



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, 2022

TIME: 1:15 PM

WSR 22-11-078

Agency: Department of Social and Health Services (department)

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify)

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

- Yes
 - No
- If Yes, explain:

Purpose: On April 11, 2022, the department filed emergency rules under WSR 22-09-014 to suspend WAC 388-97-0920, Right to Participate in Resident Groups; and delay by 30 days the requirement to complete Preadmission Screening and Resident Review (PASRR) screening prior to admission to a nursing home under WAC 388-97-1915 and -1975. This was an extension of emergency rules consecutively filed since April 13, 2020, to maintain compliance with blanket waivers issued by the Centers for Medicare and Medicaid Services (CMS) to assure nursing homes are not significantly impeded from admitting and caring for residents during the COVID-19 outbreak.

Effective May 7, 2022, CMS rescinded the blanket waiver related to the resident right to participate in resident groups, but continued the federal waiver of PASRR requirements. This rule filing cancels and supersedes the emergency rules filed as WSR 22-09-014, reimplements the requirements related to the resident right to participate in resident groups under WAC 388-97-0920 for consistency with CMS reimplementation of these requirements, and extends the amendment of the PASRR rules listed below to continue to align Washington state nursing home rules with federal rules that are suspended or amended under the CMS blanket waiver.

The department filed a CR-101 under WSR 21-11-062 and is continuing discussions about adding rules that explain the circumstances and time periods under which suspension of rules was necessary due to COVID.

Citation of rules affected by this order:

- New: None
- Repealed: None
- Amended: WACs 388-97-1915, and -1975
- 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 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.

PASRR: Current nursing home rules require a PASRR screen, typically performed by hospital staff prior to admission to a nursing home, followed by further evaluation from state agency staff or contractors under certain circumstances. Hospital staff continue to experience an extremely high workload during the pandemic due to the increased number of admissions, coupled with a reduced number of available staff. Additionally, face-to-face evaluation of the transferring resident continues to be restricted in many counties. The PASRR rule will align state nursing home rules with federal rules that were extended to help facilitate care during the COVID-19 outbreak by shortening the transfer time from hospital to nursing home and increasing the flexibility for nursing home staff to be able to prioritize immediate or emergency care needs of incoming residents.

These emergency rules continue to be needed to align state nursing home requirements with suspended or amended federal requirements. Ongoing conversations with stakeholders also support continuation of these emergency rules until a clear timeline for reimplementation, consistent with federal reimplementation, is established.

**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	2	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:

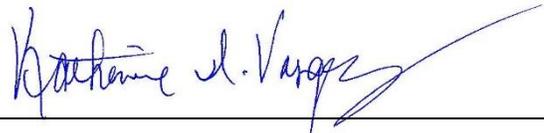
Negotiated rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Pilot rule making:	New	<u>0</u>	Amended	<u>0</u>	Repealed	<u>0</u>
Other alternative rule making:	New	<u>0</u>	Amended	<u>2</u>	Repealed	<u>0</u>

Date Adopted: May 16, 2022

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



AMENDATORY SECTION (Amending WSR 15-18-026, filed 8/25/15, effective 9/25/15)

WAC 388-97-1915 PASRR requirements (~~(prior to admission of)~~) for new residents. (~~(Prior to every)~~) Within 30 days of admission (~~(of a new resident)~~), the nursing facility must:

(1) Complete a PASRR level I screening, or verify that a PASRR level I screening has been completed(~~(, and deny admission until that screening has been completed)~~).

(2) Require a PASRR level II evaluation, or verify that a PASRR level II evaluation has been (~~(completed)~~) requested when the individual's PASRR level I screening indicates that the individual may have serious mental illness and/or intellectual disability or related condition(~~(, and deny admission until that evaluation has been completed, unless all three of the following criteria apply and are documented in the PASRR level I screening:~~

~~(a) The individual is admitted directly from a hospital after receiving acute inpatient care;~~

~~(b) The individual requires nursing facility services for the condition for which he or she received care in the hospital; and~~

~~(c) The individual's attending physician has certified that the individual is likely to require fewer than thirty days of nursing facility services)~~).

(3) (~~Decline to admit any individual whose PASRR level II evaluation determines that he or she does not require nursing facility services or that a nursing facility placement is otherwise inappropriate.~~

~~(4))~~ Coordinate with PASRR evaluators to the maximum extent practicable in order to avoid duplicative assessments and effort, and to ensure continuity of care for nursing facility residents with a serious mental illness and/or an intellectual disability or related condition.

AMENDATORY SECTION (Amending WSR 15-18-026, filed 8/25/15, effective 9/25/15)

WAC 388-97-1975 PASRR requirements after admission of a resident. (~~(Following)~~) After the 30th day of a resident's admission, the nursing facility must:

(1) Review all level I screening forms for accuracy. If at any time the facility finds that the previous level I screening was incomplete, erroneous, or is no longer accurate, the facility must immediately complete a new screening using the department's standardized level I form, following the directions provided by the department's PASRR program. If the corrected level I screening identifies a possible serious mental illness or intellectual disability or related condition, the facility must notify DDA and/or the mental health PASRR evaluator so a level II evaluation can be conducted.

(2) Record the evidence of the level I screening and level II determinations (and any subsequent changes) in the resident assessment in accordance with the schedule required under WAC 388-97-1000.

(3) Maintain the level I form and the level II evaluation report in the resident's active clinical record.

(4) Immediately complete a level I screening using the department's standardized form if the facility discovers that a resident does not have a level I screening in his or her clinical record, following directions provided by the department's PASRR program. If the level I screening identifies a possible serious mental illness or intellectual disability or related condition, notify the DDA and/or mental health PASRR evaluator so a level II evaluation can be conducted.

~~(5) ((Notify the DDA and/or mental health PASRR evaluator when a resident who was admitted on an exempted hospital discharge appears likely to need nursing facility services for more than thirty days, so a level II evaluation can be performed. This notification must occur as soon as the nursing facility anticipates that the resident may require more than 30 days of nursing facility services, and no later than the twenty-fifth day after admission unless good cause is documented for later notification.~~

~~(6))~~ Notify the DDA and/or mental health PASRR evaluator when a resident who was admitted with an advance categorical determination appears likely to need nursing facility services for longer than the period specified by DDA and/or the mental health PASRR evaluator, so that a full assessment of the individual's need for specialized services can be performed. This notification must occur as soon as the nursing facility anticipates that the resident will require more than the number of days of nursing facility services authorized for the specific advance categorical determination and no later than five days before expiration of the period (three days for protective services) unless good cause is documented for later notification.

~~((7))~~ (6) Immediately notify the DDA and/or mental health PASRR evaluator for a possible resident review when there has been a significant change in the physical or mental condition, as defined in WAC 388-97-1910, of any resident who has been determined to have a serious mental illness or intellectual disability or related condition. Complete a new level I screening for the significant change.

~~((8))~~ (7) Provide or arrange for the provision of any services recommended by a PASRR level II evaluator that are within the scope of nursing facility services. If the facility believes that the recommended service either cannot or should not be provided, the facility must document the reason(s) for not providing the service and communicate the reason(s) to the level II evaluator.

~~((9))~~ (8) Immediately complete a new level I screening using the department's standardized form if the facility finds that a resident, not previously determined to have a serious mental illness, develops symptoms of a serious mental illness, and refer the resident to the mental health PASRR evaluator for further evaluation.

~~((10))~~ (9) Provide services and interventions that complement, reinforce, and are consistent with any specialized services recommended by the level II evaluator. The resident's plan of care must specify how the facility will integrate relevant activities to achieve this consistency and the enhancement of the PASRR goals.

~~((11))~~ (10) Discharge, in accordance with WAC 388-97-0120, any resident with a serious mental illness or intellectual disability or related condition who does not meet nursing facility level of care, unless the resident has continuously resided in the facility for at least ~~((thirty))~~ 30 months and requires specialized services. The nursing facility must cooperate with DDA and/or mental health PASRR

evaluator as it prepares the resident for a safe and orderly discharge.

REPEALER))

~~((The following section of the Washington Administrative Code is repealed:~~

~~WAC 388-97-0920 Participation in resident and family groups.))~~