

WSR 21-06-048
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed February 25, 2021, 10:38 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-19-021.

Title of Rule and Other Identifying Information: The department is proposing to amend WAC 388-78A-2371 Investigations, and 388-78A-2360 Adult day services.

Hearing Location(s): On April 6, 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: Not earlier than April 7, 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 6, 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 March 23, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed update of WAC 388-78A-2371 Investigations, corrects language that was brought to the agency's attention by stakeholders after the permanent rule was filed on December 31, 2019. The proposed update of WAC 388-78A-2360 Adult day services, corrects a cross-reference.

Reasons Supporting Proposal: This proposal is in response to stakeholder requests. WAC 388-78A-2371 was adopted on December 31, 2019. However, public review after the comment period ended noted a concern in the language that must be corrected. Without correction, WAC 388-78A-2371 may have moderate negative impact to stakeholders and the department. WAC 388-78A-2360 must also be amended to correct a cross-reference to WAC 388-78A-2371

Statutory Authority for Adoption: RCW 18.20.090.

Statute Being Implemented: Chapter 18.20 RCW; and chapter 74.34 RCW.

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: Debbie Hoeman, P.O. Box 45600, Olympia, WA 98504-5600, 360-725-3210.

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 Debbie Hoeman, P.O. Box 45600, Olympia, WA 98504-5600, phone 360-725-3210, email Debra.Hoeman@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 only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

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 department analyzed the probable benefits and probable costs of the proposed rules and determined they will impose no new costs on small businesses as the proposed changes reduce the regulatory burden on assisted living facilities.

A copy of the detailed cost calculations may be obtained by contacting Debbie Hoeman, P.O. Box 45600, Olympia, WA 98504-5600, phone 360-725-3210, email Debra.Hoeman@dshs.wa.gov.

February 24, 2021
Katherine I. Vasquez
Rules Coordinator

SHS-4822.1

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2360 Adult day services. (1) The assisted living facility may, but is not required to, provide an adult day services program for nonresidents.

(2) If adult day services are provided, the assisted living facility must:

(a) Ensure each adult day services client receives appropriate supervision and agreed upon care and services during the time spent in the day services program;

(b) Ensure the care and services provided to adult day services clients do not compromise the care and services provided to assisted living facility residents;

(c) Ensure the total number of residents plus adult day services clients does not exceed the assisted living facility's maximum facility capacity;

(d) Only accept adult day services clients who are appropriate for assisted living facility care and services, consistent with WAC 388-78A-2050;

(e) Provide sufficient furniture for the comfort of day services clients, in addition to furniture provided for residents;

(f) Notify appropriate individuals specified in the client's record and consistent with WAC 388-78A-2640 when there is a significant change in the condition of an adult day services client;

(g) Investigate and document incidents and accidents involving adult day services clients consistent with WAC ((~~388-78A-2700~~) 388-78A-2371);

(h) Maintain a separate register of adult day services clients; and

(i) Maintain a record for each adult day services client.

[Statutory Authority: Chapter 18.20 RCW. WSR 13-13-063, § 388-78A-2360, filed 6/18/13, effective 7/19/13. Statutory Authority:

RCW 18.20.090. WSR 06-01-047, § 388-78A-2360, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. WSR 04-16-065, § 388-78A-2360, filed 7/30/04, effective 9/1/04.]

AMENDATORY SECTION (Amending WSR 20-02-104, filed 12/31/19, effective 1/31/20)

WAC 388-78A-2371 Investigations. The assisted living facility must:

(1) (~~Report to the local law enforcement agency and the department any individual threatening bodily harm or causing a disturbance, that threatens any individual's welfare and safety~~) Investigate and document investigative actions and findings for any alleged or suspected abuse, neglect, or financial exploitation; or accident or incident jeopardizing or affecting a resident health or life;

(2) (~~Identify, investigate, and report incidents involving residents according to department established assisted living facility guidelines~~) Determine the circumstances of the event;

(3) (~~Protect residents during the course of the investigation~~) When necessary, institute and document appropriate measures to prevent similar future situations if the alleged incident is substantiated;
and

(4) (~~Comply with "whistle blower" laws as defined in chapter 74.34 RCW~~) Protect residents during the course of the investigation.

[Statutory Authority: Chapters 18.20 and 74.39A RCW. WSR 20-02-104, § 388-78A-2371, filed 12/31/19, effective 1/31/20.]