

WSR 22-11-088
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

[Filed May 18, 2022, 8:16 a.m., effective May 18, 2022, 8:16 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: On January 26, 2022, the department filed emergency rules under WSR 22-04-038 to suspend requirements in WAC 388-97-1740 Disaster and emergency preparedness, 388-97-1760 Quality assessment and assurance, and 388-97-2400 Resident rooms. The filing was an extension of emergency rules filed consecutively since June 23, 2020, to maintain compliance with blanket waivers issued by the Centers for Medicare and Medicaid Services (CMS) to assure [ensure] nursing homes are not significantly impeded from caring for residents during the COVID-19 pandemic.

Effective May 7, 2022, CMS rescinded the blanket waiver related to quality assessment and assurance requirements, but continued the federal waivers related to fire drills and windows in each resident room. This rule filing cancels and supersedes the emergency rules filed as WSR 22-04-038, reimplements the requirements related to quality assessment and assurance under WAC 388-97-1760 for consistency with CMS reimplementations of these requirements, and extends the amendment of the disaster preparedness rule and resident room rule listed below to continue to align Washington state nursing home rules with federal rules that are suspended or amended under the CMS blanket waiver. Specifically, the following amendments continue to be suspended under this rule filing:

(1) The federal rules suspended fire drills to reduce grouping of staff and/or residents that might increase the likelihood of transmitting COVID-19. Current state rules require periodic fire drills. This emergency removes the state requirement to have fire drills, but continues to require staff training on the fire plan.

(2) The federal rules requiring a window in each resident room were waived to permit use of space not normally used for resident care to be utilized as a resident room. Current state rules require each resident room have a transparent glass window located on an exterior wall, with additional size and location requirements for new construction. This emergency rule removes the state requirement to have a window in each resident room.

The department filed a CR-101 under WSR 20-21-034 and is continuing discussions with stakeholders about adopting rules that explain the circumstances and time periods under which suspension of rules due to COVID[-19] is necessary.

Citation of Rules Affected by this Order: Amending WAC 388-97-1740 and 388-97-2400.

Statutory Authority for Adoption: RCW 74.42.620 and 18.51.070.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The threat of COVID-19 to our most vulnerable populations is significant, especially for those receiving long-term care services in their homes and congregate settings, such as long-term care facilities.

Fire drills (WAC 388-97-1740): Recent federal waivers suspended the requirement for nursing facilities to conduct fire drills. The majority of the rules around fire drills are in the federal life safety code, and under the jurisdiction of the office of the state fire marshal. Nursing home rules also contain language requiring periodic drills. Amendment of WAC 388-97-1740 will remove the requirement for conducting periodic fire drills, but does not remove the requirement to have an emergency plan that includes fire procedures and staff training on that plan.

Windows in resident rooms (WAC 388-97-2400): Current state nursing home rules require each resident room have a transparent glass window on an exterior wall. Federal rules also require a resident sleeping room to have a window. The federal rules were recently waived to accommodate facilities wanting to increase room capacity, and need to utilize spaces not normally used as a resident room as a resident room. Amendment of WAC 388-97-2400 removes the requirement to have a window in each resident room to align the state rule with the recently waived federal rule. This will provide nursing facilities with additional flexibility in redesigning their space to accommodate additional residents.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: May 16, 2022.

Katherine I. Vasquez
Rules Coordinator

SHS-4816.3

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1740 Disaster and emergency preparedness. (1) The nursing home must develop and implement detailed written plans and procedures to meet potential emergencies and disasters. At a minimum the nursing home must ensure these plans provide for:

- (a) Fire or smoke;
- (b) Severe weather;
- (c) Loss of power;
- (d) Earthquake;
- (e) Explosion;
- (f) Missing resident, elopement;

- (g) Loss of normal water supply;
- (h) Bomb threats;
- (i) Armed individuals;
- (j) Gas leak, or loss of service; and
- (k) Loss of heat supply.

(2) The nursing home must train all employees in emergency procedures when they begin work in the nursing home, and periodically review emergency procedures with existing staff (~~(, and carry out unannounced staff drills using those procedures)~~).

(3) The nursing home must ensure emergency plans:

- (a) Are developed and maintained with the assistance of qualified fire, safety, and other appropriate experts as necessary;
- (b) Are reviewed annually; and
- (c) Include evacuation routes prominently posted on each unit.

[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. WSR 08-20-062, § 388-97-1740, filed 9/24/08, effective 11/1/08.]

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-2400 Resident rooms. (1) The nursing home must ensure that each resident bedroom:

- (a) Has direct access to a hall or corridor; and
- (b) (~~Is located on an exterior wall with a transparent glass window; and~~

~~(c))~~ Is located to prevent through traffic.

(2) In a new building or addition, unless otherwise necessary for infection control, each resident bedroom must:

- (a) Have an exterior transparent glass window:
 - (i) With an area equal to at least one-tenth of the bedroom usable floor area;
 - (ii) Located (~~(twenty-four)~~) 24 feet or more from another building or the opposite wall of a court, or (~~(ten)~~) 10 feet or more away from a property line, except on street sides;
 - (iii) Located eight feet or more from any exterior walkway, paved surface, or driveway; and
 - (iv) With a sill three feet or less above the floor.
- (b) Be located on a floor level at or above grade level except for earth berms. "Grade" means the level of ground adjacent to the building floor level measured at the required exterior window. The ground must be level or slope downward for a distance of at least (~~(ten)~~) 10 feet from the wall of the building. From there the ground may slope upward to the maximum sill height of the required window at a rate of one foot vertical for two feet horizontal.

[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. WSR 08-20-062, § 388-97-2400, filed 9/24/08, effective 11/1/08.]