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

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

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

(2) Subject to the provisions of this section, the department shall issue a license to an adult family home if the department finds that the applicant and the home are in compliance with this chapter and the rules adopted under this chapter. The department may not issue a license if (a) the applicant or a person affiliated with the applicant has prior violations of this chapter relating to the adult family home subject to the application or any other adult family home, or of any other law regulating residential care facilities within the past ten years that resulted in revocation, suspension, or nonrenewal of a license or contract with the department; or (b) the applicant or a person affiliated with the applicant has a history of significant noncompliance with federal, state, or local laws, rules, or regulations relating to the provision of care or services to vulnerable adults or to children. A person is considered affiliated with an applicant if the person is listed on the license application as a partner, officer, director, resident manager, or majority owner of the applying entity, or is the spouse of the applicant.
(3) The license fee shall be submitted with the application.
(4) Proof of financial solvency must be submitted when requested by the department.
(5) The department shall serve upon the applicant a copy of the decision granting or denying an application for a license. An applicant shall have the right to contest denial of his or her application for a license as provided in chapter 34.05 RCW by requesting a hearing in writing within twenty-eight days after receipt of the notice of denial.
(6) The department shall not issue a license to a provider if the department finds that the provider or spouse of the provider or any partner, officer, director, managerial employee, or majority owner has a history of significant noncompliance with federal or state regulations, rules, or laws in providing care or services to vulnerable adults or to children.
(7) The department shall license an adult family home for the maximum level of care that the adult family home may provide. The department shall define, in rule, license levels based upon the education, training, and caregiving experience of the licensed provider or staff.
(8) For adult family homes that serve residents with special needs such as dementia, developmental disabilities, or mental illness, specialty training is required of providers and resident managers consistent with RCW 70.128.230, and also is required for caregivers, with standardized competency testing, as set forth by the department in rule. The department shall examine, with input from experts, providers, consumers, and advocates, whether the existing specialty training courses are adequate for providers, resident managers, and caregivers to meet these residents' special needs, are sufficiently standardized in curricula and instructional techniques, and are accompanied by effective tools to fairly evaluate successful student completion. The department may enhance the existing specialty training requirements by rule, and may update curricula, instructional techniques, and competency testing based upon its review and stakeholder input. In addition, the department shall examine, with input from experts, providers, consumers, and advocates, whether additional specialty training categories should be created for adult family homes serving residents with other special needs, such as...
traumatic brain injury, skilled nursing, or bariatric care. The
department may establish, by rule, additional specialty training
categories and requirements for providers, resident managers, and
caregivers, if needed to better serve residents with such special
needs.

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

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

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

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

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

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

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

(2) The disclosure form that the department develops must be standardized, reasonable in length, and easy to read. The form must indicate, among other categories, the scope of personal care and medication service provided, the scope of skilled nursing services or nursing delegation provided or available, any specialty care designations held by the home, the customary number of caregivers present during the day and whether the home has awake staff at night, any particular cultural or language access available, and clearly state whether the home admits medicaid clients or retains residents who later become eligible for medicaid. The adult family home shall provide or arrange for the care, services, and activities disclosed in its form. The adult family home shall also clearly disclose to residents and their representatives, if any, prior to admission, and to interested prospective residents and their representatives upon request, in a separate form or document of the home's choosing, the home's specific charges for its care, services, items, and activities, including the
charges not covered by the home's daily or monthly rate, or by medicaid, medicare, or other programs.

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

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

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

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

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

(6) The department shall work with consumers, advocates, and other stakeholders to combine and improve existing web resources to create a more robust, comprehensive, and user-friendly web site for family
members, residents, and prospective residents of adult family homes and
other licensed long-term care facilities in Washington. The department
may contract with outside vendors and experts to assist in the
development of the web site. The web site should be easy to navigate
and have links to information important for residents, prospective
residents, and their family members or representatives including, but
not limited to: (a) Explanations of the types of licensed long-term
care facilities, levels of care, and specialty designations; (b) lists
of suggested questions when looking for a care facility; (c) warning
signs of abuse, neglect, or financial exploitation; and (d) contact
information for the department and the long-term care ombudsman. In
addition, the consumer oriented web site should include a searchable
list of all licensed long-term care facilities in Washington, with
links to recent inspection and investigation reports and any
enforcement actions by the department. To facilitate the comparison of
homes and facilities, the web site should also include a link to each
licensed adult family home's disclosure form required by this section,
and to each licensed assisted living facility's disclosure form
required by RCW 18.20.300. The web site should permit the inclusion of
periodically updated information about whether a home or facility has
a current vacancy, if the home or facility provides such information to
the department.

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

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

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

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

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

(d) Willfully prevented or interfered with any inspection or
investigation by the department.
(2) When authorized by subsection (1) of this section, the department may take one or more of the following actions:

(a) Refuse to issue a license;

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

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

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

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

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

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

(3) When the department orders stop placement, the facility shall not admit any person until the stop placement order is terminated. The department may approve readmission of a resident to the facility from a hospital or nursing home during the stop placement. The department shall terminate the stop placement only after: (a) The violations necessitating the stop placement have been corrected; and (b) the provider exhibits the capacity to maintain correction of the violations previously found deficient. However, if upon the revisit the department finds new violations that the department reasonably believes will result in a new stop placement, the previous stop placement shall remain in effect until the new stop placement is imposed. In order to protect the home's existing residents from potential ongoing neglect, when the provider has been cited for a violation that is repeated, uncorrected, pervasive, or presents a threat to the health, safety, or welfare of one or more residents, and the department has imposed a stop placement, the department shall also impose a condition on license or other remedy to facilitate or spur prompter compliance if the violation has not been corrected, and the
provider has not exhibited the capacity to maintain correction, within forty-five days of the stop placement. Nothing in this subsection is intended to prevent the department from imposing a condition on license or other remedy prior to forty-five days after a stop placement, if the department considers it necessary to protect one or more residents' well-being.

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

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

(6) A separate adult family home account is created in the custody of the state treasurer. All receipts from civil penalties imposed under this chapter must be deposited into the account. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. The department shall use the special account only for promoting the quality of life and care of residents living in adult family homes.
The department shall by rule specify criteria as to when and how the sanctions specified in this section must be applied. The criteria must provide for the imposition of incrementally more severe penalties for deficiencies that are repeated, uncorrected, pervasive, or present a threat to the health, safety, or welfare of one or more residents. The criteria shall be tiered such that those homes consistently found to have deficiencies will be subjected to increasingly severe penalties. The department shall implement prompt and specific enforcement remedies without delay for providers found to have delivered care or failed to deliver care resulting in problems that are repeated, uncorrected, pervasive, or present a threat to the health, safety, or welfare of one or more residents. In the selection of remedies, the health, safety, and well-being of residents must be of paramount importance.

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

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

(a) Is corrected to the satisfaction of the department prior to the exit conference;
(b) Is not recurring; and
(c) Did not pose a significant risk of harm or actual harm to a resident.

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