

WSR 24-24-015

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed November 22, 2024, 9:37 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-17-058.

Title of Rule and Other Identifying Information: This proposal would update chapter 388-76 WAC, Adult family home minimum licensing requirements; and amending WAC 388-76-10780 Toilets and bathing facilities.

Hearing Location(s): On January 7, 2025, at 10:00 a.m., virtually via Teams or call in. See the department of social and health services (DSHS) website at <https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings> for the most current information.

Date of Intended Adoption: Not earlier than January 8, 2025.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax 360-664-6185, beginning noon on December 4, 2024, by 5:00 p.m. on January 7, 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), by 5:00 p.m. on December 24, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This proposal restores the flexibility of previous rules and adds clarity that will help adult family homes (AFH) with compliance while maintaining safety and well-being of residents in AFHs. The anticipated effect is a reduced financial and regulatory burden for new AFHs.

Reasons Supporting Proposal: This proposal reduces barriers to the AFH market, allowing new AFHs flexibility in how they meet licensing requirements for bathrooms. Residents' health and safety is maintained. This proposal was requested by a member of the community and supports the DSHS mission of collaborating with the community.

Statutory Authority for Adoption: RCW 70.128.040.

Statute Being Implemented: RCW 70.128.007.

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: Colleen Jensen, 4500 10th Avenue S.E., Lacey, WA 98503, 564-999-3182.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Colleen Jensen, P.O. Box 45600, Olympia, WA 98504, phone 564-999-3182, TTY 711, email [colleen.jensen1@dshs.wa.gov](mailto:colleen.jensen1@dshs.wa.gov).

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. The purpose of this chapter is to implement

chapter 70.128 RCW to promote the safety and well-being of AFH or residents, to specify standards for AFH, and to further establish requirements for operating an AFH. The proposed amendments to this chapter will:

- Remove the requirement that there be two toilets available to each resident in AFHs licensed after August 1, 2023, for more than five residents and clarify there must be at least one toilet meeting WAC requirements for every five people living in the AFH.
- Clarify toilets and bathing facilities not used by residents do not have to meet WAC requirements but must be inaccessible to residents.

DSHS provided notice of the proposed rule making to interested parties, which includes AFHs. DSHS held two interested parties "workgroup" meetings to solicit input and feedback during the rule-making process. The workgroup included representatives from the Adult Family Home Council (AFHC), the Washington state long-term care ombuds program, architects, and AFH consultants. No AFH providers accepted the invitation to participate. DSHS sought input from the state building code council and the state fire marshal, who reviewed and commented on the draft rules. DSHS used the comments from the workgroup to make updates to the draft rules.

DSHS consulted with the exclusive representative of AFH licensees, the AFHC, for input on how the rules may impact costs for the small businesses they represent.

Chapter 19.85 RCW, the Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses. The statute defines small businesses as those businesses that employ 50 or fewer people and are independently owned and operated. These proposed rules impact AFHs licensed by DSHS.

Preparation of a small business economic impact statement (SBEIS) is required when a proposed rule has the potential of placing a disproportionate economic impact on small businesses. The statute outlines information that must be included in an SBEIS.

Under chapter 19.85 RCW, DSHS has considered annual costs to small businesses that are \$50.00 or more per client served, per affected AFH. The proposed rule amendments will not impose more-than-minor costs on small businesses. The preparation of a comprehensive SBEIS is not required.

The proposed rules include the following significant changes:

- Requirements for the number of toilets available for resident use.
- Requirements to make unlicensed toilets and bathing facilities inaccessible to residents.

DSHS identified no costs associated with the proposed rule. Some AFHs will have a cost savings because they will not have to add or modify a bathroom under the proposed rule.

AFHs will not have to add or modify a bathroom when they have enough toilets to meet the 1:5 ratio in the proposed rule. This will save AFHs money and will reduce barriers to licensure. Defining "accessible" will provide clarity, which will help AFHs comply with the rule. Residents will still have access to a sufficient number of toilets in the AFH to maintain comfort and dignity and AFHs have flexibility in how they meet the requirement. For the requirement to make unlicensed toilets and bathing facilities inaccessible, there will be less likelihood of residents accessing facilities that don't meet the WAC requirements, which supports resident safety.

A copy of the detailed cost calculations may be obtained by contacting Colleen Jensen, P.O. Box 45600, Olympia, WA 98504, phone 564-999-3182, TTY 711, email colleen.jensen1@dshs.wa.gov.

November 21, 2024  
Katherine I. Vasquez  
Rules Coordinator

## SHS-5062.1

AMENDATORY SECTION (Amending WSR 23-12-075, filed 6/6/23, effective 8/1/23)

**WAC 388-76-10780 Toilets and bathing facilities.** (1) All adult family homes must ensure the home has toilets and bathing facilities that provide each resident with privacy and include at least:

(a) One accessible indoor flush toilet that meets WAC 51-51-0330 for each five persons including residents and household members who live in the home; and

(b) Sinks with hot and cold running water.

(2) For the purposes of this section, "accessible" means available and licensed for resident use.

~~((2))~~ (3) Homes licensed after July 1, 2007, must also ensure each resident has access to a toilet, and bathing facilities without going through another person's room.

~~((3) Homes licensed after August 1, 2023, that have a licensed capacity of more than five residents must have at least two indoor flush toilets available and accessible for resident use without requiring any resident to go through another person's room.)~~

(4) Homes licensed after August 1, 2023, must have a sufficient number of toilets to maintain a ratio of one accessible toilet to five persons, without having to go through another person's room to use a toilet.

(5) Toilets and bathing facilities not used by residents do not need to meet requirements of WAC 51-51-0330 and must not be accessible to residents.