

WSR 23-07-076

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed March 13, 2023, 5:34 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-13-121.

Title of Rule and Other Identifying Information: Amending WAC 388-76-10350 Assessment—Updates required, 388-78A-2100 On-going assessments, 388-107-0080 On-going comprehensive assessment; and adding a new rule to chapters 388-76, 388-78A, and 388-107 WAC to codify the timeline for emergency rules in place due to the COVID-19 public emergency.

Hearing Location(s): On April 25, 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 April 26, 2023.

Submit Written Comments to: Rules and Policies Assistance Unit Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m. on April 25, 2023.

Assistance for Persons with Disabilities: Contact Shelley Tencza, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email tenczsa@dshs.wa.gov, by 5:00 p.m. on April 11, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DSHS is proposing to adopt rules to identify the requirements in place during the COVID-19 pandemic in Washington state. The purpose of the rule change is to ensure consistent implementation and enforcement of rule requirements in effect during the COVID-19 pandemic in Washington state.

Reasons Supporting Proposal: This rule making will provide clarity for regulated facilities, department inspection, and investigation staff related to requirements in place during the COVID-19 pandemic.

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

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Sondra Haas, P.O. Box 45600, Olympia, WA 98504-5600, 360-688-0715; Implementation and Enforcement: Amy Abbott, P.O. Box 45600, Olympia, WA 98504-5600, 360-485-7893.

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. This proposal is exempt from the requirement for a cost-benefit analysis under RCW 34.05.328 (5) (b) (iv) as the proposed rules clarify language of a rule without changing its effect.

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.

Is exempt under RCW 34.05.328 (5)(b)(iv).

Explanation of exemptions: The rule is exempt under RCW 34.05.328 (5)(b)(iv), as it clarifies language of a rule without changing its effect. DSHS is proposing to adopt rules to identify the requirements in place during the COVID-19 pandemic in Washington state. The purpose of the rule change is to ensure consistent implementation and enforcement of rule requirements in effect during the COVID-19 pandemic.

Scope of exemption for rule proposal:

Is fully exempt.

March 10, 2023
Katherine I. Vasquez
Rules Coordinator

SHS-4914.4

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

WAC 388-76-10350 Assessment—Updates required. (1) The department amended portions of this rule from January 18, 2022, through (DATE), in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-76-10351.

(2) The adult family home must ensure each resident's assessment is reviewed and updated to document the resident's ongoing needs and preferences as follows:

((1)) (a) When there is a significant change in the resident's physical or mental condition;

((2)) (b) When the resident's negotiated care plan no longer reflects the resident's current status, needs, and preferences;

((3)) (c) At the resident's request or at the request of the resident's representative; or

((4)) (d) At least every ((twelve)) 12 months.

[Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. WSR 07-21-080, § 388-76-10350, filed 10/16/07, effective 1/1/08.]

NEW SECTION

WAC 388-76-10351 Assessment—Updates required—Requirements in effect from January 18, 2022, through (DATE), in response to the state of emergency related to COVID-19. (1) In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.320 on January 18, 2022, to amend a portion of WAC 388-76-10350. The emergency rules remained in effect until (DATE). The amended rules in place at that time were:

(2) The adult family home must ensure each resident's assessment is reviewed and updated to document the resident's ongoing needs and preferences as follows:

(a) When there is a significant change in the resident's physical or mental condition;

(b) When the resident's negotiated care plan no longer reflects the resident's current status, needs, and preferences;

(c) At the resident's request or at the request of the resident's representative; or

(d) At least every 12 months, except beginning January 18, 2022, assessments for residents whose care is state funded may be extended an additional 12 months during the COVID-19 public health emergency.

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

WAC 388-78A-2100 ((On-going)) Ongoing assessments. (1) The department amended portions of this rule from January 18, 2022, through DATE, in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-78A-2101.

(2) The assisted living facility must:

((1)) (a) Complete a full assessment addressing the elements set forth in WAC 388-78A-2090 for each resident at least annually;

((2)) (b) Complete an assessment specifically focused on a resident's identified problems and related issues:

((a)) (i) Consistent with the resident's change of condition as specified in WAC 388-78A-2120;

((b)) (ii) When the resident's negotiated service agreement no longer addresses the resident's current needs and preferences;

((c)) (iii) When the resident has an injury requiring the intervention of a practitioner.

((3)) (c) Ensure the staff person performing the ((on-going)) ongoing assessments is qualified to perform them.

[Statutory Authority: Chapter 18.20 RCW. WSR 13-13-063, § 388-78A-2100, filed 6/18/13, effective 7/19/13. Statutory Authority: RCW 18.20.090. WSR 06-01-047, § 388-78A-2100, 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-2100, filed 7/30/04, effective 9/1/04.]

NEW SECTION

WAC 388-78A-2101 Ongoing assessments—Requirements in effect from January 18, 2022, through (DATE), in response to the state of emergency related to COVID-19. (1) In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.320 on January 18, 2022, to amend a por-

tion of WAC 388-78A-2100. The emergency rules remained in effect until (DATE). The amended rules in place at that time were:

(2) The assisted living facility must:

(a) Complete a full assessment addressing the elements set forth in WAC 388-78A-2090 for each resident at least annually, except beginning January 18, 2022, assessments for residents whose care is state funded may be extended an additional 12 months during the COVID-19 public health emergency;

(b) Complete an assessment specifically focused on a resident's identified problems and related issues:

(i) Consistent with the resident's change of condition as specified in WAC 388-78A-2120;

(ii) When the resident's negotiated service agreement no longer addresses the resident's current needs and preferences;

(iii) When the resident has an injury requiring the intervention of a practitioner.

(c) Ensure the staff person performing the ongoing assessments is qualified to perform them.

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AMENDATORY SECTION (Amending WSR 16-14-078, filed 7/1/16, effective 8/1/16)

WAC 388-107-0080 Ongoing comprehensive assessments. (1) The department amended portions of this rule from January 18, 2022, through (DATE), in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-107-0081.

(2) The enhanced services facility must:

~~((1))~~ (a) Complete a comprehensive assessment, addressing the elements set forth in WAC 388-107-0070, upon a significant change in the resident's condition or at least every 180 days if there is no significant change in condition;

~~((2))~~ (b) Complete an assessment specifically focused on a resident's identified strengths, preferences, limitations, and related issues:

~~((a))~~ (i) Consistent with the resident's change of condition as specified in WAC 388-107-0060;

~~((b))~~ (ii) When the resident's person-centered service plan no longer addresses the resident's current needs and preferences; and

~~((c))~~ (iii) When the resident has an injury requiring the intervention of a practitioner;

~~((3))~~ (c) Review each resident's needs to evaluate discharge or transfer options when the resident:

~~((a))~~ (i) No longer needs the level of behavioral support provided by the facility; or

~~((b))~~ (ii) Expresses the desire to move to a different type of community based setting;

~~((4))~~ (d) Ensure that the person-centered service planning team discusses all available placement options; and

~~((5))~~ (e) Ensure the staff person performing the ongoing assessments is a qualified assessor.

[Statutory Authority: RCW 70.97.230 and HCBS Final Rule 42 C.F.R. WSR 16-14-078, § 388-107-0080, filed 7/1/16, effective 8/1/16. Statutory Authority: Chapter 70.97 RCW. WSR 14-19-071, § 388-107-0080, filed 9/12/14, effective 10/13/14.]

NEW SECTION

WAC 388-107-0081 Ongoing comprehensive assessments—Requirements in effect from January 18, 2022, through (DATE), in response to the state of emergency related to COVID-19. (1) In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.320 on January 18, 2022, to amend a portion of WAC 388-107-0080. The emergency rules remained in effect until (DATE). The amended rules in place at that time were:

(2) The enhanced services facility must:

(a) Complete a comprehensive assessment, addressing the elements set forth in WAC 388-107-0070 on the following timelines:

(i) Upon a significant change in the resident's condition; or

(ii) At least every 180 days if there is no significant change in condition, except beginning January 18, 2022, assessments for residents whose care is state funded may be extended an additional 12 months during the COVID-19 public health emergency.

(b) Complete an assessment specifically focused on a resident's identified strengths, preferences, limitations, and related issues:

(i) Consistent with the resident's change of condition as specified in WAC 388-107-0060;

(ii) When the resident's person-centered service plan no longer addresses the resident's current needs and preferences; and

(iii) When the resident has an injury requiring the intervention of a practitioner;

(c) Review each resident's needs to evaluate discharge or transfer options when the resident:

(i) No longer needs the level of behavioral support provided by the facility; or

(ii) Expresses the desire to move to a different type of community based setting;

(d) Ensure that the person-centered service planning team discusses all available placement options; and

(e) Ensure the staff person performing the ongoing assessments is a qualified assessor.

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