



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

March 3, 2023

AL TSA: NH #2023-006
EMERGENCY RULES FILED RELATED TO MINIMUM STAFFING STANDARDS IN NURSING HOMES (3.4 DIRECT CARE HOURS AND RN REQUIREMENTS)

Dear Nursing Facility/Home Administrator:

This message is to announce the filing of a CR-103E (Emergency Rules) amending chapter 388-97 WAC Nursing Homes. Due to the threat of COVID-19 to our most vulnerable populations and the additional impact it had on healthcare staff, Governor Inslee suspended several rules during the public health emergency. [Governor's proclamation 20.18](#) suspended WAC 388-97-1080 (3) and (8), Nursing Services, and WAC 388-97-1090, Direct Care Hours, from March 18, 2020, through October 27, 2022.

In 2021, the Washington State Legislature passed ESHB 1120 ([Chapter 203, Laws of 2021](#)), which allowed the department to adopt rules in response to the end of the governor's proclamation on October 27, 2022, and granted exemptions to the requirements in RCW 74.42.360(2) through (4), waived penalties, and suspended oversight activities for nursing homes. The department filed emergency rules under [WSR 23-05-041](#) to will allow nursing homes to prioritize and resume minimum staffing standards and move back into compliance with statutory requirements by October 27, 2023. Three new sections have been created to temporarily supersede WAC 388-97-1080 (3) and (8) and suspend WAC 388-97-1090: **WAC 388-97-1081, -1082, and -1091**. This emergency rule is effective retroactively to October 27, 2022 and expires June 9, 2023. The department is also undertaking rulemaking to permanently adopt these rules.

What [WAC 388-97-1081](#) says:

- RCS suspends oversight and enforcement activities for [WAC 388-97-1090](#) (3.4 HRD requirement)
- The data from the Centers for Medicare and Medicaid Services (CMS) Payroll Based Journal (PBJ) report will be used to calculate non-compliance.
- The information from the PBJ report with applicable dates will be found in Quarter 4 2022 and Quarter 1, 2023, published by May 1, 2023 (includes data from October 27, 2022, forward).
- Nursing Homes will need to continue to move toward compliance with the 3.4 HRD and RN requirements. Please keep documented interventions for each quarter.
- While fines will not be enforced or collected at this time, the department will calculate fines for nursing homes that do not meet the 3.4 HRD requirement as determined by the PBJ report and will send notice of those fines to the facility. A single facility may be issued up to two notices of non-compliance.
- The requirement to complete the PBJ is not waived as it is a federal rule under **F851**.
- RCS will provide targeted support when the notices of non-compliance are issued.

What WAC 388-97-1082 says:

- RCS suspends oversight and enforcement activity for [WAC 388-97-1080\(3\)](#) (Nursing services) related to the requirement to have a registered nurse (RN) 24-hours a day, seven days a week in large non-essential community nursing home providers.
- At this time, nursing homes do not need to send a letter to RCS to request an RN Exemption if they do not meet the RN requirement, as this emergency rule is in effect.

What WAC 388-97-1091 says:

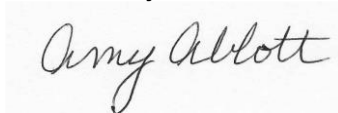
- Suspends oversight and enforcement activity for [WAC 388-97-1080\(8\)](#) (Nursing services) related to the requirement to have an RN 16-hours a day, seven days a week for essential and small non-essential community nursing home providers.

Please note the following:

- *This is an overview of the rules only.*
- *The new section numbers do not correlate exactly with the permanent WAC sections. This does not impact the implementation of the rules.*
- *The operating procedure of how the second phase of the rules will be implemented will be sent at a later date.*

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.

Sincerely,



Amy Abbott, Director
Residential Care Services

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