



PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (October 2017) (Implements RCW 34.05.310)

Do NOT use for expedited rule making

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FILED

DATE: August 22, 2024

TIME: 12:45 PM

WSR 24-18-013

Agency: Department of Social and Health Services (department), Aging and Long-Term Support, RCS

Subject of possible rule making: The department is considering amending the following rules, adding new sections, and amending other sections as needed: Chapter 388-76 WAC, Adult Family Home (AFH) Minimum Licensing Requirements, chapter 388-78A WAC, Assisted Living Facility (ALF) Licensing Rules, and chapter 388-107 WAC, Licensing Requirements for Enhanced Services Facilities (ESF). Amendments and new sections will address the need for a legally enforceable agreement between the operators of AFH, ESF, and ALF and residents in those settings whose care is paid through medicaid. This rulemaking is needed to comply with federal regulations 42 CFR §441.530(a)(1)(vi)(A) & 42 CFR §441.301(c)(4)(vi)(A). This rulemaking will include other related rules as may be required.

Statutes authorizing the agency to adopt rules on this subject: RCW 18.20.090, 70.97.230, 70.128.040, 74.09.520(2), and 74.39A.007

Reasons why rules on this subject may be needed and what they might accomplish: Rulemaking is needed to comply with Centers for Medicare and Medicaid (CMS) regulations related to Home and Community Based Settings in Adult Family Homes (AFH), Assisted Living Facilities (ALF), and Enhanced Services Facilities (ESF). Compliance with the regulations is necessary to administer the state's Medicaid funded Long-Term Services and Supports programs.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies: The department will compare the draft rules with 42 CFR §441.530(a)(1)(vi)(A) and 42 CFR §441.301(c)(4)(vi)(A), Centers for Medicare and Medicaid Services (CMS) requirements for Home and Community Based Settings. The department will confirm consistency with the federal requirements and consult with CMS as necessary.

Process for developing new rule (check all that apply):

- Negotiated rule making
- Pilot rule making
- Agency study

Other (describe) The department will use a negotiated rulemaking process for Chapter 388-76 WAC. For

Chapters 388-78A and 388-107 the department will use a collaborative rulemaking process to consult with internal and external interested parties in the development and review of the draft rules.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting:

Name: Sondra Haas
 Address: PO Box 45600, Olympia WA 98504
 Phone: 360-688-0715
 Fax: 360-438-7903
 TTY:
 Email: Sondra.Haas@dshs.wa.gov
 Web site:
 Other:

(If necessary)

Name:
 Address:
 Phone:
 Fax:
 TTY:
 Email:
 Web site:
 Other:

Additional comments:

Date: August 22, 2024

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature: