



RULE-MAKING ORDER PERMANENT RULE ONLY

CR-103P (December 2017) (Implements RCW 34.05.360)

CODE REVISER USE ONLY

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STATE OF WASHINGTON
FILED

DATE: August 29, 2019

TIME: 8:50 AM

WSR 19-18-031

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

Effective date of rule:

Permanent Rules

- 31 days after filing.
- Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes No If Yes, explain:

Purpose: The department is creating two new sections, WAC 388-78A-3181 "Remedies—Specific—Civil Penalties" and WAC 388-78A-3183 "Remedies—Civil fine grid" to assure compliance with requirements of HB 2750 (Chapter 173, Laws of 2018) passed by the 2018 legislature.

Citation of rules affected by this order:

New: WAC 388-78A-3181, WAC 388-78A-3183
 Repealed: None
 Amended: None
 Suspended: None

Statutory authority for adoption: Chapter 18.20 RCW

Other authority: None

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 19-12-117 on June 5, 2019 (date).

Describe any changes other than editing from proposed to adopted version: Minor correction of typographical error to change the word "find" to "fine" in WAC 388-78A-3183.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

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**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Federal rules or standards:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Recently enacted state statutes:	New	<u>2</u>	Amended	<u>0</u>	Repealed	<u>0</u>

The number of sections adopted at the request of a nongovernmental entity:

New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted on the agency's own initiative:

New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted using:

Negotiated rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Pilot rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Other alternative rule making:	New	<u>2</u>	Amended	<u>0</u>	Repealed	<u>0</u>

Date Adopted: August 28, 2019

Name: Cheryl Strange

Title: DSHS Secretary

Signature:



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 through December 31, 2019, and thereafter as follows:

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

(b) Beginning January 1, 2021, 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.

NEW SECTION

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
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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, 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, 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.