WSR 26-19-040
PROPOSED RULES
DEPARTMENT OF HEALTH
[Filed September 11, 2026, 7:44 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 25-22-023.

Title of Rule and Other Identifying Information: Exempting in-home dialysis services provided in a nursing home from the certificate of need (CN) process.

The department of health (department) is proposing new WAC 246-310-355 to exempt in-home dialysis services provided in a nursing home from the CN review process. The proposed rule outlines the provisions that kidney disease treatment in end-stage renal disease (ESRD) centers and skilled nursing facilities (nursing home) must meet prior to providing this type of care and outlines the documentation required to receive a CN exemption. The purpose of this new rule is to establish a new pathway for the CN regulatory process that would allow this new type of care modality in Washington. The proposed rule will decrease the regulatory burden for ESRD centers and nursing homes seeking to provide this type of care and decrease the transportation barriers that dialysis patients face.

Hearing Location(s): On October 27, 2026, at 11:00 a.m., via Zoom. Register in advance for this webinar at https://us02web.zoom.us/webinar/register/WN_SJtMzxprQtWQ85TtgtGtwA. After registering, you will receive a confirmation email containing information about joining the webinar.

Date of Intended Adoption: November 3, 2026.

Submit Written Comments to: Eric Hernandez, P.O. Box 47852, Olympia, WA 98504-7852, email CNRulemaking@doh.wa.gov, web https://fortress.wa.gov/doh/policyreview/, beginning the time and date of this filing, by October 27, 2026, at 11:59 p.m.

Assistance for Persons with Disabilities: Contact Eric Hernandez, phone 360-236-2956, TTY 711, email CNRulemaking@doh.wa.gov, by October 13, 2026.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department regulates the CN process for kidney dialysis treatment centers and nursing homes under chapter 246-310 WAC. The department of social and health services (DSHS) regulates nursing homes under chapter 388-97 WAC and the Centers for Medicare and Medicaid Services (CMS) regulates dialysis services under 42 C.F.R. Part 494 Conditions for coverage for end-stage renal disease facilities.

While DSHS and CMS regulate these services, chapter 70.38 RCW requires the department to issue certificates for the expansion of ESRD facilities and for the expansion or modification of nursing homes. A CN is needed prior to the establishment and regulation of these services in Washington state.

The purpose of this proposal is to establish a new regulatory pathway for providers to be exempted from the CN process to provide in-home dialysis in Washington. The proposed rules will decrease the regulatory burden for ESRD centers and nursing homes seeking to provide this type of care and decrease the transportation barriers that face dialysis patients. The proposed rule provides for a rapid department review of an exemption application to add in-home dialysis services to a nursing home, and allow for dialysis providers to deliver that treatment, if necessary, due to physical or cognitive limitations

of nursing home residents. This change potentially reduces the transportation burdens of nursing home staff as they may not have to transport residents to dialysis centers, and provides the resident and their care provider an alternative to in-center dialysis which could be beneficial to the resident and help maintain or increase compliance with treatment.

Reasons Supporting Proposal: The CN program is required by chapter 70.38 RCW to issue certificates for the construction, development, or establishment of new nursing homes and kidney disease treatment centers. Additionally, RCW 70.38.025 requires that the CN program regulate the expansion and alteration of nursing home services and to regulate the expansion of kidney disease treatment center stations.

Under current CN rules, an ESRD provider may provide in-home dialysis services within a patient's home if those services are provided through a CN-approved dialysis center with a home training program, or a CN-exempted standalone home training program. An ESRD provider who wishes to open a stand alone training facility may be exempted from obtaining a CN with the provision that the facility does not provide in-center dialysis treatment. If the training facility offers in-center dialysis services, then this would be considered as the establishment of a new ESRD center and requires a CN.

Under the current nursing home CN regulatory process, nursing homes are required to obtain a CN or approval prior to establishing a new nursing facility, expanding a new service within its facility, expanding bed capacity, or altering or renovating a nursing home. Once a nursing home obtains a CN to establish, expand, or modify its facility, DSHS oversees the standards and regulations of a nursing home under chapter 388-97 WAC. Within these rules, DSHS allows in-home dialysis services to be provided within a nursing home if the facility meets the requirements under WAC 388-97-1900.

While DSHS allows in-home dialysis to be provided within a nursing home, this type of care modality is not supported under the current CN regulatory process. This creates a gap as the CN program is statutorily responsible for regulating the expansion of kidney dialysis treatment centers and the establishment, alteration, construction, or renovation of nursing homes. Current rules do not integrate the CN process for establishing a service that involves both of these regulated entities.

To close this gap, the department is proposing a new rule that provides a pathway for providers to be exempted from a CN to offer in-home dialysis services within a nursing home. The proposed rule outlines relative definitions needed to implement this section, defines what is considered as in-home dialysis, outlines what must be included in an application for an exemption, and outlines what must be included in a partner agreement between an ESRD provider and a nursing home. This rule would also allow the program to provide an efficient review of an exemption application and allow for dialysis providers to deliver that treatment if necessary due to physical or cognitive limitations of nursing home residents. The proposed rules allow only CN-approved ESRD providers and CN-approved nursing homes to participate in providing this service.

The objective of this new proposed rule is to establish a clear regulatory pathway to the CN regulatory process that would efficiently and effectively regulate these types of requests, but also to reduce barriers for providers who deliver care for this vulnerable population in Washington state.

Statutory Authority for Adoption: RCW 70.38.105 and 70.38.115.

Statute Being Implemented: RCW 70.38.015 and 70.38.105.

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

Name of Proponent: Department of health, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Eric Hernandez, 111 Israel Road S.E., Tumwater, WA 98501, 360-236-2955.

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 Eric Hernandez, P.O. Box 47852, Olympia, WA 98504-7852, phone 360-236-2956, TTY 711, email CNrulemaking@doh.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(4).

Explanation of exemptions: The proposed rule applies to CN-approved kidney disease centers and CN-approved nursing homes who wish to partner to provide in-home dialysis services. CN-approved kidney disease centers and CN-approved nursing homes do not qualify as small businesses.

Scope of exemption for rule proposal:

Is fully exempt.

September 10, 2026
Kristin Peterson, JD
Chief of Policy
for Dennis E. Worsham
Secretary of Health

RDS-7201.3

NEW SECTION

WAC 246-310-355 Exempting in-home dialysis services in a nursing home. (1) A nursing home, in combination with a kidney disease treatment center, may apply for an exemption from a certificate of need to provide in-home dialysis services to residents within a nursing home. For the purposes of this section, in-home dialysis services provided on-site to residents of a nursing home are not considered to be the establishment of a new kidney disease treatment center as defined by WAC 246-310-800. Nothing in this section is intended to restrict a resident's right to choose a different dialysis provider than the one operating in the nursing home.

(2) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise:

(a) "Bedside setting" means in-home dialysis services provided to a nursing home resident at their bedside either by the resident or designated caregiver.

(b) "Caregiver" means any person(s) providing or assisting with the in-home dialysis care of the nursing home resident (e.g., nursing home staff, dialysis provider staff, or other persons approved to provide care assistance).

(c) "Dialysis provider" means a kidney disease treatment center, as defined in WAC 246-310-800, that:

(i) Is located within the same county as the nursing home;

(ii) Is Centers for Medicare and Medicaid Services (CMS) certified to provide in-home dialysis; and

(iii) Is a certificate of need (CN)-approved and CMS certified kidney disease treatment center; or

(iv) Is a CN-exempted and CMS certified standalone home-only training program.

(d) "Group setting" or "den model" means a common area of the nursing home dedicated for in-home dialysis for nursing home residents.

(e) "In-home dialysis" means home peritoneal dialysis (HPD) or home hemodialysis (HHD) training services, as defined by WAC 246-310-800, provided on-site to residents of a nursing home, including any associated training services as defined by WAC 246-310-800.

(f) "In-home dialysis equipment" means dialysis equipment intended for home dialysis with an integrated water treatment system or that utilizes a portable water treatment system, or peritoneal dialysis equipment.

(g) "Nursing home" has the same meaning as defined in WAC 246-310-010.

(3) A nursing home and dialysis center seeking to provide in-home dialysis services to nursing home residents must submit an exemption application to the department. The application must be jointly submitted by a nursing home and a dialysis provider. The application must:

(a) Include a detailed plan that demonstrates only in-home dialysis services will be provided within the nursing home either at a bedside or group setting using appropriate in-home dialysis equipment. If the group setting requires alternative use of space, the nursing home must apply and be approved for alternate use under WAC 246-310-395, as applicable, prior to initiating services.

(b) Include nursing home and dialysis provider policies and procedures that include, but are not limited to, caregiver responsibilities, training plan for caregivers, responsibilities of the dialysis provider, infection control procedures, admission criteria, nondiscrimination policies, and any other relevant policies reasonably related to the delivery of in-home dialysis services.

(c) Include only one location. If a nursing home and dialysis center seeks to request service exemptions at multiple locations, separate applications for each location must be submitted.

(4) The dialysis provider and nursing home must submit to the department an executed written agreement that clearly delineates responsibilities between the dialysis provider and the nursing home when providing in-home dialysis services to residents of the nursing home, either at a bedside or group setting. This agreement must include the following:

(a) Provisions for ensuring the clinical coordination of uninterrupted dialysis services. This includes:

(i) In the event the nursing home resident is discharged or transferred from the nursing home to a CN-approved kidney disease treatment center, as defined in WAC 246-310-800;

(ii) In the event the nursing home is no longer able to support in-home dialysis services; and

(iii) If the written agreement described in this subsection is terminated.

(b) An agreement from the dialysis provider that only in-home dialysis will be provided to residents of the nursing home;

(c) An agreement from the nursing home that only persons admitted to the nursing home will be eligible for in-home dialysis services.