



STATE OF WASHINGTON  
DEPARTMENT OF SOCIAL AND HEALTH SERVICES  
*Aging and Long-Term Support Administration*  
*PO Box 45600, Olympia, Washington 98504-5600*

January 18, 2022

**AL TSA: NH #2022-009**  
**CR-103E EMERGENCY RULE SUPERSEDES PREVIOUS EMERGENCY RULE RELATED TO  
THE TRANSFER AND DISCHARGE OF NURSING HOME RESIDENTS**

Dear Nursing Facility/Home Administrator:

On September 3, 2021, Governor Inslee issued Proclamation 21-15 that waived a provision in current law so that COVID-19 positive nursing home residents may be immediately transferred or discharged by a nursing home that is unable to treat COVID-19 positive patients to facilities that are equipped to treat the disease. The proclamation waived regulatory provisions of Washington Administrative Codes (WAC) 388-97-0140(1)(c)(ii) and 388-97-0140(2).

The proclamation expired December 1, 2021. The Department of Social and Health Services (department) filed a CR-103E emergency rule on December 1, 2021 to continue to waive the requirements previously waived under the proclamation ([WSR 21-24-069](#)).

Shortly after the filing of the emergency rules, the department received a request to clarify the circumstances under which the requirements can be waived. To provide this clarification, the department filed [WSR 22-01-072](#) on December 9, 2021 amending WACs 388-97-0140 and 388-97-0120 and superseding the emergency rules filed December 1, 2021 ([WSR 21-24-069](#)). The new emergency rules continue to waive the requirement for nursing homes to suspend certain transfers and discharges pending the outcome of a resident appeal hearing. The emergency rules clarify that the suspension is limited to improving resident safety by allowing faster grouping of COVID-19 positive residents in one facility or grouping asymptomatic residents together. This helps expedite infection control processes and maximizes the availability of nursing home beds. The following rules are amended as described until April 4, 2022:

- **WAC 388-97-0140(2)(d)** – Facility-initiated transfer or discharge of a resident is allowed, when the facility cannot meet the resident’s urgent medical needs and for cohorting purposes related to the COVID-19 pandemic as allowed under any applicable Centers for Medicare and Medicaid Services (CMS) emergency waivers.
- **WAC 388-97-0120(ii)** – Allows a transfer or discharge when an appeal request is received by the office of administrative hearings if the failure to discharge or transfer would endanger the health and safety of the resident or other individuals in the facility.
- **WAC 388-97-0120(2)** – Allows the transfer or discharge pending the outcome of the hearing if the failure to discharge or transfer would endanger the health or safety of the resident or other individuals in the facility.

Thank you for your continued commitment to resident health and safety. If you have any questions, please contact Molly McClintock, Nursing Home Policy Program Manager, at (360) 742-6966 or [molly.mcclintock@dshs.wa.gov](mailto:molly.mcclintock@dshs.wa.gov).

Sincerely,

Mike Anbesse, Director  
Residential Care Services

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