



PROPOSED RULE MAKING

CR-102 (June 2024) (Implements RCW 34.05.320) Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: November 22, 2024

TIME: 9:37 AM

WSR 24-24-015

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

☒ **Original Notice**

☐ **Supplemental Notice to WSR** _____

☐ **Continuance of WSR** _____

☒ **Preproposal Statement of Inquiry was filed as WSR 23-17-058 ; 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) This proposal would update Chapter 388-76 WAC- Adult Family Home Minimum Licensing Requirements, amending section 388-76-10780- Toilets and bathing facilities.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
January 7, 2025	10:00 a.m.	Virtually via Teams or Call in	Hearings are held virtually, see the DSHS website at https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings for the most current information.

Date of intended adoption: Not earlier than January 8, 2025 (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

Beginning (date and time) noon on December 4, 2024

By (date and time) 5:00 p.m. on January 7, 2025

Assistance for persons with disabilities:

Contact Shelley Tencza, Rules Consultant

Phone 360-664-6036

Fax 360-664-6185

TTY 711 Relay Service

Email shelley.tencza@dshs.wa.gov

Other

By (date) 5:00 p.m. on December 24, 2024

Purpose of the proposal and its anticipated effects, including any changes in existing rules: This proposal restores the flexibility of previous rules and adds clarity that will help adult family homes with compliance while maintaining safety and well-being of residents in AFHs. The anticipated effect is a reduced financial and regulatory burden for new AFHs.

- **Reasons supporting proposal:** This proposal reduces barriers to the AFH market, allowing new AFHs flexibility in how they meet licensing requirements for bathrooms. Residents' health and safety is maintained. This proposal was requested by a member of the community and supports the DSHS mission of collaborating with the community.

Statutory authority for adoption: RCW 70.128.040

Statute being implemented: RCW 70.128.007

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

Type of proponent: ☐ Private. ☐ Public. ☒ Governmental.

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting	Colleen Jensen	4500 10 th Ave SE, Lacey WA 98503	564-999-3182
Implementation	Colleen Jensen	4500 10 th Ave SE, Lacey WA 98503	564-999-3182
Enforcement	Colleen Jensen	4500 10 th Ave SE, Lacey WA 98503	564-999-3182

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 Colleen Jensen
Address PO Box 45600, Olympia WA 98504
Phone 564-999-3182
Fax
TTY 711
Email colleen.jensen1@dshs.wa.gov
Other

☐ No: Please explain:

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 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 _____.

Explanation of how the above exemption(s) applies to the proposed 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. The purpose of this chapter is to implement chapter 70.128 RCW, to promote the safety and well-being of adult family home (AFH) or residents, to specify standards for AFH, and to further establish requirements for operating an AFH. The proposed amendments to this chapter will:

- Remove the requirement that there be two toilets available to each resident in AFHs licensed after August 1, 2023, for more than five residents and clarify there must be at least one toilet meeting WAC requirements for every five people living in the AFH.
- Clarify toilets and bathing facilities not used by residents do not have to meet WAC requirements but must be inaccessible to residents.

The department provided notice of the proposed rulemaking to interested parties, which includes AFHs. The department held two interested parties "workgroup" meetings to solicit input and feedback during the rulemaking process. The workgroup included representatives from the Adult Family Home Council (AFHC), the Washington State Long-Term Care Ombuds Program, architects, and adult family home consultants. No AFH providers accepted the invitation to participate. The department sought input from the State Building Code Council and the State Fire Marshal who reviewed and commented on the draft rules. The department used the comments from the workgroup to make updates to the draft rules.

The department consulted with the exclusive representative of adult family home licensees, the AFHC, for input on how the rules may impact costs for the small businesses they represent.

Chapter 19.85 RCW, The Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses. The statute defines small businesses as those businesses that employ fifty or fewer people and are independently owned and operated. These proposed rules impact AFHs licensed by the department.

Preparation of a Small Business Economic Impact Statement (SBEIS) is required when a proposed rule has the potential of placing a disproportionate economic impact on small businesses. The statute outlines information that must be included in a SBEIS.

Under chapter 19.85 RCW, the department has considered annual costs to small businesses that are fifty dollars or more per client served, per affected Adult Family Home. The proposed rule amendments will not impose more than minor costs on small businesses. The preparation of a comprehensive SBEIS is not required.

The proposed rules include the following significant changes to:

- Requirements for the number of toilets available for resident use.
- Requirements to make unlicensed toilets and bathing facilities inaccessible to residents.

The department identified no costs associated with the proposed rule. Some AFHs will have a cost savings because they will not have to add or modify a bathroom under the proposed rule.

Adult family homes will not have to add or modify a bathroom when they have enough toilets to meet the 1:5 ratio in the proposed rule. This will save AFHs money and will reduce barriers to licensure. Defining "accessible" will provide clarity, which will help AFHs comply with the rule. Residents will still have access to a sufficient number of toilets in the AFH to maintain comfort and dignity and AFHs have flexibility in how they meet the requirement. For the requirement to make unlicensed toilets and bathing facilities inaccessible there will be less likelihood of residents accessing facilities that don't meet the WAC requirements, which supports resident safety.

- ☐ 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 Colleen Jensen

Address PO Box 45600, Olympia WA 98504

Phone 564-999-3182

Fax

TTY 711

Email colleen.jensen1@dshs.wa.gov

Other

Date: November 21, 2024	Signature: 
Name: Katherine I. Vasquez	
Title: DSHS Rules Coordinator	

AMENDATORY SECTION (Amending WSR 23-12-075, filed 6/6/23, effective 8/1/23)

WAC 388-76-10780 Toilets and bathing facilities. (1) All adult family homes must ensure the home has toilets and bathing facilities that provide each resident with privacy and include at least:

(a) One accessible indoor flush toilet that meets WAC 51-51-0330 for each five persons including residents and household members who live in the home; and

(b) Sinks with hot and cold running water.

(2) For the purposes of this section, "accessible" means available and licensed for resident use.

~~((2))~~ (3) Homes licensed after July 1, 2007, must also ensure each resident has access to a toilet, and bathing facilities without going through another person's room.

~~((3) Homes licensed after August 1, 2023, that have a licensed capacity of more than five residents must have at least two indoor flush toilets available and accessible for resident use without requiring any resident to go through another person's room.))~~

(4) Homes licensed after August 1, 2023, must have a sufficient number of toilets to maintain a ratio of one accessible toilet to five persons, without having to go through another person's room to use a toilet.

(5) Toilets and bathing facilities not used by residents do not need to meet requirements of WAC 51-51-0330 and must not be accessible to residents.