



# 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: February 25, 2021

TIME: 10:38 AM

WSR 21-06-048

**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** 20-19-021 ; 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 388-78A-2371, Investigations, and WAC 388-78A-2360, Adult day services.

### Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
April 6, 2021	10:00 a.m.	Office Building 2 DSHS Headquarters 1115 Washington Street SE Olympia, WA 98501  Or by Skype	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>  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 April 7, 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](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov)

Fax: 360-664-6185

Other:

By (date) 5:00 p.m. April 6, 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](mailto:Kildaja@dshs.wa.gov)

Other:

By (date) March 23, 2021

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The proposed update of WAC 388-78A-2371, Investigations, corrects language that was brought to the agency's attention by stakeholders after the permanent rule was filed on December 31, 2019. The proposed update of WAC 388-78A-2360, Adult day services, corrects a cross reference.

**Reasons supporting proposal:** This proposal is in response to stakeholder requests. WAC 388-78A-2371 was adopted on December 31, 2019. However, public review after the comment period ended noted a concern in the language that must be corrected. Without correction, WAC 388-78A-2371 may have moderate negative impact to stakeholders and the department. WAC 388-78A-2360 must also be amended to correct a cross-reference to WAC 388-78A-2371.

**Statutory authority for adoption:** RCW 18.20.090

**Statute being implemented:** Chapter 18.20 RCW and Chapter 74.34 RCW

**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:	Debbie Hoeman	PO Box 45600 Olympia, WA 98504-5600	360-725-3210
Implementation:	Debbie Hoeman	PO Box 45600 Olympia, WA 98504-5600	360-725-3210
Enforcement:	Debbie Hoeman	PO Box 45600 Olympia, WA 98504-5600	360-725-3210

**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: Debbie Hoeman  
Address: PO Box 45600, Olympia, WA 98504-5600  
Phone: 360-725-3210  
Fax:  
TTY:  
Email: Debra.Hoeman@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:

- 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. The department analyzed the probable benefits and probable costs of the proposed rules and determined they will impose no new costs on small businesses as the proposed changes reduce the regulatory burden on Assisted Living Facilities.
- 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: Debbie Hoeman  
 Address: PO Box 45600 Olympia, WA 98504-5600  
 Phone: 360-725-3210  
 Fax:  
 TTY:  
 Email: Debra.Hoeman@dshs.wa.gov  
 Other:

<b>Date:</b> February 24, 2021	<b>Signature:</b> 
<b>Name:</b> Katherine I. Vasquez	
<b>Title:</b> DSHS Rules Coordinator	

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

**WAC 388-78A-2360 Adult day services.** (1) The assisted living facility may, but is not required to, provide an adult day services program for nonresidents.

(2) If adult day services are provided, the assisted living facility must:

(a) Ensure each adult day services client receives appropriate supervision and agreed upon care and services during the time spent in the day services program;

(b) Ensure the care and services provided to adult day services clients do not compromise the care and services provided to assisted living facility residents;

(c) Ensure the total number of residents plus adult day services clients does not exceed the assisted living facility's maximum facility capacity;

(d) Only accept adult day services clients who are appropriate for assisted living facility care and services, consistent with WAC 388-78A-2050;

(e) Provide sufficient furniture for the comfort of day services clients, in addition to furniture provided for residents;

(f) Notify appropriate individuals specified in the client's record and consistent with WAC 388-78A-2640 when there is a significant change in the condition of an adult day services client;

(g) Investigate and document incidents and accidents involving adult day services clients consistent with WAC ~~((388-78A-2700))~~ 388-78A-2371;

(h) Maintain a separate register of adult day services clients; and

(i) Maintain a record for each adult day services client.

AMENDATORY SECTION (Amending WSR 20-02-104, filed 12/31/19, effective 1/31/20)

**WAC 388-78A-2371 Investigations.** The assisted living facility must:

(1) ~~((Report to the local law enforcement agency and the department any individual threatening bodily harm or causing a disturbance, that threatens any individual's welfare and safety))~~ Investigate and document investigative actions and findings for any alleged or suspected abuse, neglect, or financial exploitation; or accident or incident jeopardizing or affecting a resident health or life;

(2) ~~((Identify, investigate, and report incidents involving residents according to department established assisted living facility guidelines))~~ Determine the circumstances of the event;

(3) ~~((Protect residents during the course of the investigation))~~ When necessary, institute and document appropriate measures to prevent similar future situations if the alleged incident is substantiated; and

(4) ~~((Comply with "whistle blower" laws as defined in chapter 74.34 RCW))~~ Protect residents during the course of the investigation.