



EXPEDITED RULE MAKING

CR-105 (December 2017) (Implements RCW 34.05.353)

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STATE OF WASHINGTON
FILED

DATE: January 22, 2020

TIME: 11:44 AM

WSR 20-03-183

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

Title of rule and other identifying information: (describe subject) The department is proposing to amend WAC 388-78A-3181 and WAC 388-78A-3183.

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The department is amending these rules to assure compliance with requirements from RCW 18.20.190 which governs the department's response to noncompliance or violations in assisted living facilities.

Reasons supporting proposal: This proposal would correct typographical errors in the implementation dates in these rules and ensure compliance with the RCW.

Statutory authority for adoption: Chapter 18.20 RCW

Statute being implemented: RCW 18.20.190

Is rule necessary because of a:

- | | | |
|-------------------------|------------------------------|--|
| Federal Law? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If yes, CITATION:

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:	Shana Privett	PO Box 45600, Olympia, Washington 98504	360-725-2382
Implementation:	Shana Privett	PO Box 45600, Olympia, Washington 98504	360-725-2382
Enforcement:	Shana Privett	PO Box 45600, Olympia, Washington 98504	360-725-2382

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

Expedited Adoption - Which of the following criteria was used by the agency to file this notice:

- Relates only to internal governmental operations that are not subject to violation by a person;
- Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;
- Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect;
- Content is explicitly and specifically dictated by statute;
- Have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or
- Is being amended after a review under RCW 34.05.328.

Expedited Repeal - Which of the following criteria was used by the agency to file notice:

- The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule;
- The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute;
- The rule is no longer necessary because of changed circumstances; or
- Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

Explanation of the reason the agency believes the expedited rule-making process is appropriate pursuant to RCW 34.05.353(4): This proposal corrects typographical errors in the context of RCW 34.05.353(1)(c), which allows for these errors to be remedied through expedited rule making.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO

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Agency: Department of Social and Health Services
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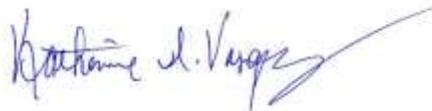
AND RECEIVED BY (date) March 23, 2020

Date: January 16, 2019

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



AMENDATORY SECTION (Amending WSR 19-18-031, filed 8/29/19, effective 9/29/19)

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 through ~~((December 31, 2019))~~ June 30, 2019, and thereafter as follows:

(a) Beginning ~~((January 1, 2020))~~ July 1, 2019, through ~~((December 31, 2020))~~ June 30, 2020, the civil penalties may not exceed two thousand dollars per day per violation; and

(b) Beginning ~~((January 1, 2021))~~ 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 general's 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 assisted 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 accrue at a rate of one percent per month as authorized under RCW 43.20B.695.

(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.

AMENDATORY SECTION (Amending WSR 19-18-031, filed 8/29/19, effective 9/29/19)

WAC 388-78A-3183 Remedies—Civil fine grid. Effective (exact date to be determined), the department will consider the guidance in the tiered sanction grid below when imposing civil fine remedies:

No Harm	Minimal to Moderate Harm		Severe Harm		Imminent Danger, Immediate Threat, or Both
Recurring/ Uncorrected	Initial	Recurring/ Uncorrected	Initial	Recurring/ Uncorrected	Any Violation
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 ((~~January 1, 2020~~)) July 1, 2019, the department will consider the guidance in the tiered sanction grid below when imposing civil fine remedies:

No Harm	Minimal to Moderate Harm		Severe Harm		Imminent Danger, Immediate Threat, or Both
Recurring/ Uncorrected	Initial	Recurring/ Uncorrected	Initial	Recurring/ Uncorrected	Any Violation
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 ((~~January 1, 2021~~)) July 1, 2020, the department will consider the guidance in the tiered sanction grid below when imposing civil fine remedies:

No Harm	Minimal to Moderate Harm		Severe Harm		Imminent Danger, Immediate Threat, or Both
Recurring/ Uncorrected	Initial	Recurring/ Uncorrected	Initial	Recurring/ 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 to 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) **"Severe"** 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.