



STATE OF WASHINGTON
DEPARTMENT OF HEALTH

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To Whom It May Concern,

The Department of Health (department) has adopted amendments to WAC 246-322-025 – Private psychiatric hospitals – responsibilities and rights – licensee and department. In 2020, the Washington state legislature passed SHB 2426, an act relating to protecting patient safety in psychiatric hospitals and other health care facilities. This law allows the department, under RCW 43.70.095, to assess a civil fine of up to \$10,000 per violation, not to exceed a total fine of one million dollars, on a licensed hospital when the department determines the psychiatric hospital has previously been subject to an enforcement action for the same or similar type of violation of the same statute or rule, or has been given any previous statement of deficiency that included the same or similar type of violation of the same or similar statute or rule, or when the psychiatric hospital failed to correct noncompliance with a statute or rule by a date established or agreed to by the department. SHB 2426 requires the department to adopt rules establishing specific fine amounts in relation to the severity of the noncompliance.

A comprehensive process that included workshops, internal and external stakeholder discussion and multiple revisions produced a fine matrix to be added to the rule to satisfy the conditions of the request from the legislature. WAC 246-322-025 was amended to:

- Detail the conditions under which a fine may be levied;
- Include a matrix of severities that determine the amount of the fine; and
- Provide definitions related to the fine language.

The amendments to WAC 246-322-025 apply to any private psychiatric hospital licensed under chapter 246-322 WAC.

The adopted amendments to WAC 246-322-025 will become effective 31 days after this filing. A copy of the adopted rules are attached.

The adopted rules are different from the text of the proposed rule as it was published in the Washington State Register as WSR 21-21-106. The following clarifying changes were made to the proposed rules upon adoption:

- A. WAC 246-322-025 (6)(b) – The maximum fine amount for high-severity, limited violations was reduced from \$10,000 to \$8,000 and the maximum fine amount for high-severity, pattern violations was reduced from \$10,000 to \$9,000. The maximum fine amount for high-severity, widespread violations remained unchanged, at \$10,000. This change was made to mirror the gradation that is found in the low and moderate-severity columns of the fine matrix and clarifies the department’s intent to take scope into consideration at every level of severity, rather than just at the low and moderate levels.
- B. WAC 246-322-025 (6)(f) – Added subsection (6)(f), which states “When determining the scope of the violation, the department will also consider the duration of time that has passed between violations that relate to the same or similar circumstances.” This change was made as a result of a suggestion that the department consider the amount of time that has passed between violations.
- C. WAC 246-322-025 (6)(a)(i) – Removed the words “or similar” prior to “statute or rule.” This was a drafting error.
- D. WAC 246-322-025 (6)(e)(i) – (6)(e)(iii) – Added the coordinating conjunction “or” between the words “visitors” and “staff” in the first sentence of each of these subsections. This was a drafting error.

The following table summarizes all the comments received and the department’s response:

TOPIC	CITATION	COMMENTS ON PROPOSED RULES	AGENCY RESPONSE
Scope of the violation	WAC 246-322-025(6)(f)	<p>The comment suggested that the department add a new subsection, (6)(f), “Factors the department will consider when determining the scope of the violation.” It was proposed that the following factor be included:</p> <ol style="list-style-type: none"> 1. The duration of time that has passed between violations that relate to the same or similar circumstances. 	<p>The department believes that this is a reasonable addition that does not detract from the intent or function of the rule.</p> <p><i>Was the rule changed as a result of these comments?</i></p> <p>Yes, the department added subsection (6)(f), which states “When determining the scope of the violation, the department will also consider the duration of time that has passed between violations that relate to the same or similar circumstances.</p>
Fine amounts	WAC 246-322-025(6)(b)	Comments suggested that the department lower the maximum fines for the “limited” and “pattern” scopes in the high-severity	The department believes that it is reasonable for there to be gradation in the high-severity column, similar to the low and

		<p>column of the matrix, which were initially set to \$10,000. It was proposed that limited high-severity offenses have a maximum fine amount of \$8,000 and pattern high-severity offenses have a maximum fine amount of \$9,000.</p> <p>Note: This suggestion was made by two separate parties.</p>	<p>moderate-severity columns.</p> <p><i>Was the rule changed as a result of these comments?</i></p> <p>Yes, the department modified the amounts in the high-severity column, so that limited high-severity offenses have a maximum fine amount of \$8,000 and pattern high-severity offenses have a maximum fine amount of \$9,000.</p>
Severity of the violation	WAC 246-322-025 (6)(d)	<p>The comment suggested that the department add the following to the list of factors that the department will consider when determining the severity of the violation: "Whether the hospital is appropriately staffing the facility and following governing requirements as determined by the department."</p>	<p>The department has determined that if staffing levels were to impact patient safety, the current rule language would already be sufficient to levy a fine. Therefore, no additional language is needed.</p> <p><i>Was the rule changed as a result of these comments?</i></p> <p>No.</p>
Severity of the violation	WAC 246-322-025 (6)(d)	<p>The comment was to express strong opposition to any consideration of staffing levels as a part of the factors that influence the fine matrix. Given the complexities of staffing, which include the experience levels of staff, models of team-based care with multiple professions, patient acuity and length of stay, the commenter does not feel that there is methodology to determine staffing impact on patient care outcomes.</p>	<p>The department was not planning on taking action in regard to the comment related to staffing (see above).</p> <p><i>Was the rule changed as a result of these comments?</i></p> <p>No.</p>

Facility staffing	WAC 246-322-025	The comment suggested that the department add a new subsection (6)(f) that states: "Failure to appropriately staff the facility and meet governing requirements will result in preemptively reduced bed and/or department capacity."	<p>The department believes that this request is outside of the scope and intent of this rulemaking project, as this rule is related to monetary sanctioned fines and not to other enforcement actions such as diminished bed/department capacity.</p> <p><i>Was the rule changed as a result of these comments?</i></p> <p>No.</p>
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Any person may petition the adoption or amendment of these rules in accordance with RCW 34.05.330.

For more information regarding these rules you may contact me by email at dan.overton@doh.wa.gov or by phone at 360-236-2953.

Cordially,

Daniel Overton, Psychiatric Hospital Program Manager