



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 09-16-101; 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 intends to amend the following sections WAC 388-76-10035 License requirements — Multiple family home providers; WAC 388-76-10036 License requirements — Multiple adult family home management; WAC 388-76-10040 License requirements — Qualified person must live-in or be on-site; WAC 388-76-10090 Application — Entity application; WAC 388-76-10105 Application — Change of ownership; WAC 388-76-10110 Application — Change of location or address; WAC 388-76-10200 Adult family home — Staff — Availability — Contact information; WAC 388-76-10415 Food services; WAC 388-76-10505 Specialty care — Admitting and retaining residents; WAC 388-76-10550 Resident rights — Adult family home staffing — Notification required; WAC 388-76-10860 Fire drill plan and procedures for emergency evacuation — Required; WAC 388-76-10970 Remedies — Specific — Condition(s) on license; WAC 388-76-10975 Remedies — Specific — Civil penalties; WAC 388-76-10985 Remedies — May extend to multiple homes.

The department intends to repeal WAC 388-76-10185 Employment — Certain criminal history — Permitted

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: **December 8, 2009** 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 December 8, 2009

Assistance for persons with disabilities: Contact Jennisha Johnson, DSHS Rules Consultant by November 24, 2009
 TTY (360) 664-6178 or (360) 664-6094 or
 by e-mail at johnsjl4@dshs.wa.gov

Date of intended adoption: Not earlier than December 9, 2009 (Note: This is **NOT** the **effective** date)

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

The purpose of these rules is to consider making clarifying changes and consolidate terms to simplify the rules. The impact of the rules is to make the rules clearer, easier to read, understand, and apply.

Statutory authority for adoption:

RCW 70.128.040

Statute being implemented:

Chapter 70.128 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

October 12, 2009

NAME (type or print)

Stephanie Vaughn

SIGNATURE

TITLE

DSHS Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
 STATE OF WASHINGTON
 FILED

DATE: October 16, 2009

TIME: 11:05 AM

WSR 09-21-070

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.....Maureen Lally	P.O. Box 45600, Olympia, WA 98513	(360)725-3204
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. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone

fax

e-mail

No. Explain why no statement was prepared. This rule does not impact small businesses.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name: Maureen Lally, Program Manager

Address: P.O. Box 45600, Olympia WA 98504-5600

phone (360) 725-3204

fax (360) 438-7903

e-mail lallyma@dshs.wa.gov

No: Please explain:

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10035 License requirements--Multiple family home providers. To be licensed to operate more than one adult family home, the applicant must have:

(1) Evidence (~~(that the provider or entity representative has successfully completed)~~) of successful completion of the forty-eight hour residential care administrator's training to meet the (~~(related)~~) applicable requirements of chapter 388-112 WAC.

(2) Operated an adult family home in Washington for at least one year without a significant violation of chapters 70.128, 70.129 or 74.34 RCW, this chapter or other applicable laws and regulations; and

(3) The ability to operate more than one home.

(4) The following plans for each home the applicant intends to operate:

(a) A twenty-four hour a day, seven day a week staffing plan;

(b) A plan for (~~(how the provider entity representative, or resident manager will manage)~~) managing the daily operations of each home; and

(c) A plan for emergencies, deliveries, staff and visitor parking.

(5) A credit history considered if the history relates to the ability to provide care and services.

(6) An (~~(applicant,)~~) entity representative or a (~~(qualified)~~) resident manager at each home who is responsible for the care of each resident at all times.

AMENDATORY SECTION (Amending WSR 09-03-030, filed 1/12/09, effective 2/12/09)

WAC 388-76-10036 License requirements--Multiple adult family home management. When there is more than one home licensed to a provider (~~(or entity)~~), the adult family home must ensure that:

(1) Each home has one person responsible for managing the overall delivery of care to all residents in the home;

(2) The designated responsible person is the provider, entity representative or a (~~(qualified)~~) resident manager; and

(3) Each responsible person is designated to manage only one adult family home at a given time.

AMENDATORY SECTION (Amending WSR 09-03-030, filed 1/12/09,

effective 2/12/09)

WAC 388-76-10040 License requirements--Qualified person must live-in or be on-site. (1) The adult family home provider or entity representative must:

(a) Live in the home; or
(b) Employ or contract with a ((qualified)) resident manager who lives in the home and is responsible for the care and services of each resident at all times.

(2) The provider, entity representative, or ((qualified)) resident manager is exempt from the requirement to live in the home if:

(a) The home has twenty-four hour staffing coverage; and
(b) A ((qualified)) staff person who can make needed decisions is always present in the home.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10090 Application--Entity application. An entity submitting an application must:

(1) Include a list of all facilities or homes in which the applicant or persons affiliated with the applicant, managerial employee, or owner of five percent or more of the entity provided care and services to children or vulnerable adults within the last ten years;

(2) Designate an entity representative who:

(a) Is responsible for the daily operations of the adult family home;

(b) Will be considered the department's primary contact person; and

(c) May act as both the entity representative and the resident manager in only one home.

(3) Designate a ((qualified)) resident manager for the home if the entity representative is not the designated resident manager in subsection (2)(c) of this section.

AMENDATORY SECTION (Amending WSR 09-03-030, filed 1/12/09, effective 2/12/09)

WAC 388-76-10105 Application--Change of ownership. (1) Under this section, "control of the provider" means the possession, directly or indirectly, of the power to direct the management, operation and/or policies of the adult family home, whether through ownership, voting control, by agreement, by contract or otherwise.

(2) A change of ownership of an adult family home requires both a new license application and a new license.

((+2)) (3) A change of ownership occurs when there is a

change in:

- (a) The provider (~~(or entity provider)~~); or
- (b) The control of ((an entity)) a provider.

~~((+3))~~ (4) Events which constitute a change of ownership include, but are not limited to:

(a) The form of legal organization of the ((provider)) adult family home is changed, such as when ((a provider)) an adult family home forms:

- (i) A partnership;
- (ii) A corporation;
- (iii) ~~((An association))~~ A limited liability company; or
- (iv) ~~((A dissolution or merger of a licensed entity))~~ When it merges with another legal organization.

(b) The ~~((provider or entity provider))~~ adult family home transfers business operations and management responsibility to another party, whether or not there is a partial or whole transfer of ~~((adult family home))~~ real property ~~((and/or))~~, personal property ~~((assets))~~, or both.

(c) Two people are both licensed as a married couple or domestic partners to operate an adult family home and an event, such as a separation, divorce, or death, results in only one person operating the home.

(d) ~~((An event dissolves the))~~ Dissolution of a business partnership((, if)) that is licensed to operate the ~~((provider or entity provider is in a business partnership))~~ adult family home.

(e) If the ~~((provider or entity provider))~~ adult family home is a corporation and the corporation:

- (i) Is dissolved;
- (ii) Merges with another corporation ((which is the survivor)), resulting in a change in the control of the provider; or

(iii) Consolidates with one or more corporations to form a new corporation;

(iv) Whether by a single transaction or multiple transactions within a continuous twenty-four month period, transfers fifty percent or more of ~~((the stock))~~ its shares to one or more of the following:

(A) New or former ~~((stockholders))~~ shareholders; or

(B) Present ~~((stockholders))~~ shareholders, each having less than five percent of the ~~((stock))~~ shares before the initial transaction.

(f) Any other event or combination of events ~~((which))~~ that results in a substitution, elimination, or withdrawal of ~~((or control of))~~ the ~~((provider or entity))~~ provider's control of the adult family home.

~~((+4))~~ (5) The new owner:

(a) Must correct all deficiencies that exist at the time of the ownership change;

(b) Is subject to the provisions of chapters 70.128, 70.129, 74.34 RCW, this chapter and other applicable laws and regulations;

(c) Must obtain a new license from the department before the transfer of ownership; and

(d) Must not begin operation of the adult family home ~~((as the new owner, provider or entity provider))~~ until the department has granted the license.

~~((+5))~~ (6) The home must notify each resident, in writing at

least thirty days before the effective date of the ownership change.

~~((6) If a)) (7) Currently licensed ((provider or entity provider)) providers seeking ((to change ownership wants the department to give priority to)) a license for a new adult family home may request application processing ((an application)) priority in order to minimize or prevent disruption ((of)) to current residents ((that live in the existing home,)). The applicant must:~~

(a) Make the request to the department in writing, including the reason for changing the ownership of the home; and

(b) Explain how or why the reason for the change is beyond the control of the home.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10110 Application--Change of location or address.

(1) A change of the adult family home location or address requires both a new license application and a new license.

(2) The home must not start operations of the home at a new location until the department has granted the license for the new location.

(3) The home must notify each resident or resident representative, in writing at least thirty days before the effective date of the change of the home location or address.

~~((4) If a currently licensed provider or entity representative, seeking to change the home location or address wants the department to give priority to processing an application to minimize or prevent the disruption of residents that live in the existing home, the applicant must:~~

~~(a) Make the request in writing, including the reason for changing the location of the home to the department; and~~

~~(b) Explain how or why the reason for change is beyond the control of the home.))~~

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10200 Adult family home--Staff--Availability--Contact information. In addition to other licensing requirements for staff availability, the adult family home must:

(1) Ensure at least one caregiver is present in the home whenever one or more residents are present in the home;

(2) Designate an experienced, ~~((capable))~~ staff member who is capable of responding on behalf of the ~~((provider or entity representative:~~

~~(a)) adult family home by phone or pager((7~~

- ~~(b)) at all times ((including:~~
~~(i) When no residents are present in the home; and~~
~~(ii) When the provider entity representative and residents are on vacation or away from the home)).~~
~~((+2)) (3) Give residents the telephone or pager number for the contact required in subsection ((+1)) (2) of this section;~~
~~((+3)) (4) Ensure the provider, entity representative or resident manager is readily available to:~~
- ~~(a) Each resident;~~
 - ~~(b) Residents' representatives;~~
 - ~~(c) Caregivers; and~~
 - ~~(d) Authorized state staff.~~

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10415 Food services. The adult family home must:

- ~~(1) Ensure ((the provider, entity representative and all staff meet)) that the safe food handling training requirements of chapter 388-112 WAC are met; and~~
- ~~(2) Serve meals:~~
 - ~~(a) In the home where each resident lives; and~~
 - ~~(b) That accommodate each resident's:~~
 - ~~(i) Preferences;~~
 - ~~(ii) Food allergies and sensitivities;~~
 - ~~(iii) Caloric needs;~~
 - ~~(iv) Cultural and ethnic background; and~~
 - ~~(v) Physical condition that may make food intake difficult such as being hard for the resident to chew or swallow.~~

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10505 Specialty care--Admitting and retaining residents. The ~~((provider or entity representative)) adult family home~~ must not admit or keep a resident with specialty care needs, such as developmental disability, mental illness or dementia as defined in WAC 388-76-10000, if the provider, entity representative, resident manager and staff have not completed the specialty care training required by chapter 388-112 WAC.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10550 Resident rights--Adult family home staffing--Notification required. The adult family home must provide the following information to prospective residents and current residents:

(1) Information about the provider, entity representative and resident manager, if there is a resident manager:

(a) Availability in the home, including a general statement about how often he or she is in the home;

(b) Education and training relevant to resident caregiving;

(c) Caregiving experience;

(d) His or her primary responsibilities, including whether he or she makes daily general care management decisions; and

(e) How to contact the provider, entity representative or resident manager when he or she is not in the home.

(2) Information about a licensed practical nurse or registered nurse, if there is one, who is in any way involved in the care of residents:

(a) Who the licensed practical nurse or registered nurse is employed by;

(b) The specific routine hours that the licensed practical nurse or registered nurse is on-site, if they are on-site routinely;

(c) His or her primary responsibilities, including whether he or she makes daily general care management decisions;

(d) The nonroutine times when the licensed practical nurse or registered nurse will be available, such as on-call; and

(e) A description of what the provider or entity representative will do to make available the services of a licensed nurse in an emergency or change in a resident's condition.

(3) A statement indicating whether the provider, (~~entity provider,~~) caregiver or staff is qualified or willing to become qualified to perform nurse delegation as allowed under state law.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10860 Fire drill plan and procedures for emergency evacuation--Required. The adult family home must:

(1) Have (~~a fire drill plan and procedures for the~~) an emergency evacuation ((of)) plan including fire drill plan and procedures for evacuating all residents from the adult family home; and

(2) Not admit (~~and~~) or keep residents (~~the provider or entity representative~~) who cannot safely (~~evacuate from the adult family home~~) be evacuated.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10970 Remedies--Specific--Condition(s) on license.

- (1) The department may impose reasonable conditions or limits on ~~((the))~~ a new or current license.
- (2) Conditions or limits the department may impose on a license include, but are not limited to, the following:
 - (a) Correction of deficiencies within a specified time;
 - (b) Training related to the deficiencies;
 - (c) Limits on the type of residents the ~~((provider or entity representative))~~ adult family home may admit or serve;
 - (d) Discharge of any resident when the department finds discharge is needed to meet that resident's needs or for the protection of other residents;
 - (e) Change in license capacity;
 - (f) Removal of the adult family home's designation as a specialized home;
 - (g) Prohibition of access to residents by a specified person; and
 - (h) Demonstration of ability to meet financial obligations necessary to continue operation.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10975 Remedies--Specific--Civil penalties. (1)

The department may impose civil penalties of not more than one hundred dollars per day per violation except that:

(a) Fines up to one thousand dollars can be issued under RCW 70.128.150 for willful interference with a representative of the long-term care ombudsman ~~((per RCW 70.129.150))~~; and

(b) Fines up to three thousand dollars can be issued under RCW 74.39A.060 for retaliation against a resident, employee, or any other person making a complaint, providing information to, or cooperating with, the ombudsman, the department, the attorney's general office, or a law enforcement agency ~~((per RCW 74.34.060(7)))~~.

(2) When the ~~((provider or entity provider))~~ adult family home fails to pay a fine ~~((when due))~~ under this chapter when due, the department may, in addition to other remedies, withhold an amount equal to the fine plus interest, if any, from any contract payment due to the provider ~~((or entity provider))~~ from the department.

(3) Civil monetary penalties are due twenty-eight days after the ~~((provider, entity representative))~~ adult family home or the owner or operator of an unlicensed adult family home is served with notice of the penalty unless the ~~((provider or entity representative))~~ adult family home requests a hearing in compliance with chapter 34.05 RCW ~~((and))~~, RCW 43.20A.215, and this chapter. If the hearing is requested, the penalty becomes due ten days after a final decision in the department's favor is issued. ~~((Interest accrues beginning))~~ Thirty days after the department serves the ~~((provider or entity provider))~~ adult family home with notice of the penalty, interest begins to accrue at a rate of one percent per month as ~~((per))~~ authorized by RCW 43.20B.695.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10985 Remedies--May extend to multiple homes. (1)
~~((When the department finds that))~~ If a licensed ~~((provider or entity representative))~~ adult family home also operates an unlicensed adult family home, the department may impose a remedy or remedies listed in WAC 388-76-10940 on the ~~((provider or entity representative and the provider's or entity representative's))~~ licensed adult family home or homes.

(2) ~~((When the department finds that))~~ If violations ~~((existing))~~ in an adult family home are of such nature as to present a serious risk or harm to residents of other homes operated by the same ~~((provider or entity representative))~~ adult family home, ~~((and after the department investigates other homes licensed by the same provider or entity representative))~~ the department may impose remedies on those other homes.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-76-10185	Employment--Certain criminal history--Permitted.
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