



RULE-MAKING ORDER EMERGENCY RULE ONLY

CR-103E (December 2017) (Implements RCW 34.05.350 and 34.05.360)

CODE REVISER USE ONLY

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STATE OF WASHINGTON
FILED

DATE: May 17, 2021

TIME: 10:09 AM

WSR 21-11-069

Agency: Department of Social and Health Services (Department)

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify) May 25, 2021

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes
 - No
- If Yes, explain:

Purpose: The Department is amending the rules listed below to assure nursing homes are not obstructed from offering the COVID-19 vaccine to residents and staff because of clinical interference from required tuberculosis (TB) testing. Current state rules specify that nursing homes administer TB testing to residents and staff within three days of employment or admission, unless the person is excluded from testing under the rules. The amendment permits the nursing home to defer TB testing if the person is in the process of receiving the COVID-19 vaccine, or if receiving the vaccine is of greater benefit and less risk than performing TB testing before administering the vaccine. The amendment does not permit the nursing facility to defer TB testing for reasons other than the COVID-19 vaccine, and requires the nursing home to complete the TB testing as soon as the COVID-19 vaccine recommendations permit. The rules also require screening for signs and symptoms of TB for those persons who are deferring TB testing.

Citation of rules affected by this order:

- New: None
- Repealed: None
- Amended: WAC 388-97-1380 and WAC 388-97-1580
- Suspended: None

Statutory authority for adoption: RCW 74.42.620

Other authority: Chapter 74.34 RCW

EMERGENCY RULE

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: The threat of COVID-19 to our most vulnerable populations is significant, especially for those receiving long-term care services in their homes and congregate settings, such as long-term care facilities. Vaccine for COVID-19 is now available and vaccinating nursing home residents and staff is a high priority due to the heightened risk of COVID-19 in the nursing home setting. The Centers for Disease Control and Prevention (CDC) issued recommendations about the co-administration of the COVID-19 vaccine and TB testing products. The CDC recommended that TB testing occur prior to COVID-19 vaccination, or if the vaccination process is underway or the vaccine is a higher priority than determining TB status, to defer TB testing until after the COVID-19 vaccination process is complete. Current nursing home rules require testing of nursing home residents and staff within three days of employment or admission. These rule amendments permit deferment of TB testing until the vaccination process is completed, in accordance with the CDC COVID-19 guidance. The department is proceeding with permanent adoption. A CR 101 was filed as WSR 21-11-061.

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Federal rules or standards:	New	<u>0</u>	Amended	<u>2</u>	Repealed	<u>0</u>
Recently enacted state statutes:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>

The number of sections adopted at the request of a nongovernmental entity:

New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted on the agency's own initiative:

New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
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The number of sections adopted using:

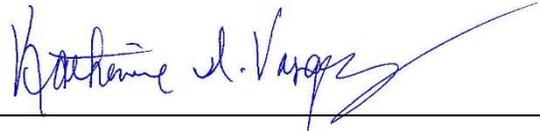
Negotiated rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Pilot rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Other alternative rule making:	New	<u>0</u>	Amended	<u>2</u>	Repealed	<u>0</u>

Date Adopted: 5/14/2021

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1380 Tuberculosis—Testing required. (1) Unless the nursing home decides to defer tuberculosis testing in accordance with subsection (2) of this section, or the resident or staff person is excluded from testing from WAC 388-97-1440, the nursing home must ((develop and implement a system to)):

(a) Ensure that facility personnel and residents have tuberculosis testing within three days of employment or admission((-)); and

((2) The nursing home must also)) (b) Ensure that facility personnel are tested annually.

((3)) (2) The nursing home may defer tuberculosis testing of facility personnel and residents to complete the COVID-19 vaccination process if the nursing home has considered the risks and benefits of such delay and if the delay is consistent with the current centers for disease control and prevention COVID-19 vaccination guidance.

(3) If testing is deferred for a resident or facility staff person, in accordance with subsection (2) of this section, the nursing home must:

(a) Assess the person for symptoms of tuberculosis within three days of employment or admission, and if the person has tuberculosis symptoms, follow WAC 388-97-1560; and

(b) Complete tuberculosis testing in accordance with WAC 388-97-1400 through 388-97-1580 as soon as indicated by the centers for disease control and prevention COVID-19 vaccination guidelines.

(4) For the purposes of WAC 388-97-1360 through 388-97-1580, "person" means facility personnel and residents.

AMENDATORY SECTION (Amending WSR 10-02-021, filed 12/29/09, effective 1/29/10)

WAC 388-97-1580 Tuberculosis—Test records. The nursing home must:

(1) Keep the records of tuberculin test results, reports of X-ray findings, and any physician or public health provider orders in the nursing home;

(2) Keep the records of the tuberculosis symptom assessment and the documented rationale for deferring the tuberculosis testing in the nursing home, if tuberculosis testing is deferred in accordance with WAC 388-97-1380(2);

(3) Make the records readily available to the appropriate health authority and licensing agency;

((3)) (4) Retain the records for eighteen months beyond the date of employment termination; and

((4)) (5) Provide the tested person with a copy of ((his/her)) the test results.