

WSR 24-22-123
PREPROPOSAL STATEMENT OF INQUIRY
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed November 5, 2024, 12:35 p.m.]

Subject of Possible Rule Making: The department of social and health services (department) is considering amending and adding new sections as needed: Chapter 388-76 WAC, Adult family home (AFH) minimum licensing requirements; chapter 388-78A WAC, Assisted living facility (ALF) licensing rules; and chapter 388-107 WAC, Licensing requirements for enhanced services facilities (ESF). This proposal re-files the project previously filed as WSR 24-18-013 to clarify the scope of rule making. Amendments and new sections will address the need for a legally enforceable agreement between the operators of AFH, ESF, and ALF and residents in those settings whose care is paid through medicaid. Requirements for these agreements include the need to outline resident rights that include resident eviction processes and appeals related to transfer and discharge. This rule making is needed to comply with federal regulations 42 C.F.R. § 441.530 (a)(1)(vi)(A) and § 441.301 (c)(4)(vi)(A). This rule making will include other related rules as may be required.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 18.20.090, 70.97.230, 70.128.040, 74.09.520(2), and 74.39A.007.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: Rule making is needed to comply with Centers for Medicare and Medicaid [Services] (CMS) regulations related to home and community based settings in AFH, ALF, and ESF. Compliance with the regulations is necessary to administer the state's medicaid funded long-term services and supports programs.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: The department will compare the draft rules with 42 C.F.R. § 441.530 (a)(1)(vi)(A) and § 441.301 (c)(4)(vi)(A), CMS requirements for home and community based settings. The department will confirm consistency with the federal requirements and consult with CMS as necessary.

Process for Developing New Rule: Negotiated rule making; and the department will use a negotiated rule-making process for chapter 388-76 WAC. For chapters 388-78A and 388-107 WAC, the department will use a collaborative rule-making process to consult with internal and external interested parties in the development and review of the draft rules.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Colleen Jensen, P.O. Box 45600, Olympia, WA 98504, phone 564-999-3182, fax 360-438-7903, email colleen.jensen1@dshs.wa.gov.

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Katherine I. Vasquez
Rules Coordinator