

RCW 71.24.038 Investigations and inspections—Violations—

Penalties. (1) The department shall review reports or other information alleging a failure to comply with this chapter or the standards and rules adopted under this chapter and may initiate investigations and enforcement actions based on those reports.

(2) The department shall conduct inspections of licensed or certified behavioral health agencies, including reviews of records and documents required to be maintained under this chapter or rules adopted under this chapter.

(3) Each licensed or certified behavioral health agency shall file with the department or the authority upon request data, statistics, schedules, medical records, and other information the department or the authority reasonably requires. A licensed or certified behavioral health agency that without good cause fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent returns thereof, may have its license or certification revoked or suspended.

(4) The authority shall use the data provided in subsection (3) of this section to evaluate each program that admits children to inpatient substance use disorder treatment upon application of their parents. The evaluation shall be done at least once every 12 months. In addition, the authority shall randomly select and review the information on individual children who are admitted on application of the child's parent for the purpose of determining whether the child was appropriately placed into substance use disorder treatment based on an objective evaluation of the child's condition and the outcome of the child's treatment.

(5) Any settlement agreement entered into between the department and licensed or certified behavioral health agencies to resolve administrative complaints, license or certification violations, license or certification suspensions, or license or certification revocations may not reduce the number of violations reported by the department unless the department concludes, based on evidence gathered by inspectors, that the licensed or certified behavioral health agency did not commit one or more of the violations.

(6) In cases in which a licensed or certified behavioral health agency that is in violation of licensing or certification standards attempts to transfer or sell the behavioral health agency to a family member, the transfer or sale may only be made for the purpose of remedying license or certification violations and achieving full compliance with the terms of the license or certification. Transfers or sales to family members are prohibited in cases in which the purpose of the transfer or sale is to avoid liability or reset the number of license or certification violations found before the transfer or sale. If the department finds that the owner intends to transfer or sell, or has completed the transfer or sale of, ownership of the behavioral health agency to a family member solely for the purpose of resetting the number of violations found before the transfer or sale, the department may not renew the behavioral health agency's license or certification or issue a new license or certification to the behavioral health provider.

(7) In any case in which the department finds that a licensed or certified behavioral health agency has failed or refused to comply with the requirements of this chapter or the standards or rules adopted under this chapter, the department may take one or more of the

actions identified in this section, except as otherwise limited in this section.

(a) When the department determines the licensed or certified behavioral health agency 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 licensed or certified behavioral health agency failed to correct noncompliance with a statute or rule by a date established or agreed to by the department, the department may impose reasonable conditions on a license. Conditions may include correction within a specified amount of time, training, or hiring a department-approved consultant if the licensed or certified behavioral health agency cannot demonstrate to the department that it has access to sufficient internal expertise.

(b) (i) In accordance with the department's authority under RCW 43.70.095, the department may assess a civil fine of up to \$3,000 per violation on a licensed or certified behavioral health agency when the department determines the licensed or certified behavioral health agency 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 licensed or certified behavioral health agency failed to correct noncompliance with a statute or rule by a date established or agreed to by the department.

(ii) Proceeds from these fines may only be used by the department to provide training or technical assistance to licensed or certified behavioral health agencies and to offset costs associated with licensing, certification, or enforcement of behavioral health agencies.

(iii) The department shall adopt in rules under this chapter specific fine amounts in relation to the severity of the noncompliance and at an adequate level to be a deterrent to future noncompliance.

(iv) If a licensee is aggrieved by the department's action of assessing civil fines, the licensee has the right to appeal under RCW 43.70.095.

(c) The department may suspend new intake or admission of a specific category or categories of individuals receiving behavioral health services as related to the violation by imposing a limited stop placement. This may only be done if the department finds that noncompliance results in immediate jeopardy.

(i) Prior to imposing a limited stop placement, the department shall provide a licensed or certified behavioral health agency written notification upon identifying deficient practices or conditions that constitute an immediate jeopardy, and the licensed or certified behavioral health agency shall have 24 hours from notification to develop and implement a department-approved plan to correct the deficient practices or conditions that constitute an immediate jeopardy. If the deficient practices or conditions that constitute immediate jeopardy are not verified by the department as having been corrected within the same 24-hour period, the department may issue the limited stop placement.

(ii) When the department imposes a limited stop placement, the licensed or certified behavioral health agency may not accept any new individuals in the category or categories subject to the limited stop placement until the limited stop placement is terminated.

(iii) The department shall conduct a follow-up inspection within five business days or within the time period requested by the licensed or certified behavioral health agency if more than five business days is needed to verify the violation necessitating the limited stop placement has been corrected.

(iv) The limited stop placement shall be terminated when:

(A) The department verifies the violation necessitating the limited stop placement has been corrected or the department determines that the licensed or certified behavioral health agency has taken intermediate action to address the immediate jeopardy; and

(B) The licensed or certified behavioral health agency establishes the ability to maintain correction of the violation previously found deficient.

(d) The department may suspend new intake or admission of individuals receiving behavioral health services as related to the violation by imposing a stop placement. This may only be done if the department finds that noncompliance results in immediate jeopardy and is not confined to a specific category or categories of individuals.

(i) Prior to imposing a stop placement, the department shall provide a licensed or certified behavioral health agency written notification upon identifying deficient practices or conditions that constitute an immediate jeopardy. The licensed or certified behavioral health agency shall have 24 hours from notification to develop and implement a department-approved plan to correct the deficient practices or conditions that constitute an immediate jeopardy. If the deficient practices or conditions that constitute an immediate jeopardy are not verified by the department as having been corrected within the same 24-hour period, the department may issue the stop placement.

(ii) When the department imposes a stop placement, the licensed or certified behavioral health agency may not accept any new individuals receiving behavioral health services until the stop placement is terminated.

(iii) The department shall conduct a follow-up inspection within five business days or within the time period requested by the licensed or certified behavioral health agency if more than five business days is needed to verify the violation necessitating the stop placement has been corrected.

(iv) The stop placement shall be terminated when:

(A) The department verifies the violation necessitating the stop placement has been corrected or the department determines that the licensed or certified behavioral health agency has taken intermediate action to address the immediate jeopardy; and

(B) The licensed or certified behavioral health agency establishes the ability to maintain correction of the violation previously found deficient.

(e) The department may suspend a specific category or categories of behavioral health services as related to the violation by imposing a limited stop service. This may only be done if the department finds that noncompliance results in immediate jeopardy.

(i) Prior to imposing a limited stop service, the department shall provide a licensed or certified behavioral health agency written notification upon identifying deficient practices or conditions that constitute an immediate jeopardy. The licensed or certified behavioral health agency shall have 24 hours from notification to develop and implement a department-approved plan to correct the deficient practices or conditions that constitute an immediate jeopardy. If the

deficient practices or conditions that constitute immediate jeopardy are not verified by the department as having been corrected within the same 24-hour period, the department may issue the limited stop service.

(ii) When the department imposes a limited stop service, the licensed or certified behavioral health agency may not provide the services in the category or categories subject to the limited stop service to any new or existing individuals, unless otherwise allowed by the department, until the limited stop service is terminated.

(iii) The department shall conduct a follow-up inspection within five business days or within the time period requested by the licensed or certified behavioral health agency if more than five business days is needed to verify the violation necessitating the limited stop service has been corrected.

(iv) The limited stop service shall be terminated when:

(A) The department verifies the violation necessitating the limited stop service has been corrected or the department determines that the licensed or certified behavioral health agency has taken intermediate action to address the immediate jeopardy; and

(B) The licensed or certified behavioral health agency establishes the ability to maintain correction of the violation previously found deficient.

(f) The department may suspend, revoke, or refuse to renew a license.

(8) (a) Except as otherwise provided, RCW 43.70.115 governs notice of the imposition of conditions on a license, a limited stop placement, stop placement, limited stop service, or the suspension, revocation, or refusal to renew a license and provides the right to an adjudicative proceeding. Adjudicative proceedings and hearings under this section are governed by the administrative procedure act, chapter 34.05 RCW. The application for an adjudicative proceeding must be in writing, state the basis for contesting the adverse action, include a copy of the department's notice, be served on and received by the department within 28 days of the licensee's receipt of the adverse notice, and be served in a manner that shows proof of receipt.

(b) When the department determines a licensee's noncompliance results in immediate jeopardy, the department may make the imposition of conditions on a licensee, a limited stop placement, stop placement, limited stop service, or the suspension of a license effective immediately upon receipt of the notice by the licensee, pending any adjudicative proceeding.

(i) When the department makes the suspension of a license or imposition of conditions on a license effective immediately, a licensee is entitled to a show cause hearing before a presiding officer within 14 days of making the request. The licensee must request the show cause hearing within 28 days of receipt of the notice of immediate suspension or immediate imposition of conditions. At the show cause hearing the department has the burden of demonstrating that more probably than not there is an immediate jeopardy.

(ii) At the show cause hearing, the presiding officer may consider the notice and documents supporting the immediate suspension or immediate imposition of conditions and the licensee's response and shall provide the parties with an opportunity to provide documentary evidence and written testimony, and to be represented by counsel. Prior to the show cause hearing, the department shall provide the licensee with all documentation that supports the department's immediate suspension or immediate imposition of conditions.

(iii) If the presiding officer determines there is no immediate jeopardy, the presiding officer may overturn the immediate suspension or immediate imposition of conditions.

(iv) If the presiding officer determines there is immediate jeopardy, the immediate suspension or immediate imposition of conditions shall remain in effect pending a full hearing.

(v) If the secretary sustains the immediate suspension or immediate imposition of conditions, the licensee may request an expedited full hearing on the merits of the department's action. A full hearing must be provided within 90 days of the licensee's request.

(9) When the department determines an alleged violation, if true, would constitute an immediate jeopardy, and the licensee fails to cooperate with the department's investigation of such an alleged violation, the department may impose an immediate limited stop placement, immediate stop placement, immediate limited stop service, immediate imposition of conditions, or immediate suspension.

(a) When the department imposes an immediate limited stop placement, immediate stop placement, immediate limited stop service, immediate imposition of conditions, or immediate suspension for failure to cooperate, a licensee is entitled to a show cause hearing before a presiding officer within 14 days of making the request. The licensee must request the show cause hearing within 28 days of receipt of the notice of an immediate limited stop placement, immediate stop placement, immediate limited stop service, immediate imposition of conditions, or immediate suspension for failure to cooperate. At the show cause hearing the department has the burden of demonstrating that more probably than not the alleged violation, if true, would constitute an immediate jeopardy and the licensee failed to cooperate with the department's investigation.

(b) At the show cause hearing, the presiding officer may consider the notice and documents supporting the immediate limited stop placement, immediate stop placement, immediate limited stop service, immediate imposition of conditions, or immediate suspension for failure to cooperate, and the licensee's response and shall provide the parties with an opportunity to provide documentary evidence and written testimony, and to be represented by counsel. Prior to the show cause hearing, the department shall provide the licensee with all documentation that supports the department's immediate action for failure to cooperate.

(c) If the presiding officer determines the alleged violation, if true, does not constitute an immediate jeopardy or determines that the licensee cooperated with the department's investigation, the presiding officer may overturn the immediate action for failure to cooperate.

(d) If the presiding officer determines the allegation, if true, would constitute an immediate jeopardy and the licensee failed to cooperate with the department's investigation, the immediate action for failure to cooperate shall remain in effect pending a full hearing.

(e) If the presiding officer sustains the immediate action for failure to cooperate, the licensee may request an expedited full hearing on the merits of the department's action. A full hearing must be provided within 90 days of the licensee's request. [2024 c 121 s 27.]