

WSR 22-13-122
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
[Filed June 17, 2022, 10:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-14-046, 21-18-001, 21-17-123, and 21-17-121.

Title of Rule and Other Identifying Information: The department is adding new sections to chapters 388-97, 388-76, 388-78A, and 388-107 WAC to implement ESHB 1120 (chapter 203, Laws of 2021).

Hearing Location(s): On July 26, 2022, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. 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 virtual. Due to the COVID[-19] pandemic, hearings are being held virtually. Please see the DSHS website for the most up-to-date information.

Date of Intended Adoption: Not earlier than July 27, 2022.

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. on July 26, 2022.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email Tencza@dshs.wa.gov [Tencza@dshs.wa.gov], by 5:00 p.m. on July 12, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of these rules is to implement the sections of ESHB 1120 (chapter 203, Laws of 2021) that direct the department to adopt rules to reestablish inspection timelines for nursing homes, assisted living facilities, adult family homes, and enhanced services facilities.

Reasons Supporting Proposal: These rules are necessary to instruct and inform licensed facilities on the process the department will use to determine the inspection schedule and bring all facilities back into compliance with the inspection timelines in statute.

Statutory Authority for Adoption: RCW 18.20.090, 70.97.100, 70.97.230, 70.128.040, and 74.42.620.

Statute Being Implemented: RCW 18.20.110, 18.51.091, 70.97.160, and 70.128.070.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Libby Wagner, P.O. Box 45600, Olympia, WA 98513, 360-464-4987; Implementation and Enforcement: Mike Anbesse, P.O. Box 45600, Olympia, WA 98513, 360-725-2401.

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

A cost-benefit analysis is not required under RCW 34.05.328. RCW 34.05.328 (5)(b)(ii) exempts "[r]ules relating only to internal governmental operations that are not subject to violation by a nongovernment party.["] These rules must be followed by the department, not by the licensed entities.

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: ESHB 1120 (chapter 203, Laws of 2021).

June 14, 2022
Katherine I. Vasquez
Rules Coordinator

SHS-4932.2

NEW SECTION

WAC 388-76-10912 Inspection timelines (1) In response to the COVID-19 pandemic, the governor suspended the requirement for the department to conduct full licensing inspections of adult family homes required by RCW 70.128.070 (2)(b).

(2) During the suspension of the full licensing inspection requirements, the department continued to conduct complaint investigations in adult family homes when it became aware of information that indicated an immediate threat to resident health and safety may exist.

(3) The department must prioritize and resume full licensing inspections of adult family homes affected by the suspension of the inspection requirements by applying the following criteria collectively:

(a) The department has identified an ongoing threat to the health and safety of residents through one or more reported complaints, previous inspections, or previous investigations;

(b) Whether the adult family home has had a remedy imposed in the last 24 months; and

(c) The length of time since the last full licensing inspection of the adult family home.

(4) The department must conduct a full licensing inspection for adult family homes licensed after the reinstatement of RCW 70.128.070 (2)(b) in accordance with the schedule set by that section.

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NEW SECTION

WAC 388-78A-3141 Inspection timelines (1) In response to the COVID-19 pandemic, the governor suspended the requirement for the department to conduct full licensing inspections of assisted living facilities required by RCW 18.20.110.

(2) During the suspension of the full licensing inspection requirements, the department continued to conduct complaint investigations in assisted living facilities when it became aware of information that indicated an immediate threat to resident health and safety may exist.

(3) The department must prioritize and resume full licensing inspections of assisted living facilities affected by the suspension of the inspection requirements by applying the following criteria collectively:

(a) The department has identified an ongoing threat to the health and safety of residents through one or more reported complaints, previous inspections, or previous investigations;

(b) Whether the assisted living facility has had a remedy imposed in the last 24 months; and

(c) The length of time since the last full licensing inspection of the assisted living facility.

(4) The department must conduct a full licensing inspection for assisted living facilities licensed after the reinstatement of RCW 18.20.110 in accordance with the schedule set by that section.

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NEW SECTION

WAC 388-97-4361 Inspection timelines (1) In response to the COVID-19 pandemic, the governor suspended the requirement for the department to conduct general periodic inspections of nursing homes under RCW 18.51.091 and 18.51.230.

(2) During the suspension of the general periodic inspection requirements, the department continued to conduct complaint investigations in nursing homes when it became aware of information that indicated an immediate threat to resident health and safety may exist.

(3) The department must prioritize and resume general periodic inspections of nursing homes affected by the suspension of the inspection requirements by applying the following criteria collectively:

(a) The department has identified an ongoing threat to the health and safety of residents through one or more reported complaints, previous inspections, or previous investigations;

(b) Whether the nursing home has had a state or federal remedy imposed in the last 24 months;

(c) The length of time since the last general periodic inspection of the nursing home; and

(d) Any requirements imposed by the centers for medicare and medicaid services, including those for facilities designated as special focus facilities.

(4) The department must conduct a general period inspection for nursing homes licensed after the reinstatement of RCW 18.51.091 and 18.51.230 in accordance with the schedule set by RCW 18.51.091(1) and 18.51.230(1), and chapter 388-97 WAC.

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NEW SECTION

WAC 388-107-1421 Inspection timelines (1) In response to the COVID-19 pandemic, the governor suspended the requirement for the department to conduct full licensing inspections of enhanced services facilities required by RCW 70.97.160(1).

(2) During the suspension of the full licensing inspection requirements, the department continued to conduct complaint investigations in enhanced services facilities when it became aware of information that indicated an immediate threat to resident health and safety may exist.

(3) The department must prioritize and resume full licensing inspections of enhanced services facilities affected by the suspension of the inspection requirements by applying the following criteria collectively:

(a) The department has identified an ongoing threat to the health and safety of residents through one or more reported complaints, previous inspections, or previous investigations;

(b) Whether the enhanced services facility has had a remedy imposed in the last 24 months; and

(c) The length of time since the last full licensing inspection of the enhanced services facility.

(4) The department must conduct a full licensing inspection for enhanced services facilities licensed after the reinstatement of RCW 70.97.160(1) in accordance with the schedule set by that section.

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