



# PREPROPOSAL STATEMENT OF INQUIRY

## CR-101 (August 2017) (Implements RCW 34.05.310) Do NOT use for expedited rule making

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STATE OF WASHINGTON  
FILED

DATE: August 22, 2017

TIME: 1:06 PM

WSR 17-17-136

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

**Subject of possible rule making:** The department is proposing to amend WAC 388-71-0105 and other related rules as may be required in order to strike the term "willful" from the definitions list in WAC 388-71-0105.

**Statutes authorizing the agency to adopt rules on this subject:** RCW 74.08.090

**Reasons why rules on this subject may be needed and what they might accomplish:** The department is proposing to strike the term "willful" from the definitions list in WAC 388-71-0105 in order to comply with an order issued by the Division III Court of Appeals in *Crosswhite v. DSHS* that invalidated the current definition of "willful". The department may also make similar amendments in other chapters such as 388-76, 388-78A, 388-101, and 388-111 WAC as necessary to comply with the *Crosswhite v. DSHS* decision.

**Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies:** Federal regulations govern long-term care facilities, including intermediate care facilities for individuals with intellectual disabilities and nursing facilities that participate in Medicare or Medicaid. Federal regulations define "willful" abuse at 42 CFR § 483.5.

**Process for developing new rule (check all that apply):**

- Negotiated rule making
- Pilot rule making
- Agency study

Other (describe) DSHS welcomes the public to take part in developing the rules. Anyone interested should contact the staff person identified below. At a later date, DSHS will file a proposal with the Office of the Code Reviser with a notice of proposed rule making. A copy of the proposal will be sent to everyone on the mailing list and to anyone who requests a copy.

**Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting:**

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(If necessary)

Name:  
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Additional comments:

**Date:** August 22, 2017

**Name:** Katherine I. Vasquez

**Title:** DSHS Rules Coordinator

**Signature:**