



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Department of Social and Health Services, Aging and Long-Term Support Administration

- Preproposal Statement of Inquiry was filed as WSR: 15-01-180 ; or
- Expedited Rule Making--Proposed notice was filed as WSR: ; or
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

- Original Notice
- Supplemental Notice to WSR:
- Continuance of WSR:

Title of rule and other identifying information: (Describe Subject)

The department is repealing the following sections in chapter 388-76 WAC, Adult Family Home Minimum Licensing Requirements: WAC 388-76-11000 Resident protection program—Investigation of reports, WAC 388-76-11004 Resident protection program—Individual defined, WAC 388-76-11005 Resident protection program—Notice to individual of preliminary finding, WAC 388-76-11010 Resident protection program—Notice to others of preliminary finding, WAC 388-76-11015 Resident protection program—Disputing a preliminary finding, WAC 388-76-11020 Resident protection program—Hearing procedures to dispute preliminary finding, WAC 388-76-11025 Resident protection program—Finalizing a preliminary finding, WAC 388-76-11030 Resident protection program—Appeal of the initial order or finding, WAC 388-76-11035 Resident protection program—Reporting final findings, and WAC 388-76-11040 Resident protection program—Disclosure of investigative and finding information.

Also, the department is amending, WAC 388-76-10655 Physical Restraints, WAC 388-76-10660 chemical restraints, and WAC 388-76-10685 Bedrooms, and creating one new section, WAC 388-76-10463 Medication – Psychopharmacologic.

Hearing location(s):

Office Building 2
DSHS Headquarters
1115 Washington
Olympia, WA 98504

Public parking at 11th and Jefferson. A map is available at:
<http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>

Date: June 9, 2015 Time: 10:00 a.m.

Submit written comments to:

Name: DSHS Rules Coordinator
Address: PO Box 45850
Olympia, WA 98504
e-mail: DSHSRPAURulesCoordinator@dshs.wa.gov
fax: (360) 664-6185

by: **5:00 p.m. June 9, 2015**

Assistance for persons with disabilities: Contact:
Jeff Kildahl, DSHS Rules Consultant by May 26, 2015
Phone: (360) 664-6092 or TTY: (360) 664-6178
Email: KildaJA@dshs.wa.gov

Date of intended adoption: Not earlier than June 10, 2015
(Note: This is **NOT** the **effective** date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

Resident Client Protection Program (RCPP) has been moved into Adult Protective Services and the rules will be administered under chapter 388-71 WAC and chapter 388-106 WAC. References to the RCPP would thus be incorrect and will be repealed from chapter 388-76 WAC. Residential Care Services is coordinating to eliminate these WAC sections at the same time Home and Community Services is incorporating them into their WACs. The CR-102s for both divisions will be filed at the same time. Repealing the rules is beneficial to or supported by the regulated entities to prevent duplication of licensing rules. Also, the department needs to amend rules to comply with Center for Medicare and Medicaid Services new requirements for Home and Community Based Services regulations on chemical and physical restraints, psychopharmacologic medications, as well as the requirement for entrance doors to be locked by the resident with only appropriate staff having keys to doors.

Reasons supporting proposal: See above.

Statutory authority for adoption: Chapter 70.128 RCW

Statute being implemented: Chapter 70.128 RCW

Is rule necessary because of a:

- Federal Law? Yes No
 - Federal Court Decision? Yes No
 - State Court Decision? Yes No
- If yes, CITATION:

DATE
April 30, 2015

NAME (type or print)
Katherine Vasquez

SIGNATURE

TITLE
DSHS Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: May 06, 2015

TIME: 8:18 AM

WSR 15-10-092

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None

Name of proponent: (person or organization) Department of Social and Health Services

- Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Christi Pederson	P.O. Box 45600, Olympia WA 98513	360-725-2327
Implementation:	Carl Walters	P.O. Box 45600, Olympia WA 98513	360-725-2400
Enforcement:	Tim Hoekstra	P.O. Box 45600, Olympia WA 98513	360-725-3238

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

Phone: ()

Fax: ()

e-mail

No. Explain why no statement was prepared.

Under RCW 19.85.025 (3), an SBEIS is not required for rules adopting or incorporating, by reference without material change, Washington State statutes or federal statutes or regulations.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

Phone: ()

fax: ()

e-mail:

No: Please explain:

Under RCW 34.05.328 (5)(b)(iii), a CBA is not required for rules adopting or incorporating, by reference without material change, Washington State statutes or federal statutes or regulations.

NEW SECTION

WAC 388-76-10463 Medication - Psychopharmacologic For residents who require psychopharmacologic medications, the adult family home must ensure:

(1) The resident assessment indicates that a psychopharmacologic medication is necessary to treat the resident's medical symptoms;

(2) In situations when a psychopharmacological drug is used for a resident, the home must ensure that the:

(a) Drug is prescribed by a physician or health care professional with prescriptive authority;

(b) Resident's negotiated care plan includes strategies and modifications of the environment and staff behavior to address the symptoms for which the medication is prescribed;

(c) Changes in medication only occur when the prescriber decides it is medically necessary; and

(d) Resident has given informed consent for its use.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10655 Physical restraints. The adult family home must ensure:

(1) Each resident's right to be free from physical restraints used for discipline or convenience;

(2) ~~((Less))~~ Prior to the use of a physical restraint, less restrictive alternatives have been tried and are documented in the resident's negotiated care plan; and

(3) That physical restraints used have been assessed as necessary to treat the resident's medical symptoms and addressed on the resident's negotiated care plan; and

(4) That if physical restraints are used to treat a resident's medical symptoms that the restraints are applied and immediately supervised on-site by a:

(a) Licensed registered nurse;

(b) Licensed practical nurse; or

(c) Licensed physician; and

(d) For the purposes of this subsection, immediate supervised means that the licensed person is in the home and quickly and easily available.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10660 Chemical restraints. (1) For the purposes of this section "chemical restraint" means a ~~((psychopharmacologic))~~ drug that is used for discipline or convenience and not required to treat the resident's medical symptoms.

(2) The adult family home must ensure that each resident is free from chemical restraints~~((+))~~

- ~~(a) Each resident is free from chemical restraints used for discipline or convenience;~~
- ~~(b) The resident assessment indicates that a chemical restraint is necessary to treat the resident's medical symptoms;~~
- ~~(c) In situations when a psychopharmacological drug is used for a resident, the home must ensure that the:~~
 - ~~(i) Drug is prescribed by a physician or health care professional with prescriptive authority;~~
 - ~~(ii) Resident's negotiated care plan includes strategies and modifications of the environment and staff behavior to address the symptoms for which the medication is prescribed;~~
 - ~~(iii) Changes in medication only occur when the prescriber decides it is medically necessary; and~~
 - ~~(iv) Resident has given informed consent for its use).~~

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

WAC 388-76-10685 Bedrooms. The adult family home must:

- (1) Ensure each resident's bedroom is an outside room, which allows entrance of natural light;
- (2) Ensure window and door screens:
 - (a) Do not hinder emergency escape; and
 - (b) Prevent entrance of flies and other insects.
- (3) Ensure each resident, including those using mobility aids such as wheelchairs and walkers has direct, unrestricted, and free access from the bedroom through doors, hallways and corridors to common use areas and other rooms used for care and services including bathrooms;
- (4) Make separate bedrooms available for each sex;
- (5) Make reasonable efforts to accommodate residents wanting to share the room;
- (6) Provide each bedroom with a minimum usable floor space as required in WAC 388-76-10690.
- (7) Give each resident the opportunity to have a lock on their door if they chose to unless having a locked door would be unsafe for the resident and this is documented in the resident's negotiated care plan.
- (8) Ensure each bedroom has a closet or a wardrobe, armoire or reasonable facsimile thereof. Neither the closet nor wardrobe/armoire floor space will be considered a part of the room's usable square footage. The home must not remove a closet in order to provide additional floor space.
- ~~((+8))~~ (9) Ensure no more than two residents to a bedroom;
- ~~((+9))~~ (10) Unless the resident chooses to provide their own furniture and bedding, the home must provide each resident a bed thirty-six inches or more wide with:
 - (a) A clean, comfortable mattress;
 - (b) A waterproof cover for use when needed or requested by the resident;
 - (c) Clean sheets and pillow cases;
 - (d) Adequate clean blankets to meet the needs of each resident;
 and
 - (e) Clean pillows.

~~((10))~~ (11) Not use the upper bunk of double-deck beds for a resident's bed;

~~((11))~~ (12) Provide a call bell or intercom system if the provider, entity representative, resident manager or caregiver bedroom is not within hearing distance of each resident bedroom and the system is required by the department;

~~((12))~~ (13) Ensure that members of the household, other than residents, do not share bedrooms with residents; and

~~((13))~~ (14) Ensure a resident does not share a bedroom with a person under eighteen years of age, unless the person is the resident's own child.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-76-11000	Resident protection program—Investigation of reports.
WAC 388-76-11004	Resident protection program—Individual defined.
WAC 388-76-11005	Resident protection program—Notice to individual of preliminary finding.
WAC 388-76-11010	Resident protection program—Notice to others of preliminary finding.
WAC 388-76-11015	Resident protection program—Disputing a preliminary finding.
WAC 388-76-11020	Resident protection program—Hearing procedures to dispute preliminary finding.
WAC 388-76-11025	Resident protection program—Finalizing a preliminary finding.
WAC 388-76-11030	Resident protection program—Appeal of the initial order or finding.
WAC 388-76-11035	Resident protection program—Reporting final findings.
WAC 388-76-11040	Resident protection program—Disclosure of investigative and finding information.