
Chairman Phil Mendelson
at the request of the Mayor

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4 A PROPOSED RESOLUTION
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6 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
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8 To approve the proposed rules to establish a schedule of fines for violations related to
9 independent living programs for foster children.

10 RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That
11 this resolution may be cited as the "Independent Living Program Schedule of Fines
12 Approval Resolution of 2012".

13 Sec. 2. (a) Pursuant to § 104(a)(1) of the Department of Consumer and
14 Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-
15 42; D.C. Official Code § 2-1801.04(a)(1)), the Mayor transmitted to the Council
16 proposed rules establishing a schedule of fines related to independent living programs for
17 foster children. The proposed rules were published in the *D.C. Register* on ____ 2012 at
18 _____. The Council approves the proposed rules as submitted.

19 Sec. 3. Fiscal impact statement.

20 The Council adopts the fiscal impact statement in the committee report as the
21 fiscal impact statement required by section 602(c)(3) of the District of Columbia Home
22 Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-
23 206.02(c)(3)).

24 Sec. 4. The Council shall transmit a copy of this resolution, upon its adoption,
25 each to the Mayor and the Child and Family Services Agency.

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Sec. 4. This resolution shall take effect immediately.

CHILD AND FAMILY SERVICES AGENCY
NOTICE OF PROPOSED RULEMAKING

The Director of the Child and Family Services Agency, pursuant to section 2(o) of the Child and Family Services Agency Establishment Amendment Act of 2000, effective April 4, 2001 (D.C. Law 13-277, D.C. Official Code § 4-1303.03(a-1)(10) and (12) (2012 Supp.)), and section 9 of the Youth Residential Facilities Licensure Act of 1986, effective August 13, 1986 (D.C. Law 6-139, D.C. Official Code § 7-2108 (2008 Repl.)) hereby gives notice of her intent to adopt the following new chapter establishing a schedule of fines for violations of 29 DCMR, Chapter 63 related to independent living programs for adolescents and young adults to Title 16 of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days from the date of publication of this notice.

Pursuant to § 104(a)(1) of the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code § 2-1801.04(a)(1) (2011 Supp.)), the proposed rules will be submitted to the Council of the District of Columbia for review and approval. These rules will become effective upon Council approval, or thirty (30) days after submission, if the Council has not disapproved the proposed rulemaking, and publication of the final rules in the *D.C. Register*.

Title 16 (Consumers, Commercial Practices & Civil Infractions) of the District of Columbia Municipal Regulations is amended by adding the following new chapter 39 (Child and Family Services Agency Infractions):

CHAPTER 39 CHILD AND FAMILY SERVICES AGENCY INFRACTIONS

3900 ADMINISTRATIVE PROCEDURES AND SCHEDULE OF FINES APPLICABLE

3900.1 The civil infractions set forth in this chapter are subject to the provisions of Chapter 31 (Civil Infractions: Administrative Procedures) and Chapter 32 (Civil Infractions: Schedule of Fines) of this title.

3901 INDEPENDENT LIVING PROGRAM INFRACTIONS

- 3901.1 Violation of any of the following provisions shall be a Class 1 infraction:
- (a) 29 DCMR § 6304.1 (failure to establish and implement policies and procedures for abuse, neglect, or other health and safety risks);
 - (b) 29 DCMR § 6306.1 (operating without a proper license);
 - (c) 29 DCMR § 6306.5 (exceeding licensed capacity);

- (d) 29 DCMR § 6316 (failure to comply with insurance requirements);
- (e) 29 DCMR § 6319.3 (failure to report an unusual incident);
- (f) 29 DCMR § 6319.4 (failure to report unusual incident within the required timeframe);
- (g) 29 DCMR § 6319.5 (failure to report alleged child abuse or neglect, or other risks);
- (h) 29 DCMR § 6323.27 (failure to comply with First Aid and CPR certification requirements);
- (i) 29 DCMR § 6324.1 (failure to obtain criminal records checks for prospective staff);
- (j) 29 DCMR § 6324.2 (employing an individual who has been convicted of a listed crime);
- (k) 29 DCMR § 6324.3 (employing an individual who has been convicted of a listed crime);
- (l) 29 DCMR § 6325.1 (failure to ensure that a prospective staff member complies with child protection register requirements);
- (m) 29 DCMR § 6325.2 (employing an individual in violation of 29 DCMR § 6325.2);
- (n) 29 DCMR § 6328.5 (failure to comply with all local and federal laws including building and fire codes, electrical, lead paint standards, and asbestos);
- (o) 29 DCMR § 6328.6 (failure to comply with fire extinguisher requirements);
- (pr) 29 DCMR § 6328.9 (failure to comply with smoke detector requirements);
- (q) 29 DCMR § 6328.10 (failure to comply with carbon monoxide detector requirements);
- (r) 29 DCMR § 6329.4 (failure to install a telephone and pay monthly for telephone service in each residence);

- (s) 29 DCMR § 6330.2 (failure to comply with fire drill requirements);
- (t) 29 DCMR § 6330.3 (failure to comply with requirements regarding inspection of fire extinguishers);
- (u) 29 DCMR § 6335 (failure to implement and develop an emergency plan);
- (v) 29 DCMR § 6336 (failure to protect residents from toxic, poisonous, and flammable substances);
- (w) 29 DCMR § 6342.5 (allowing a resident to administer or self-administer medication without proper authorization);
- (x) 29 DCMR § 6343.2 (transporting a resident in a vehicle that does not include all safety devices required by law); and
- (y) 29 DCMR § 6343.3 (permitting a person who is not locally licensed to operate a vehicle to transport a resident).

3901.2 Violations of any of the following provisions shall be a Class 2 infraction:

- (a) 29 DCMR § 6315.2 (failure to demonstrate fiscal accountability);
- (b) 29 DCMR § 6318.5 (failure to keep residential records confidential and locked in a secure place);
- (c) 29 DCMR § 6320 (failure to keep residents' records confidential);
- (d) 29 DCMR § 6322.5 (creating or using a photograph, audio-tape, artwork, or writing of resident without the required consent);
- (e) 29 DCMR § 6322.6 (using a resident's photograph for public relations or fundraising);
- (f) 29 DCMR § 6322.7 (permitting a resident under the age of eighteen (18) to participate in a public performance without the required consent);
- (g) 29 DCMR § 6322.8 (failure to provide notification when a resident over eighteen (18) is participating in a public performance);
- (h) 29 DCMR § 6323.1 (failure to provide specialized staff for residents' safety and developmental needs);

- (i) 29 DCMR § 6323.2 (failure to appoint an administrator responsible for the overall management and fiscal operations);
- (j) 29 DCMR § 6323.3 (failure to appoint an administrator with required experience and education);
- (k) 29 DCMR § 6323.5 (failure to designate a clinical director);
- (l) 29 DCMR § 6323.6 (failure to designate a clinical director who meets appropriate experience requirements);
- (m) 29 DCMR § 6323.7 (failure to employ an appropriate number of social workers);
- (n) 29 DCMR § 6323.12 (failure to provide the services of a licensed practical nurse);
- (o) 29 DCMR § 6323.15 (failure to employ counselors);
- (p) 29 DCMR § 6323.18 (failure to comply with the resident to counselor ratios);
- (q) 29 DCMR § 6323.19 (failure to provide counselors on duty at all times to staff and residents);
- (r) 29 DCMR § 6323.21 (hiring a staff member without a pre-employment physical examination);
- (s) 29 DCMR § 6323.23 (failure to verify that a staff member who provides transportation services has a current operator's permit or review his or her driving record);
- (t) 29 DCMR § 6323.24 (failure to comply with food handler certification requirements);
- (u) 29 DCMR § 6323.25 (failure to comply with requirements concerning documentation establishing staff's identity, qualifications and experience);
- (v) 29 DCMR § 6324.5 (failure to ensure that each employee undergo a criminal records check every two (2) years);
- (w) 29 DCMR § 6324.6 (failure to keep criminal records checks results confidential);

- (x) 29 DCMR § 6325.4 (failure to comply with requirements of annual staff child protection register checks);
- (y) 29 DCMR § 6325.5 (failure to keep child protection register check results confidential);
- (z) 29 DCMR § 6326.1 (failure to provide staff training specific to the ages and characteristics of residents served);
- (aa) 29 DCMR § 6326.3 (failure to provide twenty (20) hours of pre-service training to new employees);
- (bb) 29 DCMR 6328.3 (failure to comply with certificate of occupancy requirements);
- (cc) 29 DCMR § 6328.11(a) (failure to maintain the building in a sanitary, comfortable, and safe condition and free from rodent and insect infestation);
- (dd) 29 DCMR § 6328.11(b) (failure to maintain the grounds in a sanitary, comfortable, and safe condition and free from rodent and insect infestation);
- (ee) 29 DCMR § 6328.11(c) (failure to comply with requirements for maintaining building trash);
- (ff) 29 DCMR § 6328.11(d) (failure to comply with trash removal requirements);
- (gg) 29 DCMR § 6328.11(e) (failure to comply with heating requirements);
- (hh) 29 DCMR § 6328.11(f) (failure to provide water that meets all applicable laws);
- (ii) 29 DCMR § 6328.13 (failure to comply with security devices requirements);
- (jj) 29 DCMR § 6330.1 (failure to assist a resident with developing and implementing a fire safety and evacuation plan);
- (kk) 29 DCMR § 6330.8 (failure to educate a teen parent as required);
- (ll) 29 DCMR § 6331.1 (failure to monitor and inspect residences as required);

- (mm) 29 DCMR § 6331.4 (failure to comply with inspection documentation requirements);
- (nn) 29 DCMR § 6332 (failure to comply with stipend and allowance requirements);
- (oo) 29 DCMR § 6338 (failure to comply with first aid kit requirements);
- (pp) 29 DCMR § 6342.1 (failure to develop and implement a health care plan, policy or procedure);
- (qq) 29 DCMR § 6342.3 (administration of prescription medications by someone who is not a licensed health professional);
- (rr) 29 DCMR § 6342.4 (failure to administer medication as required);
- (ss) 29 DCMR § 6342.6 (failure to obtain a written report for prescribed medication);
- (tt) 29 DCMR § 6342.7 (failure to obtain written consent from a resident eighteen (18) or older prior to treatment);
- (uu) 29 DCMR § 6342.8 (failure to properly maintain prescribed medications);
- (vv) 29 DCMR § 6342.9 (failure to properly store prescribed medications); and
- (ww) 29 DCMR § 6342.10 (failure to safely dispose of medications and medical supplies).

3901.3 Violations of any of the following provisions shall be a Class 3 infraction:

- (a) 29 DCMR § 6303.6 (failure to post Statement of Residents' Rights);
- (b) 29 DCMR § 6305 (failure to comply with grievance procedure requirements);
- (c) 29 DCMR § 6306.9 (failure to submit periodic and special reports);
- (d) 29 DCMR § 6306.10 (failure to make records available upon request);
- (e) 29 DCMR § 6306.11 (failure to provide written notification prior to transferring ownership);

- (f) 29 DCMR § 6306.17 (failure to maintain an administrative office in the District of Columbia);
- (g) 29 DCMR § 6308.1 (failure to submit a renewal application binder within established timeframes);
- (h) 29 DCMR § 6308.2 (failure to submit all required renewal documentation);
- (i) 29 DCMR § 6313.2 (failure to maintain corporate status);
- (j) 29 DCMR § 6314 (failure to comply with local advisory committee requirements);
- (k) 29 DCMR § 6315.1 (failure to maintain current and accurate record of receipts and expenditures);
- (l) 29 DCMR 6315.5 (failure to maintain adequate bonding for all employees);
- (m) 29 DCMR § 6315.4 (failure to maintain copies of all leases);
- (n) 29 DCMR § 6317 (failure to comply with monitoring and evaluation process);
- (o) 29 DCMR § 6318.7 (failure to maintain emergency information in case record);
- (p) 29 DCMR § 6319.7 (failure to implement or establish a written plan for reporting unusual incidents);
- (q) 29 DCMR § 6321 (failure to comply with personal property requirements);
- (r) 29 DCMR § 6322.1 (failure to provide for residency privacy);
- (s) 29 DCMR § 6322.3 (failure to maintain confidentiality of need for medication);
- (t) 29 DCMR § 6322.4 (failure to prohibit the use of listening devices);
- (u) 29 DCMR § 6323.9 (failure to provide services of a certified or licensed addictions counselor);
- (v) 29 DCMR § 6323.10 (failure to provide services of education counselor);

- (w) 29 DCMR § 6323.20 (failure to ensure that a staff member is in general physical condition to work with youth);
- (x) 29 DCMR § 6323.22 (failure to ensure that a staff member has a medical examination every two (2) years);
- (y) 29 DCMR § 6327.1 (failure to provide a staff member with a written job description);
- (z) 29 DCMR § 6327.2 (failure to have and distribute written personnel policies);
- (aa) 29 DCMR § 6327.3 (failure to maintain an accurate personnel record on each staff member);
- (bb) 29 DCMR § 6328.11(g) (failure to comply with all applicable laws regarding lighting);
- (cc) 29 DCMR § 6328.12 (failure to comply with providing access to laundry facilities);
- (dd) 29 DCMR § 6329.1 (failure to provide adequate household supplies, furniture, and household furnishings);
- (ee) 29 DCMR § 6329.2 (failure to provide furniture and supplies in good condition);
- (ff) 29 DCMR § 6329.3 (failure to provide furniture and supplies upon discharge);
- (gg) 29 DCMR § 6330.5 (failure to comply with life skills requirements);
- (hh) 29 DCMR § 6330.6 (failure to develop and post a written plan of daily living activities);
- (ii) 29 DCMR § 6330.7 (failure to educate a resident concerning life skills);
- (jj) 29 DCMR § 6331.2 (failure to conduct both announced and unannounced inspections);
- (kk) 29 DCMR § 6331.3 (failure to comply with assessment and evaluation requirements);

- (ll) 29 DCMR § 6333.3 (failure to comply with resident bank accounts requirements);
- (mm) 29 DCMR § 6334 (failure to comply with special requirements for residents with disabilities);
- (nn) 29 DCMR § 6337.3 (failure to prohibit the use and possession of alcohol and maintain a non-smoking policy);
- (oo) 29 DCMR § 6339 (failure to comply with admission and placement requirements);
- (pp) 29 DCMR § 6340.1(a) (failure to provide for a resident's basic needs);
- (qq) 29 DCMR § 6340.1(c) (failure to have a color photograph of resident for identification purposes in the case record);
- (rr) 29 DCMR § 6340.2 (failure to timely complete an admissions record);
- (ss) 29 DCMR § 6340.3 (failure to timely meet with resident to provide resident with required information);
- (tt) 29 DCMR § 6341 (failure to comply with ITILP requirements);
- (uu) 29 DCMR § 6342.2 (failure to comply with health care plan requirements);
- (vv) 29 DCMR § 6343.1 (failure to provide or arrange for necessary transportation);
- (ww) 29 DCMR § 6344 (failure to comply with recreational activity requirements);
- (xx) 29 DCMR § 6346 (failure to comply with visitation and contact requirements);
- (yy) 29 DCMR § 6347.1 (failure to establish behavior management strategies);
- (zz) 29 DCMR § 6347.2 (administering arbitrary or capricious discipline);
- (aaa) 29 DCMR § 6347.3 (administering restraint)

- (bbb) 29 DCMR § 6347.4 (using cruel, severe, or humiliating action as a form of behavior management);
- (ccc) 29 DCMR § 6347.6 (failure to develop and follow written behavior management and discipline policies);
- (ddd) 29 DCMR § 6347.8 (failure to inform resident of the nature and reason for discipline);
- (eee) 29 DCMR § 6347.9 (failure to administer discipline timely);
- (fff) 29 DCMR § 6347.10 (failure to document disciplinary action);
- (ggg) 29 DCMR § 6345 (failure to comply with the requirements concerning the Residents' Council); and
- (iii) 29 DCMR § 6348 (failure to comply with discharge requirements).

3901.4 Violation of any of the following provisions shall be a Class 4 infraction:

- (a) 29 DCMR § 6306.15 (failure to maintain all plans and polices in a single designated location);
- (b) 29 DCMR § 6306.16 (failure to make licenses and variances available to the public, when requested); and
- (c) 29 DCMR § 6329.5(a) (failure to post names, titles, and telephone numbers of program staff, and to include a copy in the resident handbook).

All persons desiring to comment on the subject matter of this proposed rulemaking should file comments in writing within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Lionel Sims, General Counsel, Child and Family Services Agency, 400 6th Street, S.W., Washington, D.C. 20024, by email to lionel.sims@dc.gov, or online at dcregs.dc.gov. Copies of these proposed rules may be obtained without charge at the address above or online at dcregs.dc.gov.

Government of the District of Columbia
Office of the Chief Financial Officer

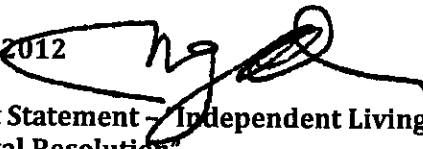


Natwar M. Gandhi
Chief Financial Officer

MEMORANDUM

TO: The Honorable Philip H. Mendelson
Chairman, Council of the District of Columbia

FROM: Natwar M. Gandhi
Chief Financial Officer

DATE: November 1, 2012 

SUBJECT: Fiscal Impact Statement - Independent Living Program Schedule of Fines Approval Resolution

REFERENCE: Draft resolution shared with the Office of Revenue Analysis on October 11, 2012

Conclusion

Funds are sufficient in the FY 2013 through FY 2016 budget and financial plan to implement the proposed resolution.

Background

The proposed resolution approves the proposed rules¹ that would establish a schedule of fines for violations of licensing requirements² for independent living programs for adolescents and young adults. Current law allows for a fine structure for civil infractions, but the fine structure is not yet in place.

The District's Child and Family Services Agency (CFSA) is responsible for licensing all independent living programs operating in the District of Columbia.³ At present, there six separate licensed independent living programs with six main facilities and thirty one residential unit apartments. The Office of Facility Licensing at CFSA administers these licenses.

¹ These rules will be incorporated by adding a new chapter 39 entitled "Child and Family Services Agency Infraction" to Title 16 (Consumer, Commercial Practices and Civil Infractions) of the District of Columbia Municipal Regulations (DCMR).

² Licensing requirements for these programs are described in Chapter 63 (Licensing of Independent Living programs for Adolescents and Young Adults) of Title 29 (Public Welfare) of DCMR.

³ These do not include programs established to serve children adjudicated delinquent or in need of supervision, or children alleged to be delinquent or in need of supervision, pursuant to D.C. Official Code, § 16-2301 *et seq.*

The Honorable Philip H. Mendelson

FIS: "Independent Living Program Schedule of Fines Approval Resolution" Draft resolution shared with the Office of Revenue Analysis on October 11, 2012

Financial Plan Impact

Funds are sufficient in the FY 2013 through FY 2016 budget and financial plan to implement the bill.

The Office of Facility Licensing at CFSA will be responsible for enforcing these infractions, and can do so with its existing resources. This office informs us that during renewal periods, the office staff typically cites license holders for a variety of administrative and programmatic violations of regulations, some of which recur year after year.⁴ These recurring issues suggest that the proposed rules will likely result in penalties, but amount of these penalties cannot be reliably estimated.

Current law allows the District to deduct any penalties and fines imposed on private providers from payments due these providers,⁵ so to the extent that these civil penalties are implemented (and if contested, withheld by the Office of Administrative Hearings), the proposed infractions could reduce District's expenditures on independent living facilities.

⁴ The administrative areas include missing or expired criminal background checks, missing staff positions, or training deficiencies, which will fall under Class 2 infractions under the proposed rules, as well as failure to comply with First Aid and CPR certification, which would fall under Class 1 infractions. The most often cited programmatic areas include physical plant safety issues such as lack of smoke detectors (a Class 1 infraction under proposed rules), lack of various training programs such as skills and parenting training (Class 2 infractions), and physical plant non-safety issues as well as various management issues such as failure to establish behavior management strategies (Class 3 under proposed rules).

⁵D.C. Official Code § 7-2108 (c). Subsection (b) of the same code section requires that any civil fines, penalties, and costs imposed against any independent living program owned or operated by the District of Columbia government shall be paid into a special account to be used for the personal needs of residents. At present, there are no such public providers of independent living programs.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL



Legal Counsel Division



MEMORANDUM


TO: Lolita S. Alston
Director
Office of Legislative Support

FROM: Janet M. Robins
Deputy Attorney General
Legal Counsel Division

DATE: August 13, 2012

SUBJECT: Independent Living Program Schedule of Fines Approval Resolution
(AE-12-194C)

This is to Certify that this Office has reviewed the above-referenced proposed resolution and found it to be legally sufficient. If you have any questions in this regard, please do not hesitate to call me at 724-5524.


Janet M. Robins