

WSR 21-06-109
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed March 3, 2021, 9:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-18-089.

Title of Rule and Other Identifying Information: The department is proposing to repeal and recodify WAC 388-71-0100 through 388-71-01281 to a new chapter 388-103 WAC. The department is also proposing to modify the definition of "willful" under WAC 388-71-0105 in response to *Crosswhite v. DSHS*, 389 P.3d 731, 197 Wn. App. 539 (2017). In addition, the department is proposing to create new WAC sections to memorialize a petition process for certified nursing assistants (CNAs), and update existing WAC sections to make other changes in grammar and structure for improved rule consistency.

Hearing Location(s): On April 27, 2021, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington Street S.E., Olympia, WA 98501. 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>; or by Skype. Due to the COVID-19 pandemic, hearing may be held via Skype, see DSHS website for most up-to-date information.

Date of Intended Adoption: No earlier than April 28, 2021.

Submit Written Comments to: DSHS, Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., April 27, 2021.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email kildaja@dshs.wa.gov, by April 13, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposal is to create a new WAC chapter containing all DSHS adult protective services (APS) regulatory subject matter. The effect of this change is to ensure that it is clear that APS is a division within aging and long-term support administration (AL TSA), and to ensure that it is clear what division is responsible for the chapter. In addition, the purpose of the proposal is to adapt and respond to the *Crosswhite* decision where a previous APS WAC definition was found to exceed the agency's statutory authority. The anticipated effect of this proposal is to adapt the commonly understood meaning of "willful" observed in *Crosswhite*. The purpose of a further proposal is to memorialize a petition process for CNAs. The effects of this are to create a process for CNAs to petition APS for their removal from the CNA registry regarding an instance of neglect. Finally, other purposes of this proposal are to clarify meanings, update grammar, and improve consistency within APS WAC and also between APS WAC and other WAC. The effect would be having WAC that is clearer, easier to understand, and consistent with other chapters of DSHS WAC.

Reasons Supporting Proposal: APS became a new division with AL TSA in 2019, and removing APS rules from home and community services rules ensures there is no confusion as to what division is responsible for the APS rules. Since the *Crosswhite* decision in 2017, there has been no explicit meaning of "willful" in regards to abuse in WAC (where abuse is defined in RCW 74.34.020). It will be defined as it was ob-

served in *Crosswhite*. Although APS does have a process for CNA petitions, having the process in rule better articulates the rights and responsibilities of the petitioners and APS. Finally, some substance in APS WAC is redundant, inconsistent with itself and other DSHS rules, and needs technical corrections.

Statutory Authority for Adoption: RCW 74.34.068, 74.34.165; 42 U.S.C. Sec. 1396r (g)(1)(D), Sec. 1395i-3 (g)(1)(D).

Statute Being Implemented: RCW 74.34.068, 74.34.165; 42 U.S.C. Sec. 1396r (g)(1)(D), Sec. 1395i-3 (g)(1)(D).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Will Reeves, P.O. Box 45600, Olympia, WA 98504, 360-485-3715.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. All proposals do the following: Adopt or incorporate by reference without material change federal statutes or regulations or Washington state statutes; clarify language of a rule without changing its effect; or are interpretive rules. The following are incorporated without material change: RCW 74.34.020; 42 C.F.R. 488.301; RCW 74.34.005, 74.34.063, 74.34.068; Part IV of chapter 34.05 RCW; RCW 74.34.095, 74.349A.056; 42 U.S.C. 1396r, 42 U.S.C. 1395i-3.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.030.

Explanation of exemptions: The proposed rules will not impose more-than-minor costs on any business or industry, as APS investigates and makes findings regarding individuals, not entities.

February 25, 2021
Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 21-07 issue of the Register.