



PROPOSED RULE MAKING

CR-102 (June 2004)

(Implements RCW 34.05.320)

Do **NOT** use for expedited rule making

Agency: Department of Social and Health Services, Aging and Disability Services Administration

- Preproposal Statement of Inquiry was filed as WSR 07-23-078; or
 Expedited Rule Making--Proposed notice was filed as WSR _____; or
 Proposal is exempt under RCW 34.05.310(4).

- Original Notice
 Supplemental Notice to WSR
 Continuance of WSR

Title of rule and other identifying information: (Describe Subject)

The department is amending the following sections from the boarding home licensing chapter: WAC 388-78A-2470 (Criminal history disclosure and background); WAC 388-78A-2680 (Boarding home use of audio and video monitoring); WAC 388-78A-2690 (Resident use of electronic monitoring); WAC 388-78A-2950 (Water supply); WAC 388-78A-2980 (Lighting); WAC 388-78A-3030 (Toilet rooms and bathrooms); WAC 388-78A-3450 (Finalizing a preliminary finding); and WAC 388-78A-3460 (Appeal of administrative law judge's initial order or finding).

Hearing location(s):

Blake Office Park East – Rose Room
4500 – 10th Ave. SE
Lacey, Washington 98503
(One block north of the intersection of Pacific Ave. SE and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling 360-664-6094)

Date: **September 23, 2008** Time: **10:00 a.m.**

Submit written comments to:

Name: DSHS Rules Coordinator
Address: PO Box 45850, Olympia WA, 98504-5850
Delivery: 4500 – 10th Ave. SE, Lacey, Washington 98503
E-mail: DSHSRPAURulesCoordinator@dshs.wa.gov
Fax: (360) 664-6185

by 5 p.m. on September 23, 2008

Assistance for persons with disabilities: Contact Jennisha Johnson, DSHS Rules Consultant by September 16, 2008
TTY (360) 664-6178 or (360) 664-6094 or
by e-mail at johnsjl4@dshs.wa.gov

Date of intended adoption: Not earlier than September 24, 2008 (Note: This is **NOT** the **effective** date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

Criminal History Disclosure: To correct typographical error in section heading.

Electronic Monitoring: To clarify, enhance readability and usability of electronic monitoring requirements; To ensure boarding home compliance with resident rights when electronic monitoring is used.

Building: To clarify, enhance readability and usability of construction requirements regarding lighting, water supply and showers; To create flexibility in construction requirements for boarding home providers to meet resident needs.

Resident Protection Program: To clarify enhance readability and usability of the rules; To provide guidance to administrative law judges that a department denial of a petition to remove a finding of neglect under WAC 388-78A-3460 from a department list may not be appealed.

Reasons supporting proposal: See above.

Statutory authority for adoption:

RCW 18.20.090

Statute being implemented:

Chapter 18.20 RCW

Is rule necessary because of a:

- | | | |
|-------------------------|------------------------------|--|
| Federal Law? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
- If yes, CITATION:

DATE

July 31, 2008

NAME (type or print)

Stephanie Schiller

SIGNATURE

TITLE

DSHS Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: August 05, 2008

TIME: 3:48 PM

WSR 08-16-119

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None.

Name of proponent: (person or organization) Department of Social and Health Services

- Private
- Public
- Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Todd Henry	P.O. Box 45600, Olympia, WA 98513	(360) 725-2580
Implementation.... Lori Melchiori	P.O. Box 45600, Olympia, WA 98513	(360) 725-2404
Enforcement..... Lori Melchiori	P.O. Box 45600, Olympia, WA 98513	(360) 725-2404

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

Yes. A copy of the statement may be obtained by contacting:
Name:
Address:

phone
fax
e-mail

No. Explain why no statement was prepared.

The department determined that the amendments result in no more than "minor costs" as defined in RCW 19.85.030. In some cases, the amendments may result in a cost savings.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:
Name: Todd Henry, Boarding Home Program
Address: P.O. Box 45600, Olympia, WA 98513

phone (360) 725-2580
fax (360) 438-7903
e-mail henryte@dshs.wa.gov

No: Please explain:

AMENDATORY SECTION (Amending 08-05-099, filed 2/15/08, effective 3/17/08)

WAC 388-78A-2470 Criminal history disclosure and background ((~~inquires~~ [~~inquiries~~]) checks. (1) This section applies to any individual associated with the licensee or boarding home who may have unsupervised access to residents, including but not limited to:

- (a) Employees;
 - (b) Managers;
 - (c) Volunteers who are not residents;
 - (d) Contractors; and
 - (e) Students.
- (2) The boarding home must:

(a) Ensure any individual associated with the licensee or boarding home who may have unsupervised access to residents has had a background check of conviction records, pending charges and disciplinary board decisions completed within the past two years, and is repeated every two years thereafter, and that individual has not been:

(i) Convicted of a crime against children or other persons as defined in RCW 43.43.830 or 43.43.842;

(ii) Convicted of crimes relating to financial exploitation as defined in RCW 43.43.830 or 43.43.842;

(iii) Found in any disciplinary board final decision to have abused a vulnerable adult as defined in RCW 43.43.830;

(iv) The subject in a protective proceeding under chapter 74.34 RCW;

(v) Convicted of criminal mistreatment; or

(vi) Found by the department to have abandoned, abused, neglected or exploited a minor, or abandoned, abused, neglected, exploited, or financially exploited a vulnerable person, provided the individual was offered an administrative hearing to contest the finding, and the finding was upheld, or the individual failed to timely appeal the finding.

(b) Not hire or retain, directly or by contract, or accept as a volunteer, any individual prohibited from having unsupervised access to residents under (a) of this subsection, except as provided in subsection (6) of this section and RCW 43.43.842.

(3) Prior to first starting his or her duties, the boarding home must:

(a) Require each prospective employee, manager, volunteer, contractor and student associated with the licensee or boarding home who may have unsupervised access to residents to disclose, consistent with RCW 43.43.834(2), whether he or she:

(i) Has been convicted of a crime, including any of the following as defined in RCW 43.43.830:

(A) All crimes against children or their persons;

(B) All crimes relating to financial exploitation; and

(C) All crimes relating to drugs;

(ii) Has had findings made against him or her in any civil

adjudicative proceeding as defined in RCW 43.43.830; or

(iii) Has both convictions for (i) and findings made against him or her under (ii).

(b) Require each individual making the disclosures required in subsection (3)(a) of this section:

(i) To make the disclosures in writing;

(ii) To swear under penalty of perjury that the contents of the disclosure are accurate; and

(iii) To sign the disclosure statement.

(4) Prior to first starting his or her duties, the boarding home must take one or more of the following three actions for each prospective employee, manager, volunteer, contractor and student associated with the licensee or boarding home who may have unsupervised access to residents:

(a) Initiate a background check on the individual through the department, which includes taking the following actions:

(i) Informing the individual that a background check is required.

(ii) Requiring the individual to complete and sign a DSHS background authorization form prior to the individual having unsupervised access to residents;

(iii) Submitting all background check authorization forms to the department's:

(A) Aging and disability services administration with the initial application for licensure; and

(B) Background check central unit for currently licensed boarding homes.

(iv) Verbally informing the named individual of his/her individual background check results and offering to provide him or her a copy of the background check results within ten days of receipt.

(b) Obtain from the individual's prior employer a copy of the completed criminal background inquiry information for the individual, subject to the following conditions:

(i) The prior employer was a nursing home licensed under chapter 18.51 RCW, a boarding home licensed under chapter 18.20 RCW, or an adult family home licensed under chapter 70.128 RCW;

(ii) The nursing home, boarding home or adult family home providing completed criminal background inquiry information for the individual is reasonably known to be the individual's most recent employer;

(iii) No more than twelve months has elapsed from the date the individual was employed by the nursing home, boarding home or adult family home and the date of the individual's current application;

(iv) The background inquiry for the individual is no more than two years old; and

(v) The boarding home has no reason to believe the individual has or may have a disqualifying conviction or finding as described in RCW 43.43.842.

(c) When using staff persons from a home health, hospice, or home care agency licensed under chapter 70.127 RCW, or a nursing pool registered under chapter 18.52C RCW, the boarding home must establish, maintain and follow a written agreement with the agency or pool to ensure the requirements of subsection (2) of this section are met for the agency or pool staff who may work in the boarding home.

(5) The boarding home must ensure that all disclosure statements, and background check results obtained by the boarding home, are:

- (a) Maintained on-site in a confidential and secure manner;
- (b) Used for employment purposes only;
- (c) Not disclosed to any individual except:
 - (i) The individual named on the background check result;
 - (ii) Authorized state and federal employees;
 - (iii) The Washington state patrol auditor; and
 - (iv) As otherwise authorized in chapter 43.43 RCW.
- (d) Retained and available for department review:
 - (i) During the individual's employment or association with a facility; and
 - (ii) At least two years following termination of employment or association with a facility.

(6) The boarding home may conditionally hire, directly or by contract, an individual having unsupervised access to residents pending a background inquiry, provided the boarding home:

- (a) Obtains a criminal history background check authorization form from the individual prior to the individual beginning work;
- (b) Submits the criminal history background check authorization form to the department no later than one business day after the individual started working; and
- (c) Has received three positive references for the individual.

(7) The department may require the boarding home or any other individual associated with the boarding home who has unsupervised access to residents to complete additional disclosure statements or background inquiries if the department has reason to believe that offenses specified under RCW 43.43.830 have occurred since completion of the previous disclosure statement or background inquiry.

AMENDATORY SECTION (Amending 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2680 (~~(Boarding home use of)~~) **Electronic monitoring equipment - Audio monitoring and video monitoring.** (1) Except as provided for in this section or in WAC 388-78A-2690, the boarding home must not use the following on the premises:

- (a) ~~((Any))~~ Audio monitoring (~~((on the boarding home premises))~~) equipment; or
- (b) ~~((Any audio monitoring used in combination with))~~ Video monitoring equipment if it includes an audio component.

(2) The boarding home may video monitor and ~~((/or))~~ video record ~~((activity))~~ activities in the boarding home or on the (~~(boarding home)~~) premises, without an audio component, only in the following areas:

(a) ~~((Boarding home))~~ Entrances and exits (~~((if))~~) as long as the (~~((camera(s) is))~~) cameras are:

- (i) Focused only on the entrance ~~((/))~~ or exit doorways; and
- (ii) Not focused on areas where residents ~~((may congregate))~~ gather.

(b) Areas used exclusively by staff persons such as, but not limited to, medication storage areas or food preparation areas, if residents do not go into these areas;

(c) Outdoor areas not commonly used by residents, such as, but not limited to, delivery areas; and

(d) Designated smoking areas (~~(excluding resident rooms, subject to the following conditions:~~

~~(i) When the area is being used by residents assessed as needing supervision for smoking, a staff person must watch the video monitor at any time the area is being used by such residents for smoking;~~

~~(ii) The video camera must be placed in a clearly visible area;~~

~~(iii) The video monitor must be placed where it cannot be viewed by the general public; and~~

~~(iv) All residents in the facility must be notified of the use of the video monitoring)), subject to the following conditions:~~

(i) Residents have been assessed as needing supervision for smoking;

(ii) A staff person watches the video monitor at any time the area is used by such residents;

(iii) The video camera is clearly visible;

(iv) The video monitor is not viewable by general public; and

(v) The boarding home notifies all residents in writing of the video monitoring equipment.

AMENDATORY SECTION (Amending 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2690 ((Resident use of)) Electronic monitoring equipment - Resident requested use. (1) The boarding home must (~~±~~ limit the use of resident-initiated video or audio monitoring to the sleeping room or apartment of the resident who requested the monitoring)) not use audio or video monitoring equipment to monitor any resident unless:

(a) The resident has requested the monitoring; and

(b) The monitoring is only used in the sleeping room of the resident who requested the monitoring.

(2) If ((a)) the resident requests ((video or)) audio or video monitoring ((in his/her sleeping room or apartment)), before any electronic monitoring occurs, the boarding home must ensure that:

(a) ((Appropriate actions are taken to ensure monitoring is consistent with and)) The electronic monitoring does not violate chapter 9.73 RCW;

(b) The resident has identified a threat to ((his or her safety or)) the resident's health, ((or the)) safety ((of his)) or ((her possessions, and has requested electronic monitoring)) personal property;

(c) The resident's roommate has provided written consent to ((the)) electronic monitoring, if the resident has a roommate; and

(d) The resident and the boarding home have agreed upon a specific duration for the ((use of the)) electronic monitoring((7))

and ~~((the boarding home has documented))~~ the agreement is documented in writing.

(3) The boarding home must:

(a) Re-evaluate the need for ~~((resident-initiated))~~ the electronic monitoring with the resident at least quarterly ~~((or more often as appropriate))~~; and

(b) Have each re-evaluation in writing, signed and dated by the resident.

(4) The boarding home must ~~((discontinue the use of resident-initiated electronic monitoring))~~ immediately ~~((if))~~ stop electronic monitoring if the:

(a) ~~((The))~~ Resident no longer ~~((desires it))~~ wants electronic monitoring;

(b) ~~((The))~~ Roommate objects ~~((to the use))~~ or withdraws the consent to the electronic monitoring; or

(c) The resident becomes unable to give consent.

(5) For the purposes of consenting to video electronic monitoring, without an audio component the term "resident" includes the resident's surrogate decision maker.

(6) For the purposes of consenting to any audio electronic monitoring, the term "resident" includes:

(a) The individual residing in the boarding home; or

(b) The resident's court-appointed guardian or attorney-in-fact who has obtained a court order specifically authorizing the court-appointed guardian or attorney-in-fact to consent to electronic monitoring of the resident.

(7) If a resident's decision maker consents to audio electronic monitoring as specified in (6) above, the boarding home must maintain a copy of the court order authorizing such consent in the resident's record.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2950 Water supply. The boarding home must:

(1) Provide water meeting the provisions of chapter 246-290 WAC, Group A public water supplies or chapter 246-291 WAC, Group B public water systems;

(2) Maintain the boarding home water systems free of cross-connections as specified in the edition of Cross-Connection Control Manual ~~((7-6th Edition))~~, published by the Pacific Northwest Section of the American Water Works Association, in effect on the date of the official application for department of health construction review of the boarding home or new boarding home construction;

(3) Provide hot and cold water under adequate pressure readily available throughout the boarding home;

(4) Provide all sinks in resident rooms, toilet rooms and bathrooms, and bathing fixtures used by residents with hot water between 105°F and 120°F at all times; and

(5) Label or color code nonpotable water supplies "unsafe for

domestic use."

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2980 Lighting. (1) The boarding home must maintain electric light fixtures and lighting necessary for the comfort and safety of residents and for the activities of residents and staff.

(2) The boarding home must ~~((maintain))~~ provide enough lighting in ((common areas that meets Illuminating Engineering Society (IES) recommendations as follows:)) each resident's room to meet the resident's needs, preferences and choices.

~~((AVERAGE MAINTAINED FOOTCANDLES))~~

((Area))	((Ambient Light))	((Task Light))
((Toilet, bathing and laundry facilities))	((30))	((50))
((Dining/day rooms))	((50))	((N/A))
((Corridors, hallways, and stairways))	((30))	((N/A))
((Janitor's closet and utility rooms))	((30))	((N/A))
((Reading rooms))	((100))	((N/A))

(3) ~~((The boarding home must provide enough lighting in each resident's room to meet the resident's needs, preferences and choices))~~ New boarding home construction must, at a minimum, meet the Illuminating Engineering Society of North America (IESNA) recommendations for lighting in common areas as established in the edition of the Illuminating Engineering Society of North America Lighting Handbook. The applicable handbook is the one in effect on the date of the official application to the department of health construction review for the new boarding home construction.

(4) Existing boarding home construction must maintain, at a minimum, the Illuminating Engineering Society of North America (IESNA) recommendations for lighting in common areas as established in the edition of the Illuminating Engineering Society of North America Lighting Handbook. The applicable handbooks is the one in effect on the date of the official application to the department of health construction review for the boarding home or that portion of the boarding home undergoing construction review.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-3030 Toilet rooms and bathrooms. (1) The boarding home must provide private or common-use toilet rooms and bathrooms to meet the needs of each resident.

(2) The boarding home must provide each toilet room and bathroom with:

(a) Water resistant, smooth, low gloss, nonslip and easily cleanable materials;

(b) Washable walls to the height of splash or spray;

(c) Grab bars installed and located to minimize accidental falls including one or more grab bars at each:

(i) Bathing fixture; and

(ii) Toilet.

(d) Plumbing fixtures designed for easy use and cleaning and kept in good repair; and

(e) Adequate ventilation to the outside of the boarding home. For boarding homes issued a project number by construction review services on or after September 1, 2004 for construction related to this section, must provide mechanical ventilation to the outside.

(3) The boarding home must provide each toilet room with a:

(a) Toilet with a clean, nonabsorbent seat free of cracks;

(b) Handwashing sink in or adjacent to the toilet room. For boarding homes issued a project number by construction review services on or after September 1, 2004 for construction related to this section, the handwashing sink must be in the toilet room or in an adjacent private area that is not part of a common use area of the boarding home; and

(c) Suitable mirror with adequate lighting for general illumination.

(4) For boarding homes approved for construction or initially licensed after August 1, 1994, the boarding home must provide a toilet and handwashing sink in, or adjoining, each bathroom.

(5) When providing common-use toilet rooms and bathrooms, the boarding home must provide toilets and handwashing sinks for residents in the ratios of one toilet and one handwashing sink for every eight residents or fraction as listed in the following table:

Number of Residents	Number of Toilets*	Number of Handwashing Sinks
1-8	1	1
9-16	2	2
17-24	3	3
25-32	4	4
33-40	5	5
41-48	6	6
49-56	7	7
57-64	8	8

Number of Residents	Number of Toilets*	Number of Handwashing Sinks
65-72	9	9
73-80	10	10
81-88	11	11
89-96	12	12
97-104	13	13
105-112	14	14
113-120	15	15
121-128	16	16
129-136	17	17
137-144	18	18
145-152	19	19
153-160	20	20
161-168	21	21
169-176	22	22
177-184	23	23

*When two or more toilets are contained in a single bathroom, they are counted as one toilet.

(6) When providing common-use toilet rooms and bathrooms, the boarding home must provide bathing fixtures for residents in the ratio of one bathing fixture for every twelve residents or fraction thereof as listed in the following table:

Number of Residents	Number of Bathing Fixtures
1-12	1
13-24	2
25-36	3
37-48	4
49-60	5
61-72	6
73-84	7
85-96	8
97-108	9

Number of Residents	Number of Bathing Fixtures
109-120	10
121-132	11
133-144	12
145-160	13
161-172	14
173-184	15
185-196	16

(7) When providing common-use toilet rooms and bathrooms, the boarding home must:

(a) Designate toilet rooms containing more than one toilet for use by men or women;

(b) Designate bathrooms containing more than one bathing fixture for use by men or women;

(c) Equip each toilet room and bathroom designed for use by, or used by, more than one person at a time, in a manner to ensure visual privacy for each person using the room. The boarding home is not required to provide additional privacy features in private bathrooms with a single toilet and a single bathing fixture located within a private apartment;

(d) Provide a handwashing sink with soap and single use or disposable towels, blower or equivalent hand-drying device in each toilet room, except that single-use or disposable towels or blowers are not required in toilet rooms or bathrooms that are located within a private apartment;

(e) Provide reasonable access to bathrooms and toilet rooms for each resident by:

(i) Locating a toilet room on the same floor or level as the sleeping room of the resident served;

(ii) Locating a bathroom on the same floor or level, or adjacent floor or level, as the sleeping room of the resident served;

(iii) Providing access without passage through any kitchen, pantry, food preparation, food storage, or dishwashing area, or from one bedroom through another bedroom; and

(f) Provide and ensure toilet paper is available at each common-use toilet.

(8) In boarding homes issued a project number by construction review services on or after September 1, 2004 for construction related to this section, the boarding home must ensure ((fifty)) twenty-five percent of all the bathing fixtures in the boarding home are roll-in type showers that have:

(a) One-half inch or less threshold that may be a collapsible rubber water barrier;

(b) A minimum size of thirty-six inches by forty-eight inches; and

(c) Single lever faucets located within thirty-six inches of the seat so the faucets are within reach of persons seated in the

shower.

AMENDATORY SECTION (Amending 08-05-099, filed 2/15/08, effective 3/17/08)

WAC 388-78A-3450 Finalizing a preliminary finding. (1) A preliminary finding becomes a final finding when:

(a) The department notifies the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident there is a preliminary finding pursuant to WAC 388-78A-3410; and

(b) The individual alleged to have abandoned, abused, neglected, exploited or financially exploited a resident does not ask for an administrative hearing; or

(c) The administrative law judge:

(i) Dismisses the hearing following withdrawal of the appeal or default; or

(ii) ~~((Issues an initial order upholding the finding and the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident fails to appeal the initial order to the department's board of appeals))~~ Dismisses the appeal for failure to comply with time limits under WAC 388-78A-3440; or

(iii) Issues an initial order upholding the finding and the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident fails to appeal the initial order to the department's board of appeals.

(d) The board of appeals issues a final order upholding the finding.

(2) A final finding is permanent.

(3) A final finding will only be removed from the department or agency list of individuals found to have abandoned, abused, neglected, exploited, or financially exploited a vulnerable adult if it is rescinded following judicial review.

(4) The department may remove a single finding of neglect from its records based upon a written petition by the individual found to have neglected a resident provided that at least one calendar year must have passed between the date a request was made to remove the finding of neglect and the date the final finding was finalized and recorded.

AMENDATORY SECTION (Amending 08-05-099, filed 2/15/08, effective 3/17/08)

WAC 388-78A-3460 Appeal of administrative law judge's initial order or finding. (1) If the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident or the department disagrees with the administrative law judge's

decision, either party may challenge this decision by filing a petition for review with the department's board of appeals under chapter 34.05 RCW, Administrative Procedure Act, and chapter 388-02 WAC.

(2) If the department appeals the administrative law judge's decision, the department will not change the finding in the department's records until a final hearing decision is issued.

(3) The department's decision to deny a petition to remove a finding of neglect under WAC 388-78A-3450 may not be appealed.