

**Chapter 18.46 RCW
BIRTHING CENTERS**

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RCW 18.46.005 Purpose. The purpose of this chapter is to provide for the development, establishment, and enforcement of standards for the maintenance and operation of birthing centers, which, in the light of advancing knowledge, will promote safe and adequate care and treatment of the individuals therein. [2000 c 93 s 29; 1951 c 168 s 1.]

RCW 18.46.010 Definitions. (1) "Birthing center" or "childbirth center" means any health facility, not part of a hospital or in a hospital, that provides facilities and staff to support a birth service to low-risk maternity clients: PROVIDED, HOWEVER, That this chapter shall not apply to any hospital approved by the American College of Surgeons, American Osteopathic Association, or its successor.

(2) "Department" means the state department of health.

(3) "Immediate jeopardy" means a situation in which the birthing center's noncompliance with one or more statutory or regulatory requirements has placed the health and safety of patients in its care at risk for serious injury, serious harm, serious impairment, or death.

(4) "Low-risk" means normal, uncomplicated prenatal course as determined by adequate prenatal care and prospects for a normal

uncomplicated birth as defined by reasonable and generally accepted criteria of maternal and fetal health.

(5) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof. [2024 c 121 s 1; 2000 c 93 s 30; 1991 c 3 s 100; 1985 c 213 s 8; 1979 c 141 s 32; 1951 c 168 s 2. Prior: 1943 c 214 s 1; Rem. Supp. 1943 s 6130-47.]

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

RCW 18.46.020 License required. After July 1, 1951, no person shall operate a birthing center in this state without a license under this chapter. [2000 c 93 s 31; 1951 c 168 s 3. Prior: 1943 c 214 s 2; Rem. Supp. 1943 s 6130-48.]

RCW 18.46.030 Application for license—Fee. An application for license shall be made to the department upon forms provided by it and shall contain such information as the department reasonably requires, which may include affirmative evidence of ability to comply with rules and regulations as are lawfully prescribed hereunder. Each application for license or renewal of license shall be accompanied by a license fee as established by the department under RCW 43.20B.110: PROVIDED, That no fee shall be required of charitable or nonprofit or government-operated institutions. [1987 c 75 s 4; 1982 c 201 s 5; 1951 c 168 s 4.]

Savings—1987 c 75: See RCW 43.20B.900.

RCW 18.46.040 License—Issuance—Renewal—Limitations—Display. Upon receipt of an application for a license and the license fee, the licensing agency shall issue a license if the applicant and the birthing center meet the requirements established under this chapter. A license, unless suspended or revoked, shall be renewable annually. Applications for renewal shall be on forms provided by the department and shall be filed in the department not less than ten days prior to its expiration. Each application for renewal shall be accompanied by a license fee as established by the department under RCW 43.20B.110. Each license shall be issued only for the premises and persons named in the application and shall not be transferable or assignable except with the written approval of the department. Licenses shall be posted in a conspicuous place on the licensed premises. [2000 c 93 s 32; 1987 c 75 s 5; 1982 c 201 s 6; 1951 c 168 s 5. Prior: 1943 c 214 s 3; Rem. Supp. 1943 s 6130-49.]

Savings—1987 c 75: See RCW 43.20B.900.

RCW 18.46.050 Actions against license—Notice. (1) In any case in which the department finds that a birthing center has failed or refused to comply with the requirements of this chapter, the standards or rules adopted under this chapter, or other applicable state or federal statutes or rules regulating birthing centers, 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 birthing center 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 birthing center 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 birthing center cannot demonstrate to the department that it has access to sufficient internal expertise. If the department determines that the violations constitute immediate jeopardy, the conditions may be imposed immediately in accordance with subsection (2) of this section.

(b) In accordance with the authority the department has under RCW 43.70.095, the department may assess a civil fine of up to \$3,000 per violation on a birthing center licensed under this chapter when the department determines the birthing center 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 birthing center failed to correct noncompliance with a statute or rule by a date established or agreed to by the department.

(i) Proceeds from these fines may only be used by the department to offset costs associated with licensing and enforcement of birthing centers.

(ii) 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.

(iii) If a birthing center 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 a specific category or categories of services or care or birthing rooms within the birthing center 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 birthing center written notification upon identifying deficient practices or conditions that constitute an immediate jeopardy. The birthing center 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 birthing center may not provide the services in the category or categories subject to the limited stop service to any new or existing patients, 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 birthing

center 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 birthing center has taken intermediate action to address the immediate jeopardy; and

(B) The birthing center establishes the ability to maintain correction of the violation previously found deficient.

(d) The department may suspend new admissions to the birthing center 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 patients or a specific area of the birthing center.

(i) Prior to imposing a stop placement, the department shall provide a birthing center written notification upon identifying deficient practices or conditions that constitute an immediate jeopardy. The birthing center 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 stop placement.

(ii) When the department imposes a stop placement, the birthing center may not admit any new patients 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 birthing center 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 birthing center has taken intermediate action to address the immediate jeopardy; and

(B) The birthing center establishes the ability to maintain correction of the violation previously found deficient.

(e) The department may deny an application for a license or suspend, revoke, or refuse to renew a license.

(2) Except as otherwise provided, RCW 43.70.115 governs notice of actions taken by the department under subsection (1) of this section 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 birthing center's receipt of the adverse notice, and be served in a manner that shows proof of receipt.

(3) 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 service, stop placement, or the suspension of a license effective immediately upon receipt of the notice by the licensee, pending any adjudicative proceeding.

(a) 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.

(b) 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 imposition of conditions.

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

(d) 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.

(e) If the presiding officer 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.

(4) 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 stop placement, immediate limited stop service, immediate imposition of conditions, or immediate suspension.

(a) When the department imposes an 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 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 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 2; 1997 c 58 s 823; 1991 c 3 s 101; 1989 c 175 s 63; 1985 c 213 s 9; 1951 c 168 s 6.]

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Effective date—1989 c 175: See note following RCW 34.05.010.

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

RCW 18.46.056 Cease and desist notices—Adjudicative proceedings—Penalties. (1) The department may give written notice to cease and desist to any person whom the department has reason to believe is engaged in the unlicensed operation of a birthing center.

(2) (a) Except as otherwise provided in this section, the requirement to cease and desist unlicensed operation is effective 20 days after the person receives the notice.

(b) The department may make the date the action is effective sooner than 20 days after receipt when necessary to protect the public health, safety, or welfare. When the department does so, it shall state the effective date and the reasons supporting the effective date in the written notice to cease and desist.

(3) The person to whom the notice to cease and desist is issued may request an adjudicative proceeding to contest the notice. The adjudicative proceeding is governed by the administrative procedure act, chapter 34.05 RCW. The request for an adjudicative proceeding must be in writing, state the basis for contesting the notice, include a copy of the notice, and be served on and received by the department within 20 days from the date the person receives the notice to cease and desist.

(4) (a) If the department gives a person 20 days' notice to cease and desist and the person requests an adjudicative proceeding before its effective date, the department shall not implement the notice until the final order has been entered. The presiding or reviewing officer may permit the department to implement part or all of the notice while the proceedings are pending if the respondent causes an unreasonable delay in the proceeding, if the circumstances change so that implementation is in the public interest, or for other good cause.

(b) If the department gives a licensee less than 20 days' notice to cease and desist and the respondent timely files a request for an adjudicative proceeding, the department may implement the cease and desist on the effective date stated in the notice. The presiding or reviewing officer may order the department to stay implementation of part or all of the adverse action while the proceedings are pending if staying implementation is in the public interest or for other good cause.

(5) The department may assess a civil fine not exceeding \$5,000 for each day a person operates a birthing center without a valid license.

(a) The department shall give written notice to the person against whom it assesses a civil fine.

(b) Except as otherwise provided in (c) and (d) of this subsection, the civil fine is due and payable 20 days after receipt.

(c) The person against whom the department assesses a civil fine has the right to request an adjudicative proceeding. The proceeding is governed by the administrative procedure act, chapter 34.05 RCW. The request must be in writing, state the basis for contesting the fine, include a copy of the notice, be served on and received by the department within 20 days of the person receiving the notice of civil fine, and be served in a manner which shows proof of receipt.

(d) If the person files a timely and sufficient request for adjudicative proceeding, the department shall not implement the fine until the final order has been served.

(6) Neither the issuance of a cease and desist order nor payment of a civil fine shall relieve the person so operating a birthing center without a license from criminal prosecution, but the remedy of a cease and desist order or civil fine shall be in addition to any criminal liability. A final notice to cease and desist is conclusive proof of unlicensed operation and may be enforced under RCW 7.21.060. This method of enforcement of the final notice to cease and desist or civil fine may be used in addition to, or as an alternative to, any provisions for enforcement of agency orders set out in chapter 34.05 RCW. [2024 c 121 s 3.]

RCW 18.46.060 Rules. The department, after consultation with representatives of birthing center operators, state medical association, Washington Osteopathic Association, state nurses association, state hospital association, state midwives association, and any other representatives as the department may deem necessary, shall adopt, amend, and promulgate such rules and regulations with respect to all birthing centers in the promotion of safe and adequate medical and nursing care in the birthing center and the sanitary, hygienic, and safe condition of the birthing center in the interest of the health, safety, and welfare of the people. [2000 c 93 s 33; 1985 c 213 s 10; 1951 c 168 s 7.]

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

RCW 18.46.070 Rules—Time for compliance. Any birthing center which is in operation at the time of promulgation of any applicable rules or regulations under this chapter shall be given a reasonable

time, under the particular circumstances, not to exceed three months from the date of such promulgation, to comply with the rules and regulations established under this chapter. [2000 c 93 s 34; 1951 c 168 s 8.]

RCW 18.46.080 Inspections—Approval of new facilities. The department shall make or cause to be made an inspection and investigation of all birthing centers, and every inspection may include an inspection of every part of the premises. The department may make an examination of all records, methods of administration, the general and special dietary and the stores and methods of supply. The department may prescribe by regulation that any licensee or applicant desiring to make specified types of alteration or addition to its facilities or to construct new facilities shall before commencing such alterations, addition, or new construction submit plans and specifications therefor to the department for preliminary inspection and approval or recommendations with respect to compliance with regulations and standards herein authorized. Necessary conferences and consultations may be provided. [2000 c 93 s 35; 1951 c 168 s 9. Prior: 1943 c 214 s 4; Rem. Supp. 1943 s 6130-50.]

RCW 18.46.090 Information confidential. All information received by the department through filed reports, inspection, or as otherwise authorized under this chapter shall not be disclosed publicly in any manner as to identify individuals or birthing centers except in a proceeding involving the question of licensure. [2000 c 93 s 36; 1951 c 168 s 10.]

RCW 18.46.110 Fire protection—Duties of chief of the Washington state patrol. Fire protection with respect to all birthing centers to be licensed hereunder, shall be the responsibility of the chief of the Washington state patrol, through the director of fire protection, who shall adopt by reference, such recognized standards as may be applicable to nursing homes, places of refuge, and birthing centers for the protection of life against the cause and spread of fire and fire hazards. The department upon receipt of an application for a license, shall submit to the chief of the Washington state patrol, through the director of fire protection, in writing, a request for an inspection, giving the applicant's name and the location of the premises to be licensed. Upon receipt of such a request, the chief of the Washington state patrol, through the director of fire protection, or his or her deputy, shall make an inspection of the birthing center to be licensed, and if it is found that the premises do not comply with the required safety standards and fire regulations as promulgated by the chief of the Washington state patrol, through the director of fire protection, he or she shall promptly make a written report to the department as to the manner in which the premises may qualify for a license and set forth the conditions to be remedied with respect to fire regulations. The department, applicant or licensee shall notify the chief of the Washington state patrol, through the director of fire protection, upon completion of any requirements made by him or her, and the chief of the Washington state patrol, through the director of fire protection, or his or her deputy, shall make a reinspection of

such premises. Whenever the birthing center to be licensed meets with the approval of the chief of the Washington state patrol, through the director of fire protection, he or she shall submit to the department, a written report approving same with respect to fire protection before a license can be issued. The chief of the Washington state patrol, through the director of fire protection, shall make or cause to be made such inspection of such birthing centers as he or she deems necessary.

In cities which have in force a comprehensive building code, the regulation of which is equal to the minimum standards of the code for birthing centers adopted by the chief of the Washington state patrol, through the director of fire protection, the building inspector and the chief of the fire department, provided the latter is a paid chief of a paid fire department, shall make the inspection and shall approve the premises before a license can be issued.

In cities where such building codes are in force, the chief of the Washington state patrol, through the director of fire protection, may, upon request by the chief fire official, or the local governing body, or of a taxpayer of such city, assist in the enforcement of any such code pertaining to birthing centers. [2000 c 93 s 37; 1995 c 369 s 5; 1986 c 266 s 82; 1951 c 168 s 12.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

State fire protection: Chapter 43.44 RCW.

RCW 18.46.120 Operating without license—Penalty. Any person operating or maintaining any birthing center without a license under this chapter shall be guilty of a misdemeanor. Each day of a continuing violation after conviction shall be considered a separate offense. [2000 c 93 s 38; 1951 c 168 s 13.]

RCW 18.46.130 Operating without license—Injunction. (1) Notwithstanding the existence or use of any other remedy, the department may in the manner provided by law, upon the advice of the attorney general who shall represent the department in all proceedings, maintain an action in the name of the state for an injunction or other process against any person to restrain or prevent the advertisement, operation, maintenance, management, or opening of a birthing center not licensed under this chapter.

(2) The injunction shall not relieve the person operating a birth center without a license from criminal prosecution, or the imposition of a civil fine under RCW 18.46.056, but the remedy by injunction shall be in addition to any criminal liability or civil fine. A person that violates an injunction issued under this chapter shall pay a civil penalty, as determined by the court, of not more than \$25,000, which shall be deposited in the department's local fee account. For the purpose of this section, the superior court issuing any injunction shall retain jurisdiction and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties. All fines, forfeitures, and penalties collected or assessed by a court because of a violation

of RCW 18.46.020 shall be deposited in the department's local fee account. [2024 c 121 s 4; 2000 c 93 s 39; 1951 c 168 s 14.]

Injunctions: Chapter 7.40 RCW.

RCW 18.46.140 Application of chapter to birthing centers operated by certain religious organizations. Nothing in this chapter or the rules and regulations adopted pursuant thereto shall be construed as authorizing the supervision, regulation, or control of the remedial and nursing care of patients in any birthing center as defined in this chapter, conducted for or by members of a recognized religious sect, denomination, or organization which in accordance with its creed, tenets, or principles depends for healing upon prayer in the practice of religion, nor shall the existence of any of the above conditions militate against the licensing of such facility. [2000 c 93 s 40; 1951 c 168 s 15.]

RCW 18.46.150 Down syndrome—Parent information. A birthing center that provides a parent with a positive prenatal or postnatal diagnosis of Down syndrome shall provide the parent with the information prepared by the department under RCW 43.70.738 at the time the birthing center provides the parent with the Down syndrome diagnosis. [2016 c 70 s 10.]