



# PROPOSED RULE MAKING

**CR-102 (June 2024)**  
**(Implements RCW 34.05.320)**  
Do NOT use for expedited rule making

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STATE OF WASHINGTON  
FILED

DATE: May 08, 2025

TIME: 3:48 PM

WSR 25-11-012

**Agency:** Department of Social and Health Services, Home and Community Living Administration, RCS

☒ **Original Notice**

☐ **Supplemental Notice to WSR** \_\_\_\_\_

☐ **Continuance of WSR** \_\_\_\_\_

☒ **Preproposal Statement of Inquiry was filed as WSR** 24-22-123 ; 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) This proposal would  
Add new sections to Chapter 388-76 WAC and amend WAC 388-76-10320 Resident Record.  
Add new sections to Chapter 388-78A WAC and amend WAC 388-78A-2410 Content of resident records.  
Add new sections to Chapter 388-107 WAC and amend WAC 388-107-0560 Resident records-Clinical records.

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
June 24, 2025	10:00 a.m.	Virtually via Teams or Call in	Hearings are held virtually, see the DSHS website at <a href="https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings">https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings</a> for the most current information.

**Date of intended adoption:** No earlier than June 25, 2025 (Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name DSHS Rules Coordinator  
Address PO Box 45850, Olympia WA 98504  
Email [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov)  
Fax 360-664-6185  
Other  
Beginning (date and time) noon on May 21, 2025  
By (date and time) 5:00 p.m. on June 24, 2025

**Assistance for persons with disabilities:**

Contact Shelley Tencza, Rules Consultant  
Phone 360-664-6036  
Fax 360-664-6185  
TTY 711 Relay Service  
Email [shelley.tencza@dshs.wa.gov](mailto:shelley.tencza@dshs.wa.gov)  
Other  
By (date) 5:00 p.m. on June 10, 2025

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The purpose of the proposed rulemaking is to comply with Centers for Medicare and Medicaid (CMS) regulations related to Home and Community Based Settings (HCBS) in AFH, ALF, and ESF. Compliance with the regulations is necessary to administer the state's Medicaid funded Long-Term Services and Supports programs. RCW 74.09.520(2) and 74.39A.007. The proposed changes to the chapters create a requirement for the operators of AFH, ALF, and ESF to enter into a residency agreement with current and new residents with Medicaid as a payor that addresses resident rights in relation to transfer and discharge.

The proposed changes require these operators to include, for residents with Medicaid, information upon transfer or discharge that explains the resident's rights, which includes the right to an attorney to represent the resident's interests in response to the transfer or discharge notice. This right is subject to legislative appropriation.

The proposed changes require minor changes to existing rules-to include a requirement that the residency agreement, if applicable, must be kept in the resident's record.

**Reasons supporting proposal:** 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 regulations is necessary to administer the state's Medicaid funded Long-Term Services and Supports programs.

**Statutory authority for adoption:** RCW 18.20.090, 70.97.230, 70.128.040, 74.09.520(2), 74.39A.007

**Statute being implemented:** RCW 74.09.520 (2), 42 C.F.R. 441.530(a)(1)(vi)(A) & 42 C.F.R. 441.301.(c)(4)(vi)(A)

**Is rule necessary because of a:**

Federal Law?

☒ Yes ☐ No

Federal Court Decision?

☐ Yes ☐ No

State Court Decision?

☐ Yes ☐ No

If yes, CITATION: 42 C.F.R. 441.530(a)(1)(vi)(A) and 42 C.F.R. 441.301.(c)(4)(vi)(A)

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:** none**Name of proponent:** (person or organization) Department of Social and Health Services**Type of proponent:** ☐ Private. ☐ Public. ☒ Governmental.**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting	Colleen Jensen	4500 10th Avenue SE Lacey, WA 98503	564-999-3182
Implementation	Colleen Jensen	4500 10th Avenue SE Lacey, WA 98503	564-999-3182
Enforcement	Colleen Jensen	4500 10th Avenue SE Lacey, WA 98503	564-999-3182

**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 Colleen Jensen

Address P.O. Box 45600 Olympia, WA 98504

Phone 564-999-3182

Fax

TTY 711 Relay Service

Email [RCSPolicy@DSHS.WA.GOV](mailto:RCSPolicy@DSHS.WA.GOV)

Other

☐ No: Please explain:**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"/> <a href="#">RCW 34.05.310</a> (4)(b)<br>(Internal government operations) | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(e)<br>(Dictated by statute)  |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(c)<br>(Incorporation by reference)     | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(f)<br>(Set or adjust fees)   |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(d)<br>(Correct or clarify language)    | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(g)<br>(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 \_\_\_\_\_.  
Explanation of how the above exemption(s) applies to the proposed rule:

**(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. The purpose of these chapters, respectively, is to:
- Promote the safety and well-being of Adult Family Home (AFH) residents, to specify standards for AFH providers, and to further establish requirements for operating an AFH;
  - Provide for the development, establishment, and enforcement of standards for the maintenance and operation of Assisted Living Facilities; and
  - Promote safe treatment and necessary care of individuals residing in the facility and provide for safe and clean conditions; establish licensee qualifications, licensing and enforcement, and license fees sufficient to cover the cost of licensing and enforcement (for ESF).

The purpose of the proposed rulemaking is to comply with Centers for Medicare and Medicaid (CMS) regulations related to Home and Community Based Settings (HCBS) in AFH, ALF, and ESF. Compliance with the regulations is necessary to administer the state's Medicaid funded Long-Term Services and Supports programs. RCW 74.09.520(2) and 74.39A.007.

The proposed changes to the chapters create a requirement for the operators of AFH, ALF, and ESF to enter into a residency agreement with current and new residents with Medicaid as a payor that addresses resident rights in relation to transfer and discharge.

The proposed changes require these operators to include, for residents with Medicaid, information upon transfer or discharge that explains the resident's rights, which includes the right to an attorney to represent the resident's interests in response to the transfer or discharge notice. This right is subject to legislative appropriation. Residential Care Services held six interested parties' meetings with about 30 to 40 participants attending each meeting. Representatives included the Adult Family Home Council (AFHC), the exclusive bargaining representative of AFHs, ALF associations LeadingAge Washington (LAW), Washington Healthcare Association (WHCA), and their legal counsel agency, and Ballard Spahr. An ESF provider attended regularly. Several resident advocacy agencies and their legal representatives were involved, including Northwest Justice Project and The Long-term Care Ombudsman Program (LTC Ombuds). The Office of Civil and Legal Aid played an active role, as they will administer the right to counsel program if appropriated in the state operating budget. The department requested and received additional input from the AFHC, LAW, and WHCA after completing the workgroup meetings. Representatives from the Developmental Disabilities Ombuds were invited, but did not attend meetings or provide input. The department emailed a copy of the full analysis to the entire workgroup. There were no additional comments on the analysis.

Chapter 19.85 RCW, The Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses. This statute outlines information that must be included in a Small Business Economic Impact Statement (SBEIS). Preparation of a SBEIS is required when a proposed rule has the potential of placing more than a minor impact on a business.

Residential Care Services (RCS) has analyzed these proposed rules and concludes that the proposed changes may impose a cost to AFH, ALF, and ESF operators. The cost would involve time spent drafting and implementing a residential agreement for residents with Medicaid, including those already living in the facility. Costs also include time facility operators spend providing a copy of any transfer or discharge notice issued to residents with Medicaid to the resident's case manager and to the Long-Term Care Ombuds.

When proposed rule changes cause more than minor costs to small businesses, the Regulatory Fairness Act requires an analysis that compares these costs between small businesses and ten percent of the largest businesses. Though the costs of the proposed rules do not meet the "more than minor" threshold we still compared these cost impacts.

We analyzed the impact on 4,897 AFHs (presuming the majority of AFHs are operated as small businesses) vs 4.5 ALFs (10% of 45 ALFs licensed for 101-253 residents) and determined there will not be a disproportionate impact on these smallest businesses despite these factors: Larger ALFs have an advantage in that the tasks imposed by the rules would be absorbed by a dedicated administrative staff. In the smallest AFHs the operator of the AFH may act as both the administrator and the sole caregiver. AFHs would not be disproportionately impacted because there are fewer residents, and the required tasks could be completed in less time overall.

This rulemaking is required for compliance with federal regulations. Residential Care Services worked with an active group of interested parties to make the proposed rules user-friendly and to limit requirements to those that are federally mandated. Though not federally required, providing a copy of the transfer or discharge notice to a resident's department case manager and the LTC Ombuds can help resolve issues between facility operators and residents. This could result in a facility receiving rent payments where previously withheld by the resident or resolution of issues that might have prompted a facility operator to seek legal or court action. Both would have a positive financial impact on the facility. Both would benefit the resident's housing stability and well-being.

Including model language in the rules will reduce the impact on all the regulated entities, giving them a template to use to comply with the rules. The optional residency agreement template the department's Home and Community Services Division is developing can also help mitigate the impact on facilities, giving them a template that can take the place of multiple documents.

☐ 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 Colleen Jensen  
Address P.O. Box 45600 Olympia, WA 98504  
Phone 564-999-3182  
Fax  
TTY 711 Relay Service  
Email [RCSPolicy@dshs.wa.gov](mailto:RCSPolicy@dshs.wa.gov)  
Other

<b>Date:</b> May 8, 2025	<b>Signature:</b> 
<b>Name:</b> Katherine I. Vasquez	
<b>Title:</b> DSHS Rules Coordinator	

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

**WAC 388-76-10320 Resident record—Content.** The adult family home must ensure that each resident record contains, at a minimum, the following information:

- (1) Identifying information about the resident;
- (2) The name, address, and telephone number of the resident's:
  - (a) Representative;
  - (b) Health care providers;
  - (c) Significant family members identified by the resident; and
  - (d) Other individuals the resident wants involved or notified.
- (3) Current medical history;
- (4) The resident assessment information;
- (5) The preliminary service plan;
- (6) The negotiated care plan;
- (7) List of resident medications;
- (8) The resident's Social Security number;
- (9) When the resident was:
  - (a) Admitted to the home;
  - (b) Absent from the home; and
  - (c) Discharged from the home.
- (10) A current inventory of the resident's personal belongings dated and signed by:
  - (a) The resident; and
  - (b) The adult family home.
- (11) Financial records.
- (12) If applicable, the residency agreement for residents with medicaid as a payor.

**RESIDENCY AGREEMENT-RESIDENTS WITH MEDICAID**

**NEW SECTION**

**WAC 388-76-10506 Written residency agreement-Residents with medicaid as a payor.** (1) For the purposes of this section "residency agreement" means a legally enforceable written document prepared by the adult family home that contains the rights and responsibilities of the facility and the resident specific to transfer and discharge and is signed by both parties.

(2) For residents with medicaid as a payor the facility must complete a signed written residency agreement with each resident that:

- (a) Is signed by the resident or their legal representative and the facility upon admission of the resident to the facility;

(b) Requires the facility to agree to comply with the long-term care residents rights statute transfer and discharge requirements pursuant to RCW 70.129; and

(c) Requires the facility to provide notice to residents upon transfer and discharge that includes information about available legal resources and notice that, subject to legislative appropriation, residents have the right to legal counsel at public expense upon notice of transfer or discharge.

(3) For residents whose payor status changes from medicaid to private pay, a new residency agreement is required if the resident's payor status returns to medicaid.

(4) A copy of the residency agreement must be kept in the resident record.

(5) The residency agreement must be in substantially the following form:

**Residency agreement-residents with medicaid as a payor.**

(a) [facility name] agrees to comply with the long-term care residents rights statute transfer and discharge requirements pursuant to RCW 70.129.

(b) Subject to legislative appropriation [resident name] has a right to a free lawyer to help them in response to a notice of transfer or discharge. If they want a free lawyer to help them, they must call the long-term care discharge defense screening line at [phone number].

(c) [Signature of resident/legal representative].

(d) [Signature of facility].

NEW SECTION

**WAC 388-76-10617 Resident rights-Transfer and discharge notice-Residents with medicaid as a payor.** For residents with medicaid as a payor, in addition to the requirements in WAC 388-76-10616, the adult family home must do the following when issuing a written notice of transfer or discharge:

(1) Include in the notice contact information provided by the department for the legal services agencies assigned to provide legal counsel;

(2) Clearly state in the notice that, subject to legislative appropriation, legal counsel at public expense is available to represent the resident's interests in the transfer or discharge process. This language must be substantially in the following form: "Subject to legislative appropriation you have a right to a free lawyer to help you respond to a notice of transfer or discharge. If you want a free lawyer to help you, please call the long-term care discharge defense screening line at [phone number].";

(3) Within three calendar days of issuing the notice, provide a copy of the notice to the resident's assigned department case manager;

(4) Within three calendar days of issuing the notice, provide a copy of the notice to the Washington state long-term care ombudsman program; and

(5) Issue the transfer and discharge notice in substantially the following form:

**Notice of transfer or discharge-residents with medicaid as a payor:**

- (a) Resident information;
  - (i) Resident name;
  - (ii) Resident address;
- (b) Facility information;
  - (i) Facility name;
  - (ii) Facility address;
  - (iii) Contact person's name;
- (c) Date notice given;
- (d) Effective date: Effective date must be at least 30 days from the date notice is given unless an exception applies according to RCW 70.129.110;
- (e) Location to where resident is transferred or discharged:
  - (i) Name;
  - (ii) Address;
  - (iii) Phone;
- (f) Reason for transfer or discharge: The specific reason for the transfer or discharge must be one or more of the reasons in (i)-(v) of this subsection:
  - (i) Transfer or discharge is necessary for the resident's welfare and the residents' needs cannot be met in the facility;
  - (ii) The safety of individuals in the facility is endangered;
  - (iii) The health of individuals in the facility would otherwise be endangered;
  - (iv) The resident has failed to make the required payment for their stay;
  - (v) The facility ceases to operate.
- (g) Copy of notice given within three days to:
  - (i) Department case manager;
  - (ii) Washington state long-term care ombudsman program;
  - (h) Your rights and resources.
- (i) Legal counsel: Subject to legislative appropriation, you have a right to a free lawyer to help you respond to a notice of transfer or discharge. If you want a free lawyer to help you, please call the long-term care discharge defense screening line at [phone number].
- (ii) Washington state ombuds: The Washington state long-term care ombudsman program is available to answer questions and provide assistance regarding this notice and other issues. If you wish to request assistance from the long-term care ombuds, call 1-800-562-6028. You may also make your request in writing, by fax at (253) 815-8173, email at [ltcop@mschelp.org](mailto:ltcop@mschelp.org), or mail at PO Box 23699, Federal Way, WA 98093-0699.
- (iii) Disability rights Washington: If you have a diagnosis of a mental illness or an intellectual disability, you may contact disability rights Washington 1-800-562-2702 or (206) 324-1521. You may also make your request in writing by fax at (206) 957-0729, email at [info@dr-wa.org](mailto:info@dr-wa.org) or mail at Disability rights Washington, 315 5th Ave S, Suite 850, Seattle WA, 98104.
- (iv) Aging and long-term support administration (AL TSA) complaint resolution unit (CRU/complaint hotline) 1-800-562-6078.

**WAC 388-78A-2410 Content of resident records.** The assisted living facility must organize and maintain resident records in a format that the assisted living facility determines to be useful and functional to enable the effective provision of care and services to each resident. Active resident records must include the following:

- (1) Resident identifying information, including resident's:
  - (a) Name;
  - (b) Birth date;
  - (c) Move-in date; and
  - (d) Sleeping room identification.
- (2) Current name, address, and telephone number of:
  - (a) Resident's primary health care provider;
  - (b) Resident's representative, if the resident has one;
  - (c) Individual(s) to contact in case of emergency, illness, or death; and
  - (d) Family members or others, if any, the resident requests to be involved in the development or delivery of services for the resident.
- (3) Resident's written acknowledgment of receipt of:
  - (a) Required disclosure information prior to moving into the assisted living facility; and
  - (b) Information required by long-term care resident rights per RCW 70.129.030.
- (4) The resident's assessment and reassessment information.
- (5) Clinical information such as admission weight, height, blood pressure, temperature, blood sugar, and other laboratory tests required by the negotiated service agreement.
- (6) The resident's negotiated service agreement consistent with WAC 388-78A-2140.
- (7) Any orders for medications, treatments, and modified or therapeutic diets, including any directions for addressing a resident's refusal of medications, treatments, and prescribed diets.
- (8) Medical and nursing services provided by the assisted living facility for a resident, including:
  - (a) A record of providing medication assistance and medication administration, which contains:
    - (i) The medication name, dose, and route of administration;
    - (ii) The time and date of any medication assistance or administration;
    - (iii) The signature or initials of the person providing any medication assistance or administration; and
    - (iv) Documentation of a resident choosing to not take ((his or her)) their medications.
  - (b) A record of any nursing treatments, including the signature or initials of the person providing them.
- (9) Documentation consistent with WAC 388-78A-2120 monitoring resident well-being.
- (10) Staff interventions or responses to subsection (9) of this section, including any modifications made to the resident's negotiated service agreement.
- (11) Notices of and reasons for relocation as specified in RCW 70.129.110.
- (12) The individuals who were notified of a significant change in the resident's condition and the time and date of the notification.



(13) When available, a copy of any legal documents in which:

(a) The resident has appointed another individual to make ((his or her)) their health care, financial, or other decisions;

(b) The resident has created an advance directive or other legal document that establishes a surrogate decision maker in the future ((and/)) or provides directions to health care providers or both; and

(c) A court has established guardianship on behalf of the resident.

(14) If applicable, the residency agreement for residents with medicaid as a payor.

### **Residency Agreement-Residents with Medicaid**

#### **NEW SECTION**

**WAC 388-78A-2651 Written residency agreement-Residents with medicaid as a payor.** (1) For the purposes of this section "residency agreement" means a legally enforceable written document prepared by the assisted living facility that contains the rights and responsibilities of the facility and the resident specific to transfer and discharge and is signed by both parties.

(2) For residents with medicaid as a payor the facility must complete a signed written residency agreement with each resident that:

(a) Is signed by the resident or their legal representative and the facility upon admission of the resident to the facility;

(b) Requires the facility to agree to comply with the long-term care residents rights statute transfer and discharge requirements pursuant to RCW 70.129; and

(c) Requires the facility to provide notice to residents upon transfer and discharge that includes information about available legal resources, and notice that, subject to legislative appropriation, residents have the right to legal counsel at public expense upon notice of transfer or discharge.

(3) For residents whose payor status changes from medicaid to private pay, a new residency agreement is required if the resident's payor status returns to medicaid.

(4) A copy of the residency agreement must be kept in the resident record.

(5) The residency agreement must be in substantially the following form:

#### **Residency agreement-residents with medicaid as a payor.**

(a) [facility name] agrees to comply with the long-term care residents rights statute transfer and discharge requirements pursuant to RCW 70.129.

(b) Subject to legislative appropriation [resident name] has a right to a free lawyer to help them in response to a notice of transfer or discharge. If they want a free lawyer to help them, they must

call the long-term care discharge defense screening line at [phone number].

(c) [Signature of resident/legal representative].

(d) [Signature of facility].

#### NEW SECTION

**WAC 388-78A-2661 Resident rights-Transfer and discharge notice-Residents with medicaid as a payor.** For residents with medicaid as a payor, in addition to the requirements in WAC 388-78A-2660, the assisted living facility must do the following when issuing a written notice of transfer or discharge:

(1) Include in the notice contact information provided by the department for the legal services agencies assigned to provide legal counsel;

(2) Clearly state in the notice that, subject to legislative appropriation, legal counsel at public expense is available to represent the resident's interests in the transfer or discharge process. This language must be substantially in the following form: "Subject to legislative appropriation you have a right to a free lawyer to help you respond to a notice of transfer or discharge. If you want a free lawyer to help you, please call the long-term care discharge defense screening line at [phone number].";

(3) Within three calendar days of issuing the notice, provide a copy of the notice to the resident's assigned department case manager;

(4) Within three calendar days of issuing the notice, provide a copy of the notice to the Washington state long-term care ombudsman program; and

(5) Issue the transfer and discharge notice in substantially the following form:

**Notice of transfer or discharge-residents with medicaid as a payor:**

(a) Resident information;

(i) Resident name;

(ii) Resident address;

(b) Facility information;

(i) Facility name;

(ii) Facility address;

(iii) Contact person's name;

(c) Date notice given;

(d) Effective date: Effective date must be at least 30 days from the date notice is given unless an exception applies according to RCW 70.129.110;

(e) Location to where resident is transferred or discharged:

(i) Name;

(ii) Address;

(iii) Phone;

(f) Reason for transfer or discharge: The specific reason for the transfer or discharge must be one or more of the reasons in (i)-(v) of this subsection:

(i) Transfer or discharge is necessary for the resident's welfare and the residents' needs cannot be met in the facility;

(ii) The safety of individuals in the facility is endangered;

(iii) The health of individuals in the facility would otherwise be endangered;

(iv) The resident has failed to make the required payment for their stay;

(v) The facility ceases to operate.

(g) Copy of notice given within three days to:

(i) Department case manager;

(ii) Washington state long-term care ombudsman program;

(h) Your rights and resources;

(i) Legal counsel: Subject to legislative appropriation, you have a right to a free lawyer to help you respond to a notice of transfer or discharge. If you want a free lawyer to help you, please call the long-term care discharge defense screening line at [phone number].

(ii) Washington state ombuds: The Washington state long-term care ombudsman program is available to answer questions and provide assistance regarding this notice and other issues. If you wish to request assistance from the long-term care ombuds, call 1-800-562-6028. You may also make your request in writing, by fax at (253) 815-8173, email at [ltcop@mschelp.org](mailto:ltcop@mschelp.org), or mail at PO Box 23699, Federal Way, WA 98093-0699.

(iii) Disability rights Washington: If you have a diagnosis of a mental illness or an intellectual disability, you may contact disability rights Washington 1-800-562-2702 or (206) 324-1521. You may also make your request in writing by fax at (206) 957-0729, email at [info@dr-wa.org](mailto:info@dr-wa.org) or mail at disability rights Washington, 315 5th Ave S, Suite 850, Seattle WA, 98104.

(iv) Aging and long-term support administration (AL TSA) complaint resolution unit (CRU/complaint hotline) 1-800-562-6078.

#### **RESIDENCY AGREEMENT-RESIDENTS WITH MEDICAID**

#### **NEW SECTION**

**WAC 388-107-0161 Written residency agreement-Residents with medicaid as a payor.** (1) For the purposes of this section "residency agreement" means a legally enforceable written document prepared by the enhanced services facility that contains the rights and responsibilities of the facility and the resident specific to transfer and discharge and is signed by both parties.

(2) For residents with medicaid as a payor the facility must complete a signed written residency agreement with each resident that:

(a) Is signed by the resident or their legal representative and the facility upon admission of the resident to the facility;

(b) Requires the facility to agree to comply with the long-term care residents rights statute transfer and discharge requirements pursuant to RCW 70.129; and

(c) Requires the facility to provide notice to residents upon transfer and discharge that includes information about available legal

resources, and notice that, subject to legislative appropriation, residents have the right to legal counsel at public expense upon notice of transfer or discharge.

(3) For residents whose payor status changes from medicaid to private pay, a new residency agreement is required if the resident's payor status returns to medicaid.

(4) A copy of the residency agreement must be kept in the resident record.

(5) The residency agreement must be in substantially the following form:

**Residency agreement-residents with medicaid as a payor.**

(a) [facility name] agrees to comply with the long-term care residents rights statute transfer and discharge requirements pursuant to RCW 70.129.

(b) Subject to legislative appropriation [resident name] has a right to a free lawyer to help them in response to a notice of transfer or discharge. If they want a free lawyer to help them, they must call the long-term care discharge defense screening line at [phone number].

(c) [Signature of resident/legal representative].

(d) [Signature of facility].

NEW SECTION

**WAC 388-107-0281 Transfer and discharge notice-Residents with medicaid as a payor.** For residents with medicaid as a payor, in addition to the requirements in WAC 388-107-0280, the enhanced services facility must do the following when issuing a written notice of transfer or discharge:

(1) Include in the notice contact information provided by the department for the legal services agencies assigned to provide legal counsel;

(2) Clearly state in the notice that, subject to legislative appropriation, legal counsel at public expense is available to represent the resident's interests in the transfer or discharge process. This language must be substantially in the following form: "Subject to legislative appropriation you have a right to a free lawyer to help you respond to a notice of transfer or discharge. If you want a free lawyer to help you, please call the long-term care discharge defense screening line at [phone number].";

(3) Within three calendar days of issuing the notice, provide a copy of the notice to the resident's assigned department case manager;

(4) Within three calendar days of issuing the notice, provide a copy of the notice to the Washington state long-term care ombudsman program; and

(5) Issue the transfer and discharge notice in substantially the following form:

**Notice of transfer or discharge-residents with medicaid as a payor:**

(a) Resident information;

(i) Resident name;

(ii) Resident address;

(b) Facility information;

(i) Facility name;

- (ii) Facility address;
- (iii) Contact person's name;
- (c) Date notice given;
- (d) Effective date: Effective date must be at least 30 days from the date notice is given unless an exception applies according to RCW 70.129.110;
- (e) Location to where resident is transferred or discharged:
  - (i) Name;
  - (ii) Address;
  - (iii) Phone;
- (f) Reason for transfer or discharge: The specific reason for the transfer or discharge must be one or more of the reasons in (i)-(v) of this subsection:
  - (i) Transfer or discharge is necessary for the resident's welfare and the residents' needs cannot be met in the facility;
  - (ii) The safety of individuals in the facility is endangered;
  - (iii) The health of individuals in the facility would otherwise be endangered;
  - (iv) The resident has failed to make the required payment for their stay;
  - (v) The facility ceases to operate.
- (g) Copy of notice given within three days to:
  - (i) Department case manager;
  - (ii) Washington state long-term care ombudsman program;
  - (h) Your rights and resources:
    - (i) Legal counsel: Subject to legislative appropriation, you have a right to a free lawyer to help you respond to a notice of transfer or discharge. If you want a free lawyer to help you, please call the long-term care discharge defense screening line at [phone number].
    - (ii) Washington state ombuds: The Washington state long-term care ombudsman program is available to answer questions and provide assistance regarding this notice and other issues. If you wish to request assistance from the long-term care ombuds, call 1-800-562-6028. You may also make your request in writing, by fax at (253) 815-8173, email at [ltcop@mschelp.org](mailto:ltcop@mschelp.org), or mail at PO Box 23699, Federal Way, WA 98093-0699.
    - (iii) Disability rights Washington: If you have a diagnosis of a mental illness or an intellectual disability, you may contact disability rights Washington 1-800-562-2702 or (206) 324-1521. You may also make your request in writing by fax at (206) 957-0729, email at [info@dr-wa.org](mailto:info@dr-wa.org) or mail at disability rights Washington, 315 5th Ave S, Suite 850, Seattle WA, 98104.
    - (iv) Aging and long-term support administration (AL TSA) complaint resolution unit (CRU/complaint hotline) 1-800-562-6078.

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

**WAC 388-107-0560 Resident records—Clinical records.** (1) The enhanced services facility must:

- (a) Maintain clinical records on each resident in accordance with accepted professional standards and practices that are:
  - (i) Complete;

- (ii) Accurately documented;
- (iii) Readily accessible; and
- (iv) Systematically organized;
- (b) Safeguard clinical record information against alteration, loss, destruction, and unauthorized use; and
- (c) Keep confidential all information contained in the resident's records, regardless of the form or storage method of the records, except when release is required by:
  - (i) Transfer to another health care institution;
  - (ii) Law; or
  - (iii) The resident.
- (2) The enhanced services facility must ensure the clinical record of each resident includes a minimum of the following:
  - (a) Resident identification and sociological data, including the name and address of the individual or individuals the resident designates as significant;
  - (b) Medical information;
  - (c) Physician's orders;
  - (d) Assessments;
  - (e) Person-centered service plans;
  - (f) Services provided;
  - (g) Progress notes;
  - (h) Medications administered;
  - (i) Consents, authorizations, releases;
  - (j) Allergic responses;
  - (k) Laboratory, X-ray, and other findings;
  - (l) If applicable, the residency agreement for residents with medicaid as a payor; and
  - ~~((1))~~ (m) Other records as appropriate.
- (3) The enhanced services facility must maintain resident records and preserve their confidentiality in accordance with applicable state and federal statutes and rules, including ~~((chapters))~~ chapter 70.02 ~~((and 70.96A))~~ RCW.