

## WSR 24-24-016

## PROPOSED RULES

## DEPARTMENT OF

## SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed November 22, 2024, 9:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-10-097.

Title of Rule and Other Identifying Information: This proposal updates chapter 388-76 WAC, Adult family home minimum licensing requirements; amending WAC 388-76-10031 License requirements—Seven or eight bed adult family homes—Licensure, 388-76-10225 Reporting requirement, and 388-76-10530 Resident rights—Notice of rights and services.

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 modifies language in WAC 388-76-10031 that conflicts with DSHS's interpretation of RCW 70.128.066 related to automatic sprinkler systems in seven and eight bed adult family homes (AFH) that serve only residents who are independent with evacuation. This rule making also implements ESHB 2015, chapter 147, Laws of 2024, that gives DSHS the ability to temporarily prioritize licensing inspections of AFHs requesting to increase licensed capacity to seven or eight beds when the home has met all other requirements. The anticipated effect is a reduction of regulatory burden for some existing AFHs, enabling expansion. This will provide more available options for residents choosing to live in an AFH.

Reasons Supporting Proposal: This rule making is necessary to incorporate ESHB 2015, chapter 147, Laws of 2024, into the rules. This and other changes fit with the aging and long-term support administration's goal of supports that increase access, choice, and integration. By removing barriers to expansion for some AFHs, there will be more options for residents choosing an AFH setting.

Statutory Authority for Adoption: RCW 70.128.040 and 70.128.066.

Statute Being Implemented: RCW 70.128.066.

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.

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

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.

Explanation of exemptions: The proposed rule allows DSHS to, temporarily, complete one or two inspections of an AFH upon submission of an application to increase capacity to seven or eight beds if the AFH has otherwise met the requirements of the statute.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: WAC 388-76-10031, adoption of statute without material change, RCW 34.05.310 (4) (c).

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 rules will meet this purpose by aligning AFH rules with DSHS's interpretation of RCW. The rules implement statutory changes adopted by the 2024 legislature under HB 2015. The legislation establishes requirements that allow DSHS to prioritize inspections of some AFHs who wish to increase licensed capacity to seven or eight beds. In addition, the rules will:

- Remove the regulatory requirement for some AFHs to have an automatic sprinkler system to be able to expand capacity to seven or eight beds.
- Require seven and eight bed AFHs that do not have a sprinkler system to include in their policies notification that residents who become unable to evacuate the AFH independently will be required to discharge.
- Require seven and eight bed AFHs that do not have a sprinkler system to report to DSHS when a resident's status changes to require assistance with evacuation.

DSHS provided notice of the proposed rule making to interested parties, which includes AFHs. Concerning the changes that address sprinklers, 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.

Concerning the changes that implement HB 2015, the rules will adopt by reference without material change Washington state statutes. This law passed after the workgroup meetings had concluded. DSHS updated the most recent draft to include the amended language and sent to the workgroup for review and comment. There were no comments concerning the added rule text.

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.

DSHS 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 to:

- Licensing requirements for AFHs wishing to expand licensed capacity to seven or eight beds.
- Reporting requirements.
- Notice requirements for AFHs.

If adopted, the proposed rules will benefit AFHs and likely save some AFHs money. Some AFHs will not have to add costly sprinkler systems. Residents will benefit from being able to make an informed choice about living in an AFH where they will be required to move should they become unable to self-evacuate. Residents who become unable to self-evacuate will be better supported when AFHs must notify DSHS of the resident's change in status.

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-5063.1

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

**WAC 388-76-10031 License requirements—Seven or eight bed adult family homes—Licensure.** (1) An adult family home submitting an application to increase the licensed capacity of a currently licensed adult family home to seven or eight residents must:

(a) Be able to demonstrate to the department the applicant's history of financial solvency and successful management experience as an adult family home provider;

(b) Maintain the initial license for the adult family home identified on the capacity increase application for a period of no less than 24 months prior to application;

(c) Maintain a licensed capacity for six residents for at least the 12 months immediately prior to application;

(d) Demonstrate to the department the ability to comply with the emergency evacuation standards in WAC 388-76-10865; and

~~((d))~~ (e) Receive at least two full inspections prior to application, with no enforcement action taken against the home during the time period starting with the older of the two most recent inspections and ending at the time the capacity increase is approved(, and)). Between June 6, 2024, and January 1, 2026, for adult family homes applying to increase bed capacity under RCW 70.128.066, the department may:

~~((e) Demonstrate to the department the ability to comply with the emergency evacuation standards in WAC 388-76-10865.))~~

(i) Complete the first inspection upon receipt of an application to increase bed capacity if the home has otherwise met the requirements of RCW 70.128.066.

(ii) Complete a second inspection upon receipt of an application to increase bed capacity if at least six months have passed since the first inspection.

(2) The adult family home must provide the following items to the department with the application:

(a) Documentation verifying the installation of an automatic sprinkler system that meets the requirements of chapter 51-54A WAC if the home serves residents who require assistance during an evacuation;

(b) Any outstanding fees associated with licensure or additional inspections;

(c) A written plan to mitigate the potential impact of vehicular traffic related to the increased capacity; and

(d) An attestation signed by the provider that states an increase in the number of beds will not adversely affect the provider's ability to meet the health, safety, rights, or quality of life needs of the current and prospective residents in the home.

(3) At the time of application for a license capacity increase to seven or eight residents, the adult family home must provide a written notice to all residents and the residents' representatives that the home has applied for a license capacity increase. This notice must:

(a) Be provided at least 60 days prior to admitting a seventh or eighth resident;

(b) Be written in a manner or language that is understood by the residents and the residents' representatives;

(c) Inform residents and resident representatives that the department will consider their comments regarding the quality of care and quality of life offered by the home and their views regarding the addition of one or two more residents; and

(d) Provide contact information for the regional residential care services licensing office where the resident or their representative can share their comments.

(4) An adult family home licensed for seven or eight beds that does not have an automatic sprinkler system must not serve residents that require assistance during evacuation as defined by WAC 388-76-10870 and will have a limit placed on their license by the department.

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

- WAC 388-76-10225 Reporting requirement.** (1) The adult family home must ensure all staff:
- (a) Report suspected abuse, neglect, exploitation, or abandonment of a resident:
    - (i) As required by chapter 74.34 RCW;
    - (ii) To the department by calling the complaint toll-free hotline number or completing an online report; and
    - (iii) To the local law enforcement agency when required by RCW 74.34.035.
  - (b) Report the following to the department by calling the complaint toll-free hotline number or completing an online report:
    - (i) Any actual or potential event requiring any resident to be evacuated;
    - (ii) Conditions that threaten the provider's or entity representative's ability to continue to provide care or services to each resident; and
    - (iii) A missing resident.
- (2) When there is a significant change in a resident's condition, or a serious injury, trauma, or death of a resident, the adult family home must immediately notify:
- (a) The resident's family;
  - (b) The resident's representative, if one exists;
  - (c) The resident's health care provider;
  - (d) Other appropriate professionals working with the resident;
  - (e) Persons identified in the negotiated care plan; and
  - (f) The resident's case manager if the resident is a department client.
- (3) Whenever an outbreak of suspected food poisoning or communicable disease occurs, the adult family home must notify:
- (a) The local public health officer; and
  - (b) The department's complaint toll-free hotline number or online reporting system.
- (4) The adult family home must notify the department's case management office within (~~twenty-four~~) 24 hours whenever a resident, whose stay is paid for by the department is discharged for more than (~~twenty-four~~) 24 hours on medical leave to a nursing home or hospital.
- (5) The adult family home licensed for seven or eight beds that does not have an automatic fire sprinkler system must notify the department's complaint toll-free hotline number or complete an online report when any resident in the home requires assistance with evacuation as defined in WAC 388-76-10870.

AMENDATORY SECTION (Amending WSR 21-11-074, filed 5/17/21, effective 8/1/21)

- WAC 388-76-10530 Resident rights—Notice of rights and services.**
- (1) The adult family home must provide each resident written notice of the resident's rights and services provided in the home in a language the resident understands and before the resident is admitted to the home. The notice must be reviewed at least once every (~~twenty-four~~)

24 months from the date of the resident's admission and must include the following:

(a) Information regarding resident rights, including rights under chapter 70.129 RCW;

(b) A complete description of the services, items, and activities customarily available in the home or arranged for by the home as permitted by the license;

(c) A complete description of the charges for those services, items, and activities, including charges for services, items, and activities not covered by the home's per diem rate or applicable public benefit programs;

(d) The monthly or per diem rate charged to private pay residents to live in the home;

(e) Rules of the home, which must not violate resident rights in chapter 70.129 RCW;

(f) How the resident can file a complaint concerning alleged abandonment, abuse, neglect, or financial exploitation with the state hotline; ~~((and))~~

(g) If the home will be managing the resident's funds, a description of how the home will protect the resident's funds ~~((-))~~; and

(h) If the home does not serve residents who require assistance with evacuation due to a limit on their license, notice that residents living in the home whose status changes to require assistance will be discharged from the facility.

(2) Upon receiving the notice of rights and services at admission and at least every ~~((twenty-four))~~ 24 months, the home must ensure the resident and a representative of the home sign and date an acknowledgement stating that the resident has received the notice of rights and services as outlined in this section. The home must retain a signed and dated copy of both the notice of rights and services and the acknowledgement in the resident's record.