

**STATE OF WASHINGTON**

**DEPARTMENT OF SOCIAL AND HEALTH SERVICES**

***Aging and Long-Term Support Administration***

***PO Box 45600, Olympia, Washington 98504-5600***

January 14, 2020

**TO:** Interested Persons

**FROM:** Libby Wagner, Adult Family Home Policy Program Manager

Aging and Long-Term Support Administration

Residential Care Services

**SUBJECT:** **CONCISE EXPLANATORY STATEMENT *(per RCW 34.05.325)***

For Significant Legislative Rules

Proposed as WSR 19-11-105 and 19-21-116

SUBJECT MATTER AND WAC NO.:

Chapter 388-76 WAC Adult Family Home Minimum Licensing Requirements

Amended:

388-76-10000 Definitions

388-76-10003 Department access

388-76-10020 License – Ability to provide care and services

388-76-10035 License requirements – Multiple family home providers (NEW TITLE: Multiple adult family home providers)

388-76-10037 License requirements – Multiple adult family homes – Additional homes

388-76-10060 Application – Department orientation class – Required

388-76-10063 Application – General training requirements

388-76-10064 Adult family home administrator training requirements

388-76-10074 Application – Waiver of fees

388-76-10085 Application – Individual or coprovider (NEW TITLE: Affiliated facilities)

388-76-10090 Application – Entity application

388-76-10095 Application – Identification of landlord – Required (NEW TITLE: Identification of property owner – Required)

388-76-10105 Application – Change of ownership

388-76-10106 Change of ownership – Notice to department and residents

388-76-10107 Priority processing – Change of ownership and relocation

388-76-10120 License – Must be denied

388-76-10125 License – May be denied

388-76-10129 Qualifications – Adult family home personnel

388-76-10130 Qualifications – Provider, entity representative, and resident manager

388-76-10145 Qualifications – Licensed nurse as provider, entity representative, or resident manager

388-76-10950 Remedies – History and actions by individuals

New Sections:

388-76-10041 License – Change of personnel

388-76-10201 Succession plan

REASON FOR ADOPTION: The proposed rule changes address barriers to entry for certain provider and entity types and clarify other requirements for licensure that have been ambiguous. The anticipated effect is to reduce regulatory burdens for new qualified providers, to increase access to the adult family home industry, and to improve access to beds for residents. Other expected outcomes are decreased application processing wait times and improved compliance due to better clarity of the regulations. These all fit into the goals and the mission of DSHS. Together, these proposed changes will improve the quality of care for residents and ensure protection of their rights.

DESCRIPTION OF HOW THE RULE IMPLEMENTS A LEGISLATIVE DIRECTIVE OR INTENT: RCW 70.128.040 mandates that the department adopt rules that address the differences between different business structures and that procedures established by the department should be easy to understand and comply with. Representatives of adult family homes raised some concerns about rules and procedures that do not meet that intent. This rule change is intended to better recognize those differences and ease unnecessary regulatory burdens.

STATUTES AUTHORIZING THE ADOPTION OF RULES ON THIS SUBJECT: RCW 70.128.040 and RCW 70.128.060

DESCRIPTION OF THE PROCESS TO INVOLVE PUBLIC STAKEHOLDERS IN THIS RULE’S DEVELOPMENT: In addition to the required notification and comment process that is part of the rule making process, three meetings were held with the Adult Family Home Council (AFHC), a representative of the Long Term Care Ombuds Program, and multiple interested adult family home licensees to discuss the proposed rule changes. They were also given two additional comment opportunities before the draft was submitted as a CR 102. The draft rules were posted on the Adult Family Home provider website. A letter was also posted, with notifications of the posting going to stakeholders to inform them of the rule-making process and to encourage them to contact us regarding questions or suggestions for the rule development. A public hearing was held on July 9, 2019. After amending the proposal due to comments made during the first public comment period, a supplemental CR 102 was filed, opening a second public comment period. The updated proposal was also posted on the Adult Family Home provider website along with a second letter to our stakeholders. A second public hearing was held on December 10, 2019. No further changes were made based on the second public comment period and second public hearing.

CHANGES MADE SINCE THE RULE WAS PROPOSED: (check one)

The rule text being adopted and Cost-Benefit Analysis do not differ from proposal.

The rule text being adopted and/or Cost-Benefit Analysis contain only editorial changes from the proposal.

The text of the adopted rule and/or Cost-Benefit Analysis vary from the proposal. The changes, other than editing changes, follow:

WAC 388-76-10000: Added “home care aides, or qualified long-term care workers” to the definition of “Nurse delegation”.

WAC 388-76-10003: Added “as well as all areas of the home for the purpose of checking smoke detectors, fire extinguishers, and posting of the emergency evacuation floor plan” to (2).

WAC 388-76-10035: Added “adult” to title of section.

WAC 388-76-10041: Changed “information” to “personnel” in title of section, deleted “through the change in information form” from (1), and changed (2) to read as follows: “Provide at least one point of contact for the owner, board of directors, or other governing body and if the entity has a board of directors, the provider must post in the home in a visible location in a common area information on at least one board meeting per twelve month period where all residents, their representatives, adult family home staff, the department, representatives of resident advocacy pro-grams, and the long-term care ombuds can view it; and”.

WAC 388-76-10060: Changed “the department will process” to “submitting” in (1), changed (3) as follows: “A new entity representative in a currently-licensed adult family home must attend a department-approved orientation class within one hundred and twenty days of assuming the role, unless: (a) They have completed the course in the previous twenty-four months; or (b) They worked as an entity representative or provider in an adult family home in the last twelve months.”

WAC 388-76-10063: Changed to read as follows: “An applicant must ensure that any individual provider, entity representative, or resident manager listed on the application has successfully completed the training that is required for their role under this chapter and chapter 388-112A WAC.”

WAC 388-76-10064: Added “and entity representatives” to (1), deleted section (3).

WAC 388-76-10107: Changed (2) as follows: “If priority processing is granted, the requirement that writ-ten notification be provided to the department and residents or applicable resident representatives sixty days prior to the change of ownership may be waived. Notice will be required as early as possible if this requirement is waived.”

WAC 388-76-10120: Changed (3) as follows: “The applicant, the spouse or domestic partner of an applicant who is a sole proprietor, the spouse or domestic partner of an entity representative with an ownership interest in the business, or any partner, officer, director, managerial employee or majority owner of the applying entity:”

WAC 388-76-10125: Changed “persons” to “residents” in (23)(b)(iii).

WAC 388-76-10129: Added new section (3) as follows: “For entities licensed after the effective date of this section, an individual can only be the entity representative for one entity provider.”

WAC 388-76-10145: Added “for their role” in (1).

The changes were made because: Text changes were made as a result of comments received. Unless otherwise noted, the comments were received during the first public comment period.

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| SUMMARY OF COMMENTS RECEIVED | THE DEPARTMENT CONSIDERED ALL THE COMMENTS. THE ACTIONS TAKEN IN RESPONSE TO THE COMMENTS, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW. |
| **WAC 388-76-10000 Definitions**  A written request was made to include home care aide as someone who can receive nurse delegation. | A change was made in response to this comment.  This matches the language in WAC 246-840-910, so the text was amended as follows: **"Nurse delegation"** means a registered nurse transfers the performance of selected nursing tasks to competent nursing assistants, home care aides, or qualified long-term care workers in selected situations. The registered nurse delegating the task retains the responsibility and accountability for the nursing care of the resident. |
| **WAC 388-76-10000 Definitions**  A written request was made to define remedy, enforcement remedy, suspension, condition and limit. | No change was made in response to this comment  This was not incorporated as it is outside of the scope of this rule-making project. |
| **WAC 388-76-10003 Department access**  A written request was made to include “All levels of the home to check the smoke detectors, fire extinguishers, and posting of the floor plan for that level of the home.” | A change was made in response to this comment.  This comment was amended and incorporated as follows: “The physical premises includes the buildings, grounds, and equipment, as well as all areas of the home for the purpose of checking smoke detectors, fire extinguishers, and posting of the emergency evacuation floor plan.” The suggestion matches current practice and will clarify that licensors are able to access these areas for this purpose. The word “area” is used instead of “level” because some homes may have only one level but still require smoke detectors in areas licensors would not otherwise be able to access. |
| **WAC 388-76-10035 License requirements – Multiple adult family home providers**  A written comment requested removing the requirement that an applicant for an additional home not be required to take the adult family home administrator training. | No change was made in response to this comment  This request was not incorporated into the rule change because this is a required course for new applicants under chapter 388-112A WAC. |
| **WAC 388-76-10041 License – Change of personnel**  A written request was made to clarify how providers can share information about owners and board meetings. | A change was made in response to this comment.  This comment was addressed by the following: “Provide at least one point of contact for the owner, board of directors, or other governing body and if the entity has a board of directors, the provider must post in the home in a visible location in a common area information on at least one board meeting per twelve month period where all residents, their representatives, adult family home staff, the department, representatives of resident advocacy programs, and the long-term care ombuds can view it.” This change will give more clear direction to providers on how to fulfill this requirement. |
| **WAC 388-76-10060 Application – Department orientation class – Required**  A written request was made to replace “the department will process” an application to “submitting” an application. | A change was made in response to this comment.  This change will tie the action to the actor in this subsection, so it was adopted. |
| **WAC 388-76-10060 Application – Department orientation class – Required**  A written request was made to give a home a grace period to meet this requirement if they need to change entity representatives, as this position often has little warning before vacancy. | A change was made in response to this comment.  The originally proposed language was difficult to follow in the event of a sudden departure, which is often outside of the control of the provider. This comment was incorporated as follows: “A new entity representative in a currently-licensed adult family home must attend a department-approved orientation class within one hundred and twenty days of assuming the role, unless:  (a) They have completed the course in the previous twenty-four months; or  (b) They worked as an entity representative or provider in an adult family home in the last twelve months.” |
| **WAC 388-76-10063 Application – General training requirements**  A written request was made to clarify which people on the application are required to meet training requirements, as not everyone will have requirements to meet. | A change was made in response to this comment.  This comment was incorporated as follows: “An applicant must ensure that any individual provider, entity representative, or resident manager listed on the application has successfully completed the training that is required for their role under this chapter and chapter 388-112A WAC.” This should reduce confusion when there are individuals listed on an application that do not meet any of those roles. |
| **WAC 388-76-10064 Adult family home administrator training requirements**  A written comment was made to request removing the requirement that a currently licensed provider or entity representative who has not previously completed the adult family home administrator training complete the training before applying for a new license. | No change was made in response to this comment.  This request was not incorporated into the rule change because this is a required course for new applicants under chapter 388-112A WAC. This course gives current providers and entity representatives a chance to learn about changes to the field or regulations they may not previously have been aware of. |
| **WAC 388-76-10090 Application – Entity application**  A written comment was made requesting that the requirement that a person only be the entity representative for one entity provider be removed because an entity may own more than one home and their entity representative should be able to serve multiple homes. | No change was made in response to this comment.  This request was not incorporated because the commenter’s concern isn’t the outcome of the proposed change. The regulation states that the entity representative cannot represent multiple entities. If an entity is licensed for multiple homes, their entity representative can serve as the representative for each home. This is not prevented by this proposed change. |
| **WAC 388-76-10106 Change of ownership – Notice to department and residents**  A written comment was made to remove the date of proposed change in the notice to the department and residents. | A change was made in response to this comment.  The date of proposed change is difficult for providers to estimate because they do not usually know when their application will be approved, so we did remove this requirement. |
| **WAC 388-76-10107 Priority processing – Change of ownership and relocation**  A written comment stated that the proposed change was confusing. | A change was made in response to this comment.  To clarify, the text was revised to the following: “If priority processing is granted, the requirement that written notification be provided to the department and residents or applicable resident representatives sixty days prior to the change of ownership may be waived. Notice will be required as early as possible if this requirement is waived.” |
| **WAC 388-76-10120 License – Must be denied**  A written comment stated that the proposed change was confusing. | A change was made in response to this comment.  To clarify, the text was revised to the following:  “The applicant, the spouse or domestic partner of an applicant who is a sole proprietor, the spouse or domestic partner of an entity representative with an ownership interest in the business, or any partner, officer, director, managerial employee or majority owner of the applying entity:” |
| **WAC 388-76-10125 License – May be denied**  A written comment suggested changing the word “persons” to “residents.” | A change was made in response to this comment.  “Residents” is the more appropriate word in this context, so this change was made. |
| **WAC 388-76-10125 License – May be denied**  A written comment requested removing the proposed change in parens (25). | No change was made in response to this comment.  This requested change was not made. RCW 70.128.065 outlines the requirements for obtaining an additional license, including timelines during which the provider must maintain compliance with the licensing regulations. Currently, an individual can obtain multiple business licenses under different business names and use those to obtain multiple licenses without complying with these timelines. This is against the intent of the proposed changes. |
| **WAC 388-76-10129 Qualifications – Adult family home personnel**  After reviewing stakeholder comments, the department determined that the language needed clarification. | A change was made.  This clarifies that the requirement that an individual can only serve as an entity representative for one entity provider applies to new and currently licensed homes. It also adds a grandfathering clause for currently licensed entities who are sharing an entity representative to reduce the burden to those homes. |
| **WAC 388-76-10129 Qualifications – Adult family home personnel**  During the second public comment period, a written comment requested that the requirements of this section, specifically the training requirements, only apply to personnel who provide direct care. | No change was made in response to this comment.  The requirements of this chapter apply to all personnel. This chapter and WAC chapter 388-112A, which is referenced in this section, delineate which training requirements apply to staff who provide direct care. Employees who do not provide direct care do have obligations under this chapter, but they are fewer than the requirements of staff who provide direct care. |
| **WAC 388-76-10130 Qualifications – Provider, entity representative, and resident manager**  A written comment asked to include that any translations of documentation to meet the education requirements must be completed by the Foundation for International Services, because they are not otherwise accepted. It also asked about home schooled applicants. | No change was made in response to this comment.  The department does not require that translations be completed by the Foundation for International Services. The department will include information on the application instructions on how to find a recognized translation service. Home schooled applicants can submit the same documentation to show they meet the requirements as other applicants. |
| **WAC 388-76-10145 Qualifications – Licensed nurse as provider, entity representative, or resident manager**  A written comment asked for clarification on what will be considered “relevant.” | A change was made in response to this comment.  To clarify, this comment was incorporated with the following: “Meets the relevant qualifications for their role listed in WAC 388-76-10130.” |
| **WAC 388-76-10201 Succession plan**  A written comment asked that this requirement be removed as there are rules in place to expedite a change of ownership in case an emergency causes a provider to not be able to meet residents’ needs unexpectedly. | No change was made in response to this comment.  There have been many instances of a provider having a health or family emergency and needing to leave their home unexpectedly. Recent provider deaths have highlighted the need for this change. This requirement will ensure the health and safety of residents in the case that happens. There are rules in place to expedite a change of ownership, but that only works if there is someone ready to assume the license. This requirement will ensure that someone is ready to take the license. |

cc: DSHS Rules Coordinator