

SSB 5630 - H COMM AMD

By Committee on Health Care & Wellness

NOT CONSIDERED 04/15/2013

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

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

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

16 (2) The legislature recognizes that significant progress has been  
17 made over the years in adult family home care, and that many adult  
18 family homes provide high quality care and are the preferred  
19 alternative for many residents in contrast to a larger care facility  
20 setting. The legislature finds however that the quality of care in  
21 some adult family homes would be improved, and abuse and neglect would  
22 decline, if these homes' caregivers and providers received better  
23 training and mentoring, residents and their families were more informed  
24 and able to select an appropriate home, and oversight by the department  
25 of social and health services was more vigorous and prompt against  
26 poorly performing homes. It is therefore the intent of the legislature  
27 to enact the recommendations included in the adult family home quality  
28 assurance panel report in order to improve the quality of care of  
29 vulnerable residents and the department's oversight of adult family  
30 homes.

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

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

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

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

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

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

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

1 (7) The department shall license an adult family home for the  
2 maximum level of care that the adult family home may provide. The  
3 department shall define, in rule, license levels based upon the  
4 education, training, and caregiving experience of the licensed provider  
5 or staff.

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

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

31 ~~((+9))~~ (10) The department shall establish, by rule, for multiple  
32 facility operators educational standards substantially equivalent to  
33 recognized national certification standards for residential care  
34 administrators.

35 ~~((+10))~~ (11) At the time of an application for an adult family  
36 home license and upon the annual fee renewal date set by the  
37 department, the licensee shall pay a license fee. Beginning July 1,  
38 2011, the per bed license fee and any processing fees, including the

1 initial license fee, must be established in the omnibus appropriations  
2 act and any amendment or additions made to that act. The license fees  
3 established in the omnibus appropriations act and any amendment or  
4 additions made to that act may not exceed the department's annual  
5 licensing and oversight activity costs and must include the  
6 department's cost of paying providers for the amount of the license fee  
7 attributed to medicaid clients.

8 ~~((+11+))~~ (12) A provider who receives notification of the  
9 department's initiation of a denial, suspension, nonrenewal, or  
10 revocation of an adult family home license may, in lieu of appealing  
11 the department's action, surrender or relinquish the license. The  
12 department shall not issue a new license to or contract with the  
13 provider, for the purposes of providing care to vulnerable adults or  
14 children, for a period of twenty years following the surrendering or  
15 relinquishment of the former license. The licensing record shall  
16 indicate that the provider relinquished or surrendered the license,  
17 without admitting the violations, after receiving notice of the  
18 department's initiation of a denial, suspension, nonrenewal, or  
19 revocation of a license.

20 ~~((+12+))~~ (13) The department shall establish, by rule, the  
21 circumstances requiring a change in the licensed provider, which  
22 include, but are not limited to, a change in ownership or control of  
23 the adult family home or provider, a change in the provider's form of  
24 legal organization, such as from sole proprietorship to partnership or  
25 corporation, and a dissolution or merger of the licensed entity with  
26 another legal organization. The new provider is subject to the  
27 provisions of this chapter, the rules adopted under this chapter, and  
28 other applicable law. In order to ensure that the safety of residents  
29 is not compromised by a change in provider, the new provider is  
30 responsible for correction of all violations that may exist at the time  
31 of the new license.

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

34 (1) In order to enhance the selection of an appropriate adult  
35 family home, all adult family homes licensed under this chapter shall  
36 disclose the scope of, and charges for, the care, services, and  
37 activities provided by the home or customarily arranged for by the

1 home. The disclosure must be provided to the home's residents and the  
2 residents' representatives, if any, prior to admission, and to  
3 interested prospective residents and their representatives upon  
4 request, using standardized disclosure forms developed by the  
5 department with stakeholders' input. The home may also disclose  
6 supplemental information to prospective residents and other interested  
7 persons.

8 (2)(a) The disclosure forms that the department develops must be  
9 standardized, reasonable in length, and easy to read. The form setting  
10 forth the scope of an adult family home's care, services, and  
11 activities must be available from the adult family home through a link  
12 to the department's web site developed pursuant to this section. This  
13 form must indicate, among other categories, the scope of personal care  
14 and medication service provided, the scope of skilled nursing services  
15 or nursing delegation provided or available, any specialty care  
16 designations held by the adult family home, the customary number of  
17 caregivers present during the day and whether the home has awake staff  
18 at night, any particular cultural or language access available, and  
19 clearly state whether the home admits medicaid clients or retains  
20 residents who later become eligible for medicaid. The adult family  
21 home shall provide or arrange for the care, services, and activities  
22 disclosed in its form.

23 (b) The department must also develop a second standardized  
24 disclosure form with stakeholders' input for use by adult family homes  
25 to set forth an adult family home's charges for its care, services,  
26 items, and activities, including the charges not covered by the home's  
27 daily or monthly rate, or by medicaid, medicare, or other programs.  
28 This form must be available from the home and disclosed to residents  
29 and their representatives, if any, prior to admission, and to  
30 interested prospective residents and their representatives upon  
31 request.

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

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

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

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

22 (5) An adult family home may deny admission to a prospective  
23 resident if the home determines that the needs of the prospective  
24 resident cannot be met, so long as the adult family home operates in  
25 compliance with state and federal law, including RCW 70.129.030(3) and  
26 the reasonable accommodation requirements of state and federal  
27 antidiscrimination laws.

28 (6) The department shall work with consumers, advocates, and other  
29 stakeholders to combine and improve existing web resources to create a  
30 more robust, comprehensive, and user-friendly web site for family  
31 members, residents, and prospective residents of adult family homes in  
32 Washington. The department may contract with outside vendors and  
33 experts to assist in the development of the web site. The web site  
34 should be easy to navigate and have links to information important for  
35 residents, prospective residents, and their family members or  
36 representatives including, but not limited to: (a) Explanations of the  
37 types of licensed long-term care facilities, levels of care, and  
38 specialty designations; (b) lists of suggested questions when looking

1 for a care facility; (c) warning signs of abuse, neglect, or financial  
2 exploitation; and (d) contact information for the department and the  
3 long-term care ombudsman. In addition, the consumer oriented web site  
4 should include a searchable list of all adult family homes in  
5 Washington, with links to recent inspection and investigation reports  
6 and any enforcement actions by the department. To facilitate the  
7 comparison of adult family homes, the web site should also include a  
8 link to each licensed adult family home's disclosure form required by  
9 subsection (2)(a) of this section. The department's web site should  
10 also include periodically updated information about whether an adult  
11 family home has a current vacancy, if the home or facility provides  
12 such information to the department, or may include links to other  
13 consumer-oriented web sites with the vacancy information.

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

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

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

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

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

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

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

31 (a) Refuse to issue a license;

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

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

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

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

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

11 (g) Suspend admissions to the adult family home by imposing stop  
12 placement.

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

33 (4) Nothing in subsection (3) of this section is intended to apply  
34 to stop placement imposed in conjunction with a license revocation or  
35 summary suspension or to prevent the department from imposing a  
36 condition on license or other remedy prior to sixty days after a stop  
37 placement, if the department considers it necessary to protect one or  
38 more residents' well-being. After a department finding of a violation



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

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

23 (6) A separate adult family home account is created in the custody  
24 of the state treasurer. All receipts from civil penalties imposed  
25 under this chapter must be deposited into the account. Only the  
26 director or the director's designee may authorize expenditures from the  
27 account. The account is subject to allotment procedures under chapter  
28 43.88 RCW, but an appropriation is not required for expenditures. The  
29 department shall use the special account only for promoting the quality  
30 of life and care of residents living in adult family homes.

31 (7) The department shall by rule specify criteria as to when and  
32 how the sanctions specified in this section must be applied. The  
33 criteria must provide for the imposition of incrementally more severe  
34 penalties for deficiencies that are repeated, uncorrected, pervasive,  
35 or present a threat to the health, safety, or welfare of one or more  
36 residents. The criteria shall be tiered such that those homes  
37 consistently found to have deficiencies will be subjected to  
38 increasingly severe penalties. The department shall implement prompt

1 and specific enforcement remedies without delay for providers found to  
2 have delivered care or failed to deliver care resulting in problems  
3 that are repeated, uncorrected, pervasive, or present a threat to the  
4 health, safety, or welfare of one or more residents. In the selection  
5 of remedies, the health, safety, and well-being of residents must be of  
6 paramount importance.

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

9 (1) If during an inspection, reinspection, or complaint  
10 investigation by the department, an adult family home corrects a  
11 violation or deficiency that the department discovers, the department  
12 shall record and consider such violation or deficiency for purposes of  
13 the home's compliance history; however, the licensor or complaint  
14 investigator may not include in the home's report the violation or  
15 deficiency if the violation or deficiency:

16 (a) Is corrected to the satisfaction of the department prior to the  
17 exit conference;

18 (b) Is not recurring; and

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

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

25 Correct the title.

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 web site content.

--- END ---