



# RULE-MAKING ORDER PERMANENT RULE ONLY

## CR-103P (December 2017) (Implements RCW 34.05.360)

CODE REVISER USE ONLY

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STATE OF WASHINGTON  
FILED

DATE: January 15, 2020

TIME: 8:53 PM

WSR 20-03-103

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

**Effective date of rule:**

**Permanent Rules**

- 31 days after filing.  
 Other (specify) \_\_\_\_\_ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

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

- Yes  No If Yes, explain:

**Purpose:** The purpose of this amendment is to remove references to chapter 388-526 WAC from this rule. WAC 388-97-0140 (3) describes the appeal process for a nursing home resident or resident representative who wants to appeal a discharge or transfer decision made by the nursing home. Removing the references to chapter 388-526 WAC, which was repealed, will more clearly define the appeal process for the user.

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

New: None  
Repealed: None  
Amended: WAC 388-97-0140  
Suspended: None

**Statutory authority for adoption:** RCW 74.42.620

**Other authority:** N/A

**PERMANENT RULE (Including Expedited Rule Making)**

Adopted under notice filed as WSR 19-22-068 on November 5, 2019 (date).  
Describe any changes other than editing from proposed to adopted version: None

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Web site:  
Other:

**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Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	___	Repealed	___

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

New	___	Amended	___	Repealed	___
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**The number of sections adopted on the agency's own initiative:**

New	___	Amended	___	Repealed	___
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	___	Amended	<u>1</u>	Repealed	___
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**The number of sections adopted using:**

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	<u>1</u>	Repealed	___

**Date Adopted:** January 14, 2020

**Name:** Katherine I. Vasquez

**Title:** DSHS Rules Coordinator

**Signature:**



**WAC 388-97-0140 Transfer and discharge appeals for resident in medicare or medicaid certified facilities.** (1) A skilled nursing facility and a nursing facility that initiates transfer or discharge of any resident, regardless of payor status, must:

(a) Provide the required written notice of transfer or discharge to the resident and, if known or appropriate, to a family member or the resident's representative;

(b) Attach a department-designated hearing request form to the transfer or discharge notice;

(c) Inform the resident in writing, in a language and manner the resident can understand, that:

(i) An appeal request may be made any time up to ninety days from the date the resident receives the notice of transfer or discharge; and

(ii) Transfer or discharge will be suspended when an appeal request is received by the office of administrative hearings on or before the date the resident actually transfers or discharges; and

(iii) The nursing home will assist the resident in requesting a hearing to appeal the transfer or discharge decision.

(2) A skilled nursing facility or nursing facility must suspend transfer or discharge pending the outcome of the hearing when the resident's appeal is received by the office of administrative hearings on or before the date of the transfer or discharge set forth in the written transfer or discharge notice, or before the resident is actually transferred or discharged.

(3) The resident is entitled to appeal the skilled nursing facility or nursing facility's transfer or discharge decision. The appeals process is set forth in (~~chapter 388-526 WAC,~~) chapter 182-526 WAC and this chapter. In such appeals, the following will apply:

(a) In the event of a conflict between a provision in this chapter and a provision in (~~chapter 388-526 WAC or~~) chapter 182-526 WAC, the provision in this chapter will prevail;

(b) The resident must be the appellant and the skilled nursing facility or the nursing facility will be the respondent;

(c) The department must be notified of the appeal and may choose whether to participate in the proceedings. If the department chooses to participate, its role is to represent the state's interest in assuring that skilled nursing facility and nursing facility transfer and discharge actions comply substantively and procedurally with the law and with federal requirements necessary for federal funds;

(d) If a medicare certified or medicaid certified facility's decision to transfer or discharge a resident is not upheld, and the resident has been relocated, the resident has the right to readmission immediately upon the first available bed in a semi-private room if the resident requires and is eligible for the services provided by a nursing facility or skilled nursing facility;

(e) Any review of the administrative law judge's initial decision shall be conducted under (~~chapter 388-526 WAC or~~) chapter 182-526 WAC.