

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5733

Chapter 140, Laws of 2004

(partial veto)

58th Legislature
2004 Regular Session

BOARDING AND ADULT FAMILY HOMES

EFFECTIVE DATE: 6/10/04

Passed by the Senate March 10, 2004
YEAS 49 NAYS 0

BRAD OWEN

President of the Senate

Passed by the House March 3, 2004
YEAS 96 NAYS 0

FRANK CHOPP

Speaker of the House of Representatives

Approved March 26, 2004, with the
exception of section 2, which is vetoed.

GARY F. LOCKE

Governor of the State of Washington

CERTIFICATE

I, Milton H. Doumit, Jr.,
Secretary of the Senate of the
State of Washington, do hereby
certify that the attached is
SUBSTITUTE SENATE BILL 5733 as
passed by the Senate and the House
of Representatives on the dates
hereon set forth.

MILTON H. DOUMIT JR.

Secretary

FILED

March 26, 2004 - 3:11 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5733

AS AMENDED BY THE HOUSE

Passed Legislature - 2004 Regular Session

State of Washington 58th Legislature 2003 Regular Session

By Senate Committee on Health & Long-Term Care (originally sponsored by Senators Winsley, Thibaudeau and Kohl-Welles)

READ FIRST TIME 03/05/03.

1 AN ACT Relating to fairness and protection in boarding homes and
2 adult family homes; amending RCW 18.20.050, 18.20.110, 70.128.060,
3 18.20.125, 18.20.195, and 74.39A.050; and repealing RCW 18.20.120.

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

5 **Sec. 1.** RCW 18.20.050 and 2003 c 231 s 4 are each amended to read
6 as follows:

7 (1) Upon receipt of an application for license, if the applicant
8 and the boarding home facilities meet the requirements established
9 under this chapter, the department shall issue a license. If there is
10 a failure to comply with the provisions of this chapter or the
11 standards and rules adopted pursuant thereto, the department may in its
12 discretion issue to an applicant for a license, or for the renewal of
13 a license, a provisional license which will permit the operation of the
14 boarding home for a period to be determined by the department, but not
15 to exceed twelve months, which provisional license shall not be subject
16 to renewal. The department may also place conditions on the license
17 under RCW 18.20.190. At the time of the application for or renewal of
18 a license or provisional license the licensee shall pay a license fee
19 as established by the department under RCW 43.20B.110. All licenses

1 issued under the provisions of this chapter shall expire on a date to
2 be set by the department, but no license issued pursuant to this
3 chapter shall exceed twelve months in duration. However, when the
4 annual license renewal date of a previously licensed boarding home is
5 set by the department on a date less than twelve months prior to the
6 expiration date of a license in effect at the time of reissuance, the
7 license fee shall be prorated on a monthly basis and a credit be
8 allowed at the first renewal of a license for any period of one month
9 or more covered by the previous license. All applications for renewal
10 of a license shall be made not later than thirty days prior to the date
11 of expiration of the license. Each license shall be issued only for
12 the premises and persons named in the application, and no license shall
13 be transferable or assignable. Licenses shall be posted in a
14 conspicuous place on the licensed premises.

15 (2) A licensee who receives notification of the department's
16 initiation of a denial, suspension, nonrenewal, or revocation of a
17 boarding home license may, in lieu of appealing the department's
18 action, surrender or relinquish the license. The department shall not
19 issue a new license to or contract with the licensee, for the purposes
20 of providing care to vulnerable adults or children, for a period of
21 twenty years following the surrendering or relinquishment of the former
22 license. The licensing record shall indicate that the licensee
23 relinquished or surrendered the license, without admitting the
24 violations, after receiving notice of the department's initiation of a
25 denial, suspension, nonrenewal, or revocation of a license.

26 (3) The department shall establish, by rule, the circumstances
27 requiring a change in licensee, which include, but are not limited to,
28 a change in ownership or control of the boarding home or licensee, a
29 change in the licensee's form of legal organization, such as from sole
30 proprietorship to partnership or corporation, and a dissolution or
31 merger of the licensed entity with another legal organization. The new
32 licensee is subject to the provisions of this chapter, the rules
33 adopted under this chapter, and other applicable law. In order to
34 ensure that the safety of residents is not compromised by a change in
35 licensee, the new licensee is responsible for correction of all
36 violations that may exist at the time of the new license.

37 (4) The department may deny, suspend, modify, revoke, or refuse to

1 renew a license when the department finds that the applicant or
2 licensee or any partner, officer, director, managerial employee, or
3 majority owner of the applicant or licensee:

4 (a) Operated a boarding home without a license or under a revoked
5 or suspended license; or

6 (b) Knowingly or with reason to know made a false statement of a
7 material fact (i) in an application for license or any data attached to
8 the application, or (ii) in any matter under investigation by the
9 department; or

10 (c) Refused to allow representatives or agents of the department to
11 inspect (i) the books, records, and files required to be maintained, or
12 (ii) any portion of the premises of the boarding home; or

13 (d) Willfully prevented, interfered with, or attempted to impede in
14 any way (i) the work of any authorized representative of the
15 department, or (ii) the lawful enforcement of any provision of this
16 chapter; or

17 (e) Has a history of significant noncompliance with federal or
18 state regulations in providing care or services to vulnerable adults or
19 children. In deciding whether to deny, suspend, modify, revoke, or
20 refuse to renew a license under this section, the factors the
21 department considers shall include the gravity and frequency of the
22 noncompliance.

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

29 ***Sec. 2. RCW 18.20.110 and 2003 c 280 s 1 are each amended to read**
30 **as follows:**

31 **The department shall make or cause to be made, at least every**
32 **eighteen months with an annual average of fifteen months, an inspection**
33 **and investigation of all boarding homes. However, the department may**
34 **delay an inspection to twenty-four months if the boarding home has had**
35 **three consecutive inspections with no written notice of violations and**
36 **has received no written notice of violations resulting from complaint**
37 **investigation during that same time period. The department may at**

1 anytime make an unannounced inspection of a licensed home to assure
2 that the licensee is in compliance with this chapter and the rules
3 adopted under this chapter. Every inspection shall focus primarily on
4 actual or potential resident outcomes, and may include an inspection of
5 every part of the premises and an examination of all records (~~((other~~
6 ~~than financial records))~~), methods of administration, the general and
7 special dietary, and the stores and methods of supply; however, the
8 department shall not have access to financial records or to other
9 records, except that financial records of the boarding home may be
10 examined when the department has reasonable cause to believe that a
11 financial obligation related to resident care or services will not be
12 met, such as a complaint that staff wages or utility costs have not
13 been paid, or when necessary for the department to investigate alleged
14 financial exploitation of a resident. Following such an inspection or
15 inspections, written notice of any violation of this law or the rules
16 adopted hereunder shall be given to the applicant or licensee and the
17 department. The department may prescribe by rule that any licensee or
18 applicant desiring to make specified types of alterations or additions
19 to its facilities or to construct new facilities shall, before
20 commencing such alteration, addition, or new construction, submit plans
21 and specifications (~~((therefor))~~) to the agencies responsible for plan
22 reviews for preliminary inspection and approval or recommendations with
23 respect to compliance with the rules and standards herein authorized.

*Sec. 2 was vetoed. See message at end of chapter.

24 **Sec. 3.** RCW 70.128.060 and 2001 c 193 s 9 are each amended to read
25 as follows:

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

29 (2) Subject to the provisions of this section, the department shall
30 issue a license to an adult family home if the department finds that
31 the applicant and the home are in compliance with this chapter and the
32 rules adopted under this chapter, unless (a) the applicant or a person
33 affiliated with the applicant has prior violations of this chapter
34 relating to the adult family home subject to the application or any
35 other adult family home, or of any other law regulating residential
36 care facilities within the past five years that resulted in revocation,
37 suspension, or nonrenewal of a license or contract with the department;

1 or (b) the applicant or a person affiliated with the applicant has a
2 history of significant noncompliance with federal, state, or local
3 laws, rules, or regulations relating to the provision of care or
4 services to vulnerable adults or to children. A person is considered
5 affiliated with an applicant if the person is listed on the license
6 application as a partner, officer, director, resident manager, or
7 majority owner of the applying entity, or is the spouse of the
8 applicant.

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

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

16 (5) The department shall not issue a license to a provider if the
17 department finds that the provider or spouse of the provider or any
18 partner, officer, director, managerial employee, or majority owner (~~of~~
19 ~~five percent or more if the provider~~) has a history of significant
20 noncompliance with federal or state regulations, rules, or laws in
21 providing care or services to vulnerable adults or to children.

22 (6) The department shall license an adult family home for the
23 maximum level of care that the adult family home may provide. The
24 department shall define, in rule, license levels based upon the
25 education, training, and caregiving experience of the licensed provider
26 or staff.

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

29 (8) The department shall establish, by rule, for multiple facility
30 operators educational standards substantially equivalent to recognized
31 national certification standards for residential care administrators.

32 (9) The license fee shall be set at fifty dollars per year for each
33 home. A fifty dollar processing fee shall also be charged each home
34 when the home is initially licensed.

35 (10) A provider who receives notification of the department's
36 initiation of a denial, suspension, nonrenewal, or revocation of an
37 adult family home license may, in lieu of appealing the department's
38 action, surrender or relinquish the license. The department shall not

1 issue a new license to or contract with the provider, for the purposes
2 of providing care to vulnerable adults or children, for a period of
3 twenty years following the surrendering or relinquishment of the former
4 license. The licensing record shall indicate that the provider
5 relinquished or surrendered the license, without admitting the
6 violations, after receiving notice of the department's initiation of a
7 denial, suspension, nonrenewal, or revocation of a license.

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

20 **Sec. 4.** RCW 18.20.125 and 2003 c 231 s 5 are each amended to read
21 as follows:

22 (1) Inspections must be outcome based and responsive to resident
23 complaints and based on a clear set of health, quality of care, and
24 safety standards that are easily understandable and have been made
25 available to facilities, residents, and other interested parties. This
26 includes that when conducting licensing inspections, the department
27 shall interview an appropriate percentage of residents, family members,
28 and advocates in addition to interviewing appropriate staff.

29 (2) Prompt and specific enforcement remedies shall also be
30 implemented without delay, consistent with RCW 18.20.190, for
31 facilities found to have delivered care or failed to deliver care
32 resulting in problems that are serious, recurring, or uncorrected, or
33 that create a hazard that is causing or likely to cause death or
34 serious harm to one or more residents. These enforcement remedies may
35 also include, when appropriate, reasonable conditions on a license. In
36 the selection of remedies, the safety, health, and well-being of
37 residents shall be of paramount importance.

1 (3) To the extent funding is available, the licensee,
2 administrator, and their staff should be screened through background
3 checks in a uniform and timely manner to ensure that they do not have
4 a criminal history that would disqualify them from working with
5 vulnerable adults. Employees may be provisionally hired pending the
6 results of the background check if they have been given three positive
7 references.

8 (4) No licensee, administrator, or staff, or prospective licensee,
9 administrator, or staff, with a stipulated finding of fact, conclusion
10 of law, and agreed order, or finding of fact, conclusion of law, or
11 final order issued by a disciplining authority, a court of law, or
12 entered into the state registry finding him or her guilty of abuse,
13 neglect, exploitation, or abandonment of a minor or a vulnerable adult
14 as defined in chapter 74.34 RCW shall be employed in the care of and
15 have unsupervised access to vulnerable adults.

16 **Sec. 5.** RCW 18.20.195 and 2001 c 193 s 7 are each amended to read
17 as follows:

18 (1) The licensee or its designee has the right to an informal
19 dispute resolution process to dispute any violation found or
20 enforcement remedy imposed by the department during a licensing
21 inspection or complaint investigation. The purpose of the informal
22 dispute resolution process is to provide an opportunity for an exchange
23 of information that may lead to the modification, deletion, or removal
24 of a violation, or parts of a violation, or enforcement remedy imposed
25 by the department.

26 (2) The informal dispute resolution process provided by the
27 department shall include, but is not necessarily limited to, an
28 opportunity for review by a department employee who did not participate
29 in, or oversee, the determination of the violation or enforcement
30 remedy under dispute. The department shall develop, or further
31 develop, an informal dispute resolution process consistent with this
32 section.

33 (3) A request for an informal dispute resolution shall be made to
34 the department within ten working days from the receipt of a written
35 finding of a violation or enforcement remedy. The request shall
36 identify the violation or violations and enforcement remedy or remedies

1 being disputed. The department shall convene a meeting, when possible,
2 within ten working days of receipt of the request for informal dispute
3 resolution, unless by mutual agreement a later date is agreed upon.

4 (4) If the department determines that a violation or enforcement
5 remedy should not be cited or imposed, the department shall delete the
6 violation or immediately rescind or modify the enforcement remedy. If
7 the department determines that a violation should have been cited or an
8 enforcement remedy imposed, the department shall add the citation or
9 enforcement remedy. Upon request, the department shall issue a clean
10 copy of the revised report, statement of deficiencies, or notice of
11 enforcement action.

12 (5) The request for informal dispute resolution does not delay the
13 effective date of any enforcement remedy imposed by the department,
14 except that civil monetary fines are not payable until the exhaustion
15 of any formal hearing and appeal rights provided under this chapter.
16 The licensee shall submit to the department, within the time period
17 prescribed by the department, a plan of correction to address any
18 undisputed violations, and including any violations that still remain
19 following the informal dispute resolution.

20 **Sec. 6.** RCW 74.39A.050 and 2000 c 121 s 10 are each amended to
21 read as follows:

22 The department's system of quality improvement for long-term care
23 services shall use the following principles, consistent with applicable
24 federal laws and regulations:

25 (1) The system shall be client-centered and promote privacy,
26 independence, dignity, choice, and a home or home-like environment for
27 consumers consistent with chapter 392, Laws of 1997.

28 (2) The goal of the system is continuous quality improvement with
29 the focus on consumer satisfaction and outcomes for consumers. This
30 includes that when conducting licensing or contract inspections, the
31 department shall interview an appropriate percentage of residents,
32 family members, resident case managers, and advocates in addition to
33 interviewing providers and staff.

34 (3) Providers should be supported in their efforts to improve
35 quality and address identified problems initially through training,
36 consultation, technical assistance, and case management.

1 (4) The emphasis should be on problem prevention both in monitoring
2 and in screening potential providers of service.

3 (5) Monitoring should be outcome based and responsive to consumer
4 complaints and based on a clear set of health, quality of care, and
5 safety standards that are easily understandable and have been made
6 available to providers, residents, and other interested parties.

7 (6) Prompt and specific enforcement remedies shall also be
8 implemented without delay, pursuant to RCW 74.39A.080, RCW 70.128.160,
9 chapter 18.51 RCW, or chapter 74.42 RCW, for providers found to have
10 delivered care or failed to deliver care resulting in problems that are
11 serious, recurring, or uncorrected, or that create a hazard that is
12 causing or likely to cause death or serious harm to one or more
13 residents. These enforcement remedies may also include, when
14 appropriate, reasonable conditions on a contract or license. In the
15 selection of remedies, the safety, health, and well-being of residents
16 shall be of paramount importance.

17 (7) To the extent funding is available, all long-term care staff
18 directly responsible for the care, supervision, or treatment of
19 vulnerable persons should be screened through background checks in a
20 uniform and timely manner to ensure that they do not have a criminal
21 history that would disqualify them from working with vulnerable
22 persons. Whenever a state conviction record check is required by state
23 law, persons may be employed or engaged as volunteers or independent
24 contractors on a conditional basis according to law and rules adopted
25 by the department.

26 (8) No provider or staff, or prospective provider or staff, with a
27 stipulated finding of fact, conclusion of law, an agreed order, or
28 finding of fact, conclusion of law, or final order issued by a
29 disciplining authority, a court of law, or entered into a state
30 registry finding him or her guilty of abuse, neglect, exploitation, or
31 abandonment of a minor or a vulnerable adult as defined in chapter
32 74.34 RCW shall be employed in the care of and have unsupervised access
33 to vulnerable adults.

34 (9) The department shall establish, by rule, a state registry which
35 contains identifying information about personal care aides identified
36 under this chapter who have substantiated findings of abuse, neglect,
37 financial exploitation, or abandonment of a vulnerable adult as defined
38 in RCW 74.34.020. The rule must include disclosure, disposition of

1 findings, notification, findings of fact, appeal rights, and fair
2 hearing requirements. The department shall disclose, upon request,
3 substantiated findings of abuse, neglect, financial exploitation, or
4 abandonment to any person so requesting this information.

5 (10) The department shall by rule develop training requirements for
6 individual providers and home care agency providers. Effective March
7 1, 2002, individual providers and home care agency providers must
8 satisfactorily complete department-approved orientation, basic
9 training, and continuing education within the time period specified by
10 the department in rule. The department shall adopt rules by March 1,
11 2002, for the implementation of this section based on the
12 recommendations of the community long-term care training and education
13 steering committee established in RCW 74.39A.190. The department shall
14 deny payment to an individual provider or a home care provider who does
15 not complete the training requirements within the time limit specified
16 by the department by rule.

17 (11) In an effort to improve access to training and education and
18 reduce costs, especially for rural communities, the coordinated system
19 of long-term care training and education must include the use of
20 innovative types of learning strategies such as internet resources,
21 videotapes, and distance learning using satellite technology
22 coordinated through community colleges or other entities, as defined by
23 the department.

24 (12) The department shall create an approval system by March 1,
25 2002, for those seeking to conduct department-approved training. In
26 the rule-making process, the department shall adopt rules based on the
27 recommendations of the community long-term care training and education
28 steering committee established in RCW 74.39A.190.

29 (13) The department shall establish, by rule, training, background
30 checks, and other quality assurance requirements for personal aides who
31 provide in-home services funded by medicaid personal care as described
32 in RCW 74.09.520, community options program entry system waiver
33 services as described in RCW 74.39A.030, or chore services as described
34 in RCW 74.39A.110 that are equivalent to requirements for individual
35 providers.

36 (14) Under existing funds the department shall establish internally
37 a quality improvement standards committee to monitor the development of
38 standards and to suggest modifications.

1 (15) Within existing funds, the department shall design, develop,
2 and implement a long-term care training program that is flexible,
3 relevant, and qualifies towards the requirements for a nursing
4 assistant certificate as established under chapter 18.88A RCW. This
5 subsection does not require completion of the nursing assistant
6 certificate training program by providers or their staff. The long-
7 term care teaching curriculum must consist of a fundamental module, or
8 modules, and a range of other available relevant training modules that
9 provide the caregiver with appropriate options that assist in meeting
10 the resident's care needs. Some of the training modules may include,
11 but are not limited to, specific training on the special care needs of
12 persons with developmental disabilities, dementia, mental illness, and
13 the care needs of the elderly. No less than one training module must
14 be dedicated to workplace violence prevention. The nursing care
15 quality assurance commission shall work together with the department to
16 develop the curriculum modules. The nursing care quality assurance
17 commission shall direct the nursing assistant training programs to
18 accept some or all of the skills and competencies from the curriculum
19 modules towards meeting the requirements for a nursing assistant
20 certificate as defined in chapter 18.88A RCW. A process may be
21 developed to test persons completing modules from a caregiver's class
22 to verify that they have the transferable skills and competencies for
23 entry into a nursing assistant training program. The department may
24 review whether facilities can develop their own related long-term care
25 training programs. The department may develop a review process for
26 determining what previous experience and training may be used to waive
27 some or all of the mandatory training. The department of social and
28 health services and the nursing care quality assurance commission shall
29 work together to develop an implementation plan by December 12, 1998.

30 NEW SECTION. **Sec. 7.** RCW 18.20.120 (Information disclosure) and
31 2000 c 47 s 5, 1994 c 214 s 25, & 1957 c 253 s 12 are each repealed.

Passed by the Senate March 10, 2004.

Passed by the House March 3, 2004.

Approved by the Governor March 26, 2004, with the exception of
certain items that were vetoed.

Filed in Office of Secretary of State March 26, 2004.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 2,
Substitute Senate Bill No. 5733 entitled:

"AN ACT Relating to fairness and protection in boarding homes and
adult family homes;"

This bill improves the laws governing the licensing of boarding homes and adult family homes. It clarifies responsibilities of the Department of Social and Health Services (DSHS) to communicate inspection and other quality of care findings to residents and their families.

Section 2 would have allowed DSHS to access the financial records of a boarding home when needed to investigate allegations of financial exploitation of a resident, or to examine instances in which there is reason to believe that a financial obligation related to resident care will not be met. This same section of statute is amended by section 3 of Substitute Senate Bill No. 6160. The amendments in Substitute Senate Bill No. 6160 provide additional protections that support the operation of quality assurance committees in boarding homes. In light of the amendments in Substitute Senate Bill No. 6160, section 2 of this bill would have introduced confusion in quality monitoring activities and is unnecessary.

For these reasons, I have vetoed section 2 of Substitute Senate Bill No. 5733.

With the exception of section 2, Substitute Senate Bill No. 5733 is approved."