

## WSR 23-04-046

## PROPOSED RULES

## DEPARTMENT OF

## SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed January 26, 2023, 11:41 a.m.]

## Original Notice.

Preproposal statement of inquiry was filed as WSR 20-08-110.

Title of Rule and Other Identifying Information: This proposal would update chapter 388-76 WAC, Adult family home minimum licensing requirements; amending WAC 388-76-10000 Definitions, 388-76-10030 Adult family home capacity, 388-76-10055 Application—Generally, 388-76-10175 Background checks—Employment—Conditional hire—Pending results of Washington state name and date of birth background check, 388-76-10191 Liability insurance required, 388-76-10192 Liability insurance required—Coverage requirements, 388-76-10780 Toilets and bathing facilities, 388-76-11050 Management agreements—General and 388-76-11055 Management agreements—Adult family home; new WAC 388-76-10004 Exemptions, 388-76-10031 License requirements—Seven or eight bed adult family homes—Licensure, and 388-76-10032 License requirements—Seven or eight bed adult family homes—Change of ownership; and repealing WAC 388-76-10193 Liability insurance required—Professional liability insurance coverage.

Hearing Location(s): On March 21, 2023, 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 virtually. 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 March 22, 2023.

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, by March 21, 2023, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS 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 March 7, 2023, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making is necessary to incorporate ESHB 1023, 2020 regular session, into the rules. This passed legislation allows certain adult family home providers to increase their capacity from six residents to eight. This rule making is also intended to address challenges that the adult family home industry is facing with complying with the liability insurance requirements in the current rules, and to clarify use, implementation, and enforcement of management agreements. New rules were developed to create a process for adult family home providers to request an exemption to rule. This was requested during the stakeholder meetings.

Reasons Supporting Proposal: This rule making is necessary to incorporate ESHB 1023, 2020 regular session, into the rules. The other sections of rule: (1) Obtaining liability insurance has become increasingly difficult. The proposed language is intended to remove a barrier to the process; (2) the term "management agreement" has been confused with "temporary manager." Clarifying the rule will reduce confusion about these terms and will simplify the requirements by re-

moving the need for department review of management agreements; and (3) developing requirements for exemptions to the adult family home rules will enable some providers to meet the minimum standards in another way. This could help increase the number of adult family home beds.

Statutory Authority for Adoption: RCW 70.128.040.

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, P.O. Box 45600, Olympia, WA 98504, 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; rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Explanation of exemptions: The proposed rule requires adult family homes wishing to increase capacity to seven or eight beds complete a capacity increase request application to DSHS. Other parts of the rules correct or clarify language or incorporate by reference.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: WAC 388-76-10055 Application—Generally—Adoption of statute without material change; RCW 34.05.310 (4) (c) and (g). WAC 388-76-10175 Background checks—Employment—Conditional hire—Pending results of Washington state name and date of birth background check, language change made for clarity only; RCW 34.05.310 (4) (d). New WAC 388-76-10032 Seven or eight bed adult family homes—Change of ownership, adoption of statute without material change; RCW 34.05.310 (4) (c).

The proposed rule does impose more-than-minor costs on businesses.

Small Business Economic Impact Statement

**SUMMARY OF PROPOSED RULES:** DSHS (department), aging and long-term support administration is proposing amendments to chapter 388-76 WAC, Adult family home (AFH or home) minimum licensing requirements.

This chapter implements chapter 70.128 RCW to promote the safety and well-being of AFH residents, to specify standards for AFH providers, and to further establish requirements for operating an AFH. Specifically, the proposed rules:

- Establish requirements for AFHs to increase capacity for up to eight residents.
- Clarify the definition of "capacity" and address individuals who are not residents but may receive care in the home.
- Include a definition of "household member."
- Correct disparity in liability insurance requirements.
- Address the need for two toilets in homes licensed for five or more residents.
- Distinguish "management agreements" from "temporary manager" and eliminate the need for department approval to enter into management agreements.
- Provide criteria for exemption to the rules of the chapter.

**SMALL BUSINESS ECONOMIC IMPACT STATEMENT—DETERMINATION OF NEED:** Chapter 19.85 RCW, The Regulatory Fairness Act (RFA), requires that the economic impact of proposed regulations be analyzed in relation to small businesses. The statute defines small businesses as those business entities that employ 50 or fewer people and are independently owned and operated.

The department has analyzed the proposed rule amendments and has determined that small businesses will be impacted by these changes, with some costs considered "more than minor" and disproportionate to small businesses.

**INDUSTRY ANALYSIS:** The department acknowledges that the majority of AFHs are operated as small businesses.

The department has determined that there are approximately 3,943 AFHs that meet the criteria for small businesses under RCW 19.85.020. These proposed rules impact all of these AFHs.

**INVOLVEMENT OF SMALL BUSINESSES:** The department held more than 10 stakeholder meetings to ensure appropriate input and feedback were allowed for consideration during the rule-making process. Stakeholders included leadership and representation from the AFH council, provider representation, long-term care ombuds, and the insurance industry. These meetings focused on the requirements of ESHB 1023 passed during the 2020 legislative session and how best to translate those requirements into the least burdensome rules. Homes and their advocacy groups were also given the opportunity to provide input on how the rules may impact costs for their businesses. For cost estimates, the department worked with insurance agents and the AFH council.

**COST OF COMPLIANCE:** Under RFA, the department has considered annual costs to small businesses that are \$50 or more per client served, per affected AFH.

The proposed rules have been evaluated and the department concludes the probable qualitative and quantitative benefits of the proposed rule amendments exceed the probable qualitative and quantitative cost. For liability insurance, homes will be required to add the state as an additional insured, requiring a cost of \$150-\$200 annually<sup>1</sup>. In addition, as many as 11 percent of homes<sup>2</sup> may incur additional insurance expenses of \$2000-\$2500 annually<sup>3</sup> should they need to acquire the

additional insurance required in these rules. Newly licensed homes licensed for five or more residents will incur costs for the second bathroom needed. The cost could be zero dollars for homes with an existing bathroom and up to more than \$10,000 for homes that must add a bathroom. These costs are offset by the anticipated improved resident quality of life, the opportunity for AFH providers to expand license capacity, and the higher level of protection provided by having more comprehensive liability insurance coverage.

**GENERAL COSTS:**

**WAC 388-76-10004 Exemptions.** This proposed rule creates the opportunity for AFH providers to apply for exemptions to requirements under the chapter if they meet the proposed standards and pursuant to departmental approval.

**Benefits:** The proposed rules add flexibility for AFH providers to meet resident needs based on their abilities and their own circumstances, given requested exemptions do not violate the criteria attached to the proposed rule. The department assumes this will create opportunities to lower costs without decreasing health and safety outcomes for residents and create innovative ideas to meet resident needs in the AFH community.

**Costs:** The department assumes the costs associated with submitting an exemption request are negligible and related to staff time spent applying for exemptions. However, because exemptions typically reduce cost of compliance for the applicant, the department also assumes there is likely an overall savings associated with this proposed rule.

**WAC 388-76-10030 AFH capacity.** This rule sets clear parameters around the number of adults who can be cared for under an AFH license with or without special permission.

**Benefits:** The department assumes the proposed rule helps ensure quality of care for licensed residents by clarifying how the rule should be interpreted, helping prevent citations due to misunderstanding of unclear rule language.

**Costs:** The department assumes this proposed rule change may result in AFH providers choosing to decrease licensed capacity without discharging current residents. There is a potential for staff time to be used making licensing adjustments for AFH providers who serve non-resident individuals, based on the expected time needed to complete a simple form with readily available information. Printing and postage costs may apply. The department assumes these costs would be less than \$50.

**WAC 388-76-10031 License requirements—Seven or eight bed adult family homes—Licensure.**

This proposed rule allows for an AFH to apply for an increase in licensed capacity under the described conditions and adds a requirement for AFH providers to notify current residents and resident representatives of an application for an increase in licensed capacity.

**Benefits:** The proposed rule provides existing residents and their representatives ample time to consider the potential effects of a capacity increase and register their concerns with the AFH provider and the department. The department assumes the rule effectively supports residents in expressing concerns with or support of the capacity change and upholds safety standards in the AFH.

The proposed rule will increase the number of AFH beds, which will allow more options for potential residents and will help address the increasing demand for community options. AFHs eligible for expansion

sion are experienced and have demonstrated, over time, the ability to manage an AFH safely and effectively. This provides a level of confidence in the AFHs who are approved to provide care to seven or eight residents.

**Costs:** This rule will require a minimal amount of staff time to notify residents and resident representatives. The department assumes these costs would be less than \$50.

Additional costs for AFH providers who have not received department approval at a higher capacity in the past may be associated with staff time taken to escort an inspector and respond to interview questions. Costs for additional provider staff time to provide care during the inspection or interview questions may apply. The hourly costs<sup>4</sup> are found in the table below, with costs broken out for metropolitan services areas (MSA)<sup>5</sup>, nonmetropolitan services areas (NMSA)<sup>6</sup>, and King County. The total AFH staff time spent in this process is typically less than one hour, resulting in a range of cost<sup>7</sup> from \$14.68 to \$16.22 without benefits.

	Without Benefits	With 20% Benefits
King	\$16.22	\$19.47
MSA	\$15.45	\$18.54
NMSA	\$14.68	\$17.61

AFHs with newly constructed or modified bedrooms will need to be inspected by the local building jurisdiction if this has not yet occurred. Costs associated with this inspection vary by jurisdiction. The cost of an inspection for an AFH is not expected to exceed the cost of an inspection for a single-family home not used as an AFH.

**WAC 388-76-10191** Liability insurance required. The existing rule allowed certain AFHs to obtain and maintain only general business liability insurance. Under the proposed rules, all AFHs must obtain and maintain general business liability insurance and professional liability insurance. The proposed rule would also set new parameters for the timing of insurance coverage and add a requirement for AFH providers to notify the department should coverage lapse.

**Benefits:** The proposed rule offers a greater level of protection for both residents and AFH providers should an event occur that would over-tax the resources of the AFH. Potential outcomes could include closure of the AFH due to financial hardship and transfer of residents. The avoided cost of potential closure and resident transfer are significant. The additional protection allows a resident to recoup cost of an injury sustained in the AFH.

The proposed rule removes a barrier to newly licensed AFHs by allowing flexibility to obtain liability insurance prior to admitting their first resident, or within a short time frame when they do not have a resident in their care.

**Costs:** This proposed rule requires an additional type of insurance for AFHs who were previously not required to have it. This will raise insurance costs for AFHs that were previously not required to have and did not have a medicaid contract requiring professional liability insurance. As many as 89 percent<sup>8</sup> of AFHs should be unaffected by this change based on the number of medicaid-contracted facilities. Insurance costs are highly varied and individualized based on the circumstances of a given AFH. The average range for combined business liability and professional liability coverage starts at \$2,000-\$2,500 annually<sup>9</sup> on the lower end of the scale based on the level of risk at-

tributed to the individual AFH. Insurance companies assess the risk differently, but could include compliance history and services provided.

**WAC 388-76-10192** Liability insurance required—Coverage requirements. The proposed rule adds the state as an additional insured.

**Benefits:** The department assumes the additional oversight created by adding the state as an additional insured entity and provides an accountability mechanism for AFHs to maintain the appropriate coverage. The proposed rules will increase protections for residents and AFH providers by ensuring that AFHs are not at considerable financial risk due to missing insurance coverage.

**Costs:** The requirement to add the state as an additional insured will incur a cost. This cost is typically \$100-\$150<sup>10</sup> plus tax, annually.

**WAC 388-76-10780** Toilets and bathing facilities. This proposed rule requires newly licensed AFHs to have at least two toilets available for residents if the AFH is licensed at a capacity of five or more.

**Benefits:** The department assumes the provision of an additional toilet in AFHs that are licensed for five or more residents will have significant positive impacts on resident hygiene and morale. Meeting the basic needs of residents is essential to their well-being and by adding a toilet, the affected AFHs can reduce waits that could lead to unsanitary situations among residents.

**Costs:** AFHs seeking a new license for five or more residents may need to add a bathroom, make an existing bathroom accessible, or adjust their licensing application. This requirement affects newly licensed AFHs, excluding existing facilities from the cost of this rule change. For AFHs that already have two bathrooms available to residents, there is no additional cost. For AFHs that need to make amendments to a bathroom to make it available for residents and in compliance with chapter 388-76 WAC and the building code, this may range from small repairs under \$50 to repairs costing thousands of dollars. For AFHs that need to add a bathroom to comply with the rule requirement, the department assumes the cost would be \$10,000 or more, depending on size, design, labor, and materials.

**WAC 388-76-11050** Management agreements—General. This proposed rule changes the timing of when an AFH must notify the department of a new or changed management agreement after initial licensure by submitting an attestation form. In addition, this proposed rule removes the requirement for AFHs to receive departmental approval before entering into a management agreement.

**Benefits:** The department assumes replacing the required department approval with an attestation form simplifies the management agreement process and saves staff time overall. Staff time taken to seek and receive departmental approval before entering a management agreement will be saved. The department assumes this cost savings would be approximately \$50.

The proposed rule also creates an avoided cost associated with not being required to wait to enter into a management agreement until after the department has approved the change. This wait period is eliminated by allowing AFH providers to submit an attestation rather than waiting for department approval.

**Costs:** The department assumes there will be unquantified cost savings as a result of the proposed rules. The cost of completing and submitting the attestation form is offset by the cost savings of re-

moving the requirement for department approval before entering into a management agreement.

**Disproportionate Economic Impact Analysis:** When proposed rule changes cause more-than-minor costs to small businesses, RFA requires an analysis that compares these costs between small businesses and 10 percent of the largest businesses.

We can assume that the amount of costs does not vary depending on the size of the business. However, because larger businesses are generally able to absorb costs more easily, the impact may be felt more disproportionately by small businesses. Costs associated with acquiring and maintaining liability insurance may impact smaller businesses more than their larger counterparts. The cost of adding a bathroom could be disproportionate for smaller businesses. For example, a \$10,000 bathroom expense would be more burdensome to a smaller business than a larger business.

**Mitigating Costs:** The stakeholder workgroup discussed alternatives to address the challenges of obtaining professional liability insurance. The department considered creating an exemption for currently licensed providers. The risk to providers and residents is high if they do not have professional liability insurance, so the department instead decided to apply the rule change to all providers to limit the number of exemptions.

The workgroup discussed adding a grace period for newly licensed homes to obtain insurance to allow time for the insurance company to process the application after the home has received their license number. Ultimately, the workgroup agreed to the proposal that the home have insurance before admitting their first new resident or within 10 business days, whichever is shorter.

Concerning the need for additional accessible toilets in homes with five or more people using a toilet, the department made this applicable to homes licensed after the effective date of the rule. This will mitigate costs for current licensed AFHs.

While the department cannot directly mitigate disproportionate costs for the smaller businesses, the potential added revenue from increasing license capacity will be proportionally larger for the smaller businesses in the industry. The department assumes this potential added revenue will likely offset the disproportionate costs.

**JOBS CREATED OR LOST:** The proposed rules do not create or eliminate jobs.

**CONCLUSION:** The department has given careful consideration to the impact of proposed rules in chapter 388-76 WAC on small businesses. To comply with RFA, the department analyzed impacts on small businesses, proposed ways to mitigate costs considered more than minor and disproportionate, and concluded that the probable benefits of the proposed rules exceed the probable costs.

1 Dana Jeffers - Fortiphi Insurance.

2 DSHS management services division (MSD) AFH locator.

3 Fortiphi Insurance.

4 DSHS MSD, rates/bargained between AFH council and state of Washington as of July 1, 2022.

5 Metropolitan areas include Benton, Clark, Franklin, Island, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom, and Yakima counties.

6 Nonmetropolitan areas include Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Oreille, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla, and Whitman counties.

7 DSHS MSD rates/bargained July 2022.

8 DSHS MSD AFH locator.

9 Fortiphi Insurance.

10 Fortiphi Insurance.

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

January 24, 2023  
Katherine I. Vasquez  
Rules Coordinator

### SHS-4962.3

AMENDATORY SECTION (Amending WSR 20-05-016, filed 2/6/20, effective 3/8/20)

**WAC 388-76-10000 Definitions. "Abandonment"** means action or inaction by a person or entity with a duty of care for a frail elder or vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

**"Abuse"** means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment of a vulnerable adult.

(1) In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish.

(2) Abuse includes sexual abuse, mental abuse, physical abuse, and personal exploitation of a vulnerable adult, and improper use of restraint against a vulnerable adult which have the following meanings:

(a) **"Sexual abuse"** means any form of nonconsensual sexual conduct, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse also includes any sexual conduct between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not consensual.

(b) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, or prodding.

(c) **"Mental abuse"** means a willful verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. Mental abuse may include ridiculing, yelling, or swearing.

(d) **"Personal exploitation"** means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.



(e) **"Improper use of restraint"** means the inappropriate use of chemical, physical, or mechanical restraints for convenience or discipline or in a manner that:

(i) Is inconsistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW;

(ii) Is not medically authorized; or

(iii) Otherwise constitutes abuse under this section.

**"Adult family home"** or **"AFH"** means:

(1) A residential home in which a person or an entity is licensed to provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood, adoption, or marriage to a provider, entity representative, resident manager, or caregiver, who resides in the home. An adult family home may be licensed to provide care to up to eight adults if the home receives approval under WAC 388-76-10031 or 388-76-10032.

(2) As used in this chapter, the term "entity" includes corporations, partnerships, and limited liability companies, and the term "adult family home" includes the person or entity that is licensed to operate an adult family home.

**"Affiliated with an applicant"** means any person listed on the application as a partner, officer, director, resident manager, entity representative, or majority owner of the applying entity, or is the spouse or domestic partner of the applicant.

**"Affiliated entity"** means any entity owned, controlled, or managed by the applicant or licensed provider, or associated with a parent or subsidiary entity applying for, or holding, an adult family home license.

**"Applicant"** means:

(1) An individual, partnership, corporation, or other entity seeking a license to operate an adult family home; and

(2) For the following sections only, also includes an entity representative solely for the purposes of fulfilling requirements on behalf of the entity:

(a) WAC 388-76-10020(1);

(b) WAC 388-76-10035(1);

(c) WAC 388-76-10060;

(d) WAC 388-76-10064;

(e) WAC 388-76-10120;

(f) WAC 388-76-10125;

(g) WAC 388-76-10129;

(h) WAC 388-76-10130;

(i) WAC 388-76-10146(4);

(j) WAC 388-76-10265;

(k) WAC 388-76-10500; and

(l) WAC 388-76-10505.

**"Capacity"** means the maximum number of persons (~~(in need of)~~) receiving personal or special care who are permitted (~~(to reside)~~) in an adult family home at a given time. Capacity includes:

(1) The total capacity, which is the number of (~~(related)~~) residents and any children or adults (~~(in the home who)~~) related to the provider who receive personal or special care and services in the home; and

(2) The licensed capacity, which is the number of residents the adult family home may admit and retain (resident capacity), which is the number listed on the license.

**"Caregiver"** means any person ((eighteen)) 18 years of age or older responsible for providing direct personal or special care to a resident and who is not the provider, entity representative, a student, or volunteer.

**"Chemical restraint"** means the administration of any drug to manage a vulnerable adult's behavior in a way that reduces the safety risk to the vulnerable adult or others, has a temporary effect of restricting the vulnerable adult's freedom of movement, and is not standard treatment for the vulnerable adult's medical or psychiatric condition.

**"Consent"** means express written consent granted after the vulnerable adult or their legal representative has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

**"Dementia"** means a condition documented through the assessment process required by WAC 388-76-10335.

**"Department"** means the Washington state department of social and health services.

**"Department case manager"** means the department authorized staff person or designee assigned to negotiate, monitor, and facilitate a care and services plan for residents receiving services paid for by the department.

**"Developmental disability"** means the same as defined under WAC 388-823-0015.

**"Direct supervision"** means oversight by a person who has demonstrated competency in the basic training and specialty training if required, or who has been exempted from the basic training requirements and is:

- (1) On the premises; and
- (2) Quickly and easily available to the caregiver.

**"Domestic partners"** means two adults who meet the requirements for a valid state registered domestic partnership as established by RCW 26.60.030 and who have been issued a certificate of state registered domestic partnership.

**"Entity representative"** means the individual designated by an entity provider or entity applicant as its representative for the purposes of fulfilling the training and qualification requirements under this chapter that only an individual can fulfill where an entity cannot. The entity representative is responsible for overseeing the operation of the home. The entity representative does not hold the license on behalf of the entity.

**"Financial exploitation"** means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.020(7).

**"Financial solvency"** means that the applicant or provider ((is able to meet debts or financial obligations with some money to spare)) has sufficient funds to operate the home. An applicant or provider is considered financially solvent when they have no delinquent debt. At the department's discretion, the department may consider an applicant or provider financially solvent if their only delinquent debt is for medical reasons.

**"Home"** means adult family home.

**"Household member"** means a person who uses the address of the adult family home as their primary address and who is not a resident.

**"Imminent danger"** or **"immediate threat"** means serious physical harm to or death of a resident has occurred, or there is a serious threat to the resident's life, health, or safety.

**"Indirect supervision"** means oversight by a person who is quickly and easily available to the caregiver, but not necessarily on-site and:

(1) Has demonstrated competency in the basic and specialty training, if required; or

(2) Is exempt from basic training requirements.

**"Inspection"** means a review by department personnel to determine the health, safety, and well-being of residents, and the adult family home's compliance with this chapter and chapters 70.128, 70.129, 74.34 RCW, and other applicable rules and regulations. The department's review may include an on-site visit.

**"Management agreement"** means a written, executed agreement between the adult family home and another individual or entity regarding the provision of certain services on behalf of the adult family home.

**"Mandated reporter"** means an employee of the department((τ)); law enforcement((τ)) officer((τ)); social worker((τ)); professional school personnel((τ)); individual provider((τ)); an employee of a facility((τ)); an employee of a social service, welfare, mental health, adult day health, adult day care, ((⊖)) home care, or hospice agency((τ)); county coroner or medical examiner((τ)); Christian Science practitioner((τ)); or health care provider subject to chapter 18.130 RCW. For the purpose of the definition of a mandated reporter, **"Facility"** means a residence licensed or required to be licensed under chapter 18.20 RCW (assisted living facilities), chapter 18.51 RCW (nursing homes), chapter 70.128 RCW (adult family homes), chapter 72.36 RCW (soldiers' homes), chapter 71A.20 RCW (residential habilitation centers), or any other facility licensed by the department.

**"Mechanical restraint"** means any device attached or adjacent to the vulnerable adult's body that they cannot easily remove and restricts freedom of movement or normal access to the vulnerable adult's body. "Mechanical restraint" does not include the use of devices, materials, or equipment that are:

(a) Medically authorized, as required; and

(b) Used in a manner that is consistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW.

**"Medical device"** as used in this chapter, means any piece of medical equipment used to treat a resident's assessed need.

(1) A medical device is not always a restraint and should not be used as a restraint;

(2) Some medical devices have considerable safety risks associated with use; and

(3) Examples of medical devices with known safety risks when used are transfer poles, Posey or lap belts, and side rails.

**"Medication administration"** means giving resident medications by a person legally authorized to do so, such as a physician, pharmacist, or nurse.

**"Medication organizer"** is a container with separate compartments for storing oral medications organized in daily doses.

**"Mental illness"** is defined as an axis I or II diagnosed mental illness as outlined in volume IV of the Diagnostic and Statistical Manual of Mental Disorders (a copy is available for review through the aging and disability services administration).

**"Minimal"** means violations that result in little or no negative outcome or little or no potential harm for a resident.

**"Moderate"** means violations that result in negative outcome and actual or potential harm for a resident.

**"Multiple home provider"** means a provider who is licensed to operate more than one adult family home.

**"Neglect"** means:

(1) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or

(2) An act or omission by a person or entity with a duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

**"Nurse delegation"** means a registered nurse transfers the performance of selected nursing tasks to competent nursing assistants, home care aides, or qualified long-term care workers in selected situations. The registered nurse delegating the task retains the responsibility and accountability for the nursing care of the resident.

**"Over-the-counter medication"** is any medication that can be purchased without a prescriptive order, including but not limited to vitamin, mineral, or herbal preparations.

**"Permanent restraining order"** means a restraining order or order of protection issued either following a hearing, or by stipulation of the parties. A "permanent restraining order" order may be in force for a specific time period (for example, one year), after which it expires.

**"Personal care services"** means both physical assistance and prompting and supervising the performance of direct personal care tasks as determined by the resident's needs and does not include assistance with tasks performed by a licensed health professional.

**"Physical restraint"** means application of physical force without the use of any device, for the purpose of restraining the free movement of a vulnerable adult's body. "Physical restraint" does not include briefly holding without undue force a vulnerable adult in order to calm or comfort them, or holding a vulnerable adult's hand to safely escort them from one area to another.

**"Placement agency"** is an "elder or vulnerable adult referral agency" as defined in chapter 18.330 RCW and means a business or person who receives a fee from or on behalf of a vulnerable adult seeking a referral to care services or supportive housing or who receives a fee from a care services provider or supportive housing provider because of any referral provided to or on behalf of a vulnerable adult.

**"Practitioner"** includes a physician, osteopathic physician, podiatric physician, pharmacist, licensed practical nurse, registered nurse, advanced registered nurse practitioner, dentist, and physician assistant licensed in the state of Washington.

**"Prescribed medication"** refers to any medication (legend drug, controlled substance, and over-the-counter) that is prescribed by an authorized practitioner.

**"Provider"** means:

(1) Any individual who is licensed to operate an adult family home and meets the requirements of this chapter;

(2) Any corporation, partnership, limited liability company, or other entity that is licensed under this chapter to operate an adult family home and meets the requirements of this chapter; and

(3) For the following sections only, also includes an entity representative solely for the purposes of fulfilling requirements on behalf of the entity:

- (a) WAC 388-76-10020(1);
- (b) WAC 388-76-10035(1);
- (c) WAC 388-76-10060;
- (d) WAC 388-76-10064;
- (e) WAC 388-76-10120;
- (f) WAC 388-76-10125;
- (g) WAC 388-76-10129;
- (h) WAC 388-76-10130;
- (i) WAC 388-76-10146(4);
- (j) WAC 388-76-10265;
- (k) WAC 388-76-10500; and
- (l) WAC 388-76-10505.

**"Psychopharmacologic medications"** means the class of prescription medications, which includes but is not limited to antipsychotics, anti-anxiety medications, and antidepressants, capable of affecting the mind, emotions, and behavior.

**"Recurring"** or **"repeated"** means that the department has cited the adult family home for a violation of applicable licensing laws or rules and the circumstances of (1) or (2) of this definition are present and if the previous violation in subsection (1) or (2) of this definition was pursuant to a law or rule that has changed at the time of the new violation, a citation to the equivalent current rule or law is sufficient:

(1) The department previously imposed an enforcement remedy for a violation of the same section of law or rule for substantially the same problem following any type of inspection within the preceding (~~(thirty-six)~~) 36 months.

(2) The department previously cited a violation under the same section of law or rule for substantially the same problem following any type of inspection on two occasions within the preceding (~~(thirty-six)~~) 36 months.

**"Resident"** means any adult (~~(unrelated to the provider who lives)~~) living in the adult family home and who is unrelated to the provider and who ((in need of care)) receives personal or special care from the adult family home. Except as specified elsewhere in this chapter, for decision-making purposes, the term "resident" includes the resident's surrogate decision maker acting under state law.

**"Resident manager"** means a person employed or designated by the provider to manage the adult family home and who meets the requirements of this chapter.

**"Serious"** means violations that either result in one or more negative outcomes and significant actual harm to residents that does not constitute imminent danger, or there is a reasonable predictability of recurring actions, practices, situations, or incidents with potential for causing significant harm to a resident, or both.

**"Severity"** means the seriousness of a violation as determined by actual or potential negative outcomes for residents and subsequent actual or potential for harm. Outcomes include any negative effect on the resident's physical, mental, or psychosocial well-being (such as safety, quality of life, quality of care).

**"Significant change"** means:

(1) A lasting change, decline, or improvement in the resident's baseline physical, mental, or psychosocial status;

(2) The change is significant enough so either the current assessment, or negotiated care plan, or both, do not reflect the resident's current status; and

(3) A new assessment may be needed when the resident's condition does not return to baseline within a two week period of time.

**"Special care"** means care beyond personal care services as defined in this section.

**"Staff"** means any person who is employed or used by an adult family home, directly or by contract, to provide care and services to any residents.

Staff must meet all the requirements in this chapter and chapter 388-112A WAC.

**"Temporary restraining order"** means a restraining order or order of protection that expired without a hearing, was dismissed following an initial hearing, or was dismissed by stipulation of the parties before an initial hearing.

**"Uncorrected"** means the department has cited a violation of WAC or RCW following an inspection and the violation remains uncorrected at the time of a subsequent inspection for the specific purpose of verifying whether such violation has been corrected.

**"Unsupervised"** means not in the presence of:

(1) Another employee or volunteer from the same business or organization; or

(2) Any relative or guardian of any of the children or individuals with developmental disabilities or vulnerable adults to which the employee, student, or volunteer has access during the course of their employment or involvement with the business or organization.

**"Usable floor space"** means resident bedroom floor space exclusive of:

(1) Toilet rooms;

(2) Closets;

(3) Lockers;

(4) Wardrobes;

(5) Vestibules; and

(6) The space required for the door to swing if the bedroom door opens into the resident bedroom.

**"Vulnerable adult"** includes a person:

(1) (~~Sixty~~) 60 years of age or older who has the functional, mental, or physical inability to care for themselves; or

(2) (~~Found incapacitated under chapter 11.88 RCW~~) Subject to a guardianship under RCW 11.130.265 or adult subject to conservatorship under RCW 11.130.360; or

(3) Who has a developmental disability as defined under RCW 71A.10.020; or

(4) Admitted to any facility; or

(5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(6) Receiving services from an individual provider; or

(7) (~~With a functional disability who lives in their own home,~~ w) Who ((is directing and supervising a paid)) self-directs their own care and receives services from a personal aide ((to perform a health care task as authorized by)) under chapter 74.39 RCW ((74.39.050)).

**"Water hazard"** means any body of water over (~~twenty-four~~) 24 inches in depth that can be accessed by a resident, and includes but is not limited to:

- (1) In-ground, above-ground, and on-ground pools;
- (2) Hot tubs, spas;
- (3) Fixed-in-place wading pools;
- (4) Decorative water features;
- (5) Ponds; or
- (6) Natural bodies of water such as streams, lakes, rivers, and oceans.

**"Working day"** means any day the department is open for business.

[Statutory Authority: RCW 70.128.040 and 70.128.060. WSR 20-05-016, § 388-76-10000, filed 2/6/20, effective 3/8/20. Statutory Authority: Chapters 70.128 and 74.34 RCW. WSR 18-07-068, § 388-76-10000, filed 3/16/18, effective 4/16/18. Statutory Authority: Chapter 70.128 RCW. WSR 16-20-095, § 388-76-10000, filed 10/4/16, effective 11/4/16; WSR 16-06-004, § 388-76-10000, filed 2/17/16, effective 4/1/16; WSR 15-03-037, § 388-76-10000, filed 1/12/15, effective 2/12/15. Statutory Authority: RCW 74.39A.056 and chapters 74.34, 18.20 RCW. WSR 14-14-028, § 388-76-10000, filed 6/24/14, effective 7/25/14. Statutory Authority: Chapter 70.128 RCW. WSR 12-01-004, § 388-76-10000, filed 12/7/11, effective 1/7/12. Statutory Authority: RCW 70.128.040, chapter 74.39A RCW. WSR 10-16-082, § 388-76-10000, filed 7/30/10, effective 1/1/11. Statutory Authority: RCW 70.128.040. WSR 10-03-064, § 388-76-10000, filed 1/15/10, effective 2/15/10; WSR 09-03-029, § 388-76-10000, filed 1/12/09, effective 2/12/09. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. WSR 07-21-080, § 388-76-10000, filed 10/16/07, effective 1/1/08.]

#### NEW SECTION

**WAC 388-76-10004 Exemptions.** (1) An adult family home may request an exemption to a specific requirement in this chapter. The request must demonstrate to the department that the exemption will:

(a) Not jeopardize or adversely affect any resident's health, safety, rights, or quality of life;

(b) Not change the fundamental nature of the adult family home operations;

(c) Correct deficiencies, prevent deficiencies, or upgrade the home in order to better serve residents;

(d) Allow the home to provide a comparable level of service to residents through the use of alternative procedures, materials, or equipment; and

(e) Not violate state or federal laws.

(2) A request for exemption must be submitted to the director of residential care services in writing and must:

(a) Identify the specific section of this chapter for which the exemption is sought;

(b) State the reason the requested exemption is needed; and

(c) Provide an explanation of how the home will meet the requirements in subsection (1) of this section if the exemption is approved.

(3) The adult family home must retain in the adult family home a copy of each approved exemption.

(4) Exemption to a requirement of this chapter may be granted at the sole discretion of the director of residential care services after evaluation of the criteria in subsection (1) of this section. The adult family home is not entitled to an administrative appeal of the department's denial of a request for an exemption.

[]

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

**WAC 388-76-10030 ((License)) Adult family home capacity.** (1)

((The adult family home capacity includes:

~~(a) The number of residents which is the resident capacity; plus~~  
~~(b) The number of related children or adults in the home who receives personal or special care services.~~

~~(2))~~ In determining the home's ((resident)) licensed capacity, the department must consider the:

(a) Structural design of the house;  
 (b) Number and accessibility of bathrooms;  
 (c) Number and qualifications of staff;  
 (d) Total number of people living in the home who require personal or special care, including:  
 (i) Related children and adults; and  
 (ii) Other household members;  
 (e) The number of people for whom the home provides adult day care; and  
 (f) The ability for the home to safely evacuate all people living in the home.

~~((3))~~ (2) The ((resident)) licensed capacity number will be listed on the adult family home license and the home must ensure that the number of residents in the home does not exceed the ((resident)) licensed capacity.

~~((4))~~ (3) The adult family home ((resident)) licensed capacity may be adjusted due to changes to the household mix or structure~~(( ))~~, including the number of others receiving personal or special care in the home.

[Statutory Authority: RCW 70.128.040. WSR 10-03-064, § 388-76-10030, filed 1/15/10, effective 2/15/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. WSR 07-21-080, § 388-76-10030, filed 10/16/07, effective 1/1/08.]

NEW SECTION

**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) 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

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

(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;

(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 at 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.

[ ]

#### NEW SECTION

**WAC 388-76-10032 License requirements—Seven or eight bed adult family homes—Change of ownership.** An applicant submitting an application for a change of ownership of an adult family home with a licensed capacity of seven or eight residents must be a currently licensed adult family home provider that has held that license for a period of no less than 24 months; and

(1) Maintain a license for six or more residents in their currently licensed home for at least the 12 months immediately prior to application; and

(2) Receive at least two full inspections prior to application, with no enforcement action taken against the home during the time pe-

riod starting with the older of the two most recent inspections and ending at the time the capacity increase is approved.

[]

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

**WAC 388-76-10055 Application—Generally.** The applicant must send a ~~((#))~~ completed application to the department for any of the following actions:

- (1) ~~((A))~~ To receive an initial adult family home license;
- (2) ~~((A))~~ To change ~~((ef))~~ ownership of the adult family home;
- ~~((ef))~~ (3) ~~((A))~~ To change ~~((ef))~~ the ~~((adult family home))~~ location or address ~~((r))~~ of the adult family home; or
- (4) To increase the licensed capacity of the adult family home.

[Statutory Authority: RCW 70.128.040. WSR 10-03-064, § 388-76-10055, filed 1/15/10, effective 2/15/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. WSR 07-21-080, § 388-76-10055, filed 10/16/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 14-14-028, filed 6/24/14, effective 7/25/14)

**WAC 388-76-10175 Background checks—Employment—Conditional hire—Pending results of Washington state name and date of birth background check.** An adult family home may conditionally employ a person directly or by contract, pending the result of a Washington state name and date of birth background check, provided the home:

- (1) Submits the Washington state name and date of birth background check no later than one ~~((business))~~ working day after conditional employment;
- (2) Requires the individual to sign a disclosure statement and the individual denies having a disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113 WAC, or a negative action that is listed in WAC 388-76-10180;
- (3) Does not allow the individual to have unsupervised access to any resident;
- (4) Ensures direct supervision, as defined in WAC 388-76-10000, of the individual; and
- (5) Ensures the individual is competent and receives the necessary training to perform assigned tasks and meets the staff training requirements under chapter 388-112A WAC.

[Statutory Authority: RCW 74.39A.056 and chapters 74.34, 18.20 RCW. WSR 14-14-028, § 388-76-10175, filed 6/24/14, effective 7/25/14. Statutory Authority: RCW 70.128.040. WSR 12-16-087, § 388-76-10175, filed 7/31/12, effective 8/31/12. Statutory Authority: RCW 70.128.040, chapter 74.39A RCW. WSR 10-16-082, § 388-76-10175, filed 7/30/10, effective 1/1/11. Statutory Authority: RCW 70.128.040 and chapters 70.128

and 74.34 RCW. WSR 07-21-080, § 388-76-10175, filed 10/16/07, effective 1/1/08.]

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

**WAC 388-76-10191 Liability insurance required.** The adult family home must:

(1) Obtain ~~((liability insurance upon licensure and maintain the insurance as required in WAC 388-76-10192 and 388-76-10193))~~ and maintain both: ((; and))

(a) Commercial general liability insurance or business liability insurance covering the adult family home; and

(b) Professional liability insurance or errors and omissions insurance covering the adult family home.

(2) Obtain the liability insurance required in subsection (1) of this section before whichever of the following events happens first:

(a) Admitting the first resident after issuance of a new adult family home license; or

(b) 10 working days have passed since the issuance of the license.

(3) Have evidence of liability insurance coverage available if requested by the department.

(4) Notify the department's complaint resolution unit if there is any lapse in required liability insurance coverage.

[Statutory Authority: RCW 70.128.040. WSR 10-03-064, § 388-76-10191, filed 1/15/10, effective 2/15/10.]

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

**WAC 388-76-10192 Liability insurance required—~~((Commercial general liability insurance or business liability insurance coverage))~~**

**Coverage requirements.** (1) The ~~((adult family home must have commercial general liability insurance or business))~~ liability insurance coverage required under WAC 388-76-10191 must ~~((that))~~ include ~~((s))~~:

~~((1) Coverage for the acts))~~ (a) Losses or allegations or both caused by errors and omissions of ~~((any))~~ the adult family home or its employees ~~((and))~~ or volunteers;

~~((2))~~ (b) Coverage for bodily injury, property damage, and contractual liability; and

~~((3))~~ (c) Coverage for premises, operations, ~~((independent contractors,))~~ products-completed operations, personal injury, advertising injury, and liability assumed under an insured contract. ~~((; and))~~

~~((4))~~ (2) Each of the required liability insurance policies must cover a ~~((M))~~ minimum limit ~~((s))~~ of:

(a) Each occurrence at ~~((five hundred thousand dollars))~~ \$500,000; and

(b) General aggregate at ~~((one million dollars))~~ \$1,000,000.

(3) The liability insurance policies must indemnify, hold harmless, and provide insurance coverage for the State of Washington, the

department, its elected and appointed officials, agents, and employees of the state for any and all claims, losses, liability, damages, or fines arising out of the acts or omissions of the adult family home licensee, its staff, contractors, and residents. The State of Washington, the department, its elected and appointed officials, agents, and employees must be listed as additional insureds on all insurance policies relating to the operation or premises of the adult family home.

(4) If the home serves residents whose care is paid for by Medicaid, the Medicaid contract may require a higher minimum insurance limit.

[Statutory Authority: RCW 70.128.040. WSR 10-03-064, § 388-76-10192, filed 1/15/10, effective 2/15/10.]

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

**WAC 388-76-10780 Toilets and bathing facilities.** (1) ~~((The))~~ 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 indoor flush toilet for each five persons including residents and household members in the home; and

(b) Sinks with hot and cold running water.

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

(3) Homes licensed after XX,XX,2023, the effective date of this section) 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 through another person's room.

[Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. WSR 07-21-080, § 388-76-10780, filed 10/16/07, effective 1/1/08.]

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

**WAC 388-76-11050 Management agreements—General.** (1) As used in WAC 388-76-11050 through 388-76-11070, the term "manager" means the individual or entity providing management services under a management agreement. It does not mean a resident manager.

(2) The requirements contained in WAC 388-76-11050 through 388-76-11070 apply to management agreements and not the temporary management program described in RCW 70.128.163.

~~((1))~~ (3) If the adult family home ((uses)) contracts with a manager, the adult family home must have a written management agreement ((approved by the department)) that is consistent with chapter 388-76 WAC requirements.

~~((2))~~ (4) The adult family home must notify the department of its use of a manager when:

- (a) Entering into a management agreement following initial (~~ap-  
plication~~) licensure;
- (b) Changing managers; or
- (c) Modifying an existing management agreement.
- ~~((3))~~ (5) An applicant must notify the department of its use of a manager when:
- (a) Applying for an adult family home license; or
- (b) Entering into a management agreement prior to licensure.
- ~~((4))~~ (6) The adult family home must submit the written management agreement, including an organizational chart which shows the relationship between the adult family home, (~~management company~~) manager, and all related entities, including (~~management~~) manager staff.
- (7) The adult family home must submit a management agreement attestation form signed and dated by the home and the manager to demonstrate that both understand and agree to comply with the requirements of chapter 388-76 WAC.
- ~~((5))~~ (8) The written management agreement must be submitted to the department:
- (a) With the initial license, change of ownership, or change of location applications; and
- (b) ~~((Sixty))~~ 60 days prior to the proposed change of ownership date or the effective date of the management agreement.
- ~~((6))~~ (9) The adult family home must submit any amendment to an existing management agreement to the department ~~((thirty))~~ 30 days before the amendment takes effect.
- ~~((7))~~ (10) The adult family home must notify current residents and their representatives ~~((sixty))~~ 60 days before ~~((entering into a))~~ the effective date of the management agreement.

[Statutory Authority: RCW 70.128.040. WSR 10-03-064, § 388-76-11050, filed 1/15/10, effective 2/15/10.]

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

- WAC 388-76-11055 Management agreements—Adult family home.** (1)  
The adult family home is responsible for:
- (a) The daily operations and provision of care and services to residents;
- (b) Compliance with all applicable laws and rules;
- (c) Ensuring the manager complies with the (~~department ap-  
proved~~) management agreement; and
- (d) Ensuring the manager does not represent itself as, or give the appearance that it is the provider.
- (2) The adult family home (~~must~~) may not give the manager responsibilities that are so extensive the adult family home is relieved of responsibility for the daily operations and provision of care and services to residents. If the adult family home relinquishes responsibility for daily operation and provision of care and services to residents, the department will determine that a change of ownership has occurred. If the department determines a change of ownership has occurred, then the department may take licensing action.

(3) The adult family home and manager must act in accordance with the terms of the department approved management agreement. If the department determines they are not, then the department may take licensing action.

(4) The adult family home may enter into a management agreement only if the management agreement creates a principal/agent relationship between the adult family home and manager.

[Statutory Authority: RCW 70.128.040. WSR 10-03-064, § 388-76-11055, filed 1/15/10, effective 2/15/10.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-76-10193      Liability insurance required—  
Professional liability insurance  
coverage.