



# PROPOSED RULE MAKING

## CR-102 (July 2022) (Implements RCW 34.05.320) Do NOT use for expedited rule making

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STATE OF WASHINGTON  
FILED

DATE: August 16, 2022

TIME: 9:25 AM

WSR 22-17-072

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

- Original Notice**
- Supplemental Notice to WSR** \_\_\_\_\_
- Continuance of WSR** \_\_\_\_\_

- Preproposal Statement of Inquiry was filed as WSR 20-24-092 ; 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 388-101-3130, Certification evaluation, and add a new section to chapter 388-101 WAC, as necessary to prioritize and resume certification evaluations of service providers which were suspended during the declared emergency of COVID-19.

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
September 27, 2022	10:00 a.m.	Office Building 2 (OB-2) DSHS Headquarters 1115 Washington Olympia, WA 98504  <b>Or virtually</b>	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 pandemic, hearings are being held virtually. Please see the DSHS website for the most up to date information

**Date of intended adoption:** Not before September 28, 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](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov)  
 Fax: 360-664-6185  
 Other:  
 By (date) 5:00 p.m. on September 27, 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: [shelley.tencza@dshs.wa.gov](mailto:shelley.tencza@dshs.wa.gov)  
 Other:  
 By (date) 5:00 p.m. on September 13, 2022

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The purpose of these rules is to establish procedures for the department to prioritize and resume certification evaluations of service providers affected by the suspension of the certification evaluation requirements during the declared emergency of COVID-19.

**Reasons supporting proposal:** These rules are necessary to instruct and inform service providers on the process the department will use to prioritize and resume certification evaluations bringing all service providers back into compliance with certification evaluation timelines.

**Statutory authority for adoption:** RCW 71A12.030 and 71A.12.080

**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

**Type of proponent:**  Private  Public  Governmental  
**Name of proponent:** (person or organization) Department of Social and Health Services

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Debra Hoeman	PO Box 45600, Olympia WA 98513	360-725-3210
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 “rules 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 and Small Business Economic Impact Statement**

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

**(1) Identification of exemptions:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). 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 checked="" type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(b)<br>(Internal government operations) | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(e)<br>(Dictated by statute)  |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(c)<br>(Incorporation by reference)                | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(f)<br>(Set or adjust fees)   |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(d)<br>(Correct or clarify language)               | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(g)<br>(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 19.85.025\(4\)](#) (does not affect small businesses).

This rule proposal, or portions of the proposal, is exempt under [RCW 34.05.328\(5\)\(b\)\(ii\)](#).

Explanation of how the above exemption(s) applies to the proposed rule: The proposed rules are exempt because they are "rules 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.

**(2) Scope of exemptions:** *Check one.*

- The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.
- The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):
- The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

**(3) Small business economic impact statement:** *Complete this section if any portion is not exempt.*

If any portion of 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 minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. \_\_\_\_\_
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact 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:

<b>Date:</b> August 9, 2022	<b>Signature:</b> 
<b>Name:</b> Katherine I. Vasquez	
<b>Title:</b> DSHS Rules Coordinator	

AMENDATORY SECTION (Amending WSR 08-02-022, filed 12/21/07, effective 2/1/08)

**WAC 388-101-3130 Certification evaluation.** (1) The department may conduct an on-site certification evaluation of each service provider at any time(~~, but at least once every two years~~).

(2) During certification evaluations the service provider's administrator or designee must:

(a) Cooperate with department representatives during the on-site visit;

(b) Provide all contractor records, client records, and other relevant information requested by the department representatives;

(c) Ensure the service provider's administrator or designee is available during any visit to respond to questions or issues identified by department representatives; and

(d) Ensure the service provider's administrator or designee is present at the exit conference.

NEW SECTION

**WAC 388-101-31301 Certification evaluation timelines.** (1) In response to the COVID-19 pandemic, the department filed an emergency rule suspending the requirement for the department to conduct on-site certification evaluations of each service provider at least once every two years as authorized by RCW 71A.12.080 and required by WAC 388-101-3130.

(2) During the suspension of the certification evaluation requirements, the department continued to conduct complaint investigations in CCRSS settings (group homes, group training homes, and supported living client households) when it became aware of information indicating an immediate threat to client health and safety.

(3) The department must prioritize and resume certification evaluations of service providers affected by the suspension of the certification evaluation requirements by applying the following criteria collectively:

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

(b) Whether the service provider has had an enforcement remedy imposed in the last 24 months; and

(c) The length of time since the service provider's last certification evaluation.