
SUBSTITUTE HOUSE BILL 1701

State of Washington 63rd Legislature 2013 Regular Session

By House Health Care & Wellness (originally sponsored by Representatives Moeller, Angel, Tharinger, and Pollet)

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

36 (b) The department must also develop a second standardized
37 disclosure form with stakeholders' input for use by adult family homes

1 to set forth a 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 home and disclosed to residents and their
5 representatives, if any, prior to admission, and to interested
6 prospective residents and their representatives upon request.

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

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

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

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

34 (5) An adult family home may deny admission to a prospective
35 resident if the home determines that the needs of the prospective
36 resident cannot be met, so long as the adult family home operates in
37 compliance with state and federal law, including RCW 70.129.030(3) and

1 the reasonable accommodation requirements of state and federal
2 antidiscrimination laws.

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

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

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

35 (a) Failed or refused to comply with the requirements of this
36 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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