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**SUBSTITUTE SENATE BILL 5630**

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**State of Washington**

**63rd Legislature**

**2013 Regular Session**

**By** Senate Health Care (originally sponsored by Senators Bailey, Keiser, Becker, Conway, and Frockt)

READ FIRST TIME 02/22/13.

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 for caregivers hired after the  
26 effective date of this section, as set forth by the department in rule.  
27 The department shall examine, with input from experts, providers,  
28 consumers, and advocates, whether the existing specialty training  
29 courses are adequate for providers, resident managers, and caregivers  
30 to meet these residents' special needs, are sufficiently standardized  
31 in curricula and instructional techniques, and are accompanied by  
32 effective tools to fairly evaluate successful student completion. The  
33 department may enhance the existing specialty training requirements by  
34 rule, and may update curricula, instructional techniques, and  
35 competency testing based upon its review and stakeholder input. In  
36 addition, the department shall examine, with input from experts,  
37 providers, consumers, and advocates, whether additional specialty  
38 training categories should be created for adult family homes serving

1 residents with other special needs, such as traumatic brain injury,  
2 skilled nursing, or bariatric care. The department may establish, by  
3 rule, additional specialty training categories and requirements for  
4 providers, resident managers, and caregivers, if needed to better serve  
5 residents with such special 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, and charges for, the care, services, and  
14 activities provided by the home or customarily arranged for by the  
15 home. The disclosure must be provided to the home's residents and the  
16 residents' representatives, if any, prior to admission, and to  
17 interested prospective residents and their representatives upon  
18 request, using standardized disclosure forms developed by the  
19 department with stakeholders' input. The home may also disclose  
20 supplemental information to prospective residents and other interested  
21 persons.

22 (2)(a) The disclosure forms that the department develops must be  
23 standardized, reasonable in length, and easy to read. The form setting  
24 forth the scope of an adult family home's care, services, and  
25 activities must be available from the adult family home and through a  
26 link from the department's web site as provided in this section. This  
27 form must indicate, among other categories, the scope of personal care  
28 and medication service provided, the scope of skilled nursing services  
29 or nursing delegation provided or available, any specialty care  
30 designations held by the home, the customary number of caregivers  
31 present during the day and whether the home has awake staff at night,  
32 any particular cultural or language access available, and clearly state  
33 whether the home admits medicaid clients or retains residents who later  
34 become eligible for medicaid. The adult family home shall provide or  
35 arrange for the care, services, and activities disclosed in its form.

36 (b) The department must, with stakeholder input, develop a second  
37 standardized disclosure form for use by adult family homes to set forth

1 an adult family home's charges for its care, services, items, and  
2 activities, including the charges not covered by the home's daily or  
3 monthly rate, or by medicaid, medicare, or other programs. This form  
4 must be available from the adult family home and disclosed to residents  
5 and their representatives, if any, prior to admission, and to  
6 interested prospective residents and their representatives upon  
7 request.

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

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

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

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

35 (5) An adult family home may deny admission to a prospective  
36 resident if the home determines that the needs of the prospective  
37 resident cannot be met, so long as the adult family home operates in

1 compliance with state and federal law, including RCW 70.129.030(3) and  
2 the reasonable accommodation requirements of state and federal  
3 antidiscrimination laws.

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

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

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

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

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

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

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

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

11 (a) Refuse to issue a license;

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

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

17 (d) Impose civil penalties of up to three thousand dollars for each  
18 incident that violates adult family home licensing laws and rules,  
19 including, but not limited to, chapters 70.128, 70.129, 74.34, and  
20 74.39A RCW and related rules. Each day upon which the same or  
21 substantially similar action occurs is a separate violation subject to  
22 the assessment of a separate penalty;

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

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

27 (g) Suspend admissions to the adult family home by imposing stop  
28 placement.

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



1 placement shall remain in effect until the new stop placement is  
2 imposed. In order to protect the home's existing residents from  
3 potential ongoing neglect, when the provider has been cited for a  
4 violation that is repeated, uncorrected, pervasive, or presents a  
5 threat to the health, safety, or welfare of one or more residents, and  
6 the department has imposed a stop placement, the department shall also  
7 impose a condition on license or other remedy to facilitate or spur  
8 prompter compliance if the violation has not been corrected, and the  
9 provider has not exhibited the capacity to maintain correction, within  
10 forty-five days of the stop placement.

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

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

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

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

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

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

32 (a) Is corrected to the satisfaction of the department prior to the  
33 exit conference;

34 (b) Is not recurring; and

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

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

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