

WSR 22-19-053
EMERGENCY RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed September 16, 2022, 8:14 a.m., effective September 16, 2022, 8:14 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Chapter 296-307 WAC, Temporary worker housing. The department of health (DOH), in conjunction with the department of labor and industries (L&I), continue to respond to the novel coronavirus disease 2019 (COVID-19) pandemic. DOH and L&I are adopting revisions to the initial emergency rule for temporary worker housing. DOH and L&I filed the initial emergency rules on May 13, 2020, WSR 20-11-024 and 20-11-025, respectively. As the pandemic continues to impact residents of Washington state and temporary worker housing occupants, and in response to the governor's guidance, DOH and L&I filed subsequent emergency rules through May 20, 2022 (WSR 22-12-013 and 22-12-014), to protect occupants from COVID-19 hazards in licensed temporary worker housing.

The emergency rule:

- Maintains the requirements for operators to educate occupants on COVID-19 in a language or languages they understand and the requirement to conspicuously post information regarding COVID-19 in a language commonly understood by the occupants.
- Maintains education requirements to include what to do if an occupant is exposed to SARS-CoV-2 and what to do if they test positive for SARS-CoV-2.
- Maintains the requirement allowing entry of community health workers and community-based outreach workers to provide additional information.
- Maintains the requirement for operators to provide face coverings/masks to occupants for use in accordance with DOH guidelines or as required by L&I rules.
- Maintains the requirement for ventilation.
- Maintains requirements related to cleaning and disinfecting surfaces and areas where symptomatic suspect SARS-CoV-2 cases or people who tested positive for SARS-CoV-2 have been, and the requirement to ensure adequate supplies of soap and single-use paper towels at all sinks to allow for frequent handwashing.
- Updates and maintains certain requirements related to screening and isolation of suspect SARS-CoV-2 and positive SARS-CoV-2 cases as follows:
 - o Updates definition of "suspect SARS-CoV-2 case" to include a person who is waiting for test results.
 - o Updates isolation requirement to allow individuals who have tested positive for SARS-CoV-2 to leave isolation after meeting criteria in DOH isolation guidance or when released from isolation by the local health officer.
 - o Maintains the requirements for daily licensed health care professional visits for employees in isolation with symptoms. For asymptomatic employees in isolation, a licensed health care professional visit is required upon initial placement in isolation and upon request of the asymptomatic employee or the licensed health care professional. Maintains the other requirements related to licensed health care professional visits, including options to use telehealth.

Both DOH and L&I each filed a preproposal statement of inquiry (CR-101) on September 10, 2020, WSR 20-19-047 and 20-19-050, regarding permanent amendments to the existing permanent rules to address hazards from COVID-19 or other outbreaks of airborne infectious diseases. Some amendments made as part of the emergency rules will be considered for permanent rule making. For example, changes to ventilation requirements and isolation requirements during an outbreak.

Citation of Rules Affected by this Order: New WAC 296-307-16102.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, 49.17.060, and 49.17.240.

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: DOH and L&I continue to take action to help prevent the spread of COVID-19. Given the evolution of the pandemic, DOH and L&I have continued to review new information, data, and science as it becomes available to determine what requirements are necessary to protect temporary worker housing occupants from COVID-19 and similar airborne infectious disease hazards. DOH and L&I have also been reviewing and considering information related to the implementation of the requirements in emergency rules and stakeholder input. As the efforts against COVID-19 continue to impact temporary worker housing occupants, emergency rules are needed to help prevent the spread and outbreaks while the potential permanent changes are under development. This emergency rule removes some previous requirements that are no longer necessary to address on an emergency basis due to changes in case counts and hospitalizations and the increased vaccination rates. Requirements related to training, ventilation, and isolation and quarantine are still critical. Given the current stage of the pandemic, DOH and L&I plan to take elements in this emergency rule and work to finalize proposed permanent rules. This emergency rule is necessary for the preservation of public health, safety, and general welfare of occupants of temporary worker housing for the remaining 2022 growing season.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, 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 1, 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 1, Amended 0, Repealed 0.

Date Adopted: September 16, 2022.

Joel Sacks
Director

OTS-2279.16

NEW SECTION

WAC 296-307-16102 Additional requirements to protect occupants in temporary worker housing from 2019 novel coronavirus (COVID-19) exposure. (1) The operator of temporary worker housing (TWH) under this chapter must implement the following steps to protect occupants from the hazards posed by SARS-CoV-2, the virus that causes coronavirus disease 2019 (COVID-19):

(a) Educate occupants and allow entry of community workers:

(i) The operator must educate occupants in a language or languages understood by the occupants on COVID-19, including: How the virus is spread and how to prevent virus spread including the importance of handwashing; the use of face coverings/masks; proper respiratory etiquette; the importance of daily cleaning and disinfection of frequently touched items; steps that can be taken to improve ventilation; common symptoms and risk factors; how to get a vaccine and where to get answers about vaccine questions; what to do if they develop symptoms of COVID-19; what to do if they are exposed to SARS-CoV-2; and what to do if they test positive for SARS-CoV-2.

(ii) The operator must also allow entry of community health workers and community-based outreach workers to provide additional information. For the purposes of this section, a community health worker is defined as a frontline public health worker who is a trusted member of and/or has an unusually close understanding of the community served. This trusting relationship enables the worker to serve as a liaison/link/intermediary between health/social services and the community to facilitate access to services and improve the quality and cultural competence of service delivery. A community-based outreach worker is defined as a legal aid representative, a union representative, or a representative from other community-based advocacy organizations.

Note: When there is a designated or recognized office at an employer's establishment, all visitors should check in to provide their name and contact information and complete a screening to ensure they are symptom free. To the extent possible, a minimum number of visitors should be allowed at a time and 6-foot physical distancing should be maintained. Personal protective equipment must be worn at all times.

(b) Conspicuously post information regarding the facility's health and safety policies, how to identify symptoms, to whom to report if not feeling well, and where and how to secure medical treatment - all in a language commonly understood by the occupants.

(c) The operator must provide at no cost an adequate number of face coverings/masks for occupants to use in accordance with Washington department of health guidelines, or as required by Washington department of labor and industries (L&I) safety rules.

(d) Ventilation.

(i) For the purposes of this section "mechanical ventilation" means the active process of supplying air to or removing air from an indoor space by powered equipment such as motor-driven fans and blowers but not by devices such as wind-driven turbine ventilators and mechanically operated windows.

(ii) If the TWH facility/building has a mechanical ventilation system, maintain it according to the manufacturer's specifications and operate the system to provide optimal fresh and filtered air. TWH operators must have building maintenance staff or HVAC contractors set their existing mechanical ventilation system to increase ventilation or the percentage of outside air that circulates into the system and verify the following:

(A) Make sure all HVAC systems are fully functional, especially those that have been shut down or operating at reduced capacity during the pandemic or off season.

(B) Use HVAC system filters with a minimum efficiency reporting value (MERV) rating of at least 13. If the HVAC system does not support MERV 13 filters, use the highest MERV rating filters supported by the HVAC system.

(C) Maximize the HVAC system's outdoor air intake. Make sure exhaust air is not pulled back into the building through HVAC air intakes or open windows. Reductions in outside air intake may be made when there are hazardous external conditions such as wildfire smoke or periods during and following pesticide application.

(D) Use appropriate personal protective equipment (particulate respirator, eye protection, and disposable gloves) when changing filters.

(E) Maintenance checks must occur at the beginning of each growing season when preparing buildings to be reopened. Additional checks must occur based on manufacturer recommendations (usually quarterly or annually).

(F) Keep a maintenance log including documentation of filter selection (include selection reason if less than MERV 13 filtration is used), filter conditions, and outside air settings. Operators shall make records required by this section available to the state agency representatives upon request.

(iii) The operator must instruct residents in buildings with mechanical ventilation to:

(A) Turn on mechanical ventilation systems (i.e., HVAC) or open windows whenever the TWH facility or building is occupied.

(B) Temporarily shut down the system when pesticides are being applied in the vicinity of the building.

(C) Operate exhaust fans in restrooms continuously at maximum capacity.

(iv) The operator shall ensure that filters in any ventilation system used in a TWH facility or building are clean and in good repair.

(v) In buildings without mechanical ventilation systems, windows must be open whenever occupied. Windows must be closed when conditions outside of the building could pose a hazard to occupants including, but not limited to, during dust storms or when pesticides are being applied to fields near the building. The operator must instruct residents to remove or redirect personal fans to prevent blowing air from one worker to another.

(e) Clean and disinfect surfaces. The operator must:

(i) Clean and disinfect areas where symptomatic suspect SARS-CoV-2 cases or people who tested positive for SARS-CoV-2 have been, according to CDC guidelines and before the space is used by others.

(ii) Ensure adequate supplies of soap and single-use paper towels at all sinks to allow for frequent handwashing.

(2) COVID-19 screening and isolation of suspect SARS-CoV-2 and positive SARS-CoV-2 cases.

(a) The operator must develop and implement a plan to identify and isolate occupants with suspect SARS-CoV-2 and positive SARS-CoV-2, including:

(i) A process to screen occupants for symptoms of COVID-19 as identified by the centers for disease control and prevention (CDC), including fever, cough, shortness of breath, difficulty breathing, chills, shaking with chills, muscle pain, headaches, fatigue, sore

throat, congestion or runny nose, nausea or vomiting, diarrhea, and loss of taste or smell. The operator must ensure that an adequate number of thermometers or "no touch" or "no contact" thermometers are available for occupants to use. All thermometers must be properly sanitized between each use. Any worker with a temperature of 100.4°F or higher is considered to have a fever.

(ii) A "suspect SARS-CoV-2 case" is defined as a person with signs and symptoms compatible with COVID-19 above who has not been tested yet, who is awaiting test results, or who refuses testing. Upon identification of any individual known to have or suspected of having SARS-CoV-2 cases, the operator must contact the local health officer immediately as required under WAC 296-307-16190 and provide transportation for any medical evaluation or treatment. Ensure individuals providing transportation have appropriate personal protective equipment.

(iii) Identify close contacts in accordance with the Washington state department of health or local health officer close contact definition. Individuals who have been in close contact with the symptomatic suspect SARS-CoV-2 case or person who has tested positive for SARS-CoV-2 with a viral test must follow Washington state department of health or local health officer guidance for close contacts if applicable, including quarantine, symptom monitoring, testing, and face covering/masking. Close contacts of a suspect case who is ruled out do not need to continue to be treated as close contacts.

(iv) Any occupant exposed to COVID-19, regardless of vaccination status, must continue to be screened for symptoms of COVID-19 as described in (a)(i) of this subsection.

(v) Isolate suspect SARS-CoV-2 cases with sleeping, eating, and bathroom accommodations that are separate from others. If the suspect occupant resides in a room with family members, the sick occupant will have the option to isolate with the family members.

(vi) Individuals who test positive for SARS-CoV-2 with a viral test must be isolated and only housed with other cases who have tested positive for SARS-CoV-2 with a viral test and must have separate bathroom, cooking and eating facilities from people who have not been diagnosed with COVID-19. If the occupant who tested positive for SARS-CoV-2 resides in a room with family members, the positive occupant will have the option to isolate with the family members. Individuals may leave isolation when they meet Washington state department of health guidance for isolation or when released from isolation by the local health officer.

(vii) The operator must report suspect SARS-CoV-2 cases or SARS-CoV-2 positive TWH occupants in isolation to the division of occupational safety and health (DOSH) within 24 hours after placement.

Note: This notification can be made by telephone to the department's toll-free telephone number, 1-800-4BE-SAFE (1-800-423-7233), or to DOSH by any other means.

(b) The operator must ensure appropriate isolation facilities for suspect SARS-CoV-2 cases or SARS-CoV-2 positive TWH occupants, including the following:

(i) Ensure that a licensed health care professional visits or assesses symptomatic occupants daily and asymptomatic occupants upon initial placement in isolation and upon request of the asymptomatic occupant or the licensed health care professional, at the employer's expense to perform a health check for each individual in isolation. Evaluations by licensed health care providers may be performed in-person, using audio telemedicine, or video telemedicine. At a minimum, the health care professional must review symptoms; temperature; oxygen

saturation via pulse oximetry; and determine if additional medical services are needed, such as an in-person evaluation or treatment. If the licensed health care professional is not already familiar with the occupant's medical history, the licensed health care professional must obtain relevant medical history from the occupant.

(ii) Provide the health care provider performing the evaluation with information on the location of the isolation facilities and what the distance is from isolation facility and the nearest advanced life support emergency medical services, an emergency room with ventilator capability, and outpatient nonemergency medical services. If the health care provider has a question about the safety, health, or well-being for the occupant in isolation, they may contact the housing operator for further information.

(iii) For evaluations done by telehealth, the operator must ensure each occupant in isolation has or is provided a working telephone with a clear connection. The operator must also provide the occupant with a U.S. Food and Drug Administration approved pulse oximeter and thermometer with written and verbal instructions on use and interpretation of their results in the occupant's preferred language.

(iv) If an occupant prefers not to self-operate the pulse oximeter, and/or thermometer, the employer must ensure that they have competent assistance.

(v) Interpretation services must be provided when the medical professional is not fluent in the occupant's preferred language.

(vi) For purposes of this subsection, a licensed health care professional means:

(A) An individual licensed under chapter 18.79 RCW as a registered nurse;

(B) An individual licensed under chapter 18.71 RCW as a physician;

(C) An individual licensed under chapter 18.71A RCW as a physician assistant;

(D) An individual licensed under chapter 18.57 RCW as an osteopathic physician;

(E) An individual licensed under chapter 18.57A RCW as an osteopathic physician assistant;

(F) An individual licensed under chapter 18.79 RCW as an advanced registered nurse practitioner; and

(G) An individual licensed under chapter 18.71 RCW as a paramedic or emergency medical technician (EMT) if authorized to monitor suspect SARS-CoV-2 cases or SARS-CoV-2 positive individuals as authorized by the local medical program director, EMS administrators, and fire chief while working in their agency/jurisdiction.

(H) A medical assistant-certified (MA-C) or medical assistant-registered (MA-R) credentialed under chapter 18.360 RCW and under the delegation and supervision of a licensed health care practitioner.

(vii) Facilitate transportation for in-person medical evaluation or treatment when specified or recommended by a medical provider or upon request of the occupant.

(viii) Guarantee that the occupants have ready access to telephone service to summon emergency care.

(ix) Provide occupants with information about paid leave and workers compensation.

(x) Permit access to other medical professionals who offer health care services in addition to the licensed health care professional(s) contracted to provide health checks.

(xi) The operator must provide food and water.

(xii) If the operator uses other isolation facilities, such as hotels, the operator must verify that the isolation facility complies with requirements of this section prior to transporting workers to the facility. Isolated workers may also be housed in county or state run isolation centers.

(3) The operator must revise the facility's written TWH management plan to include implementation of the requirements in this section, as applicable.

(a) The plan must identify a single point of contact at the TWH for COVID-19 related issues.

(b) The operator must share the plan with all occupants on the first day the plan is operational or the first day the occupant arrives at the TWH. The operator must designate a person that will ensure all occupants are aware of all aspects of the plan and be available to answer questions.

(c) If changes are made to the TWH management plan, the operator must submit the revised TWH management plan to the state department of health within 10 calendar days of the effective date of this section.

(d) Failure to submit a revised plan or properly implement the requirements of this section may result in administrative action, including license suspension or fines.

(4) Consistent with WAC 296-307-16120(1), an operator may request a temporary variance from the requirements of this section when another means of providing equal protection is provided.

(5) In the event that any provisions of this section are in conflict with other regulations in this chapter, such other regulation shall be deemed superseded for purposes of this chapter.

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