



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: 12:30 PM

WSR 24-24-020

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** 22-23-041 ; 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) WAC 388-76-10490-Medication disposal-Written policy-Required

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 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: The proposed rule supports and protects residents by adding timeframes to existing WAC requirements and adding clarifying language. The proposed rule does this by requiring AFHs to dispose of expired and discontinued medications within a specific timeframe and developing a policy to address the transfer of medications when residents permanently leave the home. Residents are less likely to receive expired or unused medications and those who leave the AFH will receive support to ensure they take their medications with them.

Reasons supporting proposal: This rulemaking is supported by a petition from a member of the pharmacy community to address waste that occurs when prescriptions are filled for residents after they leave an adult family home. Developing medication disposal and transfer timeframes and documentation requirements will help adult family home providers comply with the rule and promote safety of residents in adult family homes.

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: <input type="checkbox"/> Private. <input type="checkbox"/> Public. <input checked="" type="checkbox"/> Governmental.			
Name of agency personnel responsible for:			
	Name	Office Location	Phone
Drafting	Colleen Jensen	PO Box 45600 Olympia, WA 98504	564-999-3182
Implementation	Colleen Jensen	PO Box 45600 Olympia, WA 98504	564-999-3182
Enforcement	Colleen Jensen	PO Box 45600 Olympia, WA 98504	564-999-3182
Is a school district fiscal impact statement required under RCW 28A.305.135?			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
If yes, insert statement here:			
The public may obtain a copy of the school district fiscal impact statement by contacting: <div style="margin-left: 20px;"> Name Address Phone Fax TTY Email Other </div>			
Is a cost-benefit analysis required under RCW 34.05.328?			
<input checked="" type="checkbox"/> Yes: A preliminary cost-benefit analysis may be obtained by contacting: <div style="margin-left: 20px;"> Name Colleen Jensen Address PO Box 45600 Olympia, WA 98504 Phone 564-999-3182 Fax TTY 711 Email colleen.jensen1@dshs.wa.gov Other </div>			
<input type="checkbox"/> 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):			
<input type="checkbox"/> 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:			
<input type="checkbox"/> 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.			
<input type="checkbox"/> 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 home) residents, to specify standards for AFH providers, and to further establish requirements for operating an AFH.

The proposed amendments address a process gap that occurs when residents transfer or discharge from AFHs and prescription medications for those residents continue to be filled by pharmacies. These filled prescriptions cannot not be returned to the pharmacy and are subject to diversion and misuse by others. This issue was brought to the attention of the department by a member of the pharmacy community.

Proposed amendments to the chapter:

1. Add a definition of "discontinued" medications for this section only.
2. Add a timeframe for disposal of expired and discontinued medications for residents who reside in the AFH and for disposal of medications for residents who have permanently left the AFH.
3. Add a requirement to include in the facility's policy assistance with transfer of the resident's medications to a resident's new setting, when needed.
4. Add a requirement for the facility to include in their policy a method to stop delivery or fulfillment of the prescription medications to the AFH for residents who have permanently left the home.
5. Add a requirement for documentation when medication disposal occurs.

The proposed rules promote the safety and well-being of residents who live in AFHs by requiring homes to dispose of expired and discontinued medications within a specific timeframe and developing a policy to address the transfer of medications when residents permanently leave the home.

The department provided notice of the proposed rulemaking to interested parties, which includes AFH providers. The Adult Family Home Council (AFHC), the exclusive representative of adult family home licensees, was involved in the rulemaking. Other interested parties included the Washington State Long-Term Care Ombudsman Program and the Pharmacy Commission. The department initiated communication with interested parties and elicited feedback through a series of emails during the rule development process.

The department consulted with the AFHC for input on how the rules may impact costs for the small businesses they represent. The department also worked with an AFH consultant who was part of the interested party group for additional cost estimates.

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.

The department 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:

- Updated AFH policies to address medications of residents who permanently leave the AFH.

• Added timeframe and documentation requirements for disposal of discontinued and expired resident medications. The proposed rules provide a clear timeframe for transfer and disposal of resident medications and a requirement to document disposal. This clarity will assist AFHs in complying with the rule. Timely disposal will reduce the likelihood residents will receive discontinued or expired medications by mistake. Residents permanently leaving the AFH will be more likely to transition with their medications, which promotes their safety and well-being. Stopping fulfillment of medications for residents who permanently leave an AFH will reduce waste and cost of disposal for both pharmacies (which includes small businesses) and AFHs. The department expects there will be less opportunity for misappropriation of medication, benefitting the public as a whole.

☐ 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 v
Other

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

WAC 388-76-10490 Medication disposal—Written policy—Required.

(1) For the purposes of this section, "discontinued" means medication that is no longer prescribed or being used to treat a condition, as directed by the resident's physician or health care professional with prescriptive authority.

(2) The adult family home must ~~((have))~~ develop and implement a written policy addressing the safe disposal of ~~((unused or expired))~~ resident medications that have been discontinued or have expired. The policy must: ~~((Unused and expired medication must be disposed of in a safe manner for:~~

~~(1) Current residents living in the adult family home; and~~

~~(2) Residents who have left the home.))~~

(a) Comply with all federal and state laws and regulations regarding medication disposal;

(b) Address the safe disposal of medications for current residents, deceased residents, and residents who have discharged from the facility; and

(i) For current residents the facility must safely dispose of discontinued medications and expired medications within 30 calendar days of discontinuation or expiration;

(ii) For deceased residents the facility must safely dispose of all medications within 30 calendar days of the resident's death; and

(iii) For discharged residents the facility must:

(A) Assist with the transfer of the resident's medications to the resident's new setting, when needed;

(B) End fulfillment, delivery, and receipt of prescription medications within 10 calendar days; and

(C) Safely dispose of any medications left at the adult family home after 90 calendar days.

(c) Require that the safe disposal of the medication is recorded in a document that includes:

(i) Name of resident;

(ii) Name of medication;

(iii) Amount of medication;

(iv) Date of disposal or transfer; and

(v) Name of individual completing the task.