
SENATE BILL 5630

State of Washington 63rd Legislature 2013 Regular Session

By Senators Bailey, Keiser, Becker, Conway, and Frockt

Read first time 02/06/13. Referred to Committee on Health Care .

1 AN ACT Relating to the enactment of the Engrossed Substitute House
2 Bill No. 1277 adult family home quality assurance panel; amending RCW
3 70.128.060 and 70.128.160; and adding new sections to chapter 70.128
4 RCW.

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

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

8 (1) The protection of vulnerable residents living in adult family
9 homes and other long-term care facilities in the state is a matter of
10 ongoing concern and grave importance. In 2011, the legislature
11 examined problems with the quality of care and oversight of adult
12 family homes in Washington. The 2011 legislature passed Engrossed
13 Substitute House Bill No. 1277 to address some of these issues, and in
14 addition, created an adult family home quality assurance panel, chaired
15 by the state long-term care ombudsman, to meet and make recommendations
16 to the governor and legislature by December 1, 2012, for further
17 improvements in adult family home care and the oversight of the homes
18 by the department of social and health services.

1 (2) The legislature recognizes that significant progress has been
2 made over the years in adult family home care, and that many adult
3 family homes provide high quality care and are the preferred
4 alternative for many residents in contrast to a larger care facility
5 setting. The legislature finds however that the quality of care in
6 some adult family homes would be improved, and abuse and neglect would
7 decline, if these homes' caregivers and providers received better
8 training and mentoring, residents and their families were more informed
9 and able to select an appropriate home, and oversight by the department
10 of social and health services was more vigorous and prompt against
11 poorly performing homes. It is therefore the intent of the legislature
12 to enact the recommendations included in the adult family home quality
13 assurance panel report in order to improve the quality of care of
14 vulnerable residents and the department's oversight of adult family
15 homes.

16 **Sec. 2.** RCW 70.128.060 and 2011 1st sp.s. c 3 s 403 are each
17 amended to read as follows:

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

21 (2) Subject to the provisions of this section, the department shall
22 issue a license to an adult family home if the department finds that
23 the applicant and the home are in compliance with this chapter and the
24 rules adopted under this chapter. The department may not issue a
25 license if (a) the applicant or a person affiliated with the applicant
26 has prior violations of this chapter relating to the adult family home
27 subject to the application or any other adult family home, or of any
28 other law regulating residential care facilities within the past ten
29 years that resulted in revocation, suspension, or nonrenewal of a
30 license or contract with the department; or (b) the applicant or a
31 person affiliated with the applicant has a history of significant
32 noncompliance with federal, state, or local laws, rules, or regulations
33 relating to the provision of care or services to vulnerable adults or
34 to children. A person is considered affiliated with an applicant if
35 the person is listed on the license application as a partner, officer,
36 director, resident manager, or majority owner of the applying entity,
37 or is the spouse of the applicant.

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

2 (4) Proof of financial solvency must be submitted when requested by
3 the department.

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

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

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

21 (8) For adult family homes that serve residents with special needs
22 such as dementia, developmental disabilities, or mental illness,
23 specialty training is required of providers and resident managers
24 consistent with RCW 70.128.230, and also is required for caregivers,
25 with standardized competency testing, as set forth by the department in
26 rule. The department shall examine, with input from experts,
27 providers, consumers, and advocates, whether the existing specialty
28 training courses are adequate for providers, resident managers, and
29 caregivers to meet these residents' special needs, are sufficiently
30 standardized in curricula and instructional techniques, and are
31 accompanied by effective tools to fairly evaluate successful student
32 completion. The department may enhance the existing specialty training
33 requirements by rule, and may update curricula, instructional
34 techniques, and competency testing based upon its review and
35 stakeholder input. In addition, the department shall examine, with
36 input from experts, providers, consumers, and advocates, whether
37 additional specialty training categories should be created for adult
38 family homes serving residents with other special needs, such as

1 traumatic brain injury, skilled nursing, or bariatric care. The
2 department may establish, by rule, additional specialty training
3 categories and requirements for providers, resident managers, and
4 caregivers, if needed to better serve residents with such special
5 needs.

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

8 ((+9+)) (10) The department shall establish, by rule, for multiple
9 facility operators educational standards substantially equivalent to
10 recognized national certification standards for residential care
11 administrators.

12 ((+10+)) (11) At the time of an application for an adult family
13 home license and upon the annual fee renewal date set by the
14 department, the licensee shall pay a license fee. Beginning July 1,
15 2011, the per bed license fee and any processing fees, including the
16 initial license fee, must be established in the omnibus appropriations
17 act and any amendment or additions made to that act. The license fees
18 established in the omnibus appropriations act and any amendment or
19 additions made to that act may not exceed the department's annual
20 licensing and oversight activity costs and must include the
21 department's cost of paying providers for the amount of the license fee
22 attributed to medicaid clients.

23 ((+11+)) (12) A provider who receives notification of the
24 department's initiation of a denial, suspension, nonrenewal, or
25 revocation of an adult family home license may, in lieu of appealing
26 the department's action, surrender or relinquish the license. The
27 department shall not issue a new license to or contract with the
28 provider, for the purposes of providing care to vulnerable adults or
29 children, for a period of twenty years following the surrendering or
30 relinquishment of the former license. The licensing record shall
31 indicate that the provider relinquished or surrendered the license,
32 without admitting the violations, after receiving notice of the
33 department's initiation of a denial, suspension, nonrenewal, or
34 revocation of a license.

35 ((+12+)) (13) The department shall establish, by rule, the
36 circumstances requiring a change in the licensed provider, which
37 include, but are not limited to, a change in ownership or control of
38 the adult family home or provider, a change in the provider's form of

1 legal organization, such as from sole proprietorship to partnership or
2 corporation, and a dissolution or merger of the licensed entity with
3 another legal organization. The new provider is subject to the
4 provisions of this chapter, the rules adopted under this chapter, and
5 other applicable law. In order to ensure that the safety of residents
6 is not compromised by a change in provider, the new provider is
7 responsible for correction of all violations that may exist at the time
8 of the new license.

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

11 (1) In order to enhance the selection of an appropriate adult
12 family home, all adult family homes licensed under this chapter shall
13 disclose the scope of care, services, and activities provided by the
14 home or customarily arranged for by the home. The disclosure must be
15 provided to the home's residents and the residents' representatives, if
16 any, prior to admission, and to interested prospective residents and
17 their representatives upon request, using a standardized disclosure
18 form developed by the department with stakeholders' input. The home
19 may also disclose supplemental information to prospective residents and
20 other interested persons.

21 (2) The disclosure form that the department develops must be
22 standardized, reasonable in length, and easy to read. The form must
23 indicate, among other categories, the scope of personal care and
24 medication service provided, the scope of skilled nursing services or
25 nursing delegation provided or available, any specialty care
26 designations held by the home, the customary number of caregivers
27 present during the day and whether the home has awake staff at night,
28 any particular cultural or language access available, and clearly state
29 whether the home admits medicaid clients or retains residents who later
30 become eligible for medicaid. The adult family home shall provide or
31 arrange for the care, services, and activities disclosed in its form.
32 The adult family home shall also clearly disclose to residents and
33 their representatives, if any, prior to admission, and to interested
34 prospective residents and their representatives upon request, in a
35 separate form or document of the home's choosing, the home's specific
36 charges for its care, services, items, and activities, including the

1 charges not covered by the home's daily or monthly rate, or by
2 medicaid, medicare, or other programs.

3 (3)(a) If the adult family home decreases the scope of care,
4 services, or activities it provides, due to circumstances beyond the
5 home's control, the home shall provide a minimum of thirty days'
6 written notice to the residents, and the residents' representative if
7 any, before the effective date of the decrease in the scope of care,
8 services, or activities provided.

9 (b) If the adult family home voluntarily decreases the scope of
10 care, services, or activities it provides, and any such decrease will
11 result in the discharge of one or more residents, then ninety days'
12 written notice must be provided prior to the effective date of the
13 decrease. Notice must be given to the residents and the residents'
14 representative, if any.

15 (c) If the adult family home increases the scope of care, services,
16 or activities it provides, the home shall promptly provide written
17 notice to the residents, and the residents' representative if any, and
18 shall indicate the date on which the increase is effective.

19 (4) When the care needs of a resident exceed the disclosed scope of
20 care or services that the adult family home provides, the home may
21 exceed the care or services previously disclosed, provided that the
22 additional care or services are permitted by the adult family home's
23 license, and the home can safely and appropriately serve the resident
24 with available staff or through the provision of reasonable
25 accommodations required by state or federal law. The provision of care
26 or services to a resident that exceed those previously disclosed by the
27 home does not mean that the home is capable of or required to provide
28 the same care or services to other residents, unless required as a
29 reasonable accommodation under state or federal law.

30 (5) An adult family home may deny admission to a prospective
31 resident if the home determines that the needs of the prospective
32 resident cannot be met, so long as the adult family home operates in
33 compliance with state and federal law, including RCW 70.129.030(3) and
34 the reasonable accommodation requirements of state and federal
35 antidiscrimination laws.

36 (6) The department shall work with consumers, advocates, and other
37 stakeholders to combine and improve existing web resources to create a
38 more robust, comprehensive, and user-friendly web site for family

1 members, residents, and prospective residents of adult family homes and
2 other licensed long-term care facilities in Washington. The department
3 may contract with outside vendors and experts to assist in the
4 development of the web site. The web site should be easy to navigate
5 and have links to information important for residents, prospective
6 residents, and their family members or representatives including, but
7 not limited to: (a) Explanations of the types of licensed long-term
8 care facilities, levels of care, and specialty designations; (b) lists
9 of suggested questions when looking for a care facility; (c) warning
10 signs of abuse, neglect, or financial exploitation; and (d) contact
11 information for the department and the long-term care ombudsman. In
12 addition, the consumer oriented web site should include a searchable
13 list of all licensed long-term care facilities in Washington, with
14 links to recent inspection and investigation reports and any
15 enforcement actions by the department. To facilitate the comparison of
16 homes and facilities, the web site should also include a link to each
17 licensed adult family home's disclosure form required by this section,
18 and to each licensed assisted living facility's disclosure form
19 required by RCW 18.20.300. The web site should permit the inclusion of
20 periodically updated information about whether a home or facility has
21 a current vacancy, if the home or facility provides such information to
22 the department.

23 **Sec. 4.** RCW 70.128.160 and 2011 1st sp.s. c 3 s 208 are each
24 amended to read as follows:

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

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

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

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

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

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

3 (a) Refuse to issue a license;

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

7 (c) Impose civil penalties of at least one hundred dollars per day
8 per violation;

9 (d) Impose civil penalties of up to three thousand dollars for each
10 incident that violates adult family home licensing laws and rules,
11 including, but not limited to, chapters 70.128, 70.129, 74.34, and
12 74.39A RCW and related rules. Each day upon which the same or
13 substantially similar action occurs is a separate violation subject to
14 the assessment of a separate penalty;

15 (e) Impose civil penalties of up to ten thousand dollars for a
16 current or former licensed provider who is operating an unlicensed
17 home;

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

19 (g) Suspend admissions to the adult family home by imposing stop
20 placement.

21 (3) When the department orders stop placement, the facility shall
22 not admit any person until the stop placement order is terminated. The
23 department may approve readmission of a resident to the facility from
24 a hospital or nursing home during the stop placement. The department
25 shall terminate the stop placement (~~when~~) only after: (a) The
26 violations necessitating the stop placement have been corrected; and
27 (b) the provider exhibits the capacity to maintain correction of the
28 violations previously found deficient. However, if upon the revisit
29 the department finds new violations that the department reasonably
30 believes will result in a new stop placement, the previous stop
31 placement shall remain in effect until the new stop placement is
32 imposed. In order to protect the home's existing residents from
33 potential ongoing neglect, when the provider has been cited for a
34 violation that is repeated, uncorrected, pervasive, or presents a
35 threat to the health, safety, or welfare of one or more residents, and
36 the department has imposed a stop placement, the department shall also
37 impose a condition on license or other remedy to facilitate or spur
38 prompter compliance if the violation has not been corrected, and the

1 provider has not exhibited the capacity to maintain correction, within
2 forty-five days of the stop placement. Nothing in this subsection is
3 intended to prevent the department from imposing a condition on license
4 or other remedy prior to forty-five days after a stop placement, if the
5 department considers it necessary to protect one or more residents'
6 well-being.

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

25 (5) Chapter 34.05 RCW applies to department actions under this
26 section, except that orders of the department imposing license
27 suspension, stop placement, or conditions for continuation of a license
28 are effective immediately upon notice and shall continue in effect
29 pending any hearing.

30 (6) A separate adult family home account is created in the custody
31 of the state treasurer. All receipts from civil penalties imposed
32 under this chapter must be deposited into the account. Only the
33 director or the director's designee may authorize expenditures from the
34 account. The account is subject to allotment procedures under chapter
35 43.88 RCW, but an appropriation is not required for expenditures. The
36 department shall use the special account only for promoting the quality
37 of life and care of residents living in adult family homes.

1 (7) The department shall by rule specify criteria as to when and
2 how the sanctions specified in this section must be applied. The
3 criteria must provide for the imposition of incrementally more severe
4 penalties for deficiencies that are repeated, uncorrected, pervasive,
5 or present a threat to the health, safety, or welfare of one or more
6 residents. The criteria shall be tiered such that those homes
7 consistently found to have deficiencies will be subjected to
8 increasingly severe penalties. The department shall implement prompt
9 and specific enforcement remedies without delay for providers found to
10 have delivered care or failed to deliver care resulting in problems
11 that are repeated, uncorrected, pervasive, or present a threat to the
12 health, safety, or welfare of one or more residents. In the selection
13 of remedies, the health, safety, and well-being of residents must be of
14 paramount importance.

15 NEW SECTION. **Sec. 5.** A new section is added to chapter 70.128 RCW
16 to read as follows:

17 (1) If during an inspection, reinspection, or complaint
18 investigation by the department, an adult family home corrects a
19 violation or deficiency that the department discovers, the department
20 shall record and consider such violation or deficiency for purposes of
21 the home's compliance history; however, the licensor or complaint
22 investigator may not include in the home's report the violation or
23 deficiency if the violation or deficiency:

24 (a) Is corrected to the satisfaction of the department prior to the
25 exit conference;

26 (b) Is not recurring; and

27 (c) Did not pose a significant risk of harm or actual harm to a
28 resident.

29 (2) For the purposes of this section, "recurring" means that the
30 violation or deficiency was found under the same regulation or statute
31 in one of the two most recent preceding inspections, reinspections, or
32 complaint investigations.

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