



PROPOSED RULE MAKING

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

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FILED

DATE: November 24, 2020
TIME: 8:35 AM

WSR 20-24-055

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 20-15-140 ; 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 388-112A-0010, What definitions apply to this chapter?; and create two new sections, WAC 388-112A-1292, What are the minimum qualifications for community instructors to teach expanded specialty trainings? and WAC 388-112A-1294, What are the minimum qualifications for facility training program instructors to teach expanded specialty trainings?.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
January 5, 2021	10:00 a.m.	Office Building 2 DSHS Headquarters 1115 Washington Street SE Olympia, WA 98504 Or by Skype	Public parking at 11th and Jefferson. A map is available at: https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2 Due to the COVID 19 pandemic, hearing may be held via Skype, see DSHS website for most up to date information.

Date of intended adoption: Not earlier than January 6, 2021 (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. January 5, 2021

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) December 22, 2020

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

The department is proposing to amend WAC 388-112A-0010, and add new sections WAC 388-112A-1292 and WAC 388-112A-1294, as a result of the passage of Senate Bill 5630 in 2013. The department was required to examine whether specialty training categories should be created for adult family homes serving residents with other special needs, such as traumatic brain injury, skilled nursing, or bariatric care.

The department, with stakeholder input and involvement, determined that additional training categories are recommended including such topics as traumatic brain injury, bariatric care, and skilled nursing. The proposed rules would establish the new trainings as optional "expanded specialty training" and set instructor requirements for both facility and community instructors. Identical language will also need to be added to chapter 388-71 WAC.

Reasons supporting proposal: See purpose statement above.

Statutory authority for adoption: RCW 74.08.090, RCW 70.128.060

Statute being implemented: RCW 74.08.090, RCW 70.128.060

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:	David Chappell	P.O. Box 45600, Olympia, WA 98504-5600	360-725-2366
Implementation:	David Chappell	P.O. Box 45600, Olympia, WA 98504-5600	360-725-2366
Enforcement:	David Chappell	P.O. Box 45600, Olympia, WA 98504-5600	360-725-2366

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: Angel Sullivan
Address: PO Box 45600, Olympia, WA 98504-5310
Phone: 360-725-2495
Fax: 360-725-2646

TTY: 1-800-833-6388

Email: suliva@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:

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:

- | | |
|---|--|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> 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. These proposed rules impact adult family homes, assisted living facilities, enhanced services facilities, and community instructor training programs. These businesses fall under the following North American Industry Classification System (NAICS) designations:

- Residential mental health facilities – NAICS code 6232
- Residential developmental disabilities homes – NAICS codes 62321, 623210
- Other residential care facilities – NAICS codes 6239, 62399, 623990
- Continuing Care, assisted living facilities – NAICS code 6233, 62331, 623311, 623312
- Technical and Trade Schools - NAICS code 61151.

The Department of Social and Health Services' Aging and Long-Term Support Administration has analyzed the proposed rule amendments and has determined that the listed small businesses may be impacted by these changes. However, the Department estimates that the costs are "minor" as that term is defined in RCW 19.85.030.

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: Angel Sullivan

Address: PO Box 45600, Olympia, WA 98504-5310

Phone: 360-725-2495

Fax: 360-725-2646

TTY: 1-800-833-6388

Email: suliva@dshs.wa.gov

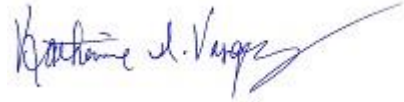
Other:

Date: November 19, 2020

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:

A handwritten signature in blue ink, appearing to read "Katherine I. Vasquez", with a long, sweeping flourish extending to the right.

WAC 388-112A-0010 What definitions apply to this chapter? The following definitions apply to this chapter:

(1) "**Activities of daily living**" means self-care abilities related to personal care such as bathing, eating, using the toilet, dressing, medication assistance, and transfer. Instrumental activities of daily living may also be used to assess a person's functional abilities in the home and the community such as cooking, shopping, house cleaning, doing laundry, working, and managing personal finances.

(2) "**Adult family home training network**" means a nonprofit organization established by the exclusive bargaining representative of adult family homes designated under RCW 41.56.026 with the capacity to provide training, workforce development, and other services to adult family homes.

(3) "**Applicant**" means:

(a) An individual who is applying for an adult family home license;

(b) An individual with an ownership interest in a partnership, corporation, or other entity that is applying for an adult family home license; or

(c) An individual who is applying for an enhanced services facility license.

(4) "**Capable caregiving training**" means the DSHS developed training curricula in dementia and mental health that will be available in three class levels. The level one series of the class in both dementia and mental health meets the requirements under RCW 18.20.270 and 70.128.230 for specialty training. The level two and level three capable caregiving classes, when developed in both topics, may be completed for continuing education credits.

(5) "**Care team**" includes the resident and everyone involved in their care. The care team may include family, friends, doctors, nurses, long-term care workers, social workers, and case managers. The role of the care team is to support the resident's well-being. However, the resident directs the service plan when able.

(6) "**Challenge test**" means a competency test taken for specialty training without first taking the class for which the test is designed.

(7) "**Competency**" means the integrated knowledge, skills, or behavior expected of a long-term care worker after completing the training in a required topic area. Learning objectives are associated with each competency.

(8) "**Competency testing**" including challenge testing, evaluates a student to determine if they can demonstrate the required level of skill, knowledge, and behavior with respect to the identified learning objectives of a particular course.

(9) "**Core basic training**" is the portion of the seventy-hour long-term care worker basic training that covers the core competencies and skills that long-term care workers need in order to provide personal care services efficiently and safely. The core basic training hours also includes hours devoted to student practice and demonstration of skills.

(10) "**Date of hire**" for determining timeframes related to training and certification, means the day an individual was first hired as

a long-term care worker as determined by the department according to WAC 388-112A-0115.

(11) "**DDA**" means the developmental disabilities administration.

(12) "**Designee**" means a person in an assisted living facility or enhanced services facility who supervises long-term care workers and is designated by an assisted living facility administrator or enhanced services facility administrator to take the trainings in this chapter required of the facility administrator. An assisted living facility or enhanced services facility administrator may have more than one designee.

(13) "**Direct care worker**" means a paid individual who provides direct, personal care services to persons with disabilities or the elderly requiring long-term care (see also the definition of long-term care worker, which includes direct care workers).

(14) "**Direct supervision**" means oversight by a person who has demonstrated competency in basic training and if required, specialty training, or has been exempted from the basic training requirements, and is on the premises and quickly available to the caregiver.

(15) "**DSHS**" or "**department**" means the department of social and health services.

(16) "**Enhancement**" means additional time provided for skills practice and additional training materials or classroom activities that help a long-term care worker to thoroughly learn the course content and skills. Enhancements may include new student materials, videos or DVDs, online materials, and additional student activities.

(17) "**Entity representative**" means the individual designated by an adult family home provider who is or will be responsible for the daily operations of an adult family home.

(18) "**Expanded specialty training**" means optional curricula that provide caregivers with advanced knowledge and skills to provide person-centered care to clients or residents living with conditions other than developmental disabilities, dementia, and mental health. The optional expanded specialty training may include such topics as traumatic brain injury, diabetes care, and bariatric care. The optional expanded specialty training curricula must be DSHS developed and based on competencies and learning objectives established by the department.

(19) "**Guardian**" means an individual as defined in chapter 11.88 RCW.

~~((19))~~ (20) "**Home**" means adult family homes, enhanced services facilities, and assisted living facilities.

~~((20))~~ (21) "**Home care aide certified**" or "**home care aide**" means a person who obtained and maintains a home care aide certification through the department of health.

~~((21))~~ (22) "**Indirect supervision**" means oversight by a person who has demonstrated competency in basic training and if required, specialty training, or was exempted from basic training requirements, and who is quickly and easily available to the long-term care worker, but not necessarily on-site.

~~((22))~~ (23) "**Learning objectives**" means measurable, written statements that clearly describe what a long-term care worker must minimally learn to meet each competency. Learning objectives are identified for each competency. Learning objectives provide consistent, common language and a framework for curriculum designers, the curriculum approval process, and testing.

~~((23))~~ (24) "**Long-term care worker**" means:

(a) All persons who provide paid, personal care services for the elderly or persons with disabilities, including but not limited to in-

dividual providers of home care services, direct care workers employed by home care agencies, providers of home care services to persons with developmental disabilities under Title 71A RCW, all direct care workers in state-licensed assisted living facilities, adult family homes, respite care providers, community residential service providers, and any other direct care staff who provide home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.

(b) Long-term care workers do not include:

(i) Persons employed by the following facilities or agencies: Nursing homes subject to chapter 18.51 RCW, hospitals or other acute care settings, residential habilitation centers under chapter 71A.20 RCW, facilities certified under 42 C.F.R., Part 483, hospice agencies subject to chapter 70.127 RCW, adult day care centers, and adult day health care centers; or

(ii) Persons who are not paid by the state, by a private agency, or facility licensed by the state to provide personal care services.

~~((24))~~ (25) "**Personal care services**" means physical or verbal assistance with activities of daily living, or activities of daily living and instrumental activities of daily living, which is provided to meet the resident's care needs.

~~((25))~~ (26) "**Provider**" means any person or entity licensed by the department to operate an adult family home, enhanced services facility, or assisted living facility, or any person or entity certified by the department to provide instruction and support services to meet the needs of persons receiving services under Title 71A RCW.

~~((26))~~ (27) "**Renewal period**" means the certification renewal period as defined in WAC 246.12.010.

~~((27))~~ (28) "**Resident**" means a person residing and receiving long-term care services at an assisted living facility, enhanced services facility, or adult family home. As applicable, "resident" also means the resident's legal guardian or other surrogate decision maker.

~~((28))~~ (29) "**Resident manager**" means a person employed or designated by the provider to manage the adult family home who meets the requirements in WAC 388-76-10000 and this chapter.

~~((29))~~ (30) "**Routine interaction**" means regular contact with residents.

~~((30))~~ (31) "**Seventy-hour long-term care worker basic training**" means the seventy-hours of required training that a new long-term care worker must complete within one hundred and twenty days of hire. It has three components: Core competencies, practice of skills, and population specific topics, which may include specialty and nurse delegation training.

~~((31))~~ (32) "**Special needs**" means a resident has dementia consistent with WAC 388-78A-2510 for assisted living or WAC 388-76-10000 for adult family homes; mental illness consistent with WAC 388-78A-2500 for assisted living or WAC 388-76-10000 for adult family homes; or developmental disabilities consistent with WAC 388-78A-2490 for assisted living or WAC 388-76-10000 for adult family homes.

~~((32))~~ (33) "**Specialty training**" means curricula that meets the requirements of RCW 18.20.270 and 70.128.230 to provide basic core knowledge and skills that caregivers need to learn and understand to effectively and safely provide care to residents living with mental illness, dementia, or developmental disabilities. The specialty training curricula may be DSHS developed or DSHS approved and must be based on the competencies and learning objectives in WAC 388-112A-0430, 388-112A-0440, or 388-112A-0450.

((33)) (34) **"Training entity"** means an organization, including an independent contractor, who provides or may provide training under this chapter using approved curriculum.

NEW SECTION

WAC 388-112A-1292 What are the minimum qualifications for community instructors to teach expanded specialty trainings? (1) The minimum qualifications for community instructors to teach an expanded specialty training, in addition to the general qualifications in WAC 388-112A-1420(1) and (2), include:

(a) The instructor must be experienced in caregiving practices related to the expanded specialty topic and capable of demonstrating competency in the entire course content;

(b) Education:

(i) Bachelor's degree, registered nurse, paramedic, emergency medical technician (EMT), mental health specialist, or a specialist with nationally recognized credentials in the expanded specialty topic with at least eighty hours of education in seminars, conferences, continuing education, or accredited college classes, in subjects directly related to expanded specialty topics; and

(ii) Successful completion of the expanded specialty training class before the instructor trains others;

(c) Work experience: Two years full-time equivalent direct work or volunteer experience with people in the specialty topic population; and

(d) Teaching experience:

(i) Two hundred hours experience teaching;

(ii) Successful completion of an adult education class that meets the requirements of WAC 388-112A-1297;

(iii) Successful completion of the DSHS instructor qualification/demonstration process; and

(iv) The instructor has been approved and contracted by the department as a community instructor;

(e) Instructors who will administer tests must have experience or training in assessment and competency testing; and

(2) Five years of full-time equivalent direct work experience with people in the specialty topic population may substitute for either:

(a) The credential or degree described in subsection (1)(b)(i) of this section; or

(b) The eighty hours in seminars, conferences, continuing education described in subsection (1)(b)(i).

NEW SECTION

WAC 388-112A-1294 What are the minimum qualifications for facility training program instructors to teach expanded specialty trainings? (1) The minimum qualifications for facility instructors to teach an expanded specialty training is to meet the requirements in WAC 388-112A-1240. The facility instructor must submit an application

attesting to those qualifications and submit copies of certificates of completion for each expanded specialty training curriculum they would like to teach and a copy of a certificate of completion of an adult education class that meets the requirements of WAC 388-112A-1297.

(a) Facility instructors must be approved prior to teaching the class.

(b) A qualified instructor under this section may teach an expanded specialty training to long-term care workers employed at other home(s) licensed by the same licensee.

(2) If your status is an approved instructor for an expanded specialty training, you may instruct expanded specialty training curriculum after submitting to the department a copy of a certificate of completion for that curriculum and a copy of a certificate of completion of an adult education class that meets the requirements of WAC 388-112A-1297.