



PROPOSED RULE MAKING

CR-102 (August 2017) (Implements RCW 34.05.320) Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: January 03, 2018
TIME: 10:19 AM
WSR 18-02-099

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

- Original Notice
- Supplemental Notice to WSR 17-18-113
- Continuance of WSR _____

- Preproposal Statement of Inquiry was filed as WSR 17-09-020 ; 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).
- Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) The department is proposing to amend WAC 388-78A-2590, WAC 388-78A-2592, and WAC 388-78A-2594.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
February 6, 2018	10:00 a.m.	Office Building 2 DSHS Headquarters 1115 Washington Olympia, WA 98504	Public parking at 11 th and Jefferson. A map is available at: https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2

Date of intended adoption: Not earlier than February 7, 2018 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: DSHS Rules Coordinator
 Address: PO Box 45850, Olympia, WA 98504
 Email: DSHSRPAURulesCoordinator@dshs.wa.gov
 Fax: (360) 664-6185
 Other:
 By (date) 5:00 p.m. February 6, 2018

Assistance for persons with disabilities:

Contact Jeff Kildahl, DSHS Rules Consultant |
 Phone: (360) 664-6092
 Fax: (360) 664-6185
 TTY: (360) 664-6178
 Email: KildaJA@dshs.wa.gov
 Other:
 By (date) January 23, 2018

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The department is amending these rules to conform to current department practice related to management agreements. For example, the department is removing language indicating that the department approves all management agreements.

Reasons supporting proposal: Although the department receives copies of management agreements and has authority to review them, it frequently relies upon a Management Agreement Attestation document submitted by a proposed licensee

Statutory authority for adoption: Chapter 18.20 RCW

Statute being implemented:

Is rule necessary because of a:

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

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

<input type="checkbox"/> Private
<input type="checkbox"/> Public
<input checked="" type="checkbox"/> Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Jeanette Childress	PO. Box 45600, Olympia, WA 98506	360-725-2591
Implementation:	Jeanette Childress	PO. Box 45600, Olympia, WA 98506	360-725-2591
Enforcement:	Jeanette Childress	PO. Box 45600, Olympia, WA 98506	360-725-2591

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

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:
TTY:
Email:
Other:

No: Please explain: The department has analyzed the proposed rules and determined that they have no fiscal impact..

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- RCW 34.05.310 (4)(b) (Internal government operations)
- RCW 34.05.310 (4)(c) (Incorporation by reference)
- RCW 34.05.310 (4)(d) (Correct or clarify language)
- RCW 34.05.310 (4)(e) (Dictated by statute)
- RCW 34.05.310 (4)(f) (Set or adjust fees)
- RCW 34.05.310 (4)(g) ((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW ____.

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated. _____

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

Date: January 2, 2018	Signature: 
Name: Katherine I. Vasquez	
Title: DSHS Rules Coordinator	

AMENDATORY SECTION (Amending WSR 10-03-066, filed 1/15/10, effective 2/15/10)

WAC 388-78A-2590 Management agreements—General. (1) If the proposed or current licensee uses a manager, the licensee must have a written management agreement (~~((approved by the department))~~) that is consistent with this chapter.

(2) The proposed or current licensee must notify the department of its use of a manager upon:

- (a) Initial application for a license;
- (b) Retention of a manager following initial application;
- (c) Change of managers; and
- (d) Modification of existing management agreement.

(3) The proposed or current licensee must provide to the department a written management agreement, including an organizational chart showing the relationship between the proposed or current licensee, management company, and all related organizations.

(4) The written management agreement must be submitted:

- (a) Sixty days before:
 - (i) The initial licensure date;
 - (ii) The proposed change of ownership date; or
 - (iii) The effective date of the management agreement; or
- (b) Thirty days before the effective date of any amendment to an existing management agreement.

(5) The proposed licensee or the current licensee must notify the resident and their representatives sixty days before entering into a new management agreement.

(6) A proposed licensee must submit a management agreement attestation form, as required by the assisted living facility application.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2592 Management agreements—Licensee. (1) The licensee is responsible for:

(a) The daily operations and provisions of services in the assisted living facility (~~((see))~~), as required by WAC 388-78A-2730 (1)(a) ((+));

(b) Ensuring the assisted living facility is operated in a manner consistent with all laws and rules applicable to assisted living facilities (~~((see WAC 388-78A-2730 (1)(b)))~~), as required by WAC 388-78A-2730(1)(b);

(c) Ensuring the manager acts in conformance with ~~((a department approved))~~ the management agreement; and

(d) Ensuring the manager does not represent itself as, or give the appearance that it is the licensee.

(2) The licensee must not give the manager responsibilities that are so extensive that the licensee is relieved of daily responsibility for the daily operations and provision of services in the assisted living facility. If the licensee does so, then the department must determine that a change of ownership has occurred.

(3) The licensee and manager must act in accordance with the terms of the ~~((department approved))~~ management agreements. If the department determines they are not, then the department may ~~((take licensing action))~~ impose enforcement remedies.

(4) The licensee may enter into a management agreement only if the management agreement creates a principal/agent relationship between the licensee and manager.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

WAC 388-78A-2594 Management agreements—Department review.

~~((Upon receipt of a proposed))~~ The department may review a management agreement((7)) at any time. Following the review, the department may require:

(1) The proposed or current licensee or manager to provide additional information or clarification;

(2) Any changes necessary to:

(a) Bring the management agreement into compliance with this chapter; and

(b) Ensure that the licensee has not been relieved of the responsibility for the daily operations of the facility.

(3) The licensee to participate in monthly meetings and quarterly on-site visits to the assisted living facility.