



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Department of Health

- Preproposal Statement of Inquiry was filed as WSR 14-04-021 ; 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)

Chapter 246-120 WAC creating a new chapter clarifying the Secretary of Health's authority and procedures for issuing civil penalties against health carriers and third-party administrators. Amending WAC 246-10-501 to allow adjudicative proceedings involving civil penalties against health carriers and third-party administrators to be conducted under brief adjudicative proceedings.

Hearing location(s): Washington State Department of Health
Point Plaza East, Room 152/153
310 Israel Road SE
Tumwater, WA 98501

Date: May 7, 2014 Time: 9:00AM

Submit written comments to:

Name: Jan Hicks-Thomson
Address: Washington State Department of Health
PO Box 47843
Olympia, WA 98504-7843

e-mail: <http://www3.doh.wa.gov/policyreview/>
fax 360-236-3590 by (date) 05/07/2014

Assistance for persons with disabilities: Contact

Nicole Avelar by 05/01/2014

TTY (800) 833-6388 or () 711

Date of intended adoption: 05/14/2014

(Note: This is NOT the effective date)

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

The proposed rule clarifies the Secretary of Health's ability and procedures for fining health plans and third-party administrators in connection with the conditions established in the Washington Vaccine Association plan of operations, which details the conditions and procedures regarding late payment of vaccine assessments and reimbursement as established in state law. The proposed rule will also allow for the use of brief adjudicative proceedings as part of the appeal process.

Reasons supporting proposal:

The rules provide the administrative framework for the Secretary of Health to carry out the levying of penalties as described in the law.

Statutory authority for adoption:

RCW 70.290.060

Statute being implemented:

Chapter 70.290 RCW

Is rule necessary because of a:

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

DATE 03/31/2014

NAME (type or print)

John Wiesman, DrPH, MPH

SIGNATURE

, DrPH, MPH

TITLE

Secretary of Health

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: April 01, 2014

TIME: 11:29 AM

WSR 14-08-085

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

None

Name of proponent: (person or organization) Washington State Department of Health

- Private
- Public
- Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Jan Hicks-Thomson	DOH, 310 Israel Rd SE, Point Plaza East, Tumwater, WA	(360) 236-3578
Implementation.... Michele Roberts	DOH, 310 Israel Rd SE, Point Plaza East, Tumwater, WA	(360) 236-3568
Enforcement..... Michele Roberts	DOH, 310 Israel Rd SE, Point Plaza East, Tumwater, WA	(360) 236-3568

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.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone

fax

e-mail

No. Explain why no statement was prepared.

A small business economic impact statement was not prepared. The proposed rule would not impose more than minor costs on businesses in an industry. It is a non-significant legislative rule that outlines the process for how the Secretary of Health will notify health plans and third party administrators of the civil penalty as outlined in Chapter 246-120 WAC.

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 agency did not complete a cost benefit analysis under RCW 34.05.328. By definition this is not a significant legislative rule. The proposed rule outlines the process for how the Secretary of Health will notify health plans and third party administrators of the civil penalty as outlined in Chapter 246-120 WAC.

WAC 246-10-501 Application of brief adjudicative proceedings.

(1) If an adjudicative proceeding is requested, a brief adjudicative proceeding will be conducted where the matter involves one or more of the following:

(a) A determination whether an applicant for a professional, business, or facility license meets the minimum criteria for an unrestricted license and the department proposes to deny such a license or to issue a restricted license;

(b) An application to approve a water system plan under WAC 246-290-100;

(c) An application to approve a project report under WAC 246-290-110;

(d) An application for source approval under WAC 246-290-130;

(e) An application to approve construction documents under WAC 246-290-120;

(f) An application to approve an existing Group A water system under WAC 246-290-140;

(g) An application for source approval under WAC 246-291-100 or 246-291-110;

(h) An application to approve a design report under WAC 246-291-120;

(i) An application to approve an existing Group B water system under WAC 246-291-130;

(j) An application to approve a water system plan under WAC 246-291-140;

(k) A decision under WAC 246-293-190;

(l) A decision with respect to service area conflicts under WAC 246-293-430;

(m) An application for approval as a satellite management agency under WAC 246-295-040;

(n) A civil penalty imposed under RCW 70.119A.040 when the amount of the civil penalty does not exceed two thousand five hundred dollars;

(o) A request to bank nursing home beds under RCW 70.38.111(8) and 70.38.115(13);

(p) A determination as to whether a person is in compliance with the terms and conditions of a final order previously issued by the department;

(q) Any approval of a school or curriculum when such approval by the department is required or authorized by statute or rule;

(r) A determination whether a license holder requesting renewal has submitted all required information and meets minimum criteria for license renewal;

(s) A decision to deny, modify, or impose conditions upon an operating permit under WAC 246-294-050; (~~(e)~~)

(t) A decision to deny or revoke certification as a home care aide when a long-term care worker is disqualified from working with vulnerable persons under chapter 74.39A RCW; or

(u) A civil penalty imposed against a health carrier or third-party administrator under RCW 70.290.060.

(2) If an adjudicative proceeding is requested, in a matter not listed in subsection (1) of this section, a brief adjudicative proceeding may be conducted in the discretion of the presiding officer

when it appears that protection of the public interest does not require that the department provide notice and an opportunity to participate to persons other than the parties and:

- (a) Only legal issues exist; or
- (b) Both parties have agreed to a brief proceeding.

Chapter 246-120 WAC
CIVIL PENALTIES OF HEALTH CARRIERS AND THIRD-PARTY ADMINISTRATORS

NEW SECTION

WAC 246-120-010 Purpose. The purpose of this chapter is to describe the procedures and conditions by which the secretary must issue civil penalties to health carriers and third-party administrators. This chapter is adopted under RCW 70.290.060.

NEW SECTION

WAC 246-120-020 Definitions. For the purposes of this chapter, the words and phrases in this section have the following meanings unless the context clearly indicates otherwise:

(1) "Health carrier" has the same meaning as defined in RCW 70.290.010.

(2) "Secretary" means the secretary of the department of health.

(3) "Third-party administrator" has the same meaning as defined in RCW 70.290.010.

(4) "Washington vaccine association" or "association" means the association created under chapter 70.290 RCW. The association collects and remits adequate funds from health carriers and third-party administrators for the cost of vaccines provided to certain children in Washington state.

NEW SECTION

WAC 246-120-030 Penalty-Failure to reimburse audit costs. (1) Following a compliance audit by Washington vaccine association pursuant to RCW 70.290.060 and upon certification of the audit costs, the Washington vaccine association shall notify the health carrier or third-party administrator in writing that there is an outstanding obligation to reimburse the Washington vaccine association for the cost of the audit.

(2) The health carrier or third-party administrator must reimburse the Washington vaccine association for the cost of the audit within forty-five days after receiving written notice of the obligation.

(3) The Washington vaccine association shall notify the secretary if the health carrier or third-party administrator fails to timely reimburse the Washington vaccine association for the cost of the audit. Upon receipt of such notice, the secretary shall assess a civil penalty of one hundred fifty percent of the amount of the costs of the audit against the health carrier or third-party administrator.

(4) The secretary shall serve notice of the civil penalty for failure to pay the audit costs in writing upon the health carrier or

third-party administrator by personal service or by certified mail in a manner that shows proof of receipt. The civil penalty is due and payable twenty-eight days at the place specified in the notice after receipt by the health carrier or third-party administrator.

(5) A health carrier or third-party administrator who has received written notification of an assessed civil penalty according to this section may request a brief adjudicative proceeding pursuant to WAC 246-120-050. The sole issue at the brief adjudicative proceeding shall be whether the health carrier or third-party administrator paid the cost of the audit in the required time and manner.

NEW SECTION

WAC 246-120-040 Penalty-Failure to remit assessment. (1) Following Washington vaccine association's notice of assessment pursuant to RCW 70.290.060 and the plan of operation, the health carrier or third-party administrator must remit the amount of the assessment to the Washington vaccine association within ninety days after receiving the written notice or timely pay in accordance with an approved payment plan with the Washington vaccine association.

(2) The Washington vaccine association shall notify the secretary if the health carrier or third-party administrator fails to pay the amount of the assessment or, after notification from the Washington vaccine association to the health carrier or third-party administrator of an outstanding obligation, the amount owed on the approved payment plan. The notice must provide the amount due to the Washington vaccine association. Upon receipt of such notice, the secretary shall assess a civil penalty of one hundred fifty percent of the assessment amount due against the health carrier or third-party administrator.

(3) The secretary shall serve notice of the civil penalty for failure to pay the assessment or amount owed on the approved payment plan in writing upon the health carrier or third-party administrator by personal service or by certified mail in a manner that shows proof of receipt. The civil penalty is due and payable twenty-eight days at the place specified in the notice after receipt by the health carrier or third-party administrator.

(4) A health carrier or third-party administrator who has received written notification of an assessed civil penalty according to this section may request a brief adjudicative proceeding pursuant to WAC 246-120-050. The sole issue at the brief adjudicative proceeding shall be whether the health carrier or third-party administrator failed to pay the annual assessment or the amount owed on the approved payment plan in the required time and manner.

NEW SECTION

WAC 246-120-050 Request for a brief adjudicative proceeding. (1) A health carrier or third-party administrator who has received written notification of an assessed civil penalty according to this chapter may request a brief adjudicative proceeding pursuant to chapter 34.05 RCW.

- (2) The application for a brief adjudicative proceeding must:
- (a) Be in writing;
 - (b) State the basis for contesting the civil penalty;
 - (c) Include a copy of the adverse notice;
 - (d) Be served on and received by the department within twenty-eight days of the health carrier or third-party administrator receiving the notice of a civil penalty; and
 - (e) Be served in a manner which shows proof of receipt at the following address:

Adjudicative Clerk Office
310 Israel Rd. S.E.
Olympia, WA 98504-7879

(3) If a health carrier or third-party administrator files a timely and sufficient application for a brief adjudicative proceeding, the secretary shall not implement the action for the civil penalty until the final order is entered. The presiding or reviewing officer may permit the secretary to implement part or all of the action while the proceedings are pending, if the health carrier or third-party administrator causes an unreasonable delay in the proceedings or for other good cause.