

**WSR 21-18-064
EMERGENCY RULES
DEPARTMENT OF**

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed August 26, 2021, 2:37 p.m., effective September 14, 2021]

Effective Date of Rule: September 14, 2021.

Purpose: The department is extending the rules listed below to assure [ensure] nursing homes are not obstructed from offering the COVID-19 vaccine to residents and staff because of clinical interference from required tuberculosis (TB) testing. Current state rules specify that nursing homes administer TB testing to residents and staff within three days of employment or admission, unless the person is excluded from testing under the rules. The amendment permits the nursing home to defer TB testing if the person is in the process of receiving the COVID-19 vaccine, or if receiving the vaccine is of greater benefit and less risk than performing TB testing before administering the vaccine. The amendment does not permit the nursing facility to defer TB testing for reasons other than the COVID-19 vaccine and requires the nursing home to complete the TB testing as soon as the COVID-19 vaccine recommendations permit. The rules also require screening for signs and symptoms of TB for those persons who are deferring TB testing. The department filed a CR-101 preproposal under WSR 21-11-061. In addition, under the rule development phase of permanent rule making, the department is in discussions about adding or amending rule language to adopt permanently the deferral of TB testing until COVID-19 vaccination is completed if deemed appropriate.

Citation of Rules Affected by this Order: Amending WAC 388-97-1380 and 388-97-1580.

Statutory Authority for Adoption: RCW 74.42.620.

Other Authority: Chapter 74.34 RCW.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The threat of COVID-19 to our most vulnerable populations is significant, especially for those receiving long-term care services in their homes and congregate settings, such as long-term care facilities. [The] vaccine for COVID-19 is now available and vaccinating nursing home residents and staff is a high priority due to the heightened risk of COVID-19 in the nursing home setting. The Centers for Disease Control and Prevention (CDC) issued recommendations about the coadministration of the COVID-19 vaccine and TB testing products. The CDC recommended that TB testing occur prior to COVID-19 vaccination, or if the vaccination process is underway or the vaccine is a higher priority than determining TB status, to defer TB testing until after the COVID-19 vaccination process is complete. Current nursing home rules require testing of nursing home residents and staff within three days of employment or admission. These rule amendments permit deferment of TB testing until the vaccination process is completed, in accordance with the CDC COVID-19 guidance.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0,

Amended 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: August 25, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4847.1

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1380 Tuberculosis—Testing required. (1) Unless the nursing home decides to defer tuberculosis testing in accordance with subsection (2) of this section, or the resident or staff person is excluded from testing from WAC 388-97-1440, the nursing home must ((develop and implement a system to)):

(a) Ensure that facility personnel and residents have tuberculosis testing within three days of employment or admission((-)); and ((2) The nursing home must also) (b) Ensure that facility personnel are tested annually.

((3)) (2) The nursing home may defer tuberculosis testing of facility personnel and residents to complete the COVID-19 vaccination process if the nursing home has considered the risks and benefits of such delay and if the delay is consistent with the current centers for disease control and prevention COVID-19 vaccination guidance.

(3) If testing is deferred for a resident or facility staff person, in accordance with subsection (2) of this section, the nursing home must:

(a) Asses the person for symptoms of tuberculosis within three days of employment or admission, and if the person has tuberculosis symptoms, follow WAC 388-97-1560; and

(b) Complete tuberculosis testing in accordance with WAC 388-97-1400 through 388-97-1580 as soon as indicated by the centers for disease control and prevention COVID-19 vaccination guidelines.

(4) For the purposes of WAC 388-97-1360 through 388-97-1580, "person" means facility personnel and residents.

[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. WSR 08-20-062, § 388-97-1380, filed 9/24/08, effective 11/1/08.]

AMENDATORY SECTION (Amending WSR 10-02-021, filed 12/29/09, effective 1/29/10)

WAC 388-97-1580 Tuberculosis—Test records. The nursing home must:

(1) Keep the records of tuberculin test results, reports of X-ray findings, and any physician or public health provider orders in the nursing home;

(2) Keep the records of the tuberculosis symptom assessment and the documented rationale for deferring the tuberculosis testing in the nursing home, if tuberculosis testing is deferred in accordance with WAC 388-97-1380(2);

(3) Make the records readily available to the appropriate health authority and licensing agency;

~~((3))~~ (4) Retain the records for eighteen months beyond the date of employment termination; and

~~((4))~~ (5) Provide the tested person with a copy of ~~((his/her))~~ the test results.

[Statutory Authority: Chapters 18.51 and 74.42 RCW. WSR 10-02-021, § 388-97-1580, filed 12/29/09, effective 1/29/10. Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. WSR 08-20-062, § 388-97-1580, filed 9/24/08, effective 11/1/08.]