



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: October 26, 2022
TIME: 12:59 PM

WSR 22-22-044

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

- Original Notice**
- Supplemental Notice to WSR** _____
- Continuance of WSR** _____

- Preproposal Statement of Inquiry was filed as WSR 22-17-099 ; 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 an amendment to enhanced services facilities WAC 388-107-0630 Training and home care aide certification requirements.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
December 6, 2022	10:00 am	Office Building 2 DSHS Headquarters 1115 Washington Olympia, WA 98504 Or Virtually	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 impacts of COVID-19, hearings are being held virtually. Please see the DSHS website for the most current information

Date of intended adoption: Not before December 7, 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 December 6, 2022.

Assistance for persons with disabilities:

Contact Shelley Tencza, DSHS Rules Consultant
 Phone: 360-664-6498
 Fax: 360-664-6185
 TTY: 711 Relay Service
 Email: Tencza@dshs.wa.gov
 Other:
 By (date) 5:00 p.m. on November 22, 2022

Purpose of the proposal and its anticipated effects, including any changes in existing rules: This rulemaking is necessary to ensure WAC 388-107-0630 is consistent with the requirements of chapter 388-112A WAC for training and home care aide certification, to support the health and safety of residents in this setting, and to benefit enhanced services facilities business owners.

Reasons supporting proposal: During the COVID 19 pandemic, this rule was suspended to allow enhanced services facilities to hire home care aids who could not meet the training requirements of chapter 388-112A WAC, which was suspended under Governor Proclamation 20-10. The department has since adopted rules to address the backlog of home care aides needing training or testing for certification, or both caused by the COVID-19 pandemic. The training rules allow additional time for home care aides to be trained and certified by requiring them to complete training requirements by certain dates based on their initial hire date. This amendment to WAC 388-107-0630 will align enhanced services facilities requirements with the newly adopted requirements in chapter 388-112A WAC.

Statutory authority for adoption: RCW 70.97.230

Statute being implemented: Chapter 70.97 RCW

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:	Sondra Haas	PO Box 45600, Olympia, WA 98504	360-688-0715
Implementation:	Mike Anbesse	PO Box 45600, Olympia, WA 98504	360-725-2401
Enforcement:	Mike Anbesse	PO Box 45600, Olympia, WA 98504	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)(iii) exempts “Rules adopting or incorporating by reference without material change ... Washington state statutes ... if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule.” These rules will adopt, without material change, requirements of RCW 70.97.080(1) and Chapter 18.88B RCW which regulate the same subject matter and conduct as the adopting rule.

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 type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input checked="" 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 19.85.025\(4\)](#) (does not affect small businesses).

This rule proposal, or portions of the proposal, is exempt under [RCW 34.05.310\(4\)\(c\)](#).

Explanation of how the above exemption(s) applies to the proposed rule: RCW 34.05.310(4)(c) exempts "Rules adopting or incorporating by reference without material change ... Washington state statutes ... if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule." These rules will adopt, without material change, requirements of RCW 70.97.080(1) and chapter 18.88B RCW which regulate the same subject matter and conduct as the adopting rule

(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:

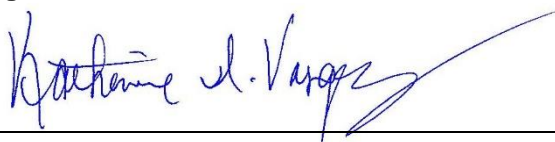
Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Date: October 25, 2022

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



WAC 388-107-0630 Training and home care aide certification requirements. (1) Under RCW 18.88B.041 and chapter 246-980 WAC, certain individuals including registered nurses, licensed practical nurses, certified nursing assistants, or persons who are in an approved certified nursing assistant program are exempt from long-term care worker training requirements.

(2) Continuing education requirements are outlined in chapter 388-112A WAC; registered nurses and licensed practical nurses are exempt from the long-term care worker continuing education requirement.

(3) The enhanced services facility must ensure staff persons meet training requirements in effect on the date hired, including requirements described in chapter 388-112A WAC, unless exempt under RCW 18.88B.041.

(4) The enhanced services facility must ensure all enhanced services facility administrators, or their designees, and caregivers who are not exempt under subsection (1) of this section meet the long-term care worker training requirements of chapter 388-112A WAC, including but not limited to:

(a) Orientation and safety;

(b) Basic training;

(c) Specialty for dementia and, mental illness (~~and~~) or developmental disabilities or both when serving residents with any of those primary special needs;

(d) Cardiopulmonary resuscitation and first aid; and

(e) Continuing education.

(5) The enhanced services facility must ensure that all staff receives appropriate training and orientation to perform their specific job duties and responsibilities.

(6) The enhanced services facility must ensure the following staff obtains home care aide certification (~~(, unless exempt under WAC 246-980-070)~~) if required by this section, chapters 246-980, or 388-112A WAC:

(a) All long-term care workers (~~(, within two hundred days of hire)~~);

(b) All enhanced services facility applicants, before licensure;

(c) All enhanced services facility administrators (~~(within two hundred days of hire,)~~) ; and

(d) Any other staff who will provide direct care and services to residents.