



PROPOSED RULE MAKING

CR-102 (July 2022)
(Implements RCW 34.05.320)
Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: March 13, 2023

TIME: 5:34 PM

WSR 23-07-076

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

- Original Notice**
- Supplemental Notice to WSR** _____
- Continuance of WSR** _____

- Preproposal Statement of Inquiry was filed as WSR 22-13-121 ; or**
- Expedited Rule Making--Proposed notice was filed as WSR _____; or**
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or**
- Proposal is exempt under RCW _____.**

Title of rule and other identifying information: (describe subject) Amending WAC 388-76-10350 Assessment—Updates required, 388-78A-2100 On-going Assessments, 388-107-0080 On-going Comprehensive Assessment, and adding a new rule to chapters 388-76, 388-78A, and 388-107 to codify the timeline for emergency rules in place due to the COVID-19 public emergency.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
April 25, 2023	10:00 a.m.	Office Building 2 DSHS Headquarters 1115 Washington Olympia, WA 98504 Or virtually	Public parking at 11th and Jefferson. A map is available at: https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2 Due to the COVID pandemic, hearings are being held virtually. Please see the DSHS website for the most up to date information

Date of intended adoption: Not earlier than April 26, 2023 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: RPAU Rules Coordinator
Address: PO Box 45850, Olympia WA 98504
Email: DSHSRPAURulesCoordinator@dshs.wa.gov
Fax: 360-664-6185
Other:
By (date) 5:00 p.m. on April 25, 2023

Assistance for persons with disabilities:

Contact [Shelley Tencza](mailto:Shelley.Tencza@dshs.wa.gov)
Phone: 360-664-6036
Fax: 360-664-6185
TTY: 711 Relay Service
Email: tencza@dshs.wa.gov
Other:
By (date) 5:00 p.m. on April 11, 2023

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The department is proposing to adopt rules to identify the requirements in place during the COVID-19 pandemic in Washington state. The purpose of the rule change is to ensure consistent implementation and enforcement of rule requirements in effect during the COVID-19 pandemic in Washington state.

Reasons supporting proposal: This rulemaking will provide clarity for regulated facilities and department inspection and investigation staff related to requirements in place during the COVID-19 pandemic.

Statutory authority for adoption: RCW 18.20.090, 70.97.230, and 70.128.040

Statute being implemented: none

Is rule necessary because of a:

- Federal Law? Yes No
- Federal Court Decision? Yes No
- State Court Decision? Yes No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: none

Type of proponent: Private Public Governmental

Name of proponent: (person or organization) DSHS

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Sondra Haas	PO Box 45600, Olympia, WA 98504-5600	360.688.0715
Implementation:	Amy Abbott	PO Box 45600 Olympia, WA 98504-5600	360.485.7893
Enforcement:	Amy Abbott	PO Box 45600 Olympia, WA 98504-5600	360.485.7893

Is a school district fiscal impact statement required under [RCW 28A.305.135](#)? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

Is a cost-benefit analysis required under [RCW 34.05.328](#)?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

No: Please explain: This proposal is exempt from the requirement for a cost-benefit analysis under RCW 34.05.328(5)(b)(iv) as the proposed rules clarify language of a rule without changing its effect.

Regulatory Fairness Act and Small Business Economic Impact Statement

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

(1) Identification of exemptions:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.061](#) because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570\(2\)](#) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(3\)](#). Check all that apply:

- | | |
|---|---|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input checked="" type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> RCW 34.05.310 (4)(g)
(i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(4\)](#) (does not affect small businesses).

This rule proposal, or portions of the proposal, is exempt under [RCW 34.05.328\(5\)\(b\)\(iv\)](#).

Explanation of how the above exemption(s) applies to the proposed rule: The rule is exempt under 34.05.328(5)(b)(iv) as it clarifies language of a rule without changing its effect. The department is proposing to adopt rules to identify the requirements in place during the COVID-19 pandemic in Washington state. The purpose of the rule change is to ensure consistent implementation and enforcement of rule requirements in effect during the COVID-19 pandemic.

(2) Scope of exemptions: *Check one.*

- The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.
- The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):
- The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

(3) Small business economic impact statement: *Complete this section if any portion is not exempt.*

If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. _____
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

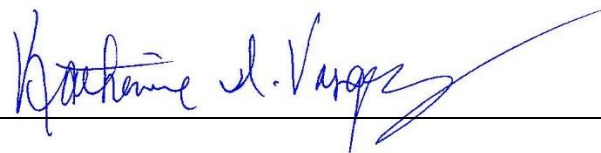
Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Date: March 10, 2023

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10350 Assessment—Updates required. (1) The department amended portions of this rule from January 18, 2022, through (DATE), in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-76-10351.

(2) The adult family home must ensure each resident's assessment is reviewed and updated to document the resident's ongoing needs and preferences as follows:

~~((1))~~ (a) When there is a significant change in the resident's physical or mental condition;

~~((2))~~ (b) When the resident's negotiated care plan no longer reflects the resident's current status, needs, and preferences;

~~((3))~~ (c) At the resident's request or at the request of the resident's representative; or

~~((4))~~ (d) At least every ~~((twelve))~~ 12 months.

NEW SECTION

WAC 388-76-10351 Assessment-Updates required-Requirements in effect from January 18, 2022, through (DATE), in response to the state of emergency related to COVID-19. (1) In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.320 on January 18, 2022, to amend a portion of WAC 388-76-10350. The emergency rules remained in effect until (DATE). The amended rules in place at that time were:

(2) The adult family home must ensure each resident's assessment is reviewed and updated to document the resident's ongoing needs and preferences as follows:

(a) When there is a significant change in the resident's physical or mental condition;

(b) When the resident's negotiated care plan no longer reflects the resident's current status, needs, and preferences;

(c) At the resident's request or at the request of the resident's representative; or

(d) At least every 12 months, except beginning January 18, 2022, assessments for residents whose care is state funded may be extended an additional 12 months during the COVID-19 public health emergency.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2100 ((On-going)) Ongoing assessments. (1) The department amended portions of this rule from January 18, 2022, through DATE, in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-78A-2101.

- (2) The assisted living facility must:
- ~~((1))~~ (a) Complete a full assessment addressing the elements set forth in WAC 388-78A-2090 for each resident at least annually;
 - ~~((2))~~ (b) Complete an assessment specifically focused on a resident's identified problems and related issues:
 - ~~((a))~~ (i) Consistent with the resident's change of condition as specified in WAC 388-78A-2120;
 - ~~((b))~~ (ii) When the resident's negotiated service agreement no longer addresses the resident's current needs and preferences;
 - ~~((c))~~ (iii) When the resident has an injury requiring the intervention of a practitioner.
 - ~~((3))~~ (c) Ensure the staff person performing the ~~((on-going))~~ ongoing assessments is qualified to perform them.

NEW SECTION

WAC 388-78A-2101 Ongoing assessments-Requirements in effect from January 18, 2022, through (DATE), in response to the state of emergency related to COVID-19. (1) In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.320 on January 18, 2022, to amend a portion of WAC 388-78A-2100. The emergency rules remained in effect until (DATE). The amended rules in place at that time were:

- (2) The assisted living facility must:
- (a) Complete a full assessment addressing the elements set forth in WAC 388-78A-2090 for each resident at least annually, except beginning January 18, 2022, assessments for residents whose care is state funded may be extended an additional 12 months during the COVID-19 public health emergency;
 - (b) Complete an assessment specifically focused on a resident's identified problems and related issues:
 - (i) Consistent with the resident's change of condition as specified in WAC 388-78A-2120;
 - (ii) When the resident's negotiated service agreement no longer addresses the resident's current needs and preferences;
 - (iii) When the resident has an injury requiring the intervention of a practitioner.
 - (c) Ensure the staff person performing the ongoing assessments is qualified to perform them.

AMENDATORY SECTION (Amending WSR 16-14-078, filed 7/1/16, effective 8/1/16)

WAC 388-107-0080 Ongoing comprehensive assessments. (1) The department amended portions of this rule from January 18, 2022, through (DATE), in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-107-0081.

- (2) The enhanced services facility must:
- ~~((1))~~ (a) Complete a comprehensive assessment, addressing the elements set forth in WAC 388-107-0070, upon a significant change in

the resident's condition or at least every 180 days if there is no significant change in condition;

~~((2))~~ (b) Complete an assessment specifically focused on a resident's identified strengths, preferences, limitations, and related issues:

~~((a))~~ (i) Consistent with the resident's change of condition as specified in WAC 388-107-0060;

~~((b))~~ (ii) When the resident's person-centered service plan no longer addresses the resident's current needs and preferences; and

~~((c))~~ (iii) When the resident has an injury requiring the intervention of a practitioner;

~~((3))~~ (c) Review each resident's needs to evaluate discharge or transfer options when the resident:

~~((a))~~ (i) No longer needs the level of behavioral support provided by the facility; or

~~((b))~~ (ii) Expresses the desire to move to a different type of community based setting;

~~((4))~~ (d) Ensure that the person-centered service planning team discusses all available placement options; and

~~((5))~~ (e) Ensure the staff person performing the ongoing assessments is a qualified assessor.

NEW SECTION

WAC 388-107-0081 Ongoing comprehensive assessments-Requirements in effect from January 18, 2022, through (DATE), in response to the state of emergency related to COVID-19. (1) In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.320 on January 18, 2022, to amend a portion of WAC 388-107-0080. The emergency rules remained in effect until (DATE). The amended rules in place at that time were:

(2) The enhanced services facility must:

(a) Complete a comprehensive assessment, addressing the elements set forth in WAC 388-107-0070 on the following timelines:

(i) Upon a significant change in the resident's condition; or

(ii) At least every 180 days if there is no significant change in condition, except beginning January 18, 2022, assessments for residents whose care is state funded may be extended an additional 12 months during the COVID-19 public health emergency.

(b) Complete an assessment specifically focused on a resident's identified strengths, preferences, limitations, and related issues:

(i) Consistent with the resident's change of condition as specified in WAC 388-107-0060;

(ii) When the resident's person-centered service plan no longer addresses the resident's current needs and preferences; and

(iii) When the resident has an injury requiring the intervention of a practitioner;

(c) Review each resident's needs to evaluate discharge or transfer options when the resident:

(i) No longer needs the level of behavioral support provided by the facility; or

(ii) Expresses the desire to move to a different type of community based setting;

- (d) Ensure that the person-centered service planning team discusses all available placement options; and
- (e) Ensure the staff person performing the ongoing assessments is a qualified assessor.