



EXPEDITED RULE MAKING

CR-105 (December 2017) (Implements RCW 34.05.353)

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STATE OF WASHINGTON
FILED

DATE: July 03, 2018

TIME: 10:00 AM

WSR 18-14-097

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

Title of rule and other identifying information: (describe subject) The department is proposing to amend sections contained in chapter 388-76 WAC in order to update references from chapter 388-112 WAC to chapter 388-112A WAC.

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The proposed amendments update the references to chapter 388-112 WAC contained throughout chapter 388-76 WAC. Any sections in chapter 388-76 WAC containing references to chapter 388-112 WAC that are not included in this proposed draft and are currently open for rule making will be updated with the correct reference through those specific rule making actions.

Reasons supporting proposal: The proposed amendment provides clarity and refers users to the correct WAC chapter.

Statutory authority for adoption: Chapter 70.128 WAC

Statute being implemented:

Is rule necessary because of a:

- | | | |
|-------------------------|------------------------------|--|
| Federal Law? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If yes, CITATION:

Name of proponent: (person or organization) Department of Social and Health Services

Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Jeanette K. Childress	PO Box 45600, Olympia, Washington 98504	360-725-2591
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Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: N/A

Expedited Adoption - Which of the following criteria was used by the agency to file this notice:

- Relates only to internal governmental operations that are not subject to violation by a person;
- Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;
- Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect;
- Content is explicitly and specifically dictated by statute;
- Have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or
- Is being amended after a review under RCW 34.05.328.

Expedited Repeal - Which of the following criteria was used by the agency to file notice:

- The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule;
- The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute;
- The rule is no longer necessary because of changed circumstances; or
- Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

Explanation of the reason the agency believes the expedited rule-making process is appropriate pursuant to RCW 34.05.353(4): The proposed amendments update references without changing the effect of the rule.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO

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Agency: Department of Social and Health Services

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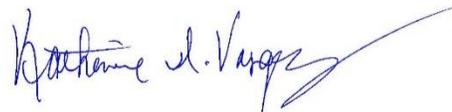
AND RECEIVED BY (date) 5:00 p.m. September 4, 2018

Date: June 27, 2018

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



AMENDATORY SECTION (Amending WSR 12-01-004, filed 12/7/11, effective 1/7/12)

WAC 388-76-10035 License requirements—Multiple family home providers. The department will only consider an application for more than one home if the applicant has:

(1) Evidence of successful completion of the forty-eight hour residential care administrator's training to meet the applicable requirements of chapter ((388-112)) 388-112A WAC;

(2) The ability to operate more than one home;

(3) The following plans for each home the applicant intends to operate. Each of the following plans must be updated and maintained:

(a) A twenty-four hour a day, seven day a week staffing plan;

(b) A plan for managing the daily operations of each home; and

(c) A plan for emergencies, deliveries, staff and visitor parking.

(4) A demonstrated history of financial solvency related to the ability to provide care and services; and

(5) An entity representative or a resident manager at each home who is responsible for the care of each resident at all times.

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

WAC 388-76-10063 Application—General training requirements. An applicant must ensure that each person listed on the application has successfully completed the training if required under this chapter and chapter ((388-112)) 388-112A WAC.

AMENDATORY SECTION (Amending WSR 16-01-171, filed 12/22/15, effective 1/22/16)

WAC 388-76-10064 Adult family home administrator training requirements. (1) The applicant and the entity representative must successfully complete the department approved adult family home administration class as required in chapter ((388-112)) 388-112A WAC.

(2) An applicant and entity representative may not be required to take the adult family home administrator class if there is a change in ownership and the applicant and entity representative are already participants in the operation of a currently licensed home.

(3) An applicant and entity representative must take the adult family home administrator class when the application is for an additional licensed home and the class has not already been successfully taken.

(4) The class must be a minimum of forty-eight hours of classroom time and approved by the department.

(5) Under exceptional circumstances, the department may waive the administrator training class for up to four months if the application

meets all the other requirements for licensure and all the components of WAC 388-76-10074.

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

WAC 388-76-10129 Qualifications—Adult family home personnel.

The adult family home must ensure that the following are qualified and meet all of the applicable requirements of this chapter and chapter ((388-112)) 388-112A WAC:

(1) Any person employed or used by the adult family home, directly or by contract, by an adult family home; including but not limited to:

- (a) The provider;
- (b) Entity representative;
- (c) Resident manager;
- (d) Staff; and
- ((f)) (e) Caregivers.

AMENDATORY SECTION (Amending WSR 15-03-037, filed 1/12/15, effective 2/12/15)

WAC 388-76-10130 Qualifications—Provider, entity representative and resident manager. The adult family home must ensure that the provider, entity representative and resident manager have the following minimum qualifications:

(1) Be twenty-one years of age or older;

(2) Have a United States high school diploma or high school equivalency certificate as provided in RCW 28B.50.536, or any English or translated government document of the following:

(a) Successful completion of government approved public or private school education in a foreign country that includes an annual average of one thousand hours of instruction a year for twelve years, or no less than twelve thousand hours of instruction;

(b) Graduation from a foreign college, foreign university, or United States community college with a two-year diploma, such as an associate's degree;

(c) Admission to, or completion of course work at a foreign or United States college or university for which credit was awarded;

(d) Graduation from a foreign or United States college or university, including award of a bachelor's degree;

(e) Admission to, or completion of postgraduate course work at, a United States college or university for which credits were awarded, including award of a master's degree; or

(f) Successful passage of the United States board examination for registered nursing, or any professional medical occupation for which college or university education was required.

(3) Completion of the training requirements that were in effect on the date they were hired or became licensed providers, including the requirements described in chapter ((388-112)) 388-112A WAC;

- (4) Have good moral and responsible character and reputation;
- (5) Be literate and able to communicate in the English language, and assure that a person is on staff and available at the home who is capable of understanding and speaking English well enough to be able to respond appropriately to emergency situations and be able to read, understand and implement resident negotiated care plans.
- (6) Assure that there is a mechanism to communicate with the resident in his or her primary language either through a qualified person on-site or readily available at all times, or other reasonable accommodations, such as a language line.
- (7) Be able to carry out the management and administrative requirements of chapters 70.128, 70.129 and 74.34 RCW, this chapter and other applicable laws and regulations;
- (8) Have completed at least one thousand hours of successful direct care experience in the previous sixty months obtained after age eighteen to vulnerable adults in a licensed or contracted setting before operating or managing a home. Individuals holding one of the following professional licenses are exempt from this requirement:
 - (a) Physician licensed under chapter 18.71 RCW;
 - (b) Osteopathic physician licensed under chapter 18.57 RCW;
 - (c) Osteopathic physician assistant licensed under chapter 18.57A RCW;
 - (d) Physician assistant licensed under chapter 18.71A RCW;
 - (e) Registered nurse, advanced registered nurse practitioner, or licensed practical nurse licensed under chapter 18.79 RCW.
- (9) Have no disqualifying criminal convictions or pending criminal charges under chapter 388-113 WAC;
- (10) Have none of the negative actions listed in WAC 388-76-10180;
- (11) Obtain and keep valid cardiopulmonary resuscitation (CPR) and first-aid card or certificate as required in chapter ((388-112)) 388-112A WAC; and
- (12) Have tuberculosis screening to establish tuberculosis status per this chapter.

AMENDATORY SECTION (Amending WSR 17-01-002, filed 12/7/16, effective 1/7/17)

WAC 388-76-10135 Qualifications—Caregiver. The adult family home must ensure each caregiver has the following minimum qualifications:

- (1) Be eighteen years of age or older;
- (2) Has a clear understanding of the caregiver job responsibilities and knowledge of each resident's negotiated care plan to provide care specific to the needs of each resident;
- (3) Has basic communication skills to:
 - (a) Be able to communicate or make provisions to communicate with the resident in his or her primary language; and
 - (b) Understand and speak English well enough to:
 - (i) Respond appropriately to emergency situations; and
 - (ii) Read, understand, and implement resident negotiated care plans;

(4) Has completed the training requirements in effect on the date the caregiver was hired, including the requirements applicable to the caregiver under chapter ((388-112)) 388-112A WAC;

(5) Has no disqualifying criminal convictions or pending criminal charges under chapter 388-113 WAC;

(6) Has none of the negative actions listed in WAC 388-76-10180;

(7) Has a current valid ((first-aid)) first-aid card or certificate as required in chapter ((388-112)) 388-112A WAC, except nurses, who are exempt from this requirement;

(8) Has a valid cardiopulmonary resuscitation (CPR) card or certificate as required in chapter ((388-112)) 388-112A WAC; and

(9) Meets the tuberculosis screening requirements of this chapter.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10140 Qualifications—Students—Volunteers. The adult family home must ensure that students and volunteers meet the following minimum qualifications:

(1) Be eighteen years old or older;

(2) Meet the department's training requirements of chapter ((388-112)) 388-112A WAC;

(3) Have no criminal convictions listed in RCW 43.43.830 and 43.43.842 or state or federal findings of abandonment, abuse, neglect or financial exploitation; and

(4) Tuberculosis screening to establish tuberculosis status per this chapter.

AMENDATORY SECTION (Amending WSR 16-20-095, filed 10/4/16, effective 11/4/16)

WAC 388-76-10145 Qualifications—Licensed nurse as provider, entity representative, or resident manager. The adult family home must ensure that a licensed nurse who is a provider, entity representative, or resident manager:

(1) Meets all minimum qualifications for providers, entity representatives, or resident managers listed in WAC 388-76-10130; and

(2) Has a current valid cardiopulmonary resuscitation (CPR) card or certificate as required in chapter ((388-112)) 388-112A WAC.

AMENDATORY SECTION (Amending WSR 15-03-037, filed 1/12/15, effective 2/12/15)

WAC 388-76-10146 Qualifications—Training and home care aide certification. (1) The adult family home must ensure staff persons hired before January 7, 2012 meet training requirements in effect on

the date hired, including requirements in chapter ((388-112)) 388-112A WAC.

(2) The adult family home must ensure all adult family home caregivers, entity representatives, and resident managers hired on or after January 7, 2012, meet the long-term care worker training requirements of chapter ((388-112)) 388-112A WAC, including but not limited to:

(a) Orientation and safety;

(b) Basic;

(c) Specialty for dementia, mental illness and/or developmental disabilities when serving residents with any of those primary special needs;

(d) Cardiopulmonary resuscitation and first aid; and

(e) Continuing education.

(3) All persons listed in subsection (2) of this section, must obtain the home-care aide certification if required by this section or chapters 246-980 or ((388-112)) 388-112A WAC.

(a) Until March 1, 2016, a provisional home-care aide certification may be issued by the department of health to a long-term care worker who is limited English proficient.

(4) Even if an adult family home applicant does not intend to provide direct personal care, the applicant must meet the long-term care worker training and home-care aide certification requirements under chapter ((388-112)) 388-112A WAC to the same extent that the requirements would apply if the applicant was a long-term care worker.

(5) Under RCW 18.88B.041 and chapter 246-980 WAC, certain individuals, including registered nurses, licensed practical nurses, certified nursing assistants or persons who are in an approved certified nursing assistant ((~~programs~~program), are exempt from home-care aide certification and long-term care worker training requirements. This exemption does not apply to continuing education; these individuals must comply with continuing education requirements under chapter ((388-112)) 388-112A WAC.

(6) The adult family home must ensure that all staff receive the orientation and training necessary to perform their job duties.

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

WAC 388-76-10198 Adult family home—Personnel records. The adult family home must keep documents related to staff in a place readily accessible to authorized department staff. These documents must be available during the staff's employment, and for at least two years following employment. The documents must include but are not limited to:

(1) Staff information such as address and contact information.

(2) Staff orientation and training records pertinent to duties, including, but not limited to:

(a) Training required by chapter ((388-112)) 388-112A WAC, including as appropriate for each staff person, orientation, basic training or modified basic training, specialty training, nurse delegation core training, and continuing education;

(b) Cardiopulmonary resuscitation;

- (c) First aid; and
- (d) HIV/AIDS training.
- (3) Tuberculosis testing results.
- (4) Criminal history disclosure and background check results as required.

AMENDATORY SECTION (Amending WSR 12-16-087, filed 7/31/12, effective 8/31/12)

WAC 388-76-10200 Adult family home—Staff—Availability—Contact information. In addition to other licensing requirements for staff availability, the adult family home must:

(1) Ensure at least one qualified caregiver is present in the home whenever one or more residents are present in the home, except as provided in subsection (2). For purpose of this subsection, a qualified caregiver means someone who has completed orientation and basic training as required by chapter ((388-112)) 388-112A WAC;

(2) Ensure that before the adult family home leaves a resident unattended:

(a) That the adult family home determines that the resident can be left unattended safely, based upon an assessment that identifies the resident's strengths and needs;

(b) The resident knows what to do in an emergency and is able to successfully act on that knowledge; such as leaving the home or calling 911, when necessary;

(c) The adult family home individualizes each resident's negotiated care plan to the resident's identified strengths and needs and includes a limited and specific amount of time the resident is safe to be left unattended;

(d) The resident consents to the plan to be left unattended; and

(e) The resident is able to contact a responsible staff person at all times.

(3) Designate an experienced, staff member who is capable of responding on behalf of the adult family home by phone or pager at all times.

(4) Give residents the telephone or pager number for the contact required in subsection (2) of this section;

(5) Ensure the provider, entity representative or resident manager is readily available to:

(a) Each resident;

(b) Residents' representatives;

(c) Caregivers; and

(d) Authorized state staff.

AMENDATORY SECTION (Amending WSR 10-04-008, filed 1/22/10, effective 2/22/10)

WAC 388-76-10415 Food services. The adult family home must:

(1) Ensure that the safe food handling training requirements of chapter ((388-112)) 388-112A WAC are met; and

- (2) Serve meals:
 - (a) In the home where each resident lives; and
 - (b) That accommodate each resident's:
 - (i) Preferences;
 - (ii) Food allergies and sensitivities;
 - (iii) Caloric needs;
 - (iv) Cultural and ethnic background; and
 - (v) Physical condition that may make food intake difficult such as being hard for the resident to chew or swallow.

AMENDATORY SECTION (Amending WSR 10-04-008, filed 1/22/10, effective 2/22/10)

WAC 388-76-10505 Specialty care—Admitting and retaining residents. The adult family home must not admit or keep a resident with specialty care needs, such as developmental disability, mental illness, or dementia as defined in WAC 388-76-10000, if the provider, entity representative, resident manager and staff have not completed the specialty care training required by chapter (~~388-112~~) 388-112A WAC.