**MEMORANDUM**

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| **DATE:** | **October 14, 2019** |
| **TO:** | Interested Stakeholders  Katherine Vasquez, DSHS Rules Coordinator |
| **FROM:** | Libby Wagner, Division of Residential Care Services |
| **SUBJECT:** | Small Business Economic Impact Statement and Cost Benefit Analysis for Proposed Amendments to Chapter 388-76, Adult Family Home Minimum Licensing Requirements |

**SUMMARY OF PROPOSED RULES**

The Department of Social and Health Services’ Aging & Long Term Support Administration is proposing amendments to chapter 388-76 WAC, Adult Family Home Minimum Licensing Requirements.

The purpose of this chapter is to implement chapter 70.128 RCW, to promote the safety and well-being of adult family home residents, to specify standards for adult family home providers, and to further establish requirements for operating an adult family home.

The proposed amendments to this chapter create a new section that adopts federal Home and Community Based Settings requirements as set forth in the Code of Federal Regulations (C.F.R.) section 441.530. Because these requirements are not being adopted without material change, this is considered a significant legislative rule and subject to Small Business Economic Impact and Cost Benefit Analysis.

**SMALL BUSINESS ECONOMIC IMPACT STATEMENT – DETERMINATION OF NEED**

Chapter 19.85 RCW, The Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses. The statute defines small businesses as those business entities that employ fifty or fewer people and are independently owned and operated. These proposed rules impact adult family homes, which are generally classified as small businesses. An adult family home is a residential home in which a person or entity is licensed to provide personal care, special care, room, and board to more than one but not more than six adults.

Preparation of a Small Business Economic Impact Statement (SBEIS) is required when a proposed rule has the potential of placing a disproportionate economic impact on small businesses. Residential Care Services (RCS) has analyzed the proposed rule amendments and has determined that some small businesses will be impacted by these changes. However, there will be no cost associated with the rule change. Rather, this analysis will show that by adopting these rules, adult family homes will benefit.

RCS has determined there are approximately 3,000 adult family homes in the state of Washington, which will be affected by these regulations. Because the adult family home industry is almost entirely comprised of small businesses, this impact will primarily be borne by small business.

**INDUSTRY ANALYSIS**

RCS is responsible for licensing and regulating adult family homes. As part of our monitoring responsibilities, we keep a database with currently licensed facilities. Using this database gives an accurate estimate of the number of businesses affected by these rule changes. Currently, there are approximately 3,000 adult family homes in the state of Washington that meet the criteria of small business under RCW 19.85.020.

**INVOLVEMENT OF SMALL BUSINESS**

This project was initiated by a change in the Code of Federal Regulations and has been determined to apply to adult family homes by the department and the Center for Medicare and Medicaid Services (CMS.) In creating the draft language, the department worked with the Adult Family Home Council, the collective bargaining representative for adult family homes; adult family home providers; and the Long Term Care Ombuds Program. This group discussed questions around implementation of the regulations and how the draft language could be clarified for greater understanding by the regulated entities and their clients. The department also offered a training to adult family home providers on the federal regulations to ensure understanding and solicit further feedback on any potential barriers to compliance.

**COST OF COMPLIANCE**

Because the proposed change to the rule “establishes, alters, or revokes any qualification or standard for the issuance, suspension, or revocation of a license or permit,” RCS has determined the proposed rules to be “significant” as defined by the legislature. As required by RCW 34.05.328(1)(d), RCS has analyzed the probable costs and benefits of the proposed amendments, taking into account both the qualitative and quantitative benefits and costs. Under Chapter 19.85 RCW, RCShas considered annual costs to small businesses that are fifty dollars or more per client. Our analysis shows that there are no associated costs with the proposed rule change.

The federal regulations under C.F.R. 441.530 have already been determined to apply to the adult family home setting prior to this rule change. Because of this all of the requirements outlined in the new section are already being enforced through WAC Chapter 388-76-10015. Providers received training on these regulations and their expectations in August, 2015. This rule change does not represent a change to current standards or policies. The proposed language does differ from the federal regulations for two reasons. First, department policy is to use plain language in writing regulations, so the language is amended to be clearer to the average user. Second, some of the requirements are covered by the current regulations in WAC Chapter 388-76, and the proposed language attempts to avoid duplication. Because these regulations are already in effect and adult family homes are already expected to be in compliance with them, there is no expected cost associated with the proposed changes.

*Disproportionate Economic Impact Analysis*

When proposed rule changes cause more than minor costs to small businesses, the Regulatory Fairness Act requires an analysis that compares these costs between small businesses and ten percent of the largest businesses. Because there are no costs associated with this proposal, the department did not find any evidence of a disproportionate impact on small businesses.

*Benefits for Proposed Rules*

By adopting the federal regulations into the WAC chapter, adult family homes will be able to more easily identify these regulations. Having the regulations in one place will result in less time spent by providers in searching for the federal regulations. This will mean increased compliance and reduced enforcement costs. In addition to creating these benefits for adult family homes, the proposed changes will further ensure that homes are protecting resident rights, which will improve the quality of life and care for residents in the home.

**JOBS CREATED OR LOST**

No jobs are expected to be created or lost by the proposed rule change.

**CONCLUSION**

DSHS, Aging & Long Term Support Administration has given careful consideration to the impact of proposed rules in Chapter 388-76 on small businesses. To comply with the Regulatory Fairness Act, Chapter 19.85 RCW, DSHS, Aging & Long Term Support Administration has analyzed impacts on small businesses and determined that no costs are associated with this proposed rule change.

Please contact me if you have any questions at (253) 234-6061.