Industries - 2023 Full Year Results, NAIC.*
[52] See *US Property/Casualty Downgrades Outpace Upgrades in 2023, Best's Special Report (2024).*

Volatility in the Reinsurance Market Has Amplified the Problem

The reinsurance markets provide a critical source of financial stability to insurers across all lines of business. Insurers utilize reinsurance to spread the risk of their direct business and frequently the use of reinsurance is a necessary expense for a direct writer.[53] The reinsurance market also provides additional capacity to the direct markets, given regulatory capital and other constraints that limit the amount of risk that a direct writer can place on their balance sheet.

Since 2019, the global reinsurance market has also experienced significant market strain. They have experienced the same spikes in loss costs as direct writers and seen payouts increase due to weather related events over this period. Reinsurers raised rates which forced direct writers to take on more risk than they would like, causing them to increase their own rates.

[53] A "direct writer" refers to the insurance company that accepts the transfer of risk directly from a consumer, business, or other entity that is seeking coverage for a liability. A reinsurer, in contrast, typically has no contractual relationship with the consumer, business, or other entity seeking coverage for a liability. A reinsurer, instead, enters into a contract with an insurer that is looking to transfer on some or all of a risk it has assumed.