



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: October 03, 2019

TIME: 12:54 PM

WSR 19-21-006

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 department is amending WAC 388-97-4425, WAC 388-97-4430, and WAC 388-97-4440 to clarify that notices can be delivered and proof of service can be obtained electronically through the federal website, and to clarify the nursing home's right to appeal WAC deficiency findings under the state appeal process, regardless of the delivery method of the deficiency report.

Citation of rules affected by this order:

New: None
Repealed: None
Amended: WAC 388-97-4425, WAC 388-97-4430, WAC 388-97-4440
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 19-14-038 on June 26, 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Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	___	Repealed	___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New	___	Amended	___	Repealed	___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New	___	Amended	___	Repealed	___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>3</u>	Repealed	___
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The number of sections adopted using:

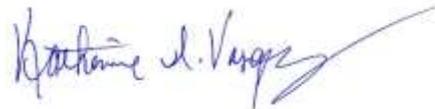
Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	<u>3</u>	Repealed	___

Date Adopted: October 3, 2019

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



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

WAC 388-97-4425 Notice—Service complete. Service of the department notices is complete when:

- (1) Personal service is made;
- (2) The notice is addressed to the facility or to the individual at his or her last known address, and deposited in the United States mail;
- (3) The notice is faxed and the department receives evidence of transmission;
- (4) Notice is delivered to a commercial delivery service with charges prepaid; ~~((\oplus))~~
- (5) Notice is delivered to a legal messenger service with charges prepaid(~~(\oplus)~~); or
- (6) Notice is sent electronically, including through the federal website.

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

WAC 388-97-4430 Notice—Proof of service. The department may establish proof of service by any of the following:

- (1) A declaration of personal service;
- (2) An affidavit or certificate of mailing to the nursing home or to the individual to whom the notice is directed;
- (3) A signed receipt from the person who accepted the certified mail, the commercial delivery service, or the legal messenger service package; ~~((\oplus))~~
- (4) Proof of fax transmission(~~(\oplus)~~); or
- (5) Proof of electronic transmission.

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

WAC 388-97-4440 Appeal rights. (1) The appeal rights in this section apply to any appealable action taken by the department under chapters 18.51, 74.42 and 74.39A RCW. Notice and appeal requirements for resident protection program findings are described in WAC 388-97-0720 and 388-97-0740.

- (2) The following actions may be appealed:
 - (a) Imposition of a penalty under RCW 18.51.060 or 74.42.580;
 - (b) A denial of a license under RCW 18.51.054, a license suspension under RCW 18.51.067 or a condition on a license under RCW 74.39A.050; or
 - (c) Deficiencies cited on the state survey report and any other deficiencies cited under state law.

(3) The appeal process will be governed by the Administrative Procedure Act (chapter 34.05 RCW), RCW 18.51.065 and 74.42.580, chap-

ter 388-02 WAC and this chapter. If there is a conflict between chapter 388-02 WAC and this chapter, this chapter will govern.

(4) The purpose of an administrative hearing will be to review actions taken by the department under chapters 18.51, 74.42 or 74.39A RCW, and under this chapter.

(5) The office of administrative hearings must receive an administrative hearing request from the applicant, licensee, or nursing home within twenty days of receipt of written notification of the department's action listed in subsection (2) of this section. Further information about administrative hearings is available in chapter 388-02 WAC and at the office of administrative hearings (OAH) web site: www.oah.wa.gov.

(6) Orders of the department imposing a stop placement, license suspension, emergency closure, emergency transfer of residents, temporary management, or conditions on a license are effective immediately upon verbal or written notice and must remain in effect until they are rescinded by the department or through the state administrative appeals process.

(7) Federal deficiencies cited on the federal survey report may not be appealed through the state administrative appeals process. If a federal remedy is imposed, the Centers for Medicare and Medicaid Services will notify the nursing facility of appeal rights under the federal administrative appeals process.