**MEMORANDUM**

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| **DATE:** | February 11, 2021 |
| **TO:** | Interested Stakeholders  Katherine Vasquez, DSHS Rules Coordinator |
| **FROM:** | Debbie Hoeman, Behavioral Health Policy Program Manager, Division of Residential Care Services |
| **SUBJECT:** | Cost-Benefit Analysis for Proposed Amendments to WAC 388-78A-2360, Adult day services, and WAC 388-78A-2371, Investigations |

**SUMMARY OF PROPOSED RULES**

The Department of Social and Health Services (department), Aging & Long Term Support Administration (ALTSA) is proposing amendments to WAC 388-78A-2360, Adult day services, and WAC 388-78A-2371, Investigations.

The chapter is written to implement chapter 18.20 RCW, to provide for the development, establishment, and enforcement of standards for the maintenance and operation of Assisted Living Facilities, which, in the light of advancing knowledge, will promote safe and adequate care of the individual therein.

The proposed rule changes are intended to promote the safety and well-being of Assisted Living Facility residents to specify standards for investigating and documenting investigative actions and findings for any alleged or suspected abuse, neglect, or financial exploitation; or accident or incident jeopardizing or affecting a resident’s health and safety. The current rule adopted December 31, 2019 unintentionally expanded the scope of reporting. This rule making would adopt the rule requirements in effect prior to the December 2019 rule adoption. The proposed rules specifically reduces confusion for Assisted Living Facilities by amending reporting procedures using clear and succinct language and removing language stakeholders reported as overly broad.

Proposed WAC 388-78A-2371, Investigations:

* + - * Removes the reporting requirement to local law enforcement;
      * Clarifies the requirement to investigate specific types of accidents or incidents;
      * Requires the facility to implement appropriate prevention measures if necessary.
      * Establishes documentation requirements including investigative actions, findings, and determinations, and when necessary, prevention measures; and
      * Maintains the requirement to protect residents during the course of the investigation.

Proposed WAC 388-78A-2360, Adult day services, updates an internal cross-reference only.

**INVOLVEMENT OF STAKEHOLDERS**

The proposed sections have been amended in response to stakeholder request to reduce confusion and narrow the scope of action. This section has also been rewritten in plain English, making it more understandable to our customers.

The draft rules were provided to stakeholders for informal review and comment prior to proposing the rules for adoption. During the informal comment period, the department did not receive any comments.

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

Chapter 19.85 RCW, The Regulatory Fairness Act, requires that the economic impact of proposed significant legislative rules under chapter 34.05 RCW be analyzed in relation to small businesses. The statute defines small businesses as those businesses that employ fifty or fewer people and are independently owned and operated. These proposed rules impact Assisted Living Facilities, which are generally classified as small businesses. An Assisted Living Facility is a residential facility in which a person or entity is licensed to provide personal care, special care, health support services, or intermittent nursing services to its residents.

Preparation of a Small Business Economic Impact Statement (SBEIS) is required when a proposed significant legislative rule has the potential of placing a disproportionate economic impact on small businesses. The Regulatory Fairness Act outlines information that must be included in an SBEIS. The department analyzed the proposed rules and determined they will impose no new costs on small businesses as the proposed changes reduce the burden on Assisted Living Facilities (see the Evaluation of Probable Costs and Probable Benefits below). Based on the department’s determination, the preparation of a comprehensive SBEIS is not required.

**EVALUATION OF PROBABLE COSTS AND PROBABLE BENEFITS**

Assisted Living Facilities are affected by these proposed rules, and as required by RCW 34.05.328(1)(d), the department has analyzed the probable costs and probable benefits of the proposed amendments, taking into account both the qualitative and quantitative benefits and costs.

**WAC 388-78A-2360**

The department determined proposed WAC 388-78A-2360, Adult day services, updates an internal cross-reference only and is not considered a “significant legislative rule” under RCW 34.05.328(5)(b)(iv) because it ”clarifies language of a rule without changing its effect”.

**WAC 388-78A-2371**

The department determined proposed WAC 388-78A-2371, Investigations, is considered a “significant legislative rule” under RCW 34.05.328(5)(c)(iii) because it makes the following “significant amendments to a policy or regulatory program”:

* + - * Removes the requirement for Assisted Living Facilities to report local law enforcement and the department any individual threatening bodily harm or causing a disturbance that threatens an individual’s welfare and safety.

The following are not considered significant under RCW 34.05.328(5)(c)(iii) as they:

* + - * Clarify without changing the effect of the requirement by replacing reference to guidelines with specific investigative actions related to alleged or suspected abuse, neglect, or financial exploitation; or accident or incident jeopardizing or affecting a resident’s health or life; and to determine the circumstances of the event;
      * Clarify without changing the effect of the requirement by replacing reference to guidelines with a specific requirement to implement and document appropriate prevention measures if deemed necessary. and
      * Maintain the requirement to protect residents during the course of the investigation.

The proposed rule removes the requirement for Assisted Living Facilities to report local law enforcement and the department any individual threatening bodily harm or causing a disturbance that threatens an individual’s welfare and safety. The department determined the current rule is overly broad and assumes the proposed rule is likely to reduce costs as a result of lessening the regulatory burden on Assisted Living Facilities. The proposed rule narrows the scope of reportable circumstances to be consistent with chapter 74.34 RCW, Abuse of Vulnerable Adults, and WAC 388-78A-2630, Reporting Abuse and Neglect.

**Probable Costs**

The department assumes there is a reduced cost associated with eliminating the requirement to report any individual threatening bodily harm or causing a disturbance that threatens an individual’s welfare and safety. This requirement is unclear as the terms ‘disturbance’ and ‘welfare’ are not defined in rule and could include minor behaviors typical of residents living in Assisted Living Facilities that do not warrant local law enforcement or department action.

In addition, the current rule has been in effect for just over one year and data is not available to determine how many reports to local law enforcement or investigations may be avoided by adopting the proposed rules. However, the department received comments from stakeholders that make clear the concerns of added cost under the current rule requirements (see Appendix A, Request to revise rules, number 1).

**Probable Benefits**

Assisted Living Facilities are already required to report incidents of abuse to the department and local law enforcement under chapter 74.34 RCW and WAC 388-78A-2630. Removing the reporting requirement in WAC 388-78A-2371 does not reduce the requirement of the rules already in place, therefore does not increase health and safety risks for residents.

The department assumes adoption of the proposed amendments will result in several benefits including reducing confusion on what does and does not qualify under the rule as a circumstance requiring investigation and reporting to local law enforcement and the department.

The department further assumes the proposed rule maintains resident safety by requiring Assisted Living Facilities to investigate and document investigative actions and findings for any alleged or suspected abuse, neglect, or financial exploitation consistent with reporting requirements under state law for these acts. WAC 388-78A-2630 requires reporting to local law enforcement and the department all incidents of abandonment, abuse, financial exploitation, or neglect when the staff person has reasonable cause to believe the incident has occurred.

**Conclusion**

The department assumes the proposed changes will likely reduce costs as identified above without increasing risk of harm to residents of Assisted Living Facilities. The department concludes that the probable benefits of the proposed rules exceed the probable costs. The department has complied with the appropriate sections of the Administrative Procedure Act and is prepared to proceed with the rule filing.

Please contact me if you have any questions at 360-725-3210.