

The background of the slide features a close-up of a blue parrot's head on the left and a peacock's tail feathers on the right, both slightly out of focus. The overall color palette is soft and naturalistic.

# **Chapter 388-76 WAC Updates**

**Colleen Jensen, Policy Program Manager**

**August 30, 2023**



# Background

- In 2020 ESHB 1023 passed the legislative session, allowing certain adult family homes (AFHs) to increase their licensed capacity to eight beds when they meet specific criteria.
- The rulemaking workgroup identified three other areas that needed clarification.
- The rulemaking project focuses on four main areas.



# Scope of Project

- Creating rules for seven and eight bed licensed capacity
- Addressing challenge of obtaining and maintaining liability insurance in the AFH industry
- Clarifying rules for management agreements
- Creating rules for the department to consider requests for alternative ways of meeting WAC requirements- exemptions



# Effective Date

**WAC changes went into effect August 1, 2023.**

# Which WACs Changed?

<a href="#"><u>388-76-10000</u></a>	<a href="#"><u>388-76-10055</u></a>	<a href="#"><u>388-76-10780</u></a> **
<a href="#"><u>388-76-10004</u></a> (new)	<a href="#"><u>388-76-10175</u></a>	<a href="#"><u>388-76-11050</u></a>
<a href="#"><u>388-76-10030</u></a>	<a href="#"><u>388-76-10191</u></a>	<a href="#"><u>388-76-11055</u></a>
<a href="#"><u>388-76-10031</u></a> ** (new)	<a href="#"><u>388-76-10192</u></a>	
<a href="#"><u>388-76-10032</u></a> (new)	388-76-10193 (repealed)	



# Review of WAC Updates

**NOTICE:** The following slides summarize key points of the WAC changes. Use links on slide 5 to review individual WACs for complete information and requirements.

Slide headings in **RED** are new WACs. Blue headers are amended WACs.



# New and Amended Definitions

- "adult family home"- adds the ability to have up to eight residents, includes **adoptive** relationships to those not considered residents.
- "capacity"- clarifies the licensed capacity is determined by several factors. **Those who don't live in the home, but receive services in the home from caregiving staff, count toward the home's capacity.**
- "financial solvency"- clarifies **how** the department will determine an applicant is financially solvent.



# New and Amended Definitions

- "household member"- provides definition for the purposes of background checks, capacity, and emergency supplies.
- “mandated reporter”- mirrors RCW 74.34.020 definition, effective August 1,2023.
- “resident”- clarifies it is a person receiving care in the AFH, who is not related to the provider.





# New Amended Definitions

- “vulnerable adult”- mirrors current RCW 74.34.020 definition.
- “working day”- provides definition for clarity.



# Process for Exemptions-NEW

## (WAC 388-76-10004)

- Allows the home to provide a comparable level of service to residents through the use of alternative procedures, materials, or equipment.
- Must not violate state or federal laws.
- RCS Director determines; AFHs do not have appeal rights after denial.



# Exemptions-NEW

## **(WAC 388-76-10004) Exemptions.**

(1) An adult family home may request an exemption to a specific requirement in this chapter. The request must demonstrate to the department that the exemption will:

- (a) Not jeopardize or adversely affect any resident's health, safety, rights, or quality of life;
  - (b) Not change the fundamental nature of the adult family home operations;
  - (c) Correct deficiencies, prevent deficiencies, or upgrade the home in order to better serve residents;
  - (d) Allow the home to provide a comparable level of service to residents through the use of alternative procedures, materials, or equipment; and
  - (e) Not violate state or federal laws.
- (2) A request for exemption must be submitted to the director of residential care services in writing and must:
- (a) Identify the specific section of this chapter for which the exemption is sought;
  - (b) State the reason the requested exemption is needed; and
  - (c) Provide an explanation of how the home will meet the requirements in subsection (1) of this section if the exemption is approved.
- (3) The adult family home must retain in the adult family home a copy of each approved exemption.
- (4) Exemption to a requirement of this chapter may be granted at the sole discretion of the director of residential care services after evaluation of the criteria in subsection (1) of this section. The adult family home is not entitled to an administrative appeal of the department's denial of a request for an exemption.



# Adult Family Home Capacity

**(WAC 388-76-10030)**

Clarifies the licensed capacity may be adjusted when non-residents are receiving care in the AFH.



# License Requirements- Seven or Eight bed- NEW

**(WAC 388-76-10031 and WAC 388-76-10032)**

- Provides eligibility criteria for capacity increase to seven or eight beds, and
- Provides eligibility criteria for change of ownership (CHOW) for seven and eight bed AFHs.



# Application

**(WAC 388-76-10055)**

Requires AFHs to complete an application to increase licensed capacity.



# Background Checks

**(WAC 388-76-10175)**

Changes “business” day to “working” day, in alignment with other sections of the chapter.



# Liability Insurance

**(WAC 388-76-10191, WAC 388-76-10192)**

- Requires all AFHs to have both general and **professional** liability insurance.
- Clarifies coverage requirements.
- Requires adding State of Washington to additional insured.



# Liability Insurance

(WAC 388-76-10191, WAC 388-76-10192)

- AFHs must obtain liability insurance within 10 working days of AFH license date, or before admitting their first resident- whichever is first.
- Currently licensed AFHs will add professional liability insurance when renewing their policy.
- AFHs must notify the Complaint Resolution Unit if insurance lapses.





# Toilets

**(WAC 388-76-10780)**

Requires AFHs licensed after August 1, 2023, that have a license capacity of more than five residents to have two toilets available and **accessible** for resident use.



# Management Agreements

**(WAC 388-76-11050, WAC 388-76-11055)**

- Clarifies the section pertains to management agreements and not the temporary management program;
- Removes the requirement for the department to approve management agreements;
- Requires AFHs to submit an attestation form to DSHS when they enter into a management agreement or make changes; and
- Allows the department to take licensing action if determined a change in ownership has occurred.



# New and Updated Forms





# Management Agreements- **New Form**

**(New)** Adult Family Home Management Agreement Attestation Information and Attachments ([DSHS 27-226](#))

Three-page form, completed by AFHs when entering into a management agreement:

- At time of application or
- When entering into a new management agreement
- Processed by BAAU or BOAU

# Form Update- Capacity Increase

[Electronic DSHS Forms | DSHS \(wa.gov\)](#) (DSHS 06-168)

## Updates to 7-8 bed Section:

- Attestation- Ability to meet health, safety and rights of new and future residents- now part of form, no separate attestation needed
- New process to determine “financial solvency”- credit checks
  - Added check box for consent for credit check
  - Added space for name and info for each applicant
  - No longer need to submit utility bills



# Surveying





# Surveying

Licensors and complaint investigators will:

- Check for exemptions prior to on-site inspection.
- Ask AFHs for evidence of liability insurance.
- *(For homes licensed after August 1, 2023, with a capacity of more than five)* Look for two toilets accessible to residents.





# Summary





# Summary

**Effective August 1, 2023, Chapter 388-76 WAC includes:**

New and amended definitions

New rule for exemption process for AFHs

New rules for seven and eight bed capacity increase \*additional rulemaking coming soon

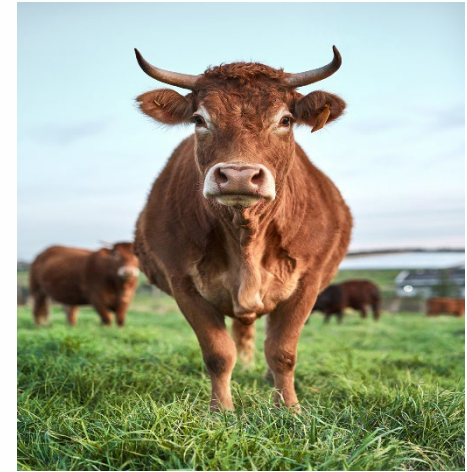
Amended liability insurance requirements

Amended requirements for management agreements

Amended requirements for access to toilets- new licenses \*additional rulemaking coming soon

# References

- Chapter [388-76](#) WAC
- Chapter [70.128](#) RCW
- Dear Provider Letter AFH #[2023-025](#)
- (New) Adult Family Home Management Agreement Attestation Information and Attachments ([DSHS 27-226](#))
- (Updated) Capacity Increase form, DSHS [06-168](#)
- [WSR 23-12-075](#)
- [Section 2, chapter 220, Laws of 2020](#)



# Questions?

Contact [RCSPolicy@dshs.wa.gov](mailto:RCSPolicy@dshs.wa.gov)

