



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: February 04, 2019

TIME: 7:56 AM

WSR 19-04-080

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

- Original Notice
- Supplemental Notice to WSR _____
- Continuance of WSR 18-20-016

- Preproposal Statement of Inquiry was filed as WSR 18-11-069 ; 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); or
- Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) The department is proposing to amend WAC 388-78A-3180 "Required enforcement" and create two new sections, WAC 388-78A-3181 "Remedies—Specific—Civil Penalties" and WAC 388-78A-3183 "Remedies—Civil fine grid".

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
March 12, 2019	10:00 a.m.	Office Building 2 DSHS Headquarters 1115 Washington Olympia, WA 98504	Public parking at 11 th and Jefferson. A map is available at: https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2

Date of intended adoption: Not earlier than March 13, 2019 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: DSHS Rules Coordinator
 Address: PO Box 45850
 Olympia, WA 98504
 Email: DSHSRPAURulesCoordinator@dshs.wa.gov
 Fax: 360-664-6185
 Other:
 By (date) 5:00 p.m. March 12, 2019

Assistance for persons with disabilities:

Contact Jeff Kildahl, DSHS Rules Consultant
 Phone: 360-664-6092
 Fax: 360-664-6185
 TTY: 711 Relay Service
 Email: Kildaja@dshs.wa.gov
 Other:
 By (date) February 26, 2019

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The department is filing this CR-102 Notice of Proposed Rule Making as a continuance to the notice filed as WSR 18-20-016 on September 21, 2018 in order to hold a second public hearing and comment period to ensure public notification of the civil penalty changes related to legislative mandates.

The department is amending and creating these rules as required by state law and to assure compliance with requirements of HB 2750 (Chapter 173, Laws of 2018) passed by the 2018 legislature. HB 2750 requires a "tiered sanction grid that considers the extent of harm from the deficiency and the regularity of the occurrence of the deficiency when imposing civil fines". In

addition, it requires that "all receipts from civil penalties imposed under this chapter must be deposited in the assisted living facility temporary management account created in RCW 18.20.430". This will require changes to the existing section and creation of the enforcement sections listed above.

Reasons supporting proposal: To meet the legislative requirement established under HB 2750 passed by the 2018 legislature.

Statutory authority for adoption: Chapter 18.20 RCW

Statute being implemented: Chapter 173, Laws of 2018

Is rule necessary because of a:

Federal Law? Yes No
Federal Court Decision? Yes No
State Court Decision? Yes No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Name of proponent: (person or organization) Department of Social and Health Services Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Jeanette K. Childress	PO Box 45600, Olympia, WA 98504	360-725-2591
Implementation:	Jeanette K. Childress	PO Box 45600, Olympia, WA 98504	360-725-2591
Enforcement:	Jeanette K. Childress	PO Box 45600, Olympia, WA 98504	360-725-2591

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Is a cost-benefit analysis required under RCW 34.05.328?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:
Name: Jeanette K. Childress
Address: PO Box 45600, Olympia, WA 98504
Phone: 360-725-2591
Fax: 360-407-1976

TTY:
Email: childjk@dshs.wa.gov
Other:

No: Please explain:

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- | | |
|---|--|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input checked="" type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> RCW 34.05.310 (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under RCW ____.

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated. _____

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

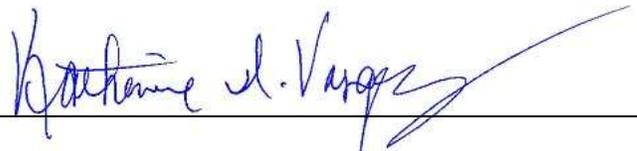
Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Date: January 31, 2019

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



WAC 388-78A-3180 (~~Required enforcement~~) **Remedies—Imposition of remedies.** The department must impose ~~((an appropriate))~~ a remedy ~~((consistent with RCW 18.20.125 and as otherwise authorized by RCW 18.20.185 or 18.20.190 whenever the department finds an assisted living facility has))~~ or remedies listed in WAC 388-78A-3181 when violations of chapter 18.20 RCW, chapter 70.129 RCW, and chapter 74.34 RCW, and this chapter are:

- (1) ~~((A serious problem, a recurring problem, or an uncorrected problem))~~ Repeated;
- (2) ~~((Created a hazard that causes or is likely to cause death or serious harm to one or more residents))~~ Uncorrected;
- (3) ~~((Discriminated or retaliated in any manner against a resident, employee, or any other person because that person or any other person made a complaint or provided information to the department, the attorney general, a law enforcement agency, or the long term care ombuds))~~ Pervasive; or
- (4) ~~((Willfully interfered with the performance of official duties by a long term care ombuds))~~ Present a threat to the health, safety, or welfare of one or more residents.

NEW SECTION

WAC 388-78A-3181 Remedies—Specific—Civil Penalties. (1) The department may impose civil penalties of at least one hundred dollars per day per violation.

(2) Fines up to one thousand dollars per day per violation may be issued under RCW 18.20.190 until July 1, 2019, and thereafter as follows:

(a) Beginning July 1, 2019, through June 30, 2020, the civil penalties may not exceed two thousand dollars per day per violation; and

(b) Beginning July 1, 2020, the civil penalties may not exceed three thousand dollars per day per violation.

(3) Fines up to three thousand dollars may be issued under RCW 18.20.185 for willful interference with a representative of the long-term care ombuds.

(4) Fines up to three thousand dollars may be issued under RCW 74.39A.060 for retaliation against a resident, employee, or any other person making a complaint, providing information to, or cooperating with, the ombuds, the department, the attorney's general office, or a law enforcement agency.

(5) Fines up to ten thousand dollars may be issued under RCW 18.20.190 for a current or former licensed provider who is operating an unlicensed home.

(6) When the assisted living facility fails to pay a fine under this chapter when due, the department may, in addition to other remedies, withhold an amount equal to the fine plus interest, if any, from any contract payment due to the provider from the department.

(7) Civil monetary penalties are due twenty-eight days after the assisted living facility or the owner or operator of an unlicensed as-

sisted living facility is served with notice of the penalty unless the assisted living facility requests a hearing in compliance with chapter 34.05 RCW, RCW 43.20A.215, and this chapter. If the hearing is requested, the penalty becomes due ten days after a final decision affirming the assessed civil penalty. Thirty days after the department serves the assisted living facility with notice of the penalty, interest begins to

(8) All receipts from civil penalties imposed under this chapter must be deposited in the assisted living facility temporary management account created in RCW 18.20.430.

NEW SECTION

WAC 388-78A-3183 Remedies—Civil fine grid. Effective October 26, 2018, 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, Immediate Threat, or Both
	Repeat/ Uncorrected	Initial	Repeat/ Uncorrected	Initial	Repeat/ Uncorrected
Civil fine of at least one hundred dollars per violation.	Civil fine up to two hundred and fifty dollars per violation per day.	Civil fine up to five hundred dollars per violation per day.	Civil fine up to seven hundred and fifty dollars per violation per day.	Civil fine up to one thousand dollars per violation per day.	Civil fine of one thousand dollars per violation per day.

Beginning July 1, 2019, 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, Immediate Threat, or Both
	Repeat/ Uncorrected	Initial	Repeat/ Uncorrected	Initial	Repeat/ Uncorrected
Civil fine of at least one hundred dollars per violation.	Civil fine up to two hundred and fifty dollars per violation or a daily civil fine of at least one hundred and twenty-five dollars per day.	Civil fine up to five hundred dollars per violation or a daily civil fine of at least two hundred and fifty dollars per day.	Civil fine up to one thousand dollars per violation or a daily civil fine of at least five hundred dollars per day.	Civil fine up to one thousand five hundred dollars per violation or a daily civil fine of at least seven hundred and fifty dollars per day.	Civil fine of two thousand dollars or daily civil fine of at least one thousand dollars per day.

Beginning July 1, 2020, the department will consider the guidance in the tiered sanction grid below when imposing civil find remedies:

No Harm	Minimal or Moderate Harm	Serious Harm	Imminent Danger, Immediate Threat, or Both

Repeat/ Uncorrected	Initial	Repeat/ Uncorrected	Initial	Repeat/ Uncorrected	Any Violation
Civil fine of at least one hundred dollars per violation.	Civil fine up to five hundred dollars per violation or a daily civil fine of at least two hundred and fifty dollars per day.	Civil fine up to one thousand dollars per violation or a daily civil fine of at least five hundred dollars per day.	Civil fine up to two thousand dollars per violation or a daily civil fine of at least one thousand dollars per day.	Civil fine up to three thousand dollars per violation or a daily civil fine of at least one thousand five hundred dollars per day.	Civil fine of three thousand dollars or daily civil fine of at least one thousand dollars per day.

For the purpose of this section, the following definitions of harm apply:

(1) **"Minimal"** means violations that result in little or no negative outcome or little or no potential harm for a resident.

(2) **"Moderate"** means violations that result in negative outcome and actual or potential harm for a resident.

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

(4) **"Imminent danger"** or **"immediate threat"** means serious physical harm to or death of a resident has occurred, or there is a serious threat to the resident's life, health, or safety.