



# PROPOSED RULE MAKING

## CR-102 (June 2012)

(Implements RCW 34.05.320)

Do **NOT** use for expedited rule making

**Agency:** Department of Social and Health Services, Aging and Long-Term Support Administration

- Preproposal Statement of Inquiry was filed as WSR: 15-12-084 ; or
- Expedited Rule Making--Proposed notice was filed as WSR:      ; or
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

- Original Notice
- Supplemental Notice to WSR:
- Continuance of WSR:

**Title of rule and other identifying information:** (Describe Subject)

The Department is amending WAC 388-101-3000, WAC 388-101-4190, WAC 388-101-4200, and WAC 388-101-4240; repealing WAC 388-101-4210, WAC 388-101-4220, and WAC 388-101-4230; and creating new WAC sections including WAC 388-101-3202, WAC 388-101-3259, WAC 388-101-4175, WAC 388-101-4180, WAC 388-101-4185, WAC 388-101-4205, WAC 388-101-4515, WAC 388-101-4525, and WAC 388-101-4535.

**Hearing location(s):**

Office Building 2  
DSHS Headquarters  
1115 Washington  
Olympia, WA 98504

Public parking at 11<sup>th</sup> and Jefferson. A map is available at:  
<http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>

Date: November 24, 2015 Time: 10:00 a.m.

**Submit written comments to:**

Name: DSHS Rules Coordinator  
Address: PO Box 45850  
Olympia, WA 98504  
e-mail: [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov)  
fax: (360) 664-6185  
**by: 5:00 p.m. November 24, 2015**

**Assistance for persons with disabilities:** Contact:

Jeff Kildahl, DSHS Rules Consultant by November 11, 2015  
Phone: (360) 664-6092 or TTY: (360) 664-6178  
Email: [KildaJA@dshs.wa.gov](mailto:KildaJA@dshs.wa.gov)

**Date of intended adoption:** Not earlier than November 25, 2015  
(Note: This is **NOT** the effective date)

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:**

Changes to Chapter 388-101 WAC are needed to align with new or changed legislation to include:

- HB1307 outlines enforcement changes in regards to CCRSS providers.
- Initiative 1163 modifies the law governing background checks, training, and home care aide certification for long-term care and must be implemented in this program by 1/01/16. This created changes in the definition section of this WAC and Long Term Care Worker Requirements (WAC 388-101-3259) and Background Checks (WAC 388-101-3202).
- SB 5600 modified certain definitions concerning vulnerable adults, including the definitions of abuse and sexual abuse and also amended RCW 74.35.020 and RCW 74.34.205. These changes are reflected in the definition section of this WAC.

**Reasons supporting proposal:**

Repealing the rules is beneficial to or supported by the regulated entities to prevent duplication of certification rules and supports the health and safety of residents in long term care settings.

**Statutory authority for adoption:** Chapter 71A.12 RCW

**Statute being implemented:**

**Is rule necessary because of a:**

- Federal Law?  Yes  No
  - Federal Court Decision?  Yes  No
  - State Court Decision?  Yes  No
- If yes, CITATION:

**DATE**  
September 30, 2015

**NAME** (type or print)  
Katherine Vasquez

**SIGNATURE**

**TITLE**  
DSHS Rules Coordinator

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE: October 06, 2015**

**TIME: 2:53 PM**

**WSR 15-20-113**

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:**

Comments and recommendations were received from the Board of Appeals regarding statutory language. These recommended changes will be incorporated into these proposed rules once all comments are received through the public hearing process.

**Name of proponent:** (person or organization) Department of Social and Health Services

Penelope Rarick, Policy Program manager  
AL TSA/RCS

- Private  
 Public  
 Governmental

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Penelope Rarick	Olympia	(360) 725-3210
Implementation:	Penelope Rarick	Olympia	(360) 725-3210
Enforcement:	Penelope Rarick	Olympia	(360) 725-3210

**Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?**

- Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

Phone: ( )

Fax: ( )

e-mail

- No. Explain why no statement was prepared.

The proposed rules do not impact small business or small non-profits.

**Is a cost-benefit analysis required under RCW 34.05.328?**

- Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

Phone: ( )

fax: ( )

e-mail:

- No: Please explain:

The proposed rules do not meet the definition of "significant legislative rule" under RCW 34.05.328(5)(c).

**WAC 388-101-3000 Definitions.** "Abandonment" means action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means:

(1) The willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment of a vulnerable adult;

(2) In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish; and

(3) Abuse includes sexual abuse, mental abuse, physical abuse, and personal exploitation of a vulnerable adult and improper use of restraint against a vulnerable adult, which have the following meanings:

(a) "**Sexual abuse**" means any form of nonconsensual sexual (~~contact~~) conduct, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual (~~contact~~) conduct may include interactions that do not involve touching, including but not limited to sending a client sexually explicit messages, or cuing or encouraging a client to perform sexual acts. Sexual abuse also includes any sexual (~~contact~~) conduct between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not it is consensual.

(b) "**Physical abuse**" means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving(~~(,)~~) or prodding(~~(, or the use of chemical restraints or physical restraints unless the restraints are consistent with licensing and certification requirements, and includes restraints that are otherwise being used inappropriately)~~)).

(c) "**Mental abuse**" means (~~any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, regular activity, and verbal assault that includes ridiculing, intimidating,~~) a willful verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. Mental abuse may include ridiculing, yelling, or swearing.

(d) "**Personal exploitation**" means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

(e) "**Improper use of restraint**" means the inappropriate use of chemical, physical, or mechanical restraints for convenience or discipline or in a manner that:

(i) Is inconsistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW;

- (ii) Is not medically authorized; or
- (iii) Otherwise constitutes abuse under this section.

(f) "Chemical restraint" means the administration of any drug to manage a vulnerable adult's behavior in a way that reduces the safety risk to the vulnerable adult or others, has a the temporary effect of restricting the vulnerable adult's freedom of movement, and is not standard treatment for the vulnerable adult's medical or psychiatric condition.

**"Associated with the applicant"** means any person listed on the application as a partner, officer, director, or majority owner of the applying entity, or who is the spouse or domestic partner of the applicant.

**"Case manager"** means the division of developmental disabilities case resource manager or social worker assigned to a client.

**"Certification"** means a process used by the department to determine if an applicant or service provider complies with the requirements of this chapter and is eligible to provide certified community residential services and support to clients.

**"Chaperone agreement"** means a plan or agreement that describes who will supervise a community protection program client when service provider staff is not present. This plan or agreement is negotiated with other agencies and individuals who support the client, including the client's legal representative and family.

**"Chemical restraint"** means the use of psychoactive medications for discipline or convenience and not prescribed to treat the client's medical symptoms.

**"Client"** means a person who has a developmental disability as defined in RCW 71A.10.020(4) and who also has been determined eligible to receive services by the division of developmental disabilities under chapter 71A.16 RCW. For purposes of informed consent and decision making requirements, the term "client" includes the client's legal representative to the extent of the representative's legal authority.

**"Client services"** means instruction and support services that service providers are responsible to provide as identified in the client's individual support plan.

"Consent" means express written consent granted after the vulnerable adult or his or her legal representative has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

**"Crisis diversion"** means temporary crisis residential services and supports provided to clients at risk of psychiatric hospitalization and authorized by the division of developmental disabilities.

**"Crisis diversion bed services"** means crisis diversion that is provided in a residence maintained by the service provider.

**"Crisis diversion support services"** means crisis diversion that is provided in the client's own home.

**"Department"** means the Washington state department of social and health services.

**"Financial exploitation"** means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.020(6).

**"Functional assessment"** means a comprehensive evaluation of a client's challenging behavior(s). This evaluation is the basis for developing a positive behavior support plan.

**"Group home"** means a residence that is licensed as either an assisted living facility or an adult family home by the department under chapters 388-78A or 388-76 WAC. Group homes provide community residential instruction, supports, and services to two or more clients who are unrelated to the provider.

**"Group training home"** means a certified nonprofit residential facility that provides full-time care, treatment, training, and maintenance for clients, as defined under RCW 71A.22.020(2).

**"Immediate"** or **"immediately"** means within twenty-four hours for purposes of reporting abandonment, abuse, neglect, or financial exploitation of a vulnerable adult.

**"Immediate risk", "immediate threat" or "imminent danger"** means serious physical harm to or death of a client has occurred, or there is a serious threat to the client's life, health or safety.

**"Individual financial plan"** means a plan describing how a client's funds will be managed when the service provider is responsible for managing any or all of the client's funds.

**"Individual instruction and support plan"** means a plan developed by the service provider and the client. The individual instruction and support plan:

(1) Uses the information and assessed needs documented in the individual support plan to identify areas the client would like to develop;

(2) Includes client goals for instruction and support that will be formally documented during the year; and

(3) Must contain or refer to other applicable support or service information that describes how the client's health and welfare needs are to be met (e.g. individual financial plan, positive behavior support plan, cross system crisis plan, individual support plan, individual written plan, client-specific instructions).

**"Individual support plan"** means a document that authorizes and identifies the division of developmental disabilities paid services to meet a client's assessed needs.

**"Instruction"** means goal oriented teaching that is designed for acquiring and enhancing skills.

**"Instruction and support services staff"** means long-term care workers of the service provider whose primary job function is the provision of instruction and support services to clients. Instruction and support services staff shall also include employees of the service provider whose primary job function is the supervision of instruction and support services staff. In addition, both applicants, prior to initial certification, and administrators, prior to assuming duties, who may provide instruction and support services to clients shall be considered instruction and support services staff for the purposes of the applicable training requirements.

**"Legal representative"** means a person's legal guardian, a person's limited guardian when the subject matter is within the scope of the limited guardianship, a person's attorney at law, a person's attorney in fact, or any other person who is authorized by law to act for another person.

"Long-term care workers" include all persons who provide paid, hands-on personal care services for the elderly or persons with disabilities, including but not limited to individual providers of home care services, direct care workers employed by home care agencies, providers of home care services to persons with developmental disabilities under Title 71A RCW, all direct care workers in state-licensed assisted living facilities, and adult family homes, respite care pro-

viders, direct care workers employed by community residential service businesses, and any other direct care worker providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.

**"Managing client funds"** means that the service provider:

- (1) Has signing authority for the client;
- (2) Disperses the client's funds; or
- (3) Limits the client's access to funds by not allowing funds to be spent.

**"Mechanical restraint"** means ~~((a)) any device ((or object, which the client cannot remove, applied to the client's body that restricts his/her free movement)) attached or adjacent to the vulnerable adult's body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body.~~ "Mechanical restraint" does not include the use of devices, materials, or equipment that are:

- (1) medically authorized, as required; and
- (2) used in a manner that is consistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW.

**"Medication administration"** means the direct application of a prescribed medication whether by injection, inhalation, ingestion, or other means, to the body of the client by an individual legally authorized to do so.

**"Medication assistance"** means assistance with selfadministration of medication rendered by a nonpractitioner to a client receiving certified community residential services and supports in accordance with chapter 69.41 RCW and chapter 246-888 WAC.

**"Medication service"** means any service provided by a certified community residential services and support provider related to medication administration or medication assistance provided through nurse delegation and medication assistance.

**"Minimal"** means violations that result in little or no negative outcome and/or little or no potential harm for a client.

**"Moderate"** means violations that result in negative outcome and actual or potential harm for a client.

**"Negative outcome"** includes any negative effect on the client's physical, mental, or psychosocial well-being (i.e., safety, quality of life, quality of care).

**"Neglect"** means:

- (1) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or

- (2) An act or omission by a person or entity with a duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

**"Physical intervention"** means the use of a manual technique intended to interrupt or stop a behavior from occurring. This includes using physical restraint to release or escape from a dangerous or potentially dangerous situation.

**"Physical restraint"** means ~~((physically holding or restraining all or part of a client's body in a way that restricts the client's free movement. This does not include briefly holding, without undue force, a client in order to calm him/her, or holding a client's hand~~

to escort the client safely from one area to another)) the application of physical force without the use of any device, for the purpose of restraining the free movement of a vulnerable adult's body. "Physical restraint" does not include:

(a) Briefly holding without undue force on a vulnerable adult in order to calm or comfort him or her; or

(b) Holding a vulnerable adult's hand to safely escort him or her from one area to another.

**"Psychoactive"** means possessing the ability to alter mood, anxiety level, behavior, cognitive processes, or mental tension, usually applied to pharmacological agents.

**"Psychoactive medications"** means medications prescribed to improve or stabilize mood, mental status or behavior. Psychoactive medications include anti-psychotics/neuroleptics, atypical antipsychotics, antidepressants, stimulants, sedatives/hypnotics, and antimania and antianxiety drugs.

**"Qualified professional"** means a person with at least three years' experience working with individuals with developmental disabilities and as required by RCW 71A.12.220(12).

**"Recurring" or "repeated"** means that the department has cited the service provider for a violation of applicable licensing laws or rules and the circumstances of (1) and (2) of this definition are present:

(1) The department previously imposed an enforcement remedy for a violation of the same section of law or rule for substantially the same problem following any type of inspection within the preceding twenty four months; or

(2) The department previously cited a violation under the same section of law or rule for substantially the same problem following any type of inspection on two occasions within the preceding twenty four months.

(3) If the previous violation in (1) or (2) of this definition was pursuant to a law or rule that has changed at the time of the new violation, a citation to the equivalent current law or rule section is sufficient.

**"Restrictive procedure"** means any procedure that restricts a client's freedom of movement, restricts access to client property, requires a client to do something which he/she does not want to do, or removes something the client owns or has earned.

**"Risk assessment"** means an assessment done by a qualified professional and as required by RCW 71A.12.230.

**"Serious"** means violations that result in one or more negative outcomes and significant actual harm to client that does not constitute imminent danger; and/or, there is reasonable predictability of recurring actions, practices, situations or incidents with potential for causing significant harm to a client.

**"Severity"** means the seriousness of a violation as determined by the actual or potential negative outcomes for clients and subsequent actual or potential for harm. Negative outcomes include any negative effect on the client's physical, mental, or psychosocial well-being (i.e., safety, quality of life, quality of care).

**"Service provider"** means a person or entity certified by the department who delivers services and supports to meet a client's identified needs. The term includes the state operated living alternative (SOLA) program.

**"Support"** means assistance a service provider gives a client based on needs identified in the individual support plan.

**"Supported living"** means instruction, supports, and services provided by service providers to clients living in homes that are owned, rented, or leased by the client or their legal representative.

**"Treatment team"** means the program participant and the group of people responsible for the development, implementation, and monitoring of the person's individualized supports and services. This group may include, but is not limited to, the case manager, therapist, the service provider, employment/day program provider, and the person's legal representative and/or family, provided the person consents to the family member's involvement.

**"Uncorrected deficiency"** means the department has cited a violation of WAC or RCW following any type of certification evaluation or complaint investigation and the violation remains uncorrected at the time the department makes a subsequent inspection for the specific purpose of verifying whether such violation has been corrected.

**"Vulnerable adult"** includes a person:

- (1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or
- (2) Found incapacitated under chapter 11.88 RCW; or
- (3) Who has a developmental disability as defined under RCW 71A.10.020; or
- (4) Admitted to any facility; or
- (5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or
- (6) Receiving services from an individual provider.

**"Willful"** means the deliberate, or nonaccidental, action or inaction by an individual that he/she knew or reasonably should have known could cause a negative outcome, including harm, injury, pain, or anguish.

#### NEW SECTION

**WAC 388-101-3202 Background checks - National fingerprint background checks.** (1) Administrators and all caregivers who are hired on or after January 1, 2016, and are not disqualified by the Washington state name and date of birth background check, must complete a national fingerprint background check and follow department procedures.

(2) After receiving the results of the national fingerprint background check the service provider must not employ, directly or by contract, an administrator, employee, volunteer, student or subcontractor who has a disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113, 388-78A or 388-76 WAC.

(3) The service provider may accept a copy of the national fingerprint background check results letter and any additional information from the department's background check central unit from an individual who previously completed a national fingerprint check through the department's background check central unit, provided the national fingerprint background check was completed after January 7, 2012.

NEW SECTION

**WAC 388-101-3259 Long-term care worker requirements.** Beginning January 1, 2016, all staff employed as Long-term care workers as defined by RCW 74.39A.009 (16) are required to meet all the training requirements in the following:

- (1) Chapter 388-112 WAC, if the service provider is also licensed as an adult family home or assisted living facility
- (2) Chapter 388-829 WAC, if the service provider is certified only.

NEW SECTION

**WAC 388-101-4175 Remedies - General.** The department may take one or more of the following actions in any case which the department finds that a service provider is noncompliant with the requirements of this chapter, the department's residential services contract, the requirements of chapter 74.34 RCW or other relevant federal, state and local laws, requirements or ordinances:

- (1) Require a service provider to implement a plan of correction developed by the department and to cooperate with subsequent monitoring of the service provider's progress;
- (2) Impose reasonable conditions on a service provider's certification such as correction within a time specified in the statement of deficiency, training, and limits on the type of client the provider may serve,
- (3) Impose civil penalties;
- (4) Suspend the service provider from accepting clients with specified needs by imposing a limited suspension of department referrals (stop placement);
- (5) Suspend department referrals (stop placement);
- (6) Refuse to certify a prospective provider;
- (7) Decertify or refuse to renew the certification of the service provider;
- (8) The enforcement actions and penalties authorized in this section are not exclusive or exhaustive and nothing in this section prohibits the department from taking any action authorized in statute or rule or under the terms of a contract with the service provider.

NEW SECTION

**WAC 388-101-4180 Remedies - Consideration for imposing remedies.**

- (1) When determining the appropriate enforcement actions the department will select actions in proportion to the seriousness of the harm or threat of harm to clients being served by the service provider.
- (2) The department may take enforcement actions that are more severe for violations that are:
  - (a) Uncorrected;
  - (b) Repeated;
  - (c) Pervasive; or

(d) Present a serious threat to the health, safety, or welfare of clients served by the provider.

NEW SECTION

**WAC 388-101-4185 Remedies - Circumstances resulting in enforcement remedies.** The department is authorized to impose the enforcement remedies described in these chapters when the service provider has:

(1) Failed or refused to comply with the health and safety related requirements of this chapter, chapter 74.34 RCW or the rules adopted under these chapters;

(2) Failed or refused to cooperate with the certification process;

(3) Prevented or interfered with a certification, inspection, or complaint investigation by the department;

(4) Failed to comply with any applicable requirements regarding vulnerable adults under chapter 74.34 RCW or;

(5) Knowingly, or with reason to know, made a false statement of material fact related to certification or contracting with the department, or in any matter under investigation by the department;

(6) Failed to submit a plan of correction for approval by the department;

(7) Failed to implement the plan or plans of correction or failed to make a correction imposed under WAC; or

(8) Failed to cooperate with subsequent monitoring.

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

**WAC 388-101-4190 Remedies - Specific provisional certification.**

(1) The department may impose a provisional certification, not to exceed one hundred eighty days, if any service provider does not comply with requirements of this chapter, other applicable laws and rules, or the residential services contract.

(2) At the end of provisional certification the department may:

(a) Approve the service provider for regular certification if the service provider has complied with certification requirements; or

(b) ((Revoke)) Decertify the service provider((~~is certification~~)) and terminate the residential services contract if the service provider has not complied with all certification requirements.

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

**WAC 388-101-4200 Remedies - Specific - Decertification.** The department may ((~~revoke any~~)) decertify a service provider((~~is certification~~)) at any time for noncompliance with the requirements of this chapter, the department's residential services contract, the require-

ments of chapter 74.34 RCW or other relevant federal, state and local laws, requirements or ordinances.

NEW SECTION

**WAC 388-101-4205 Remedies - Specific - Suspend department referrals (stop placement).** (1) The department may suspend referrals to the provider for noncompliance with the requirements of this chapter, the department's residential services contract, and the requirements of chapter 74.34 RCW or other relevant federal, state and local laws.

(2) Once imposed, the provider must not admit new referrals until the suspension of department referrals is lifted.

(3) The department may end the suspension of department referrals only after the department finds the:

(a) Deficiencies necessitating the suspension of department referrals have been corrected; and

(b) Provider can exhibit the capacity to maintain correction of the violations previously found.

(4) If upon revisiting the provider, the department finds new violations that the department reasonably believes will result in a new suspension or limited suspension of department referrals, the previous suspension or limited suspension of department referrals remains in effect until the new suspension or limited suspension of department referrals is imposed

(5) After a department finding of a violation for which a suspension of department referrals has been imposed, the department shall make an on-site revisit of the provider within fifteen working days from the date the provider notifies the department of the correction.

NEW SECTION

**WAC 388-101-4515 Remedies - Specific - Limited suspension of department referrals (stop placement) for clients with specified needs.**

(1) The department may order a limited suspension of department referrals and prohibit the accepting of clients with specified needs if the provider is noncompliant with the requirements of this chapter, the department's residential services contract, the requirements of chapter 74.34 RCW or other relevant federal, state and local laws.

(2) Once imposed, the provider must not accept any clients with the identified specific needs or at a specific site until the limited suspension of department referrals order is lifted.

(3) The department may lift the limited suspension of department referrals only after the department finds the:

(a) Deficiencies necessitating the limited suspension of department referrals have been corrected; and

(b) Provider can exhibit the capacity to maintain correction of the violations previously found.

(4) If upon revisiting the provider the department finds new violations that the department reasonably believes will result in a new suspension or limited suspension of department referrals, the previous suspension or limited suspension of department referrals remains in

effect until the new suspension or limited suspension of department referrals is imposed.

(5) After a department finding of a violation for which a limited suspension of department referrals has been imposed, the department shall make an on-site revisit of the provider within fifteen working days from the date the provider notifies the department of the correction.

NEW SECTION

**WAC 388-101-4525 Remedies - Specific - Civil penalties.** (1) The department may impose civil penalties of at least one hundred dollars per day per violation.

(2) The department may impose a civil penalty up to three thousand dollars per violation.

(3) The civil penalty can be assessed from the compliance date identified in the approved plan of correction or the date of the statement of deficiencies.

(4) If a provider fails to submit a plan of correction for approval by the department, the department may impose civil penalties as described in this subsection starting ten days after the provider received the statement of deficiency.

NEW SECTION

**WAC 388-101-4535 Remedies - Civil fine grid.** The department will consider the guidance in the tiered sanction grid below when imposing civil fine remedies:

NO HARM	MINIMAL or MODERATE HARM		SERIOUS HARM		IMMINENT DANGER and/or IMMEDIATE THREAT
	Repeat / Uncorrected	Initial	Repeat / Uncorrected	Initial	
Civil fine of up to \$100 per violation	Civil fine up to \$100 per day per violation not to exceed \$500 per violation	Civil fine up to \$100 per day per violation not to exceed \$1000 per violation	Civil fine up to \$100 per day per violation not to exceed \$2000 per violation	Civil fine up to \$100 per day per violation not to exceed \$3000 per violation	Civil fine up to \$100 per day per violation not to exceed \$3000 per violation

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

**WAC 388-101-4240 Informal dispute resolution.** (1) When a service provider disagrees with the department's finding of a violation or

certification action under this chapter, the service provider may request an informal dispute resolution meeting with the department.

(2) The service provider must make a written request to the department for an informal dispute resolution meeting within ten working days of receipt of the written notice of the department's final report of findings and/or certification action.

(3) The service provider must submit a written statement identifying the challenged action, and include specifically the issues and regulations involved.

(4) Except for the imposition of civil penalties, the effective date of enforcement actions may not be delayed or suspended pending any hearing or informal dispute resolution process.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- |                  |   |
|------------------|---|
| WAC 388-101-4210 | Community protection program—<br>Circumstances resulting in enforcement remedies. |
| WAC 388-101-4220 | Community protection program—Authorized enforcement remedies.                     |
| WAC 388-101-4230 | Community protection program—<br>Considerations for imposing remedies.            |