



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: June 26, 2019

TIME: 11:05 AM

WSR 19-14-038

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

- Original Notice**
- Supplemental Notice to WSR** _____
- Continuance of WSR**

- Preproposal Statement of Inquiry was filed as WSR 19-03-149 ; 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); or**
- Proposal is exempt under RCW _____.**

Title of rule and other identifying information: (describe subject) The department is proposing to amend WAC 388-97-4425 "Notice—Service complete", WAC 388-97-4430 "Notice—Proof of service", and WAC 388-97-4440 "Appeal rights".

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
August 6, 2019	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 August 7, 2019 (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. August 6, 2019

Assistance for persons with disabilities:

Contact Jeff Kildahl, DSHS Rules Consultant
 Phone: 360-664-6092
 Fax: 360-664-6185
 TTY: 711 Relay Service
 Email: Kildaja@dshs.wa.gov
 Other:
 By (date) July 23, 2019

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The proposed amendments to these rules will clarify that notices can be delivered and proof of service can be obtained electronically through the federal website, and will also clarify the nursing home's right to appeal WAC deficiency findings under the state appeal process, regardless of the delivery method of the deficiency report.

Reasons supporting proposal: These amendments will clarify rules to ensure providers can appeal state deficiencies delivered through the federal electronic website. The amendments will also expand delivery methods and proof of service methods to include electronic delivery using the federal website, improving the efficiency of communication between the department and the providers.

Statutory authority for adoption: RCW 74.42.620

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:

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:	Lisa Herke	P.O. Box 45600, Olympia, WA 98504	509-225-2819
Implementation:	Candace Goehring	P.O. Box 45600, Olympia, WA 98504	360-725-2401
Enforcement:	Bett Schlemmer	P.O. Box 45600, Olympia, WA 98504	360-725-2404

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

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 19.85.030.

Explanation of exemptions, if necessary: The department has analyzed the proposed rule and concluded that no new costs will be imposed on small businesses affected by them. The preparation of a comprehensive SBEIS is not required under RCW 19.85.030.

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: June 24, 2019

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:

AMENDATORY SECTION (Amending WSR 10-02-021, filed 12/29/09, effective 1/29/10)

WAC 388-97-4425 Notice—Service complete. Service of the department notices is complete when:

- (1) Personal service is made;
- (2) The notice is addressed to the facility or to the individual at his or her last known address, and deposited in the United States mail;
- (3) The notice is faxed and the department receives evidence of transmission;
- (4) Notice is delivered to a commercial delivery service with charges prepaid; ~~((\oplus))~~
- (5) Notice is delivered to a legal messenger service with charges prepaid(~~(\oplus)~~); or
- (6) Notice is sent electronically, including through the federal website.

AMENDATORY SECTION (Amending WSR 10-02-021, filed 12/29/09, effective 1/29/10)

WAC 388-97-4430 Notice—Proof of service. The department may establish proof of service by any of the following:

- (1) A declaration of personal service;
- (2) An affidavit or certificate of mailing to the nursing home or to the individual to whom the notice is directed;
- (3) A signed receipt from the person who accepted the certified mail, the commercial delivery service, or the legal messenger service package; ~~((\oplus))~~
- (4) Proof of fax transmission(~~(\oplus)~~); or
- (5) Proof of electronic transmission.

AMENDATORY SECTION (Amending WSR 10-02-021, filed 12/29/09, effective 1/29/10)

WAC 388-97-4440 Appeal rights. (1) The appeal rights in this section apply to any appealable action taken by the department under chapters 18.51, 74.42 and 74.39A RCW. Notice and appeal requirements for resident protection program findings are described in WAC 388-97-0720 and 388-97-0740.

- (2) The following actions may be appealed:
 - (a) Imposition of a penalty under RCW 18.51.060 or 74.42.580;
 - (b) A denial of a license under RCW 18.51.054, a license suspension under RCW 18.51.067 or a condition on a license under RCW 74.39A.050; or
 - (c) Deficiencies cited on the state survey report and any other deficiencies cited under state law.

(3) The appeal process will be governed by the Administrative Procedure Act (chapter 34.05 RCW), RCW 18.51.065 and 74.42.580, chap-

ter 388-02 WAC and this chapter. If there is a conflict between chapter 388-02 WAC and this chapter, this chapter will govern.

(4) The purpose of an administrative hearing will be to review actions taken by the department under chapters 18.51, 74.42 or 74.39A RCW, and under this chapter.

(5) The office of administrative hearings must receive an administrative hearing request from the applicant, licensee, or nursing home within twenty days of receipt of written notification of the department's action listed in subsection (2) of this section. Further information about administrative hearings is available in chapter 388-02 WAC and at the office of administrative hearings (OAH) web site: www.oah.wa.gov.

(6) Orders of the department imposing a stop placement, license suspension, emergency closure, emergency transfer of residents, temporary management, or conditions on a license are effective immediately upon verbal or written notice and must remain in effect until they are rescinded by the department or through the state administrative appeals process.

(7) Federal deficiencies cited on the federal survey report may not be appealed through the state administrative appeals process. If a federal remedy is imposed, the Centers for Medicare and Medicaid Services will notify the nursing facility of appeal rights under the federal administrative appeals process.