



# 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: October 18, 2019

TIME: 9:07 AM

WSR 19-21-117

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

Original Notice

Supplemental Notice to WSR 19-17-065

Continuance of WSR \_\_\_\_\_

Preproposal Statement of Inquiry was filed as WSR 19-03-150 ; 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 create WAC 388-76-10401 "Home and community-based setting requirements". This new section requires homes to comply with federal Home and Community Based Services requirements.

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
November 26, 2019	10:00 a.m.	Office Building 2 DSHS Headquarters 1115 Washington Olympia, WA 98504	Public parking at 11 <sup>th</sup> and Jefferson. A map is available at: <a href="https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2">https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2</a>

**Date of intended adoption:** Not earlier than November 27, 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](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov)

Fax: 360-664-6185

Other:

By (date) 5:00 p.m. November 26, 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](mailto:Kildaja@dshs.wa.gov)

Other:

By (date) November 12, 2019

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** This proposal incorporates the federal requirements for Home and Community Based Settings. This will help adult family home providers understand their obligations and improve their ability to comply with them. The proposal will also ensure that residents are receiving care in a homelike setting and reducing their dependence on institutions or isolating settings. These regulations improve quality of life in adult family homes by giving residents greater opportunities to make decisions about their lives and care. Subsequent to filing a CR-102 Proposed Rule Making on August 20, 2019 as WSR 19-17-065, the department determined this new rule should be proposed as a significant legislative rule. This supplemental filing opens the proposed rule to a new public comment period as a significant legislative rule.

**Reasons supporting proposal:** The Department of Social and Health Services (DSHS) has a funding waiver from Centers for Medicaid and Medicare Services through the Home and Community Based Settings program. As part of the agreement for this waiver, the department must adopt these rules. Failure to do so could result in the loss of the waiver and the funding source, which would result in fewer homes, fewer beds, and fewer people to regulate this setting. This proposal benefits residents, adult family home providers, and the department.

**Statutory authority for adoption:** RCW 70.128.040, RCW 70.128.060

**Statute being implemented:** 42 CFR § 441.530

**Is rule necessary because of a:**

Federal Law?	<input checked="" type="checkbox"/> Yes	<input 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: 42 CFR § 441.530

**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:	Libby Wagner	20425 72 <sup>nd</sup> Avenue S, Kent, WA 98032	(253) 234-6061
Implementation:	Libby Wagner	20425 72 <sup>nd</sup> Avenue S, Kent, WA 98032	(253) 234-6061
Enforcement:	Libby Wagner	20425 72 <sup>nd</sup> Avenue S, Kent, WA 98032	(253) 234-6061

**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: Libby Wagner  
Address: 20425 72<sup>nd</sup> Avenue S, Kent, WA 98032  
Phone: 253-234-6061  
Fax:  
TTY:  
Email: libby.wagner@dshs.wa.gov  
Other:

No: Please explain:

**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: 42 CFR § 441.530. These regulations apply to home and community based settings, which includes adult family homes. If this proposed rule is not adopted, the adult family home program would be out of compliance with Medicaid rules.

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:** October 17, 2019

**Name:** Katherine I. Vasquez

**Title:** DSHS Rules Coordinator

**Signature:**

NEW SECTION

**WAC 388-76-10401 Home and community-based setting requirements.**

(1) The home must ensure that the following conditions are present for each resident:

(a) Privacy in each resident's bedroom, including lockable doors when chosen, with only the resident or residents who live in the room and appropriate staff having the key;

(b) Choice of roommates;

(c) Freedom to decorate and furnish their room within the terms of the notice of rights and service agreement;

(d) Freedom and support to control their own schedule;

(e) Access to food and water at any time; and

(f) Having visitors at any time, although nothing in this section requires an adult family home to provide a visitor with food or a place to sleep.

(2) When conditions under subsection (1) of this section cannot be met, the home must ensure the following elements are in place before implementing a modification:

(a) The specific assessed need for the modification is identified in the resident's assessment and negotiated care plan;

(b) The resident's negotiated care plan documents less intrusive methods and interventions that were tried prior to the modification but did not work;

(c) The details of the modification are clearly described in the resident's assessment and negotiated care plan, including how the modification addresses the resident's specific assessed need;

(d) The modification is agreed to by the resident or the resident's legal representative; and

(e) The modification must not cause the resident harm.

(3) All modifications must be reviewed annually with the assessment and negotiated care plan, and evidence of its effectiveness or lack thereof must be documented in both.

(4) Any modification must be discontinued if there is no longer a need for it or it is no longer effective.