

WSR 22-22-044

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed October 26, 2022, 12:59 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-17-099.

Title of Rule and Other Identifying Information: The department is proposing an amendment to enhanced services facilities' WAC 388-107-0630 Training and home care aide certification requirements.

Hearing Location(s): On December 6, 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 virtually. Due to the impacts of COVID-19, hearings are being held virtually. Please see the DSHS website for the most current information.

Date of Intended Adoption: Not before December 7, 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 December 6, 2022.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6498, fax 360-664-6185, TTY 711 relay service, email Tenczsa@dshs.wa.gov, by 5:00 p.m. on November 22, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This rule making is necessary to ensure WAC 388-107-0630 is consistent with the requirements of chapter 388-112A WAC for training and home care aide certification, to support the health and safety of residents in this setting, and to benefit enhanced services facilities' business owners.

Reasons Supporting Proposal: During the COVID-19 pandemic, this rule was suspended to allow enhanced services facilities to hire home care aids who could not meet the training requirements of chapter 388-112A WAC, which was suspended under Governor Proclamation 20-10. The department has since adopted rules to address the backlog of home care aides needing training or testing for certification, or both, caused by the COVID-19 pandemic. The training rules allow additional time for home care aides to be trained and certified by requiring them to complete training requirements by certain dates based on their initial hire date. This amendment to WAC 388-107-0630 will align enhanced services facilities' requirements with the newly adopted requirements in chapter 388-112A WAC.

Statutory Authority for Adoption: RCW 70.97.230.

Statute Being Implemented: Chapter 70.97 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: Sondra Haas, P.O. Box 45600, Olympia, WA 98504, 360-688-0715; Implementation and Enforcement: Mike Anbesse, P.O. Box 45600, Olympia, WA 98504, 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)(iii) exempts "Rules adopting or incorporating by reference without material change ... Washington state statutes ... if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule." These rules will adopt, without material change, requirements of RCW 70.97.080(1) and chapter 18.88B RCW, which regulate the same subject matter and conduct as the adopting rule.

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.

Is exempt under RCW 34.05.310 (4)(c).

Explanation of exemptions: RCW 34.05.310 (4)(c) exempts "Rules adopting or incorporating by reference without material change ... Washington state statutes ... if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule." These rules will adopt, without material change, requirements of RCW 70.97.080(1) and chapter 18.88B RCW, which regulate the same subject matter and conduct as the adopting rule.

Scope of exemption for rule proposal:

Is fully exempt.

October 25, 2022
Katherine I. Vasquez
Rules Coordinator

SHS-4944.1

AMENDATORY SECTION (Amending WSR 18-20-040, filed 9/25/18, effective 10/26/18)

WAC 388-107-0630 Training and home care aide certification requirements. (1) Under RCW 18.88B.041 and chapter 246-980 WAC, certain individuals including registered nurses, licensed practical nurses, certified nursing assistants, or persons who are in an approved certified nursing assistant program are exempt from long-term care worker training requirements.

(2) Continuing education requirements are outlined in chapter 388-112A WAC; registered nurses and licensed practical nurses are exempt from the long-term care worker continuing education requirement.

(3) The enhanced services facility must ensure staff persons meet training requirements in effect on the date hired, including requirements described in chapter 388-112A WAC, unless exempt under RCW 18.88B.041.

(4) The enhanced services facility must ensure all enhanced services facility administrators, or their designees, and caregivers who are not exempt under subsection (1) of this section meet the long-term care worker training requirements of chapter 388-112A WAC, including but not limited to:

(a) Orientation and safety;

(b) Basic training;

(c) Specialty for dementia and, mental illness (~~and/~~) or developmental disabilities or both when serving residents with any of those primary special needs;

(d) Cardiopulmonary resuscitation and first aid; and

(e) Continuing education.

(5) The enhanced services facility must ensure that all staff receives appropriate training and orientation to perform their specific job duties and responsibilities.

(6) The enhanced services facility must ensure the following staff obtains home care aide certification(~~, unless exempt under WAC 246-980-070~~) if required by this section, chapters 246-980, or 388-112A WAC:

(a) All long-term care workers(~~, within two hundred days of hire~~);

(b) All enhanced services facility applicants, before licensure;

(c) All enhanced services facility administrators (~~within two hundred days of hire,~~) ; and

(d) Any other staff who will provide direct care and services to residents.

[Statutory Authority: Chapter 70.97 RCW. WSR 18-20-040, § 388-107-0630, filed 9/25/18, effective 10/26/18; WSR 14-19-071, § 388-107-0630, filed 9/12/14, effective 10/13/14.]