



RULE-MAKING ORDER

CR-103 (June 2004)
(Implements RCW 34.05.360)

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

- Permanent Rule**
 Emergency Rule

Effective date of rule:

Permanent Rules

- 31 days after filing.
 Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Effective date of rule:

Emergency Rules

- Immediately upon filing.
 Later (specify) _____

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes No If Yes, explain:

Purpose: The purpose of the proposed rule is to clarify requirements and make grammatical correction.

Citation of existing rules affected by this order:

Repealed: WAC 388-76-10785
 Amending: WAC 388-76-10040; 388-76-10080; 388-76-10105; 388-76-10170; 388-76-10335; 388-76-10645; 388-76-11015
 Suspended: None

Statutory authority for adoption: RCW 70.128.040

Other authority: N/A

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 08-22-104 on November 5, 2008.(date)

Describe any changes other than editing from proposed to adopted version:

Delete the wording "except that" in (2) of WAC 388-76-10040 License requirements –qualified person must live-in or be on-site.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting: Maureen Lally

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 Olympia, WA 98504-5600 e-mail lallyma@dshs.wa.gov

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
 That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

Date adopted:

January 12, 2009

NAME (TYPE OR PRINT)

Stan Marshburn

SIGNATURE

TITLE

Interim Secretary, Department of Social and Health Services

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: January 12, 2009
TIME: 9:04 AM

WSR 09-03-030

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Federal rules or standards:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Recently enacted state statutes:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

The number of sections adopted at the request of a nongovernmental entity:

	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted in the agency's own initiative:

	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

	New	<u>5</u>	Amended	<u>7</u>	Repealed	<u>1</u>
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The number of sections adopted using:

Negotiated rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Pilot rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Other alternative rule making:	New	<u>5</u>	Amended	<u>7</u>	Repealed	<u>1</u>

NEW SECTION

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 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10040 License requirements--(~~Provider or entity representative residence~~)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(~~or~~
- (c) ~~Provide twenty-four hour staffing~~)).
- (2) (~~Ensure that~~) 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 388-76-10080 Application--Co-provider. Couples considered legally married or domestic partners under Washington state law:

- (1) May not apply for separate licenses (~~for each spouse~~); and
- (2) May apply jointly as co-providers.

WAC 388-76-10105 Application--Change of ownership. (1) A change of ownership of an adult family home requires both a new license application and a new license.

(2) A change of ownership occurs when there is a change in:

(a) The provider or entity (~~((representative ultimately responsible for the daily operational decisions of the home))~~) provider; or

(b) Control of an entity provider.

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

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

(i) A partnership;

(ii) A corporation;

(iii) An association; or

(iv) A dissolution or merger of a licensed entity with another legal organization.

(b) The provider or entity (~~((representative))~~) provider transfers business operations and management responsibility to another party, whether there is a partial or whole transfer of adult family home real property and/or personal property assets.

(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 partnership, if the provider or entity (~~((representative))~~) provider is in a business partnership.

(e) If the provider or entity (~~((representative))~~) provider is a corporation and the corporation:

(i) Is dissolved;

(ii) Merges with another corporation which is the survivor; 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 to one or more:

(A) New or former stockholders; or

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

(f) Any other event or combination of events which results in a substitution of or control of the provider or entity (~~((representative))~~) provider.

(4) 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 (~~((representative))~~) provider until the department has granted the license.

(5) The home must notify each resident, in writing at least

thirty days before the effective date of the ownership change.

(6) If a currently licensed provider or entity (~~representative~~) provider seeking to change ownership wants the department to give priority to processing an application to minimize or prevent disruption of 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 (~~location~~) 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 388-76-10170 Criminal history background check--Information--Confidentiality--Use restricted. The adult family home must:

(1) Establish and implement procedures that ensure:

(a) All disclosure statements, background inquiry applications, responses, related information, and all copies are kept in a confidential and secure manner;

(b) All background inquiry results and disclosure statements are used for employment purposes only;

(c) Background inquiry results and disclosure statements are not disclosed to any person except:

(i) The person about whom the home made the disclosure or background inquiry;

(ii) Licensed facilities, an employer of an authorized program, or an in-home services agency employer identified in WAC 388-76-10173;

(iii) Authorized state and federal employees; and

~~((iii))~~ (iv) The Washington state patrol auditor.

(2) Keep a record of inquiry results for eighteen months after the date an employee either quits or is terminated.

NEW SECTION

WAC 388-76-10173 Disclosure of employee information--Employer immunity--Rebuttable presumption. (1) A provider of the following, who discloses information about a former or current employee to the prospective employer of the following, is presumed to act in good faith and is immune from civil and criminal liability for such disclosure or its consequences:

(a) Boarding homes licensed under chapter 18.20 RCW;

(b) Nursing homes licensed under chapter 18.51 RCW;

(c) Adult family homes licensed under chapter 70.128 RCW;

(d) An employer of a program authorized under RCW 71A.12.040(10); or

(e) An in-home services agency employer of a program licensed under chapter 70.127 RCW.

(2) The immunity provided in this section only applies if the disclosure relates to:

(a) The employee's ability to perform his or her job;

(b) The diligence, skill or reliability with which the employee carried out the duties of his or her job; or

(c) Any illegal or wrongful act committed by the employee when related to his or her ability to care for a vulnerable adult.

(3) For the purposes of this section:

(a) The presumption of good faith may only be rebutted by a showing of clear and convincing evidence that the information disclosed by the provider was knowingly false or made with reckless disregard for the truth of the information disclosed.

(b) Should the employee successfully rebut the presumption of good faith standard in court, the employee shall be entitled to recover reasonable attorneys' fees against the employer.

NEW SECTION

WAC 388-76-10174 Background checks--Disclosure of information--Sharing of criminal background information by health care facilities. In accordance with RCW 43.43.832 a health care facility may share criminal background information with other health care facilities. For the purposes of this section health care facility means 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.

(1) A health care facility may, upon request from another health care facility, share copies of completed criminal background inquiry information.

(2) A health care facility may share completed criminal background inquiry information only if:

(a) The health care facility sharing the criminal background inquiry information is reasonably known to be the person's most recent employer;

(b) No more than twelve months has elapsed from the date the person was last employed at a licensed health care facility to the date of their current employment application; and

(c) The criminal background information is no more than two years old.

(3) If criminal background inquiry information is shared, the health care facility employing the subject of the inquiry must require the applicant to sign a disclosure statement indicating that there has been no conviction or finding as described in RCW 43.43.842 since the completion date of the most recent criminal background inquiry.

(4) Any health care facility that knows or has reason to believe that an applicant has or may have a disqualifying conviction or finding as described in RCW 43.43.842, after the completion date of their most recent criminal background inquiry:

(a) Cannot rely on the applicant's previous employer's

criminal background inquiry information; and

(b) Must request a new criminal background inquiry pursuant to RCW 43.43.830 through 43.43.842.

(5) Health care facilities that share criminal background inquiry information shall be immune from any claim of defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of this information in accordance with this section.

(6) Health care facilities must send and receive the criminal background inquiry information in a manner that reasonably protects the subject's rights to privacy and confidentiality.

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

WAC 388-76-10335 Resident assessment topics. (~~((1))~~ For the purposes of this section, "body care" means:

~~((a))~~ How the resident performs with passive range of motion, applications of dressings and ointments or lotions to the body and pedicure to trim toenails and apply lotion to feet; and

~~((b))~~ Dressing changes using clean technique and topical ointments must be performed by a licensed nurse or through nurse delegation in accordance with chapter 246-840 WAC.

~~((2))~~ Body care includes:

~~((a))~~ Foot care if the resident is diabetic or has poor circulation; or

~~((b))~~ Changing bandages or dressings when sterile procedures are required.

~~((3))~~ The adult family home must ensure that each resident's assessment includes the following minimum information:

~~((a))~~ (1) Recent medical history;

~~((b))~~ (2) Current prescribed medications, and contraindicated medications, including but not limited to, medications known to cause adverse reactions or allergies;

~~((c))~~ (3) Medical diagnosis reported by the resident, the resident representative, family member, or by a licensed medical professional;

~~((d))~~ (4) Medication management:

~~((i))~~ (a) The ability of the resident to be independent in managing medications;

~~((ii))~~ (b) The amount of medication assistance needed;

~~((iii))~~ (c) If medication administration is required; or

~~((iv))~~ (d) If a combination of the elements in ~~((i))~~ (a) through ~~((iii))~~ (c) above is required.

~~((e))~~ (5) Food allergies or sensitivities;

~~((f))~~ (6) Significant known behaviors or symptoms that may cause concern or require special care, including:

~~((i))~~ (a) The need for and use of medical devices;

~~((ii))~~ (b) The refusal of care or treatment; and

~~((iii))~~ (c) Any mood or behavior symptoms that the resident has had within the last five years.

~~((g))~~ (7) Cognitive status, including an evaluation of

disorientation, memory impairment, and impaired judgment;

- ~~((h))~~ (8) History of depression and anxiety;
- ~~((i))~~ (9) History of mental illness, if applicable;
- ~~((j))~~ (10) Social, physical, and emotional strengths and needs;
- ~~((k))~~ (11) Functional abilities in relationship to activities of daily living including:
 - ~~((i))~~ (a) Eating;
 - ~~((ii))~~ (b) Toileting;
 - ~~((iii))~~ (c) Walking;
 - ~~((iv))~~ (d) Transferring;
 - ~~((v))~~ (e) Positioning;
 - ~~((vi))~~ ~~Specialized body care;~~
 - ~~((vii))~~ (f) Personal hygiene;
 - ~~((viii))~~ (g) Dressing; and
 - ~~((ix))~~ (h) Bathing.
- ~~((l))~~ (12) Preferences and choices about daily life that are important to the resident, including but not limited to:
 - ~~((i))~~ (a) The food that the resident enjoys;
 - ~~((ii))~~ (b) Meal times; and
 - ~~((iii))~~ (c) Sleeping and nap times.
- ~~((m))~~ (13) ~~((Preferences for))~~ Activities ~~((; and~~
~~((n))~~ ~~A preliminary service plan)).~~

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

WAC 388-76-10645 Resident rights--Quality of life--Reasonable accommodation. The adult family home must ensure each resident:

(1) Receives reasonable accommodation to meet the needs and preferences of the resident, except when the reasonable accommodation endangers the health or safety of the individual or other residents; and

(2) Has the ability to share a double room with his or her spouse or domestic partner when both spouses or domestic partners consent to the arrangement.

NEW SECTION

WAC 388-76-10783 Water hazards and bodies of water--Resident safety. The adult family home must protect each resident:

(1) From risks associated with water hazards or bodies of water of any depth at the home; and

(2) When accompanying or escorting the resident at other locations where there are water hazards or bodies of water of any depth.

NEW SECTION

WAC 388-76-10784 Water hazards--Fences, gates and alarms.

For any adult family home newly licensed after July 1, 2007 or any currently licensed adult family home that adds or modifies a new or existing water hazard after July 1, 2007 must:

- (1) Comply with this section and the requirements of the:
 - (a) International Residential Code (IRC); and
 - (b) Washington state amendments to the International Residential Code (IRC).
- (2) Enclose water hazards over twenty four inches deep with:
 - (a) Fences and gates at least forty-eight inches high; and
 - (b) Audible alarms when doors, screens, and gates that directly lead to or surround the water hazard, are opened.

AMENDATORY SECTION (Amending WSR 08-05-098, filed 2/15/08, effective 3/17/08)

WAC 388-76-11015 Resident protection program--Disputing a preliminary finding. (1) The individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident may request an administrative hearing to challenge a preliminary finding made by the department.

(2) The request must be made in writing to the office of administrative hearings.

(3) The office of administrative hearings must receive the individual's written request for an administrative hearing within thirty calendar days of the date written on the notice of the preliminary finding.

(4) The written request for a hearing must include(~~(7~~
~~(a))~~) the individual's full legal name((7)) and current mailing address and should include:

(a) The individual's telephone number;
(b) A brief explanation of why the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident disagrees with the preliminary finding;

(c) A description of any assistance needed in the administrative appeal process by the individual, including a foreign or sign language interpreter or any reasonable accommodation for a disability; and

(d) The individual's signature.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-76-10785

Water hazards--Enclosures and
safety devices.