

SSB 5630 - H COMM AMD

By Committee on Appropriations Subcommittee on Health & Human Services

ADOPTED 04/15/2013

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2 Strike everything after the enacting clause and insert the
3 following:

4

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

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

18 (2) The legislature recognizes that significant progress has been
19 made over the years in adult family home care, and that many adult
20 family homes provide high quality care and are the preferred
21 alternative for many residents in contrast to a larger care facility
22 setting. The legislature finds however that the quality of care in
23 some adult family homes would be improved, and abuse and neglect would
24 decline, if these homes' caregivers and providers received better
25 training and mentoring, residents and their families were more
26 informed and able to select an appropriate home, and oversight by the
27 department of social and health services was more vigorous and prompt

1 against poorly performing homes. It is therefore the intent of the
2 legislature to enact the recommendations included in the adult family
3 home quality assurance panel report in order to improve the quality of
4 care of vulnerable residents and the department's oversight of adult
5 family homes.

6

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

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

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

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

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

32 (5) The department shall serve upon the applicant a copy of the
33 decision granting or denying an application for a license. An
34 applicant shall have the right to contest denial of his or her

1 application for a license as provided in chapter 34.05 RCW by
2 requesting a hearing in writing within twenty-eight days after receipt
3 of the notice of denial.

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

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

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

1 department may establish, by rule, additional specialty training
2 categories and requirements for providers, resident managers, and
3 caregivers, if needed to better serve residents with such special
4 needs.

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

7 ~~((+9))~~ (10) The department shall establish, by rule, for multiple
8 facility operators educational standards substantially equivalent to
9 recognized national certification standards for residential care
10 administrators.

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

22 ~~((+11))~~ (12) A provider who receives notification of the
23 department's initiation of a denial, suspension, nonrenewal, or
24 revocation of an adult family home license may, in lieu of appealing
25 the department's action, surrender or relinquish the license. The
26 department shall not issue a new license to or contract with the
27 provider, for the purposes of providing care to vulnerable adults or
28 children, for a period of twenty years following the surrendering or
29 relinquishment of the former license. The licensing record shall
30 indicate that the provider relinquished or surrendered the license,
31 without admitting the violations, after receiving notice of the
32 department's initiation of a denial, suspension, nonrenewal, or
33 revocation of a license.

34

1 (~~(12)~~) (13) The department shall establish, by rule, the
2 circumstances requiring a change in the licensed provider, which
3 include, but are not limited to, a change in ownership or control of
4 the adult family home or provider, a change in the provider's form of
5 legal organization, such as from sole proprietorship to partnership or
6 corporation, and a dissolution or merger of the licensed entity with
7 another legal organization. The new provider is subject to the
8 provisions of this chapter, the rules adopted under this chapter, and
9 other applicable law. In order to ensure that the safety of residents
10 is not compromised by a change in provider, the new provider is
11 responsible for correction of all violations that may exist at the
12 time of the new license.

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

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

27 (2)(a) The disclosure forms that the department develops must be
28 standardized, reasonable in length, and easy to read. The form
29 setting forth the scope of an adult family home's care, services, and
30 activities must be available from the adult family home through a link
31 to the department's web site developed pursuant to this section. This
32 form must indicate, among other categories, the scope of personal care
33 and medication service provided, the scope of skilled nursing services
34 or nursing delegation provided or available, any specialty care

1 designations held by the adult family home, the customary number of
2 caregivers present during the day and whether the home has awake staff
3 at night, any particular cultural or language access available, and
4 clearly state whether the home admits medicaid clients or retains
5 residents who later become eligible for medicaid. The adult family
6 home shall provide or arrange for the care, services, and activities
7 disclosed in its form.

8 (b) The department must also develop a second standardized
9 disclosure form with stakeholders' input for use by adult family homes
10 to set forth an adult family home's charges for its care, services,
11 items, and activities, including the charges not covered by the home's
12 daily or monthly rate, or by medicaid, medicare, or other programs.
13 This form must be available from the home and disclosed to residents
14 and their representatives, if any, prior to admission, and to
15 interested prospective residents and their representatives upon
16 request.

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

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

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

33 (4) When the care needs of a resident exceed the disclosed scope
34 of care or services that the adult family home provides, the home may

1 exceed the care or services previously disclosed, provided that the
2 additional care or services are permitted by the adult family home's
3 license, and the home can safely and appropriately serve the resident
4 with available staff or through the provision of reasonable
5 accommodations required by state or federal law. The provision of
6 care or services to a resident that exceed those previously disclosed
7 by the home does not mean that the home is capable of or required to
8 provide the same care or services to other residents, unless required
9 as a reasonable accommodation under state or federal law.

10 (5) An adult family home may deny admission to a prospective
11 resident if the home determines that the needs of the prospective
12 resident cannot be met, so long as the adult family home operates in
13 compliance with state and federal law, including RCW 70.129.030(3) and
14 the reasonable accommodation requirements of state and federal
15 antidiscrimination laws.

16 (6) The department shall work with consumers, advocates, and other
17 stakeholders to combine and improve existing web resources to create a
18 more robust, comprehensive, and user-friendly web site for family
19 members, residents, and prospective residents of adult family homes in
20 Washington. The department may contract with outside vendors and
21 experts to assist in the development of the web site. The web site
22 should be easy to navigate and have links to information important for
23 residents, prospective residents, and their family members or
24 representatives including, but not limited to: (a) Explanations of
25 the types of licensed long-term care facilities, levels of care, and
26 specialty designations; (b) lists of suggested questions when looking
27 for a care facility; (c) warning signs of abuse, neglect, or financial
28 exploitation; and (d) contact information for the department and the
29 long-term care ombudsman. In addition, the consumer oriented web site
30 should include a searchable list of all adult family homes in
31 Washington, with links to inspection and investigation reports and any
32 enforcement actions by the department for the previous three years.
33 If a violation or enforcement remedy is deleted, rescinded, or
34 modified under RCW 70.128.167 or chapter 34.05 RCW, the department

1 shall make the appropriate changes to the information on the web site
2 as soon as reasonably feasible, but no later than thirty days after
3 the violation or enforcement remedy has been deleted, rescinded, or
4 modified. To facilitate the comparison of adult family homes, the web
5 site should also include a link to each licensed adult family home's
6 disclosure form required by subsection (2)(a) of this section. The
7 department's web site should also include periodically updated
8 information about whether an adult family home has a current vacancy,
9 if the home provides such information to the department, or may
10 include links to other consumer-oriented web sites with the vacancy
11 information.

12
13 **Sec. 4.** RCW 70.128.160 and 2011 1st sp.s. c 3 s 208 are each
14 amended to read as follows:

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

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

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

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

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

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

30 (a) Refuse to issue a license;

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

34

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

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

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

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

13 (g) Suspend admissions to the adult family home by imposing stop
14 placement.

15 (3) When the department orders stop placement, the facility shall
16 not admit any person until the stop placement order is terminated.
17 The department may approve readmission of a resident to the facility
18 from a hospital or nursing home during the stop placement. The
19 department shall terminate the stop placement (~~when~~) only after:

20 (a) The violations necessitating the stop placement have been
21 corrected; and (b) the provider exhibits the capacity to maintain
22 correction of the violations previously found deficient. However, if
23 upon the revisit the department finds new violations that the
24 department reasonably believes will result in a new stop placement,
25 the previous stop placement shall remain in effect until the new stop
26 placement is imposed. In order to protect the home's existing
27 residents from potential ongoing neglect, when the provider has been
28 cited for a violation that is repeated, uncorrected, pervasive, or
29 presents a threat to the health, safety, or welfare of one or more
30 residents, and the department has imposed a stop placement, the
31 department shall also impose a condition on license or other remedy to
32 facilitate or spur prompter compliance if the violation has not been
33 corrected, and the provider has not exhibited the capacity to maintain
34 correction, within sixty days of the stop placement.

1 (4) Nothing in subsection (3) of this section is intended to apply
2 to stop placement imposed in conjunction with a license revocation or
3 summary suspension or to prevent the department from imposing a
4 condition on license or other remedy prior to sixty days after a stop
5 placement, if the department considers it necessary to protect one or
6 more residents' well-being. After a department finding of a violation
7 for which a stop placement has been imposed, the department shall make
8 an on-site revisit of the provider within fifteen working days from
9 the request for revisit, to ensure correction of the violation. For
10 violations that are serious or recurring or uncorrected following a
11 previous citation, and create actual or threatened harm to one or more
12 residents' well-being, including violations of residents' rights, the
13 department shall make an on-site revisit as soon as appropriate to
14 ensure correction of the violation. Verification of correction of all
15 other violations may be made by either a department on-site revisit or
16 by written or photographic documentation found by the department to be
17 credible. This subsection does not prevent the department from
18 enforcing license suspensions or revocations. Nothing in this
19 subsection shall interfere with or diminish the department's authority
20 and duty to ensure that the provider adequately cares for residents,
21 including to make departmental on-site revisits as needed to ensure
22 that the provider protects residents, and to enforce compliance with
23 this chapter.

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

29 (6) A separate adult family home account is created in the custody
30 of the state treasurer. All receipts from civil penalties imposed
31 under this chapter must be deposited into the account. Only the
32 director or the director's designee may authorize expenditures from
33 the account. The account is subject to allotment procedures under
34 chapter 43.88 RCW, but an appropriation is not required for

1 expenditures. The department shall use the special account only for
2 promoting the quality of life and care of residents living in adult
3 family homes.

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

18
19 NEW SECTION. **Sec. 5.** A new section is added to chapter 70.128
20 RCW to read as follows:

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

28 (a) Is corrected to the satisfaction of the department prior to
29 the exit conference;

30 (b) Is not recurring; and

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

33 (2) For the purposes of this section, "recurring" means that the
34 violation or deficiency was found under the same regulation or statute

1 in one of the two most recent preceding inspections, reinspections, or
2 complaint investigations.

3
4 NEW SECTION. **Sec. 6.** If specific funding for the purposes of this
5 act, referencing this act by bill or chapter number, is not provided
6 by June 30, 2013, in the omnibus appropriations act, this act is null
7 and void."

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9 Correct the title.

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11

EFFECT: Increases the number of days that an adult family home under a stop placement order can be in violation before the Department must impose protective conditions for current residents from 45 days to 60 days.

Removes references to assisted living facilities with respect to the website content.

Limits the duration for links to adult family home inspections and investigation reports and enforcement actions to remain on the Department of Social and Health Services (Department) website to previous three years. Requires the Department to update the website as soon as reasonably feasible if a violation or enforcement remedy is deleted, rescinded, or modified, but no more than 30 days from the deletion, rescission, or modification.

Declares the act to be null and void if funding for the act is not provided in the 2013-15 budget.

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