
HOUSE BILL 1701

State of Washington 63rd Legislature 2013 Regular Session

By Representatives Moeller, Angel, Tharinger, and Pollet

Read first time 02/06/13. Referred to Committee on Health Care & Wellness.

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

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

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

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

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

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

34 ((+12+)) (13) The department shall establish, by rule, the
35 circumstances requiring a change in the licensed provider, which
36 include, but are not limited to, a change in ownership or control of
37 the adult family home or provider, a change in the provider's form of
38 legal organization, such as from sole proprietorship to partnership or

1 corporation, and a dissolution or merger of the licensed entity with
2 another legal organization. The new provider is subject to the
3 provisions of this chapter, the rules adopted under this chapter, and
4 other applicable law. In order to ensure that the safety of residents
5 is not compromised by a change in provider, the new provider is
6 responsible for correction of all violations that may exist at the time
7 of the new license.

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

10 (1) In order to enhance the selection of an appropriate adult
11 family home, all adult family homes licensed under this chapter shall
12 disclose the scope of care, services, and activities provided by the
13 home or customarily arranged for by the home. The disclosure must be
14 provided to the home's residents and the residents' representatives, if
15 any, prior to admission, and to interested prospective residents and
16 their representatives upon request, using a disclosure form developed
17 by the department with stakeholders' input. The home may also disclose
18 supplemental information to prospective residents and other interested
19 persons.

20 (2) The disclosure form that the department develops must be
21 standardized, reasonable in length, and easy to read. The form must
22 indicate, among other categories, the scope of personal care and
23 medication service provided, the scope of skilled nursing services or
24 nursing delegation provided or available, any specialty care
25 designations held by the home, the customary number of caregivers
26 present during the day and whether the home has awake staff at night,
27 any particular cultural or language access available, and clearly state
28 whether the home admits medicaid clients or retains residents who later
29 become eligible for medicaid. The adult family home shall provide or
30 arrange for the care, services, and activities disclosed in its form.

31 (3)(a) If the adult family home decreases the scope of care,
32 services, or activities it provides, due to circumstances beyond the
33 home's control, the home shall provide a minimum of thirty days'
34 written notice to the residents, and the residents' representative if
35 any, before the effective date of the decrease in the scope of care,
36 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 affected residents and the
6 residents' 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 create an accessible and consumer-friendly web site for
30 family members, residents, and prospective residents of adult family
31 homes and other licensed long-term care facilities in Washington. The
32 department may contract with outside vendors and experts to assist in
33 the development of the web site. The web site should be easy to
34 navigate and have links to information important for residents,
35 prospective residents, and their family members or representatives
36 including, but not limited to: (a) Explanations of the types of
37 licensed long-term care facilities, levels of care, and specialty
38 designations; (b) lists of suggested questions when looking for a care

1 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 licensed long-term care
5 facilities in Washington, with links to recent inspection and
6 investigation reports and any enforcement actions by the department.
7 To facilitate the comparison of homes and facilities, the web site
8 should also include a link to each licensed adult family home's
9 disclosure form required by this section, and to each licensed assisted
10 living facility's disclosure form required by RCW 18.20.300. The web
11 site should permit the inclusion of periodically updated information
12 about whether a home or facility has a current vacancy, if the home or
13 facility provides such information to the department.

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. Nothing in this subsection is
33 intended to prevent the department from imposing a condition on license
34 or other remedy prior to sixty days after a stop placement, if the
35 department considers it necessary to protect one or more residents'
36 well-being.

37 (4) After a department finding of a violation for which a stop
38 placement has been imposed, the department shall make an on-site

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

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

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

30 (7) The department shall by rule specify criteria as to when and
31 how the sanctions specified in this section must be applied. The
32 criteria must provide for the imposition of incrementally more severe
33 penalties for deficiencies that are repeated, uncorrected, pervasive,
34 or present a threat to the health, safety, or welfare of one or more
35 residents. The criteria shall be tiered such that those homes
36 consistently found to have deficiencies will be subjected to
37 increasingly severe penalties. The department shall implement prompt
38 and specific enforcement remedies without delay for providers found to

1 have delivered care or failed to deliver care resulting in problems
2 that are repeated, uncorrected, pervasive, or present a threat to the
3 health, safety, or welfare of one or more residents. In the selection
4 of remedies, the health, safety, and well-being of residents must be of
5 paramount importance.

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

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

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

17 (b) Is not recurring; and

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

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

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