



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 17, 2022

TIME: 10:14 AM

WSR 22-13-122

Agency: Department of Social and Health Services (department)

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 21-14-046, 21-18-001, 21-17-123, and 21-17-121 ; 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 adding new sections to chapters 388-97, 388-76, 388-78A, and 388-107 WAC to implement ESHB 1120 (Chapter 203, Laws of 2021.)

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
July 26, 2022	10:00 a.m.	Office Building 2 DSHS Headquarters 1115 Washington Olympia, WA 98504 Or virtual	Public parking at 11 th 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 pandemic, hearings are being held virtually. Please see the DSHS website for the most up to date information

Date of intended adoption: Not earlier than July 27, 2022 (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. on July 26, 2022

Assistance for persons with disabilities:

Contact Shelley Tencza, DSHS Rules Consultant

Phone: 360-664-6036

Fax: 360-664-6185

TTY: 711 Relay Service

Email: Tencza@dshs.wa.gov

Other:

By (date) 5:00 p.m. on July 12, 2022

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The purpose of these rules is to implement the sections of ESHB 1120 (Chapter 203, Laws of 2021) that direct the department to adopt rules to reestablish inspection timelines for nursing homes, assisted living facilities, adult family homes, and enhanced services facilities.

Reasons supporting proposal: These rules are necessary to instruct and inform licensed facilities on the process the department will use to determine the inspection schedule and bring all facilities back into compliance with the inspection timelines in statute.

Statutory authority for adoption: RCW 18.20.090, 70.97.100, 70.97.230, 70.128.040, and 74.42.620

Statute being implemented: RCW 18.20.110, 18.51.091, 70.97.160, and 70.128.070

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:	Libby Wagner	PO Box 45600, Olympia, WA 98513	(360) 464-4987
Implementation:	Mike Anbesse	PO Box 45600, Olympia, WA 98513	(360) 725-2401
Enforcement:	Mike Anbesse	PO Box 45600, Olympia, WA 98513	(360) 725-2401

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: RCW 34.05.328(5)(b)(ii) exempts “[r]ules relating only to internal governmental operations that are not subject to violation by a nongovernment party. These rules must be followed by the department, not by the licensed entities.

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: ESHB 1120 (Chapter 203, Laws of 2021)

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: June 14, 2022

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:

NEW SECTION

WAC 388-76-10912 Inspection timelines (1) In response to the COVID-19 pandemic, the governor suspended the requirement for the department to conduct full licensing inspections of adult family homes required by RCW 70.128.070(2)(b).

(2) During the suspension of the full licensing inspection requirements, the department continued to conduct complaint investigations in adult family homes when it became aware of information that indicated an immediate threat to resident health and safety may exist.

(3) The department must prioritize and resume full licensing inspections of adult family homes affected by the suspension of the inspection requirements by applying the following criteria collectively:

(a) The department has identified an ongoing threat to the health and safety of residents through one or more reported complaints, previous inspections, or previous investigations;

(b) Whether the adult family home has had a remedy imposed in the last 24 months; and

(c) The length of time since the last full licensing inspection of the adult family home.

(4) The department must conduct a full licensing inspection for adult family homes licensed after the reinstatement of RCW 70.128.070(2)(b) in accordance with the schedule set by that section.

NEW SECTION

WAC 388-78A-3141 Inspection timelines (1) In response to the COVID-19 pandemic, the governor suspended the requirement for the department to conduct full licensing inspections of assisted living facilities required by RCW 18.20.110.

(2) During the suspension of the full licensing inspection requirements, the department continued to conduct complaint investigations in assisted living facilities when it became aware of information that indicated an immediate threat to resident health and safety may exist.

(3) The department must prioritize and resume full licensing inspections of assisted living facilities affected by the suspension of the inspection requirements by applying the following criteria collectively:

(a) The department has identified an ongoing threat to the health and safety of residents through one or more reported complaints, previous inspections, or previous investigations;

(b) Whether the assisted living facility has had a remedy imposed in the last 24 months; and

(c) The length of time since the last full licensing inspection of the assisted living facility.

(4) The department must conduct a full licensing inspection for assisted living facilities licensed after the reinstatement of RCW 18.20.110 in accordance with the schedule set by that section.

NEW SECTION

WAC 388-97-4361 Inspection timelines (1) In response to the COVID-19 pandemic, the governor suspended the requirement for the department to conduct general periodic inspections of nursing homes under RCW 18.51.091 and 18.51.230.

(2) During the suspension of the general periodic inspection requirements, the department continued to conduct complaint investigations in nursing homes when it became aware of information that indicated an immediate threat to resident health and safety may exist.

(3) The department must prioritize and resume general periodic inspections of nursing homes affected by the suspension of the inspection requirements by applying the following criteria collectively:

(a) The department has identified an ongoing threat to the health and safety of residents through one or more reported complaints, previous inspections, or previous investigations;

(b) Whether the nursing home has had a state or federal remedy imposed in the last 24 months;

(c) The length of time since the last general periodic inspection of the nursing home; and

(d) Any requirements imposed by the centers for medicare and medicaid services, including those for facilities designated as special focus facilities.

(4) The department must conduct a general period inspection for nursing homes licensed after the reinstatement of RCW 18.51.091 and 18.51.230 in accordance with the schedule set by RCW 18.51.091(1) and 18.51.230(1), and chapter 388-97 WAC.

NEW SECTION

WAC 388-107-1421 Inspection timelines (1) In response to the COVID-19 pandemic, the governor suspended the requirement for the department to conduct full licensing inspections of enhanced services facilities required by RCW 70.97.160(1).

(2) During the suspension of the full licensing inspection requirements, the department continued to conduct complaint investigations in enhanced services facilities when it became aware of information that indicated an immediate threat to resident health and safety may exist.

(3) The department must prioritize and resume full licensing inspections of enhanced services facilities affected by the suspension of the inspection requirements by applying the following criteria collectively:

(a) The department has identified an ongoing threat to the health and safety of residents through one or more reported complaints, previous inspections, or previous investigations;

(b) Whether the enhanced services facility has had a remedy imposed in the last 24 months; and

(c) The length of time since the last full licensing inspection of the enhanced services facility.

(4) The department must conduct a full licensing inspection for enhanced services facilities licensed after the reinstatement of RCW 70.97.160(1) in accordance with the schedule set by that section.