



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: 16-10-066; 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 proposing to amend the following sections in chapter 388-76 WAC, Adult Family Home Minimum Licensing Requirements: WAC 388-76-1000 "Definitions", WAC 388-76-10145 "Qualifications – Licensed nurse as provider, entity representative or resident manager", WAC 388-76-10463 "Medication – Psychopharmacologic", WAC 388-76-10535 "Resident rights – Notice of change to services", WAC 388-76-10540 "Resident Rights – Disclosure of fees and charges – Notice requirements – Deposits", WAC 388-76-10650 "Medical devices", WAC 388-76-10655 "Physical restraints", WAC 388-76-10715 "Doors – Ability to open", WAC 388-76-10730 "Grab bars and hand rails", WAC 388-76-10825 "Space heaters and stoves", WAC 388-76-10845 "Emergency drinking water supply", WAC 388-76-10865 "Emergency evacuation from adult family home", and WAC 388-76-10895 "Emergency evacuation drills – Frequency and participation". The department also is proposing to repeal WAC 388-76-10820 "Resident evacuation capabilities and location of resident bedrooms" and WAC 388-76-10880 "Emergency evacuation adult family home bedrooms".

Hearing location(s):

Office Building 2
DSHS Headquarters
1115 Washington
Olympia, WA 98504

Public parking at 11th and Jefferson. A map is available at:
<https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>

Date: August 23, 2016 Time: 10:00 a.m.

Date of intended adoption: Not earlier than August 24, 2016
(Note: This is **NOT** the **effective** date)

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. August 23, 2016

Assistance for persons with disabilities: Contact:
Jeff Kildahl, DSHS Rules Consultant by August 9, 2016
Phone: (360) 664-6092 or TTY: (360) 664-6178
Email: KildaJA@dshs.wa.gov

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

The department is amending chapter 388-76 WAC to assure compliance with the requirements of SB 5600 and to align rule language with the statute. Additionally, revisions to chapter 388-76 WAC are being made to improve the health and safety of residents, to account for changes in technology, and to reflect the language or intent of RCW 70.128. Other changes are beneficial to adult family home business owners.

The department is also repealing two sections in chapter 388-76 WAC to condense the emergency evacuation WACs.

Reasons supporting proposal:

This amendment will ensure the Department is in compliance with the newly passed law, and that rules are clear so that the rights and safety of residents are protected.

Statutory authority for adoption: Chapter 70.128 RCW

Statute being implemented:

Is rule necessary because of a:

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

DATE
June 22, 2016

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: June 28, 2016

TIME: 9:58 AM

WSR 16-14-037

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:	Sherise Baltazar	P.O. Box 45600, Olympia, WA 98513	(360) 725-3204
Implementation:	Candace Goehring	P.O. Box 45600, Olympia, WA 98513	(360) 725-2401
Enforcement:	Bett Schlemmer	P.O. Box 45600, Olympia, WA 98513	(360) 725-2404

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) and RCW 34.05.310 (4)(c), a 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.

WAC 388-76-10000 Definitions. "**Abandonment**" means action or inaction by a person or entity with a duty of care for a frail elder or vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

"**Abuse**" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment ~~((on))~~ of a vulnerable adult((+)).

(1) In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain or mental anguish ~~((+ and))~~.

(2) Abuse includes sexual abuse, mental abuse, physical abuse, and personal exploitation of a vulnerable adult, and improper use of restraint against a vulnerable adult which have the following meanings:

(a) "**Sexual abuse**" means any form of nonconsensual sexual ~~((contact))~~ conduct, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. ~~((Sexual contact may include interactions that do not involve touching, including but not limited to sending a resident sexually explicit messages, or cuing or encouraging a resident to perform sexual acts.))~~ Sexual abuse also includes any sexual ~~((contact))~~ conduct between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not consensual.

(b) "**Physical abuse**" means ~~((a))~~ the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, or prodding ~~((, or chemical or physical restraints unless the restraints are consistent with licensing requirements, and includes restraints that are otherwise being used inappropriately))~~.

(c) "**Mental abuse**" means ~~((any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating))~~ a willful verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. Mental abuse may include ridiculing, yelling, or swearing.

(d) "**Exploitation**" means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

(e) "**Improper use of restraint**" means the inappropriate use of chemical, physical, or mechanical restraints for convenience or discipline or in a manner that:

(i) Is inconsistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW;

(ii) Is not medically authorized; or

(iii) Otherwise constitutes abuse under this section.

"Adult family home" means:

(1) A residential home in which a person or an entity is licensed to provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to a licensed operator, resident manager, or caregiver, who resides in the home.

(2) As used in this chapter, the term "entity" includes corporations, partnerships and limited liability companies, and the term "adult family home" includes the person or entity that is licensed to operate an adult family home.

"Affiliated with an applicant" means any person listed on the application as a partner, officer, director, resident manager, or majority owner of the applying entity, or is the spouse or domestic partner of the applicant.

"Applicant" means an individual, partnership, corporation, or other entity seeking a license to operate an adult family home.

"Capacity" means the maximum number of persons in need of personal or special care (~~(who are permitted to reside)~~) permitted in an adult family home at a given time(~~(. The capacity includes:~~

~~(1) The number of related children or adults in the home who receive personal or special care and services; plus~~

~~(2) The number of residents the adult family home may admit and retain — The resident capacity. The capacity number listed on the license is the "resident capacity.")), including related children or adults in the home and who receive special care.~~

"Caregiver" means any person eighteen years of age or older responsible for providing direct personal or special care to a resident and who is not the provider, entity representative, a student or volunteer.

"Chemical restraint" means the administration of any drug to manage a vulnerable adult's behavior in a way that reduces the safety risk to the vulnerable adult or others, has a temporary effect of restricting the vulnerable adult's freedom of movement, and is not standard treatment for the vulnerable adult's medical or psychiatric condition.

"Consent" means express written consent granted after the vulnerable adult or his or her legal representative has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

"Dementia" is defined as a condition documented through the assessment process required by WAC 388-76-10335.

"Department" means the Washington state department of social and health services.

"Department case manager" means the department authorized staff person or designee assigned to negotiate, monitor, and facilitate a care and services plan for residents receiving services paid for by the department.

"Developmental disability" means:

(1) A person who meets the eligibility criteria defined by the division of developmental disabilities under WAC 388-823-0040; or

(2) A person with a severe, chronic disability which is attributable to cerebral palsy or epilepsy, or any other condition, other than

mental illness, found to be closely related to mental retardation which results in impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation, and requires treatment or services similar to those required for these persons (i.e., autism); and

(a) The condition was manifested before the person reached age eighteen;

(b) The condition is likely to continue indefinitely; and

(c) The condition results in substantial functional limitations in three or more of the following areas of major life activities:

(i) Self-care;

(ii) Understanding and use of language;

(iii) Learning;

(iv) Mobility;

(v) Self-direction; and

(vi) Capacity for independent living.

"Direct supervision" means oversight by a person who has demonstrated competency in the basic training and specialty training if required, or who has been exempted from the basic training requirements and is:

(1) On the premises; and

(2) Quickly and easily available to the caregiver.

"Domestic partners" means two adults who meet the requirements for a valid state registered domestic partnership as established by RCW 26.60.030 and who have been issued a certificate of state registered domestic partnership.

"Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.020(6).

"Financial solvency" means that the applicant or provider is able to meet debts or financial obligations with some money to spare.

"Entity representative" means the individual designated by a provider who is or will be responsible for the daily operation of the adult family home and who meets the requirements of this chapter and chapter 388-112 WAC.

"Home" means adult family home.

"Imminent danger" or **"immediate threat"** means serious physical harm to or death of a resident has occurred, or there is a serious threat to the resident's life, health or safety.

"Indirect supervision" means oversight by a person who:

(1) Has demonstrated competency in the basic training and specialty training if required; or

(2) Has been exempted from the basic training requirements; and

(3) Is quickly and easily available to the care giver, but not necessarily on-site.

"Inspection" means a review by department personnel to determine the health, safety, and well-being of residents, and the adult family home's compliance with this chapter and chapters 70.128, 70.129, 74.34 RCW, and other applicable rules and regulations. The department's review may include an on-site visit.

"Management agreement" means a written, executed agreement between the adult family home and another individual or entity regarding the provision of certain services on behalf of the adult family home.

"Mandated reporter" means an employee of the department, law enforcement, officer, social worker, professional school personnel, individual provider, an employee of a facility, an employee of a social service, welfare, mental health, adult day health, adult day care, or hospice agency, county coroner or medical examiner, Christian Science practitioner, or health care provider subject to chapter 18.130 RCW. For the purpose of the definition of a mandated reporter, **"Facility"** means a residence licensed or required to be licensed under chapter 18.20 RCW (Assisted living facilities), chapter 18.51 RCW (Nursing homes), chapter 70.128 RCW (Adult family homes), chapter 72.36 RCW (Soldiers' homes), chapter 71A.20 RCW (Residential habilitation centers), or any other facility licensed by the department.

"Mechanical restraint" means any device attached or adjacent to the vulnerable adult's body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body. "Mechanical restraint" does not include the use of devices, materials, or equipment that are:

(a) Medically authorized, as required; and

(b) Used in a manner that is consistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW.

"Medical device" as used in this chapter, means any piece of medical equipment used to treat a resident's assessed need.

(1) A medical device is not always a restraint and should not be used as a restraint;

(2) Some medical devices have considerable safety risks associated with use; and

(3) Examples of medical devices with known safety risks when used are transfer poles, Posey or lap belts, and side rails.

"Medication administration" means giving resident medications by a person legally authorized to do so, such as a physician, pharmacist or nurse.

"Medication organizer" is a container with separate compartments for storing oral medications organized in daily doses.

"Mental illness" is defined as an Axis I or II diagnosed mental illness as outlined in volume IV of the Diagnostic and Statistical Manual of Mental Disorders (a copy is available for review through the aging and disability services administration).

"Minimal" means violations that result in little or no negative outcome and/or little or no potential harm for a resident.

"Moderate" means violations that result in negative outcome and actual or potential harm for a resident.

"Multiple facility provider" means a provider who is licensed to operate more than one adult family home.

"Neglect" means:

(1) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or

(2) An act or omission by a person or entity with duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

"Nurse delegation" means a registered nurse transfers the performance of selected nursing tasks to competent nursing assistants in

selected situations. The registered nurse delegating the task retains the responsibility and accountability for the nursing care of the resident.

"Over-the-counter medication" is any medication that can be purchased without a prescriptive order, including but not limited to vitamin, mineral, or herbal preparations.

"Permanent restraining order" means a restraining order and/or order of protection issued either following a hearing, or by stipulation of the parties. A "permanent" order may be in force for a specific time period (for example, one year), after which it expires.

"Personal care services" means both physical assistance and/or prompting and supervising the performance of direct personal care tasks as determined by the resident's needs and does not include assistance with tasks performed by a licensed health professional.

"Physical restraint" means (~~(a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that restricts freedom of movement or access to his or her body, is used for discipline or convenience, and is not required to treat the resident's medical symptoms)~~) application of physical force without the use of any device, for the purpose of restraining the free movement of a vulnerable adult's body. "Physical restraint" does not include briefly holding without undue force on a vulnerable adult in order to calm or comfort him or her, or holding a vulnerable adult's hand to safely escort him or her from one area to another.

"Placement agency" is an "elder or vulnerable adult referral agency" as defined in chapter 18.330 RCW and means a business or person who receives a fee from or on behalf of a vulnerable adult seeking a referral to care services or supportive housing or who receives a fee from a care services provider or supportive housing provider because of any referral provided to or on behalf of a vulnerable adult.

"Practitioner" includes a physician, osteopathic physician, podiatric physician, pharmacist, licensed practical nurse, registered nurse, advanced registered nurse practitioner, dentist, and physician assistant licensed in the state of Washington.

"Prescribed medication" refers to any medication (legend drug, controlled substance, and over-the-counter) that is prescribed by an authorized practitioner.

"Provider" means:

(1) Any person who is licensed to operate an adult family home and meets the requirements of this chapter; or

(2) Any corporation, partnership, or limited liability company that is licensed under this chapter to operate an adult family home and meets the requirements of this chapter.

"Psychopharmacologic medications" means the class of prescription medications, which includes but is not limited to antipsychotics, anti-anxiety medications, and antidepressants, capable of affecting the mind, emotions, and behavior.

"Recurring" or "repeated" means that the department has cited the adult family home for a violation of applicable licensing laws or rules and the circumstances of (1) and (2) of this definition are present:

(1) The department previously imposed an enforcement remedy for a violation of the same section of law or rule for substantially the same problem following any type of inspection within the preceding thirty-six months; or

(2) The department previously cited a violation under the same section of law or rule for substantially the same problem following any type of inspection on two occasions within the preceding thirty-six months.

(3) If the previous violation in (1) or (2) of this definition was pursuant to a law or rule that has changed at the time of the new violation, a citation to the equivalent current law or rule section is sufficient.

"Resident" means any adult unrelated to the provider who lives in the adult family home and who is in need of care. Except as specified elsewhere in this chapter, for decision-making purposes, the term "resident" includes the resident's surrogate decision maker acting under state law.

"Resident manager" means a person employed or designated by the provider to manage the adult family home and who meets the requirements of this chapter.

"Serious" means violations that result in one or more negative outcomes and significant actual harm to residents that does not constitute imminent danger; and/or, there is reasonable predictability of recurring actions, practices, situations or incidents with potential for causing significant harm to a resident.

"Severity" means the seriousness of a violation as determined by actual or potential negative outcomes for residents and subsequent actual or potential for harm. Outcomes include any negative effect on the resident's physical, mental or psychosocial well being (i.e., safety, quality of life, quality of care).

"Significant change" means:

(1) A lasting change, decline or improvement in the resident's baseline physical, mental or psychosocial status;

(2) The change is significant enough so the current assessment and/or negotiated care plan do not reflect the resident's current status; and

(3) A new assessment may be needed when the resident's condition does not return to baseline within a two week period of time.

"Special care" means care beyond personal care services as defined in this section.

"Staff" means any person who:

(1) Is employed or used by an adult family home, directly or by contract, to provide care and services to any resident.

(2) Staff must meet all of the requirements in this chapter and chapter 388-112 WAC.

"Temporary restraining order" means restraining order or order of protection that expired without a hearing, was dismissed following an initial hearing, or was dismissed by stipulation of the parties before an initial hearing.

"Uncorrected" means the department has cited a violation of WAC or RCW following an inspection and the violation remains uncorrected at the time of a subsequent inspection for the specific purpose of verifying whether such violation has been corrected.

"Unsupervised" means not in the presence of:

(1) Another employee or volunteer from the same business or organization; or

(2) Any relative or guardian of any of the children or individuals with developmental disabilities or vulnerable adults to which the employee, student or volunteer has access during the course of his or her employment or involvement with the business or organization.

"Usable floor space" means resident bedroom floor space exclusive of:

- (1) Toilet rooms;
- (2) Closets;
- (3) Lockers;
- (4) Wardrobes;
- (5) Vestibules; and
- (6) The space required for the door to swing if the bedroom door opens into the resident bedroom.

"Water hazard" means any body of water over twenty-four inches in depth that can be accessed by a resident, and includes but not limited to:

- (1) In-ground, above-ground, and on-ground pools;
- (2) Hot tubs, spas;
- (3) Fixed-in-place wading pools;
- (4) Decorative water features;
- (5) Ponds; or
- (6) Natural bodies of water such as streams, lakes, rivers, and oceans.

"Willful" means the deliberate or nonaccidental action or inaction by an individual that he/she knew or reasonably should have known could cause a negative outcome, including harm, injury, pain or anguish.

"Vulnerable adult" includes a person:

- (1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself;
- (2) Found incapacitated under chapter 11.88 RCW;
- (3) Who has a developmental disability as defined under RCW 71A.10.020;
- (4) Admitted to any facility;
- (5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW;
- (6) Receiving services from an individual provider; or
- (7) With a functional disability who lives in his or her own home, who is directing and supervising a paid personal aide to perform a health care task as authorized by RCW 74.39.050.

AMENDATORY SECTION (Amending WSR 14-14-028, filed 6/24/14, effective 7/25/14)

WAC 388-76-10145 Qualifications—Licensed nurse as provider, entity representative, or resident manager. The adult family home must ensure that a licensed nurse who is a provider, entity representative, or resident manager (~~has~~):

- (1) Meets all (~~of the~~) minimum qualifications for providers, entity representatives, or resident managers listed in WAC 388-76-10130; and
- (2) Has a current valid (~~first-aid and~~) cardiopulmonary resuscitation (CPR) card or certificate as required in chapter 388-112 WAC.

AMENDATORY SECTION (Amending WSR 16-06-004, filed 2/17/16, effective 4/1/16)

WAC 388-76-10463 Medication—Psychopharmacologic. For residents who are given 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; ~~((and))~~

(2) The drug is prescribed by a physician or health care professional with prescriptive authority; ~~((and))~~

(3) The 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; ~~((and))~~

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

(5) The resident ~~((has given informed consent for its use))~~ or resident representative is aware the resident is taking the psychopharmacologic medication and its purpose.

AMENDATORY SECTION (Amending WSR 16-01-171, filed 12/22/15, effective 1/22/16)

WAC 388-76-10535 Resident rights—Notice of change to services.

(1) The adult family home must inform each resident in advance of changes to services, items, activities, or home rules as follows:

(a) In writing; ~~((and~~

~~(b) In advance of changes in the availability of, or the charges for services, items, or activities, or of changes in the home's rules.~~

~~(2) The home must:~~

~~(a) Provide at least fourteen days advanced notice when there has been a substantial and continuing change in the resident's condition that necessitates substantially greater or lesser services, items or activities.~~

~~(b) Give residents a thirty day notice prior to))~~ (b) Within fourteen days of a substantial and continuing change in the resident's condition that necessitates substantially greater or lesser services, items, or activities;

(c) At least thirty days before the effective date of ((the)) a change ((if the home)) that decreases the scope of care, services, or activities due to circumstances beyond the home's control; and

~~((c) Give residents a))~~ (d) At least ninety ((day notice prior to)) days before the effective date ((of the decrease if)) the home voluntarily decreases the scope of care, services, or activities the home provides, or if the change ((results)) will result in the discharge of at least one resident.

~~((3))~~ (2) The home is not required to ((give notice:

~~(a) If the home gives each resident written notice of the availability and charges of services, items and activities before admission, when there are changes and every twenty four months; and~~

~~(b) If the resident is provided different or additional services, items or activities from the home which do not result in an additional~~

cost to the resident)) notify the resident if the home provides him or her different or additional services, items, or activities that do not result in an additional cost to the resident.

AMENDATORY SECTION (Amending WSR 15-03-037, filed 1/12/15, effective 2/12/15)

WAC 388-76-10540 Resident rights—Disclosure of fees and charges—Notice requirements—Deposits.

(1) The adult family home must complete the department's disclosure of charges form(~~s as provided by the department~~) and provide a copy (~~of it~~) to each resident (~~who is~~) admitted to the home.

(2) If the adult family home (~~chooses to provide its own disclosure of fees and charges to residents in addition to the form required by the department, the home:~~

~~(a) Must give full disclosure in writing;~~

~~(b) In a language the resident understands;~~

(c) Prior to the receipt of any funds)) requires an admission fee, deposit, prepaid charges, or any other fees or charges, by or on behalf of a person seeking admission, the home must give the resident full disclosure in writing in a language the resident understands prior to its receipt of any funds.

(3) The disclosure must include:

(a) A statement of the amount of any admissions fees, security deposits, prepaid charges, minimum stay fees, or any other fees or charges specifying what the funds are paid for and the basis for retaining any portion of the funds if the resident dies, is hospitalized, (~~or is~~) transferred, or discharged from the home;

(b) The home's advance notice or transfer requirements; and

(c) The amount of the security deposits, admission fees, prepaid charges, minimum stay fees, or any other fees or charges that (~~will be refunded~~) the home will refund to the resident if the resident leaves the home.

(4) The home must ensure that the (~~receipt of the disclosures required under subsection (1) of this section is in writing and signed and dated by the resident and the home~~) resident and home sign and date an acknowledgement in writing stating that the resident has received a disclosure required under subsection (2) of this section. The home must retain a copy of the disclosure and acknowledgement.

(5) If the home does not provide (~~these~~) the disclosures in subsection 3 to the resident, the home must not keep the resident's security deposits, admission fees, prepaid charges, minimum stay fees, or any other fees or charges.

(6) If a resident dies, is hospitalized, or is transferred to another facility for more appropriate care and does not return to the home, the adult family home:

(a) Must refund any deposit or charges (~~already~~) paid by the resident less the home's per diem rate for the days the resident actually resided, reserved, or retained a bed in the home (~~in spite~~) regardless of any minimum stay policy or discharge notice requirements; (~~except that~~)

(b) May keep an additional amount to cover its reasonable and actual expenses incurred as a result of a private-pay resident's move,

not to exceed five days per diem charges((+)), unless the resident has given advance notice in compliance with the home's admission agreement; and

(c) ((May)) Must not require the resident to obtain a refund from a placement agency or person.

(7) The adult family home ((may)) must not retain funds for reasonable wear and tear by the resident or for any basis that would violate RCW 70.129.150.

(8) ((All)) The adult family home((s covered under this section are required to refund any and all refunds due the)) must provide the resident with any and all refunds due to him or her within thirty days from the resident's date of discharge from the home.

(9) Nothing in this section applies to provisions in contracts negotiated between a home and a certified health plan, health or disability insurer, health maintenance organization, managed care organization, or similar entities.

(10) ((If)) The home ((requires an admission agreement by or on behalf of an individual seeking admission the home must ensure the terms of the agreement are)) must ensure that any resident admission agreement is consistent with the requirements of this section, chapters 70.128, 70.129, and 74.34 RCW, and other applicable state and federal laws.

AMENDATORY SECTION (Amending WSR 09-03-029, filed 1/12/09, effective 2/12/09)

WAC 388-76-10650 Medical devices. ((Before the adult family home uses medical devices for any resident, the home must:

(1) Review the resident assessment to determine the resident's need for and use of a medical device;

(2) Ensure the resident negotiated care plan includes the resident use of a medical device or devices; and

(3) Provide the resident and family with enough information about the significance and level of the safety risk of use of the device to enable them to make an informed decision about whether or not to use the device)) (1) The adult family home must not use a medical device with a known safety risk as a restraint or for staff convenience.

(2) Before a medical device is used by a resident, the home must:

(a) Review the resident's assessment to identify the resident's need and ability to safely use the medical device;

(b) Provide the resident and his or her family or legal representative with information about the device's benefits and safety risks to enable them to make an informed decision about whether to use the device; and

(c) Ensure the resident's negotiated care plan includes use of the medical device.

AMENDATORY SECTION (Amending WSR 16-06-004, filed 2/17/16, effective 4/1/16)

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

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

(2) 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 or mechanical restraints, the home has tried less restrictive alternatives and documented them in the resident's negotiated care plan;

(3) The physical or mechanical 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 or mechanical 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))~~ (5) For the purposes of this ~~((subsection, immediate supervised))~~ section, "immediately supervised" means that the licensed person is in the home and quickly and easily available.

AMENDATORY SECTION (Amending WSR 16-01-171, filed 12/22/15, effective 1/22/16)

WAC 388-76-10715 Doors—Ability to open. The adult family home must ensure:

(1) Every bedroom and bathroom door opens from the inside and outside;

(2) Every closet door opens from the inside and outside; and

(3) One door leading to the outside ~~((must be))~~ is designated as the primary egress and~~((, effective))~~ homes licensed after January 1, 2016~~((, must))~~ have a lever door handle and hardware that allows residents to exit~~((, even))~~ when the door is locked~~((, and also allows))~~ and reentry ~~((into the home))~~ without a key, tool, or special knowledge or effort by residents.

(4) Other external exit doors not designated as the primary egress, must open without any special skills or knowledge and they ~~((must))~~ remain accessible to residents unless doing so poses a risk to the health or safety of at least one resident.

(5) All internal and external doors ~~((must))~~ comply with local jurisdictional requirements as well as the building code requirements ~~((as contained))~~ in chapter 51-51 WAC.

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

WAC 388-76-10730 Grab bars and hand rails. ~~(1) ((The adult family home must install grab bars or hand rails to meet the needs of each resident.~~

~~(2) At a minimum, grab bars must be installed and securely fastened in:~~

~~(a) Bathing)) Homes licensed before October 1, 2016, must at a minimum install:~~

~~(a) Grab bars in bathing facilities such as tubs and showers;~~
~~((and))~~

~~(b) Grab bars next to toilets, if needed by any resident((-~~

~~(3) If needed by any resident, hand rails must be installed and conveniently located on:~~

~~(a) A step or steps; and~~

~~(b) Ramps));~~

~~(c) Handrails on a step or steps; and~~

~~(d) Handrails on ramps.~~

~~(2) Homes and bathroom additions licensed after October 1, 2016 must install grab bars securely fastened in accordance with WAC 51-51-0325 at the following locations:~~

~~(a) Bathing facilities such as tubs and showers; and~~

~~(b) Each side of any toilet used by residents.~~

~~(3) Homes licensed after October 1, 2016 must install handrails on each side of the following:~~

~~(a) Step or steps; and~~

~~(b) Ramps used by residents.~~

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

WAC 388-76-10825 Space heaters, fireplaces, and stoves. ~~((The adult family home must ensure:~~

~~(1) The following space heaters are not used in a home except during a power outage and the portable heater is only safe source of heat:~~

~~(a) Oil;~~

~~(b) Gas;~~

~~(c) Kerosene; and~~

~~(d) Electric.~~

~~(2) Stoves and heaters do not block residents, staff or household members from escaping)) (1) The adult family home must not use oil, gas, kerosene, or electric space heaters not equipped with automatic safety features, except during a power outage if it is the only safe source of heat.~~

~~(2) The adult family home must ensure that stoves and heaters do not block resident, staff, or household member escape routes.~~

~~(3) The adult family home must ensure that fireplaces and stoves have a stable barrier that prevents accidental resident contact. No barrier is required for an electric fireplace with glass that is not hot to the touch.~~

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

WAC 388-76-10845 Emergency drinking water supply. The adult family home must have an on-site emergency supply of drinking water that:

- (1) Will last for a minimum of seventy-two hours for ~~((each))~~ every resident~~((and each))~~, household member, and caregiving staff;
- (2) Is at least three gallons for ~~((each))~~ every resident~~((and each))~~, household member, and caregiving staff;
- (3) Is stored in well-sealed food grade or glass containers;
- (4) Is chlorinated or commercially-bottled;
- (5) Is replaced every six months, unless ~~((the commercial water bottle is labeled for a longer expiration date))~~ it is sealed and commercially-bottled; and
- (6) Is stored in a cool, dry location away from direct sunlight.

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

WAC 388-76-10865 ((Emergency)) Resident evacuation from adult family home. (1) The adult family home must be able to evacuate all ~~((people living in the home:~~

- ~~(1) From the home to a safe location outside the home; and~~
- ~~(2) In five minutes or less))~~ residents from the home to a safe location outside the home in five minutes or less.
- (2) The home must ensure that residents who require assistance are able to evacuate the home as follows:
 - (a) Through the primary egress door;
 - (b) Via a path from the resident's bedroom that does not go through other bedrooms; and
 - (c) Without the resident having to use any of the following:
 - (i) Stairs;
 - (ii) Elevators;
 - (iii) Chairlift; or
 - (iv) Platform lift.
- (3) Ramps for residents to enter, exit, or evacuate on homes licensed after October 1, 2016 must comply with WAC 51-51-0325.
- (4) Homes that serve residents who are hearing impaired and not able to hear the fire alarm warning must install visual fire alarms.

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

WAC 388-76-10895 Emergency evacuation drills—Frequency and participation. The adult family home must ensure:

- (1) Emergency evacuation drills occur at least every two months; and

(2) All residents take part in together and at the same time at least one emergency evacuation drill each calendar year (~~(involving)~~) that includes full evacuation from the home to a safe location.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-76-10820 Resident evacuation capabilities and location of resident bedrooms.
- WAC 388-76-10880 Emergency evacuation adult family home bedrooms.