**MEMORANDUM**

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| **DATE:** | **May 8, 2019** |
| **TO:** | Interested Stakeholders  Katherine Vasquez, DSHS Rules Coordinator |
| **FROM:** | Jeanette K. Childress, Division of Residential Care Services |
| **SUBJECT:** | Small Business Economic Impact Statement and Cost Benefit Analysis for Proposed Amendments to Chapter 388-78A WAC, Assisted Living Facility Licensing Rules |

**SUMMARY OF PROPOSED RULES**

The Department of Social and Health Services (DSHS), Aging & Long Term Support Administration is proposing amendments to chapter 388-78A WAC, Assisted Living Facility (ALF) Licensing Rules.

This chapter is written to implement chapter 18.20 RCW, to promote the safety and well-being of assisted living facility residents, to specify standards for assisted living facility operators, and to further establish requirements for the operation of assisted living facilities.

**Physical plant rules**

These rules have not been updated in fourteen years. DSHS developed the rules to clarify language that was unclear, ambiguous, and inaccurate. The rules needed to be coordinated with the national building code standards for assisted living facilities which are updated every three years. The Department of Health (DOH), Construction Review Services division collaborated with DSHS to review and develop requirements for the physical environment described in chapter 388-78A WAC Assisted Living Facility Licensing Rules.

**INVOLVEMENT OF STAKEHOLDERS**

**Advisory Committee**

An advisory committee was established to provide advisory opinion to transform policy decisions into action, build rules through collaboration and voting, give the community a forum for participating in rule development, and to provide a fair and transparent rule development process with a balance of expertise included in the decisions. The advisory committee consisted of representatives impacted by these ALF rules including representation of both for-profit and non-profit partners for each of the following: developers, architects, associations, facility administrators, and privately owned facilities. As well as representation from the Ombuds Office and the Department of Health, Construction Review Services.

Overview of changes:

**Reorganized sections**

DSHS reorganized the sections to reflect a flow of licensing requirements that occur from the construction phase with DOH Construction Review Services division through the licensing phase with DSHS Residential Care Services division.

**New section-Project and operations functional program**

DSHS added a new section to describe the requirements of the operations functional program for when developers, architects, and facilities make an application to DOH Construction Review Services to describe the care services that are impacted with physical plant requirements. It is a means to document considerations and decisions related to the physical environment for new construction. The functional program document identifies population specific standards on how services will be rendered in an area that must meet physical plant standards such as medication services and security.

**New section-General design requirements for memory care**

A section is included for the codification of memory care requirements with architectural and programmatic solutions for units commonly referred to as ‘dementia units’. The requirement for outdoor spaces has been clarified to identify an alternative consideration to the requirement that an outdoor space be available ‘on the floor on which the resident resides’ such as an indoor viewing area for new construction may be permissible. This section authorizes a facility to temporarily secure access to their outdoor spaces during inclement weather, construction, maintenance, and other temporary environmental factors.

**New section-Applicability requirements for physical plant**

DSHS added a new section to clarify the complicated references to grandfathering language for existing facilities that was added to the rules in 2004. This section reflects the regulations that are required by local and state building codes to be maintained with current standards for new and existing facilities.

**New section-New licenses and use of construction**

DSHS clarified which regulatory authority is required to inspect a facility when new construction has occurred for a new or currently licensed facility by DOH Construction Review Services, the Washington State Patrol Office of the Fire Marshal, and DSHS Residential Care Services. Certain construction projects must be inspected before licensing a facility or inhabited by a resident.

**Electronic Monitoring**

DSHS updated the rules to include the technological advances that have changed the facilities and resident families’ means of monitoring a resident’s care in conjunction with the use of electronics such as ‘nanny cams’ and other electronic devices. DSHS also adopted rules for electronic use of audio devices in community events at a facility and the use of such information for social media. The rules also expand the use of video monitoring to additional areas of a facility for the protection of facility property.

**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.

Preparation of a SBEIS is required when a proposed rule has the potential of placing a disproportionate economic impact on small businesses. The statute outlines information that must be included in a Small Business Economic Impact Statement (SBEIS).

DSHS, Aging & Long Term Support Administration has analyzed the proposed rule amendments and has determined that some small businesses will be impacted by these changes. However, the impacts impose no new or disproportionate costs to the existing providers. In instances, where existing providers may incur additional costs under these new rules, DSHS has allowed for the provider to comply with some of their previous licensing requirements if doing so does not jeopardize client health, safety, and welfare.

**EVALUATION OF PROBABLE COSTS AND PROBABLE BENEFITS**

Since 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,” DSHS has determined the proposed rules to be “significant” as defined by the legislature. As required by RCW 34.05.328(1)(d), DSHS has analyzed the probable costs and probable benefits of the proposed amendments, taking into account both the qualitative and quantitative benefits and costs.

**Costs**

The proposed WAC changes describe the licensing requirements for assisted living facilities undergoing construction for new and existing facilities. An overall consideration from the onset of the rules development process was to provide minimal cost impacts. The advisory committee recognizes that:

* Reorganizing these sections to achieve clarification of language, and editorial changes did not increase costs and at times reduced costs by narrowing or eliminating physical plant requirements.
* Revisions to the communication system provides trade-offs and design options that would likely balance any additional costs. It recognizes current technologies and maintains a current home-like environment.
* These changes in the electronic monitoring sections has an indeterminate impact on costs but may help lower insurance premiums, legal fees, and lower overall operating costs.
* Eliminating the requirement for an expensive clinic sink reduces costs, and shifts resources to resident care and other more useful capital improvements as well as valuable square footage for resident support spaces.
* Staff assisted areas such as intermittent nursing supply storage in residents rooms may increase design square footage costs. Additional construction cost, should a facility decide to create specialized storage space versus the use of storage ‘containers’ as permitted in regulation, should be offset many times over by reduction in resident and staff injury as long term benefits outweigh increase in initial construction costs.
* Changes to the toilet rooms and bathrooms section will increase costs. Increase in construction costs likely to be made up by reduced resident and staff injury and increased resident satisfaction.
* The outdoor spaces section has changes to the proposed text that may result in an increase in costs for providers by defining the required square footage per resident. These costs could be offset by alternative ‘viewable areas’ that can be located indoors for newly constructed memory care units; and by the ability of the facility to secure outdoor areas during temporary environmental changes such as weather, construction or maintenance, which may reduce costs associated with staff and resident injuries.
* Removing the requirements established in previous building codes that are no longer applicable reduces the cost of installation of outdated systems that do not meet the current high efficiency standards.

**Benefits**

DSHS proposed rules provide a number of ways that benefit the residents of assisted living facilities and clarify the regulatory requirements.

* Operational safety components added for consideration with the facility’s functional program.
* Effective preventative maintenance programs in the section on safety in the built environment are a recognized value added and minimum expectation.
* The restricted egress section, renamed Freedom of Access, establishes the building code as the basis for design for these systems.
* Proposed amendments increase resident freedom and choice to use cameras in their own rooms, while providing clarity around the installation of video/audio monitoring by parties other than the assisted living provider, in particular families who wish to use technology to keep in closer contact with the resident. These changes will reduce uncertainty for providers around emerging technologies; avoid disagreements between providers and families; clarify and protect residents' rights to make informed decisions as to communication, privacy, and security; and increase the protection of property for facilities therefore potentially reducing insurance and repair costs.
* Changes to the heating and cooling sections provides for flexibility in mechanical system design to meet higher efficiency standards reducing operational and construction costs.
* The change to the capacity section will help provide clarification regarding changes in licensed bed capacity, and support residents who wish to age in place.
* The new design section facilitates compliance through clear presentation of construction and licensing requirements.
* Introduces the idea of alternative methods to the exemptions section by meeting the intent of the rule.
* The new license and construction section will improve the compliance environment by clarifying process and requirements.
* The communication system section recognizes current technologies and maintains current home-like environment.
* For toilet and bathroom sections, these changes address the fact that there is no model code requirement that a toilet must be located in a separate room; creates consistent standards moving forward from the date of adoption; addresses conflict between construction and manufacturers industry standard practice for sizing nomenclature, particularly with the selection of manufactured shower assemblies.

For more information the proposed amendments to this chapter can be viewed on the *Report on Comments Chapter 388-78A-WAC* issued by the Department of Social & Health Services, Residential Care Services Division October 2017 at <https://www.dshs.wa.gov/altsa/residential-care-services/information-assisted-living-facility-professionals>. The report includes cost impacts and benefits for each proposal.

**CONCLUSION**

DSHS, Aging & Long Term Support Administration has given careful consideration to the impact of proposed rules in Chapter 388-78A WAC 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 proposed ways to mitigate costs considered more than minor and disproportionate.

Please contact me if you have any questions at (360) 725-2591.