



# 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: November 05, 2021

TIME: 1:45 PM

WSR 21-23-015

**Agency:** Department of Social and Health Services (Department)

**Effective date of rule:**

**Emergency Rules**

- Immediately upon filing.
- Later (specify) 11/18/2021

**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 extending the suspension of the rules listed below to ensure long-term care facilities and providers are not significantly impeded during the hiring process due to an inability to access required tuberculosis (TB) testing as a result of the COVID-19 epidemic. Clinics providing TB testing continue to be short of staff and have limited availability throughout the state. These clinics are unable to provide the TB testing required as a part of the hiring process in many long-term care programs. This circumstance is expected to exacerbate demand for long-term care workers when the pandemic has already significantly reduced the availability of long-term care workers in the state. These emergency rules will help increase the number of long-term care workers necessary to provide essential services for some of Washington's most vulnerable residents.

**Citation of rules affected by this order:**

New: None  
 Repealed: WACs 388-76-10265 and -10285; WAC 388-78A-2484; and WAC 388-107-0490  
 Amended: WACs 388-76-10290(1); WACs 388-78A-2480(1), and -2485(1); WACs 388-101D-0650(1) and -0660(3); and WAC 388-107-0460(1)  
 Suspended: None

**Statutory authority for adoption:** RCW 70.128.040, RCW 71A.12.030, and Chapters 18.20 and 70.97 RCW

**Other authority:** Chapters 70.128, 71A.12, and 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 continued 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. Due to the uptick in COVID and the testing requirements, labs are heavily taxed trying to meet demands for COVID testing which impacts testing for TB. Facilities have limited availability of antigen testing for TB. While vaccinations are being distributed, this alone has not yet significantly improved staffing availability in long-term care facilities. Although the state has implemented a reopening plan, clinics providing TB testing continue to be short of staff and have limited availability throughout the state partially due to higher than normal requests for services related to overdue standard screening tests such as TB. Adult family homes and many assisted living facilities are dependent upon community services to provide TB testing. These clinics are unable to meet the demand for testing required as a part of the hiring process in many long-term care programs. This circumstance is expected to exacerbate demand for long-term care workers when the pandemic has already significantly reduced the availability of long-term care workers in the state.

Ongoing communication with stakeholders indicates a need to continue these suspended rules as the COVID pandemic is still impacting the ability of long-term care facilities to meet these requirements. With the rise in COVID testing, the ability to get the antigen tests for TB has been very limited in availability as labs are trying to meet testing demands for COVID. Many assisted livings do not have the nurses on staff available to perform the TB skin testing in-house at currently. The department filed a CR 101 preproposal under WSR 20-16-069.

**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>0</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>10</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:**

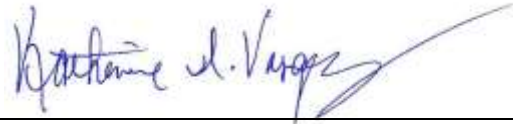
Negotiated rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Pilot rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Other alternative rule making:	New	<u>0</u>	Amended	<u>10</u>	Repealed	<u>0</u>

**Date Adopted:** November 5, 2021

**Name:** Katherine I. Vasquez

**Title:** DSHS Rules Coordinator

**Signature:**



AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

**WAC 388-76-10290 Tuberculosis—Positive test result.** When there is a positive result to tuberculosis skin or blood testing the adult family home must:

- ~~(1) ((Ensure that the person has a chest X-ray within seven days;~~
- ~~(2))~~ Ensure each resident or employee with a positive test result is evaluated for signs and symptoms of tuberculosis; and
- ~~((3))~~ (2) Follow the recommendation of the person's health care provider.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

**WAC 388-78A-2480 Tuberculosis—Testing—Required.** ~~((1) The as-~~  
~~sisted living facility must develop and implement a system to ensure~~  
~~each staff person is screened for tuberculosis within three days of~~  
~~employment.~~

~~(2))~~ For purposes of WAC 388-78A-2481 through 388-78A-2489, "staff person" means any assisted living facility employee or temporary employee of the assisted living facility, excluding volunteers and contractors.

AMENDATORY SECTION (Amending WSR 13-13-063, filed 6/18/13, effective 7/19/13)

**WAC 388-78A-2485 Tuberculosis—Positive test result.** When there is a positive result to tuberculosis skin or blood testing the assisted living facility must:

- ~~(1) ((Ensure that the staff person has a chest X-ray within seven~~  
~~days;~~
- ~~(2))~~ Ensure each resident or staff person with a positive test result is evaluated for signs and symptoms of tuberculosis; and
- ~~((3))~~ (2) Follow the recommendation of the resident or staff person's health care provider.

AMENDATORY SECTION (Amending WSR 18-23-101, filed 11/20/18, effective 1/1/19)

**WAC 388-101D-0650 What must a group training home do to detect and manage tuberculosis?** To detect and manage tuberculosis, a group training home must:

- ~~(1) ((Ensure each employee has a tuberculin test no more than~~  
~~three days after beginning to work with clients unless otherwise ex-~~  
~~empt under this chapter;~~

(2)) Implement policies and procedures that comply with tuberculosis standards set by the Centers for Disease Control and Prevention and applicable state laws;

~~((3))~~ (2) Comply with the Washington Industrial Safety and Health Act (WISHA) standards for respiratory protection; and

~~((4))~~ (3) Comply with chapter 296-842 WAC requirements to protect the health and safety of clients who may come into contact with people who have infectious tuberculosis.

AMENDATORY SECTION (Amending WSR 18-23-101, filed 11/20/18, effective 1/1/19)

**WAC 388-101D-0660 When is a group training home employee not required to complete a tuberculin test?** (1) A group training home employee is not required to complete a tuberculin test if the employee:

(a) Has documentation of an FDA-approved tuberculin test with negative results from within the last twelve months;

(b) Has documentation of a positive FDA-approved tuberculin test with documented evidence of:

(i) Adequate therapy for active disease; or

(ii) Completion of treatment for latent tuberculosis infection preventive therapy;

(c) Self-reports a history of positive test results under subsection (2) or (3) of this section.

(2) If a group training home employee self-reports a history of positive test results with chest X-ray results from the last twelve months, the employee must:

(a) Provide a copy of the normal X-ray results to the group training home; and

(b) Be evaluated for signs and symptoms of tuberculosis.

~~(3) ((If a group training home employee self-reports a history of positive test results without chest X-ray results, the employee must:~~

~~(a) Be referred to a medical provider;~~

~~(b) Complete a chest X-ray within seven days; and~~

~~(c) Be cleared by a medical professional before returning to work if the X-ray is abnormal and consistent with tuberculosis.~~

~~(4))~~ A group training home volunteer working less than four hours a month is exempt from tuberculin test requirements.

AMENDATORY SECTION (Amending WSR 14-19-071, filed 9/12/14, effective 10/13/14)

**WAC 388-107-0460 Tuberculosis (TB)—Testing—Required.** The enhanced services facility must:

~~((1) Develop and implement a system to ensure staff have TB testing upon employment or starting service; and~~

(2)) Ensure that staff have an annual risk assessment completed using the Washington state department of health approved criteria.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-76-10265	Tuberculosis—Testing—Required.
WAC 388-76-10285	Tuberculosis—Two step skin testing.
WAC 388-78A-2484	Tuberculosis—Two step skin testing.
WAC 388-107-0490	Tuberculosis (TB)—Two-step skin testing.