



# **Home and Community Based Services (HCBS) New Rules Information Session**

**September 17, 2025, September 23, 2025, October 9, 2025**



# Agenda

- Housekeeping
- Background and purpose of the new rules
- Overview of requirements
- New residency agreement requirements
- New transfer and discharge requirements
- Review of supportive resources
- References
- Questions

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# Housekeeping

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# Housekeeping

1. Introductions
2. Use of chat
3. Raise hand to speak, “mute” when not speaking
4. No AI tools or bots, no recording
5. Slides and Q&A document available in the meeting invitation
6. We will compile questions from today and make them available later in the meeting invitation.



# Background and Purpose

- Federal rules for Home and Community Based Settings (HCBS) require HCBS settings to have written agreements with Medicaid residents that provide protections related to eviction and appeals comparable to those provided by the Landlord Tenant Act.
- The adopted rules create additional standards for transfer and for discharge for residents with Medicaid that comply with the requirements.
- Applies to residents with Medicaid in AFH/ALF/ESF (current and new admits) effective January 1, 2026.



# Residency Agreement

**By January 1, 2026, AFH/ALF/ESF must:**

- Have written agreements with residents with Medicaid that provide protections related to eviction and appeals comparable to those provided by the Residential Landlord Tenant Act.
- Provide written notice before transfer or discharge, that informs residents with Medicaid of their right to \*legal counsel at public expense upon notice of transfer or discharge.



*\*Subject to funding*



# Transfer and Discharge Notice

## **Effective January 1, 2026:**

In addition to existing requirements, when transferring or discharging a resident with Medicaid, facilities must:

- Provide notice of resident rights and legal resources, including right to an attorney at no cost to resident.
- Send a copy of the transfer or discharge notice to the Long-Term Care Ombuds and to the DSHS case manager within 3 calendar days.

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# Residency Agreement

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# Residency Agreement

**NEW SECTION (same language for AFH/ALF/ESF)**

**WAC 388-76-10506 Written residency agreement-Residents with medicaid as a payor.**

**WAC 388-78A-2651 Written residency agreement-Residents with medicaid as a payor.**

**WAC 388-107-0161 Written residency agreement-Residents with medicaid as a payor.**



# Residency Agreement 2

## NEW SECTION

(1) For the purposes of this section "residency agreement" means a legally enforceable written document prepared by the [AFH/ALF/ESF] that contains the rights and responsibilities of the facility and the resident specific to transfer and discharge and is signed by both parties.

(2) For residents with medicaid as a payor the facility must complete a signed written residency agreement with each resident that:



# Residency Agreement 3

- (a) Is signed by the resident or their legal representative and the facility upon admission of the resident to the facility;
- (b) Requires the facility to agree to comply with the long-term care residents rights statute transfer and discharge requirements pursuant to RCW 70.129; and
- (c) Requires the facility to provide notice to residents before transfer and discharge that includes information about available legal resources and notice that, subject to legislative appropriation, residents have the right to legal counsel at public expense upon notice of transfer or discharge.



# Residency Agreement 4

(3) For residents whose payor status changes from medicaid to private pay, a new residency agreement is required if the resident's payor status returns to medicaid.

(4) A copy of the residency agreement that is signed and dated by both parties must be:

- (a) Kept in the resident record; and
- (b) Provided to the resident or their representative.



# Residency Agreement 5

(5) The residency agreement must be in substantially the following form:

**Residency agreement-residents with medicaid as a payor.**

(a) [facility name] agrees to comply with the long-term care residents rights statute transfer and discharge requirements pursuant to RCW 70.129.

(b) Subject to legislative appropriation [resident name] has a right to a free lawyer to help them in response to a notice of transfer or discharge. If they want a free lawyer to help them, they must call the long-term care discharge defense screening line at [phone number].

(c) [Signature of resident/legal representative and date].

(d) [Signature of facility and date].

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# Transfer and Discharge Notice

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# Transfer and Discharge

NEW SECTION (same language for AFH/ALF/ESF)

## **WAC 388-76-10617 Transfer and discharge notice-Residents with medicaid as a payor.**

- For residents with medicaid as a payor, in addition to the requirements in WAC 388-76-10616, the adult family home must...

## **WAC 388-78A-2661 Transfer and discharge notice-Residents with medicaid as a payor.**

- For residents with medicaid as a payor, in addition to the requirements in WAC 388-78A-2660, the assisted living facility must...

## **WAC 388-107-0281 Transfer and discharge notice-Residents with medicaid as a payor.**

- For residents with medicaid as a payor, in addition to the requirements in WAC 388-107-0281, the enhanced services facility must...



# Transfer and Discharge 2

The (AFH/ALF/ESF)...must do the following when issuing a written notice of transfer or discharge:

- (1) Include in the notice contact information provided by the department for the legal services agencies assigned to provide legal counsel;
- (2) Clearly state in the notice that, subject to legislative appropriation, legal counsel at public expense is available to represent the resident's interests in the transfer or discharge process. This language must be substantially in the following form: "Subject to legislative appropriation you have a right to a free lawyer to help you respond to a notice of transfer or discharge. If you want a free lawyer to help you, please call the long-term care discharge defense screening line at [phone number].";





# Transfer and Discharge 3

- (3) Within three calendar days of issuing the notice, provide a copy of the notice to the resident's assigned department case manager;
- (4) Within three calendar days of issuing the notice, provide a copy of the notice to the Washington state long-term care ombudsman program; and
- (5) Issue the transfer and discharge notice in substantially the following form:



# Transfer and Discharge 4

## **Notice of transfer or discharge-residents with medicaid as a payor:**

- (a) Resident information;
  - (i) Resident name;
  - (ii) Resident address;
- (b) Facility information;
  - (i) Facility name;
  - (ii) Facility address;
  - (iii) Contact person's name;
- (c) Date notice given;



# Transfer and Discharge 5

(d) Effective date: Effective date must be at least 30 days from the date notice is given unless an exception applies according to RCW 70.129.110;

(e) Location to where resident is transferred or discharged:

(i) Name;

(ii) Address;

(iii) Phone;

(f) Reason for transfer or discharge: The specific reason for the transfer or discharge must be one or more of the reasons in (i)-(v) of this subsection:

(i) Transfer or discharge is necessary for the resident's welfare and the residents' needs cannot be met in the facility;



# Transfer and Discharge 6

- (ii) The safety of individuals in the facility is endangered;
- (iii) The health of individuals in the facility would otherwise be endangered;
- (iv) The resident has failed to make the required payment for their stay;
- (v) The facility ceases to operate.
- (g) Copy of notice given within three days to:
  - (i) Department case manager;
  - (ii) Washington state long-term care ombudsman program;



# Transfer and Discharge 7

(h) Your rights and resources;

(i) Legal counsel: Subject to legislative appropriation, you have a right to a free lawyer to help you respond to a notice of transfer or discharge. If you want a free lawyer to help you, please call the long-term care discharge defense screening line at [phone number].



# Transfer and Discharge 6

(ii) Washington state ombuds: The Washington state long-term care ombudsman program is available to answer questions and provide assistance regarding this notice and your health, safety, welfare, and rights as a long-term care resident. If you wish to find out more about the long-term care ombuds, call 1-800-562-6028. You may also contact a long-term care ombuds in writing, by fax at (253) 815-8173, email at [ltcop@mschelp.org](mailto:ltcop@mschelp.org), or mail at PO Box 23699, Federal Way, WA 98093-0699.



# Transfer and Discharge 8

(iii) Disability rights Washington: If you have a diagnosis of a mental illness or an intellectual disability, you may contact disability rights Washington 1-800-562-2702 or (206) 324-1521. You may also make your request in writing by fax at (206) 957-0729, email at [info@dr-wa.org](mailto:info@dr-wa.org) or mail at disability rights Washington, 315 5th Ave S, Suite 850, Seattle WA, 98104.

(iv) DSHS home and community living administration (HCLA): You have the right to make a complaint to the complaint resolution unit (CRU/complaint hotline) 1-800-562-6078.

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# Resident Records

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# Resident record—Content AFH

## **WAC 388-76-10320 Resident record—Content.**

*(showing only amended section for space purposes)*

The adult family home must ensure that each resident record contains, at a minimum, the following information:

...

(12) The residency agreement for residents with medicaid as a payor.



# Content of resident records ALF

## **WAC 388-78A-2410 Content of resident records.**

*(showing only amended section for space purposes)*

The assisted living facility must organize and maintain resident records in a format that the assisted living facility determines to be useful and functional to enable the effective provision of care and services to each resident. Active resident records must include the following:

...

(14) The residency agreement for residents with medicaid as a payor.



# Resident records-Clinical records ESF

## **WAC 388-107-0560 Resident records—Clinical records.** *(showing only amended section for space purposes)*

(2) The enhanced services facility must ensure the clinical record of each resident includes a minimum of the following:

...

(I) The residency agreement for residents with medicaid as a payor;

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# Resources

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# Resources

## **Is there a residency agreement template available?**

- You can use the outline in WAC 388-76-10506(5) for AFH, 388-78A-2651(5) for ALF, or 388-107-0161(5) for ESF.
- DSHS is developing an optional residency agreement/occupancy terms list for your use (coming soon- HCS will share).



# Resources

**Where do I find the phone number for legal services to include in my residency agreements and transfer or discharge notice?**

The Office of Civil Legal Aid will contract with one or more agencies to provide this service. Once the contract is in place and the phone number is available, DSHS will post the phone number on our facility pages for each facility type:

- [Information for Adult Family Home Providers | DSHS](#)
- [Information for Assisted Living Facility Professionals | DSHS](#)
- [Enhanced Services Facilities | DSHS](#)



# Resources

## **Is there a discharge notice template or form?**

DSHS is developing an optional Transfer or Discharge Notice form for use in AFH, ALF and ESF (coming soon).



# References

- [Home and Community Based Settings \(HCBS\) Implementation New Rules Effective January 1, 2026](#) (Question and Answer document)
- [WSR 25-18-037 Permanent Rule-Making](#)
- [eCFR :: 42 CFR 441.530\(a\)\(1\)\(vi\)\(A\)](#)
- [eCFR :: 42 CFR 441.301\(c\)\(4\)\(vi\)\(A\)](#)
- [Chapter 70.129 RCW: LONG-TERM CARE RESIDENT RIGHTS](#)
- [Chapter 388-76 WAC:](#)
- [Chapter 388-78A WAC:](#)
- [Chapter 388-107 WAC:](#)



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# Questions

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# Thank you!

Questions?

Contact [RCSpolicy@dshs.wa.gov](mailto:RCSpolicy@dshs.wa.gov).