



Home and Community Based Settings (HCBS) Implementation New Rules Effective January 1, 2026

GENERAL REQUIREMENTS

What settings does this apply to?

- Adult family homes (AFH)
- Assisted living facilities (ALF)
- Enhanced services facilities (ESF)

Why did the department make these rules?

The department adopted rules to comply with federal regulations for Home and Community Based Settings (HCBS). The federal rules require residential HCBS setting have written agreements with Medicaid residents that provide protections related to eviction and appeals comparable to those provided by the Landlord Tenant Act ([42 CFR §441.530\(a\)\(1\)\(vi\)\(A\)](#), [42 CFR §441.301\(c\)\(4\)\(vi\)\(A\)](#)). The adopted rules create additional standards for transfer and for discharge for residents with Medicaid that comply with the requirements.

What do the new rules require me to do?

This is an overview of the requirements. Go to the individual WACs cited to see the full requirements.

For residents whose payor source is Medicaid (whether partially or fully paid by Medicaid):

1. AFH/ALF/ESF must have a signed written residency agreement between the facility/home and residents whose care is paid through Medicaid. This includes current and future residents and includes any resident whose care is partially or fully paid for by Medicaid. This is a new requirement- different from any other notice, agreement or contract required by current WAC or statute. WAC 388-76-10506 for AFH, 388-78A-2651 for ALF, or 388-107-0161 for ESF.
2. AFH/ALF/ESF must provide a copy of the residency agreement, signed by the facility and the resident or their representative, to the resident or their representative and keep a copy of the signed agreement in the resident record. WAC 388-76-10506 for AFH, 388-78A-2651 for ALF, or 388-107-0161 for ESF.
3. AFH/ALF/ESF must provide written notification to residents whose care is paid through Medicaid before transfer or discharge. Notice must include information about legal resources and notice that subject to legislative appropriation (funding), residents have the right to legal counsel at public expense upon notice of transfer or discharge. This is in addition to current notice requirements. WACs 388-76-10506, 388-76-10617 for AFH, 388-78A-2651, 388-78A-2661 for ALF, or 388-107-0161, 388-107-0281 for ESF.
4. AFH/ALF/ESF must provide a copy of the notice of transfer or discharge for any resident whose care is paid through Medicaid to the Long-Term Care Ombudsman Program and to the resident's DSHS case manager within three calendar days of issuing the notice. WAC 388-76-10617 for AFH, 388-78A-2661 for ALF, or 388-107-0281 for ESF.

Who do I contact if I need more information about the new rules?

Email rcspolicy@dshs.wa.gov. You may also contact Colleen Jensen at 564-999-3182.

WRITTEN RESIDENCY AGREEMENT

What is a residency agreement?

- As defined in WAC, "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. WAC 388-76-10506 for AFH, 388-78A-2651 for ALF, or 388-107-0161 for ESF.
- This "residency agreement" is defined in WAC and is different from other agreements or contracts completed at time of admission. WAC 388-76-10506 for AFH, 388-78A-2651 for ALF, or 388-107-0161 for ESF.

Must I complete a residency agreement with current residents whose care is paid through Medicaid?

Yes.

When must the residency agreement be in place for current residents whose care is paid through Medicaid?

- The rule has a delayed effective date of January 1, 2026. Agreements must be in place by that time.
- AFH/ALF/ESFs may enter into this new residency agreement with residents prior to January 1, 2026, but are not required to do so before that date.

When must the residency agreement be in place for future residents?

- Residents with Medicaid admitting to AFH/ALF/ESFs on or after January 1, 2026, must have a residency agreement at the time of admission.

- AFH/ALF/ESFs may enter into this new residency agreement with residents prior to January 1, 2026, but are not required to do so before that date.

What is required for the residency agreement?

The agreement must contain the information in WAC 388-76-10506 for AFH, 388-78A-2651 for ALF, or 388-107-0161 for ESF.

Is the new residency agreement the same as the “notice of rights and services” required by [RCW 70.129.030](#)?

- No. The new residency agreement is specific to residents whose care is paid for through Medicaid and is a new requirement for these residents only.
- The “notice of rights and services” is still required for ALL residents, regardless of payor, and has not changed. Some people call this a “residency agreement” or “contract”.

Is there a residency agreement template available?

- DSHS is developing an optional template for your use (coming soon).
- You can also create your own by using the outline in WAC 388-76-10506(5) for AFH, 388-78A-2651(5) for ALF, or 388-107-0161(5) for ESF.

NOTICE ABOUT LEGAL RESOURCES AND RIGHT TO LEGAL COUNSEL FOR TRANSFER OR DISCHARGE DISPUTES

What is the phone number for the legal services screening line for residents whose care is paid for by Medicaid?

There will be one centralized intake and screening line for all eligible AFH/ALF/ESF residents related to transfer or discharge disputes. The screening line is in development, and the phone number will be posted on the following pages when available:

AFH:

[Information for Adult Family Home Providers | DSHS](#) under the “Announcements” tab at the top of the page, and in the “Quick Links” tab in the table.

ALF:

[Information for Assisted Living Facility Professionals | DSHS](#) under the “Announcements” tab at the top of the page and in the “Home and Community Based Services (HCBS) residency agreement for residents with Medicaid” link in the list of items further down the page.

ESF:

[Enhanced Services Facilities | DSHS](#) under the “Announcements” tab at the top of the page, and under the “Information and Updates” header.

What is required for the notice of legal resources and right to legal counsel when issuing a notice of discharge or transfer to a resident with Medicaid?

- The notice must contain information in WAC 388-76-10617 for AFH, 388-78A-2661 for ALF, or 388-107-0281 for ESF.

Is there a transfer or discharge notice template available?

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

Do the new rules change any other residents’ rights?

No. The AFH/ALF/ESF must still comply with the transfer and discharge requirements in [RCW 70.129.110](#), and all other residents' rights in [Chapter 70.129 RCW](#).

CHANGE IN PAYOR

What happens when a resident's care is no longer paid for by Medicaid?

A written residency agreement is not required if the resident is no longer covered by Medicaid. All other resident rights in Chapter 70.129 still apply, including, but not limited to, notice of rights and services [RCW 70.129.030](#).

What if a resident's status changes from private pay to Medicaid?

See "What do the new rules require me to do" in this document.

ADDITIONAL FAQs

Is there a specific way to provide a copy of the transfer or discharge notice for residents with Medicaid to the Long-Term Care Ombuds office?

- AFH/ALF/ESF can use the method that works best for them, adhering to applicable confidentiality standards.
- Do not send notices for residents that do not have Medicaid as a payor.

Is there a specific way to provide a copy of the transfer or discharge notice for residents with Medicaid to the DSHS case manager?

- AFH/ALF/ESF can use the method that works best for them, adhering to applicable confidentiality standards.

Am I required to keep a copy of the residency agreement in the resident record?

Yes. WAC 388-76-10506 for AFH, 388-78A-2651 for ALF, or 388-107-0161 for ESF.

Am I required to provide a copy of the residency agreement to the resident or their representative?

Yes. You must provide them with a copy of the agreement, signed by both the facility and the resident or their representative. WAC 388-76-10506 for AFH, 388-78A-2651 for ALF, or 388-107-0161 for ESF.

Who can call the legal services screening line for residents whose care is paid for by Medicaid?

Referrals for legal assistance may be made by the resident; or, to the extent possible with the resident's knowledge, and in support of the resident's rights, by a legal guardian, family member, Long-Term Care Ombuds, or other advocate.

How will I know when the optional forms/templates and the legal services screening line phone number are available?

- DSHS will publish a "Dear Provider Letter" through Gov Delivery. If you are not signed up for Gov Delivery notices sign up here: [Washington Department of Social and Health Services – Home and Community Living Administration](#).
- DSHS will update our provider pages with the information once it is available.

References

[RCW 70.129](#)
[Chapter 388-76 WAC](#)
[Chapter 388-78A WAC](#)
[Chapter 388-107 WAC](#)