

WSR 23-12-075

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed June 6, 2023, 11:38 a.m., effective August 1, 2023]

Effective Date of Rule: August 1, 2023.

Purpose: This rule making is necessary to incorporate ESHB 1023, 2020 regular session, into the rules. This passed legislation allows certain adult family home providers to increase their capacity from six residents to eight. This rule making is also intended to address challenges that the adult family home industry is facing related to complying with the liability insurance requirements in the current rules, and to clarify use, implementation, and enforcement of management agreements. New rules were developed to create a process for adult family home providers to request an exemption to rule. This was requested during the stakeholder meetings.

Citation of Rules Affected by this Order: New WAC 388-76-10004, 388-76-10031 and 388-76-10032; repealing WAC 388-76-10193; and amending WAC 388-76-10000, 388-76-10030, 388-76-10055, 388-76-10175, 388-76-10191, 388-76-10192, 388-76-10780, 388-76-11050, and 388-76-11055.

Statutory Authority for Adoption: RCW 70.128.040.

Other Authority: RCW 70.128.066.

Adopted under notice filed as WSR 23-04-046 on January 26, 2023.

Changes Other than Editing from Proposed to Adopted Version:

Amended definition of "mandated reporter" for consistency with statutory definition (RCW 74.34.020) effective July 23, 2023.

A final cost-benefit analysis is available by contacting Colleen Jensen, P.O. Box 45600, Olympia, WA 98504, phone 564-999-3182, email colleen.jensen1@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 2, Amended 2, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 1, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 7, Repealed 1.

Number of Sections Adopted using Negotiated Rule Making: New 3, Amended 9, Repealed 1; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: June 6, 2023.

Lisa N. H. Yanagida
Chief of Staff

SHS-4962.7

AMENDATORY SECTION (Amending WSR 20-05-016, filed 2/6/20, effective 3/8/20)

WAC 388-76-10000 Definitions. "**Abandonment**" means action or inaction by a person or entity with a duty of care for a frail elder or vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

"**Abuse**" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment of a vulnerable adult.

(1) In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish.

(2) Abuse includes sexual abuse, mental abuse, physical abuse, and personal exploitation of a vulnerable adult, and improper use of restraint against a vulnerable adult which have the following meanings:

(a) "**Sexual abuse**" means any form of nonconsensual sexual conduct, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse also includes any sexual conduct between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not consensual.

(b) "**Physical abuse**" means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, or prodding.

(c) "**Mental abuse**" means a willful verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. Mental abuse may include ridiculing, yelling, or swearing.

(d) "**Personal exploitation**" means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

(e) "**Improper use of restraint**" means the inappropriate use of chemical, physical, or mechanical restraints for convenience or discipline or in a manner that:

(i) Is inconsistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW;

(ii) Is not medically authorized; or

(iii) Otherwise constitutes abuse under this section.

"**Adult family home**" or "**AFH**" means:

(1) A residential home in which a person or an entity is licensed to provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood, adoption, or marriage to a provider, entity representative, resident manager, or caregiver, who resides in the home. An adult family home may be licensed to provide care to up to eight adults if the home receives approval under WAC 388-76-10031 or 388-76-10032.

(2) As used in this chapter, the term "entity" includes corporations, partnerships, and limited liability companies, and the term "adult family home" includes the person or entity that is licensed to operate an adult family home.

"Affiliated with an applicant" means any person listed on the application as a partner, officer, director, resident manager, entity representative, or majority owner of the applying entity, or is the spouse or domestic partner of the applicant.

"Affiliated entity" means any entity owned, controlled, or managed by the applicant or licensed provider, or associated with a parent or subsidiary entity applying for, or holding, an adult family home license.

"Applicant" means:

(1) An individual, partnership, corporation, or other entity seeking a license to operate an adult family home; and

(2) For the following sections only, also includes an entity representative solely for the purposes of fulfilling requirements on behalf of the entity:

- (a) WAC 388-76-10020(1);
- (b) WAC 388-76-10035(1);
- (c) WAC 388-76-10060;
- (d) WAC 388-76-10064;
- (e) WAC 388-76-10120;
- (f) WAC 388-76-10125;
- (g) WAC 388-76-10129;
- (h) WAC 388-76-10130;
- (i) WAC 388-76-10146(4);
- (j) WAC 388-76-10265;
- (k) WAC 388-76-10500; and
- (l) WAC 388-76-10505.

"Capacity" means the maximum number of persons (~~(in need of)~~) receiving personal or special care who are permitted (~~(to reside)~~) in an adult family home at a given time. Capacity includes:

(1) The total capacity, which is the number of (~~(related)~~) residents and any children or adults (~~(in the home who)~~) related to the provider who receive personal or special care and services in the home; and

(2) The licensed capacity, which is the number of residents the adult family home may admit and retain (resident capacity), which is the number listed on the license.

"Caregiver" means any person (~~(eighteen)~~) 18 years of age or older responsible for providing direct personal or special care to a resident and who is not the provider, entity representative, a student, or volunteer.

"Chemical restraint" means the administration of any drug to manage a vulnerable adult's behavior in a way that reduces the safety risk to the vulnerable adult or others, has a temporary effect of restricting the vulnerable adult's freedom of movement, and is not standard treatment for the vulnerable adult's medical or psychiatric condition.

"Consent" means express written consent granted after the vulnerable adult or their legal representative has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

"Dementia" means a condition documented through the assessment process required by WAC 388-76-10335.

"Department" means the Washington state department of social and health services.

"Department case manager" means the department authorized staff person or designee assigned to negotiate, monitor, and facilitate a care and services plan for residents receiving services paid for by the department.

"Developmental disability" means the same as defined under WAC 388-823-0015.

"Direct supervision" means oversight by a person who has demonstrated competency in the basic training and specialty training if required, or who has been exempted from the basic training requirements and is:

- (1) On the premises; and
- (2) Quickly and easily available to the caregiver.

"Domestic partners" means two adults who meet the requirements for a valid state registered domestic partnership as established by RCW 26.60.030 and who have been issued a certificate of state registered domestic partnership.

"Entity representative" means the individual designated by an entity provider or entity applicant as its representative for the purposes of fulfilling the training and qualification requirements under this chapter that only an individual can fulfill where an entity cannot. The entity representative is responsible for overseeing the operation of the home. The entity representative does not hold the license on behalf of the entity.

"Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.020(7).

"Financial solvency" means that the applicant or provider (~~is able to meet debts or financial obligations with some money to spare~~) has sufficient funds to operate the home. An applicant or provider is considered financially solvent when they have no delinquent debt. At the department's discretion, the department may consider an applicant or provider financially solvent if their only delinquent debt is for medical reasons.

"Home" means adult family home.

"Household member" means a person who uses the address of the adult family home as their primary address and who is not a resident.

"Imminent danger" or **"immediate threat"** means serious physical harm to or death of a resident has occurred, or there is a serious threat to the resident's life, health, or safety.

"Indirect supervision" means oversight by a person who is quickly and easily available to the caregiver, but not necessarily on-site and:

- (1) Has demonstrated competency in the basic and specialty training, if required; or
- (2) Is exempt from basic training requirements.

"Inspection" means a review by department personnel to determine the health, safety, and well-being of residents, and the adult family home's compliance with this chapter and chapters 70.128, 70.129, 74.34 RCW, and other applicable rules and regulations. The department's review may include an on-site visit.

"Management agreement" means a written, executed agreement between the adult family home and another individual or entity regarding the provision of certain services on behalf of the adult family home.

"Mandated reporter" means an employee of the department((τ)) or the department of children, youth, and families; law enforcement((τ)) officer((τ)); social worker((τ)); professional school personnel((τ)); individual provider((τ)); an operator of a facility or a certified residential services and supports agency under chapter 71A.12 RCW, an employee of a facility((τ)); an employee of a social service, welfare, mental health, adult day health, adult day care, ((τ)) home health, home care, hospice ((agency,τ)); or certified residential services and supports agency, county coroner or medical examiner((τ)); Christian Science practitioner((τ)); or health care provider subject to chapter 18.130 RCW. For the purpose of the definition of a mandated reporter, "Facility" means a residence licensed or required to be licensed under chapter 18.20 RCW (assisted living facilities), chapter 18.51 RCW (nursing homes), chapter 70.128 RCW (adult family homes), chapter 72.36 RCW (soldiers' homes), chapter 71A.20 RCW (residential habilitation centers), or any other facility licensed by the department.

"Mechanical restraint" means any device attached or adjacent to the vulnerable adult's body that they cannot easily remove and restricts freedom of movement or normal access to the vulnerable adult's body. "Mechanical restraint" does not include the use of devices, materials, or equipment that are:

- (a) Medically authorized, as required; and
- (b) Used in a manner that is consistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW.

"Medical device" as used in this chapter, means any piece of medical equipment used to treat a resident's assessed need.

- (1) A medical device is not always a restraint and should not be used as a restraint;
- (2) Some medical devices have considerable safety risks associated with use; and
- (3) Examples of medical devices with known safety risks when used are transfer poles, Posey or lap belts, and side rails.

"Medication administration" means giving resident medications by a person legally authorized to do so, such as a physician, pharmacist, or nurse.

"Medication organizer" is a container with separate compartments for storing oral medications organized in daily doses.

"Mental illness" is defined as an axis I or II diagnosed mental illness as outlined in volume IV of the Diagnostic and Statistical Manual of Mental Disorders (a copy is available for review through the aging and disability services administration).

"Minimal" means violations that result in little or no negative outcome or little or no potential harm for a resident.

"Moderate" means violations that result in negative outcome and actual or potential harm for a resident.

"Multiple home provider" means a provider who is licensed to operate more than one adult family home.

"Neglect" means:

- (1) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or

(2) An act or omission by a person or entity with a duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

"Nurse delegation" means a registered nurse transfers the performance of selected nursing tasks to competent nursing assistants, home care aides, or qualified long-term care workers in selected situations. The registered nurse delegating the task retains the responsibility and accountability for the nursing care of the resident.

"Over-the-counter medication" is any medication that can be purchased without a prescriptive order, including but not limited to vitamin, mineral, or herbal preparations.

"Permanent restraining order" means a restraining order or order of protection issued either following a hearing, or by stipulation of the parties. A "permanent restraining order" order may be in force for a specific time period (for example, one year), after which it expires.

"Personal care services" means both physical assistance and prompting and supervising the performance of direct personal care tasks as determined by the resident's needs and does not include assistance with tasks performed by a licensed health professional.

"Physical restraint" means application of physical force without the use of any device, for the purpose of restraining the free movement of a vulnerable adult's body. "Physical restraint" does not include briefly holding without undue force a vulnerable adult in order to calm or comfort them, or holding a vulnerable adult's hand to safely escort them from one area to another.

"Placement agency" is an "elder or vulnerable adult referral agency" as defined in chapter 18.330 RCW and means a business or person who receives a fee from or on behalf of a vulnerable adult seeking a referral to care services or supportive housing or who receives a fee from a care services provider or supportive housing provider because of any referral provided to or on behalf of a vulnerable adult.

"Practitioner" includes a physician, osteopathic physician, podiatric physician, pharmacist, licensed practical nurse, registered nurse, advanced registered nurse practitioner, dentist, and physician assistant licensed in the state of Washington.

"Prescribed medication" refers to any medication (legend drug, controlled substance, and over-the-counter) that is prescribed by an authorized practitioner.

"Provider" means:

(1) Any individual who is licensed to operate an adult family home and meets the requirements of this chapter;

(2) Any corporation, partnership, limited liability company, or other entity that is licensed under this chapter to operate an adult family home and meets the requirements of this chapter; and

(3) For the following sections only, also includes an entity representative solely for the purposes of fulfilling requirements on behalf of the entity:

- (a) WAC 388-76-10020(1);
- (b) WAC 388-76-10035(1);
- (c) WAC 388-76-10060;
- (d) WAC 388-76-10064;
- (e) WAC 388-76-10120;
- (f) WAC 388-76-10125;
- (g) WAC 388-76-10129;

- (h) WAC 388-76-10130;
- (i) WAC 388-76-10146(4);
- (j) WAC 388-76-10265;
- (k) WAC 388-76-10500; and
- (l) WAC 388-76-10505.

"Psychopharmacologic medications" means the class of prescription medications, which includes but is not limited to antipsychotics, anti-anxiety medications, and antidepressants, capable of affecting the mind, emotions, and behavior.

"Recurring" or **"repeated"** means that the department has cited the adult family home for a violation of applicable licensing laws or rules and the circumstances of (1) or (2) of this definition are present and if the previous violation in subsection (1) or (2) of this definition was pursuant to a law or rule that has changed at the time of the new violation, a citation to the equivalent current rule or law is sufficient:

(1) The department previously imposed an enforcement remedy for a violation of the same section of law or rule for substantially the same problem following any type of inspection within the preceding (~~(thirty-six)~~) 36 months.

(2) The department previously cited a violation under the same section of law or rule for substantially the same problem following any type of inspection on two occasions within the preceding (~~(thirty-six)~~) 36 months.

"Resident" means any adult (~~(unrelated to the provider who lives)~~) living in the adult family home and who is unrelated to the provider and who ((in need of care)) receives personal or special care from the adult family home. Except as specified elsewhere in this chapter, for decision-making purposes, the term "resident" includes the resident's surrogate decision maker acting under state law.

"Resident manager" means a person employed or designated by the provider to manage the adult family home and who meets the requirements of this chapter.

"Serious" means violations that either result in one or more negative outcomes and significant actual harm to residents that does not constitute imminent danger, or there is a reasonable predictability of recurring actions, practices, situations, or incidents with potential for causing significant harm to a resident, or both.

"Severity" means the seriousness of a violation as determined by actual or potential negative outcomes for residents and subsequent actual or potential for harm. Outcomes include any negative effect on the resident's physical, mental, or psychosocial well-being (such as safety, quality of life, quality of care).

"Significant change" means:

(1) A lasting change, decline, or improvement in the resident's baseline physical, mental, or psychosocial status;

(2) The change is significant enough so either the current assessment, or negotiated care plan, or both, do not reflect the resident's current status; and

(3) A new assessment may be needed when the resident's condition does not return to baseline within a two week period of time.

"Special care" means care beyond personal care services as defined in this section.

"Staff" means any person who is employed or used by an adult family home, directly or by contract, to provide care and services to any residents.

Staff must meet all the requirements in this chapter and chapter 388-112A WAC.

"Temporary restraining order" means a restraining order or order of protection that expired without a hearing, was dismissed following an initial hearing, or was dismissed by stipulation of the parties before an initial hearing.

"Uncorrected" means the department has cited a violation of WAC or RCW following an inspection and the violation remains uncorrected at the time of a subsequent inspection for the specific purpose of verifying whether such violation has been corrected.

"Unsupervised" means not in the presence of:

(1) Another employee or volunteer from the same business or organization; or

(2) Any relative or guardian of any of the children or individuals with developmental disabilities or vulnerable adults to which the employee, student, or volunteer has access during the course of their employment or involvement with the business or organization.

"Usable floor space" means resident bedroom floor space exclusive of:

(1) Toilet rooms;

(2) Closets;

(3) Lockers;

(4) Wardrobes;

(5) Vestibules; and

(6) The space required for the door to swing if the bedroom door opens into the resident bedroom.

"Vulnerable adult" includes a person:

(1) (~~(Sixty)~~) 60 years of age or older who has the functional, mental, or physical inability to care for themselves; or

(2) (~~(Found incapacitated under chapter 11.88 RCW)~~) Subject to a guardianship under RCW 11.130.265 or adult subject to conservatorship under RCW 11.130.360; or

(3) Who has a developmental disability as defined under RCW 71A.10.020; or

(4) Admitted to any facility; or

(5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(6) Receiving services from an individual provider; or

(7) (~~(With a functional disability who lives in their own home, w) Who ((is directing and supervising a paid))~~) self-directs their own care and receives services from a personal aide ((to perform a health care task as authorized by)) under chapter 74.39 RCW((-74.39.050)).

"Water hazard" means any body of water over (~~(twenty-four)~~) 24 inches in depth that can be accessed by a resident, and includes but is not limited to:

(1) In-ground, above-ground, and on-ground pools;

(2) Hot tubs, spas;

(3) Fixed-in-place wading pools;

(4) Decorative water features;

(5) Ponds; or

(6) Natural bodies of water such as streams, lakes, rivers, and oceans.

"Working day" means any day the department is open for business.

[Statutory Authority: RCW 70.128.040 and 70.128.060. WSR 20-05-016, § 388-76-10000, filed 2/6/20, effective 3/8/20. Statutory Authority:

Chapters 70.128 and 74.34 RCW. WSR 18-07-068, § 388-76-10000, filed 3/16/18, effective 4/16/18. Statutory Authority: Chapter 70.128 RCW. WSR 16-20-095, § 388-76-10000, filed 10/4/16, effective 11/4/16; WSR 16-06-004, § 388-76-10000, filed 2/17/16, effective 4/1/16; WSR 15-03-037, § 388-76-10000, filed 1/12/15, effective 2/12/15. Statutory Authority: RCW 74.39A.056 and chapters 74.34, 18.20 RCW. WSR 14-14-028, § 388-76-10000, filed 6/24/14, effective 7/25/14. Statutory Authority: Chapter 70.128 RCW. WSR 12-01-004, § 388-76-10000, filed 12/7/11, effective 1/7/12. Statutory Authority: RCW 70.128.040, chapter 74.39A RCW. WSR 10-16-082, § 388-76-10000, filed 7/30/10, effective 1/1/11. Statutory Authority: RCW 70.128.040. WSR 10-03-064, § 388-76-10000, filed 1/15/10, effective 2/15/10; WSR 09-03-029, § 388-76-10000, filed 1/12/09, effective 2/12/09. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. WSR 07-21-080, § 388-76-10000, filed 10/16/07, effective 1/1/08.]

NEW SECTION

WAC 388-76-10004 Exemptions. (1) An adult family home may request an exemption to a specific requirement in this chapter. The request must demonstrate to the department that the exemption will:

- (a) Not jeopardize or adversely affect any resident's health, safety, rights, or quality of life;
- (b) Not change the fundamental nature of the adult family home operations;
- (c) Correct deficiencies, prevent deficiencies, or upgrade the home in order to better serve residents;
- (d) Allow the home to provide a comparable level of service to residents through the use of alternative procedures, materials, or equipment; and
- (e) Not violate state or federal laws.

(2) A request for exemption must be submitted to the director of residential care services in writing and must:

- (a) Identify the specific section of this chapter for which the exemption is sought;
 - (b) State the reason the requested exemption is needed; and
 - (c) Provide an explanation of how the home will meet the requirements in subsection (1) of this section if the exemption is approved.
- (3) The adult family home must retain in the adult family home a copy of each approved exemption.

(4) Exemption to a requirement of this chapter may be granted at the sole discretion of the director of residential care services after evaluation of the criteria in subsection (1) of this section. The adult family home is not entitled to an administrative appeal of the department's denial of a request for an exemption.

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

WAC 388-76-10030 ((License)) Adult family home capacity. (1)
 ((The adult family home capacity includes:

~~(a) The number of residents which is the resident capacity; plus~~
~~(b) The number of related children or adults in the home who receive personal or special care services.~~
~~(2))~~ In determining the home's (~~resident~~) licensed capacity, the department must consider the:

- (a) Structural design of the house;
- (b) Number and accessibility of bathrooms;
- (c) Number and qualifications of staff;
- (d) Total number of people living in the home who require personal or special care, including:
 - (i) Related children and adults; and
 - (ii) Other household members;
- (e) The number of people for whom the home provides adult day care; and
- (f) The ability for the home to safely evacuate all people living in the home.

~~((3))~~ (2) The (~~resident~~) licensed capacity number will be listed on the adult family home license and the home must ensure that the number of residents in the home does not exceed the (~~resident~~) licensed capacity.

~~((4))~~ (3) The adult family home (~~resident~~) licensed capacity may be adjusted due to changes to the household mix or structure(~~-~~), including the number of others receiving personal or special care in the home.

[Statutory Authority: RCW 70.128.040. WSR 10-03-064, § 388-76-10030, filed 1/15/10, effective 2/15/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. WSR 07-21-080, § 388-76-10030, filed 10/16/07, effective 1/1/08.]

NEW SECTION

WAC 388-76-10031 License requirements-Seven or eight bed adult family homes-Licensure. (1) An adult family home submitting an application to increase the licensed capacity of a currently licensed adult family home to seven or eight residents must:

- (a) Be able to demonstrate to the department the applicant's history of financial solvency and successful management experience as an adult family home provider;
- (b) Maintain the initial license for the adult family home identified on the capacity increase application for a period of no less than 24 months prior to application;
- (c) Maintain a licensed capacity for six residents for at least the 12 months immediately prior to application;
- (d) Receive at least two full inspections prior to application, with no enforcement action taken against the home during the time period starting with the older of the two most recent inspections and ending at the time the capacity increase is approved; and
- (e) Demonstrate to the department the ability to comply with the emergency evacuation standards in WAC 388-76-10865.

(2) The adult family home must provide the following items to the department with the application:

- (a) Documentation verifying the installation of an automatic sprinkler system that meets the requirements of chapter 51-54A WAC;

(b) Any outstanding fees associated with licensure or additional inspections;

(c) A written plan to mitigate the potential impact of vehicular traffic related to the increased capacity; and

(d) An attestation signed by the provider that states an increase in the number of beds will not adversely affect the provider's ability to meet the health, safety, rights, or quality of life needs of the current and prospective residents in the home.

(3) At the time of application for a license capacity increase to seven or eight residents, the adult family home must provide a written notice to all residents and the residents' representatives that the home has applied for a license capacity increase. This notice must:

(a) Be provided at least 60 days prior to admitting a seventh or eighth resident;

(b) Be written in a manner or language that is understood by the residents and the residents' representatives;

(c) Inform residents and resident representatives that the department will consider their comments regarding the quality of care and quality of life offered by the home and their views regarding the addition of one or two more residents; and

(d) Provide contact information for the regional residential care services licensing office where the resident or their representative can share their comments.

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NEW SECTION

WAC 388-76-10032 License requirements-Seven or eight bed adult family homes-Change of ownership. An applicant submitting an application for a change of ownership of an adult family home with a licensed capacity of seven or eight residents must be a currently licensed adult family home provider that has held that license for a period of no less than 24 months; and

(1) Maintain a license for six or more residents in their currently licensed home for at least the 12 months immediately prior to application; and

(2) Receive at least two full inspections prior to application, with no enforcement action taken against the home during the time period starting with the older of the two most recent inspections and ending at the time the capacity increase is approved.

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

WAC 388-76-10055 Application—Generally. The applicant must send a((#)) completed application to the department for any of the following actions:

(1) ((A)) To receive an initial adult family home license;

- (2) ((A)) To change ((ef)) ownership of the adult family home; ((ef))
- (3) ((A)) To change ((ef)) the ((adult family home)) location or address((-)) of the adult family home; or
- (4) To increase the licensed capacity of the adult family home.

[Statutory Authority: RCW 70.128.040. WSR 10-03-064, § 388-76-10055, filed 1/15/10, effective 2/15/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. WSR 07-21-080, § 388-76-10055, filed 10/16/07, effective 1/1/08.]

AMENDATORY SECTION (Amending WSR 14-14-028, filed 6/24/14, effective 7/25/14)

WAC 388-76-10175 Background checks—Employment—Conditional hire—Pending results of Washington state name and date of birth background check. An adult family home may conditionally employ a person directly or by contract, pending the result of a Washington state name and date of birth background check, provided the home:

- (1) Submits the Washington state name and date of birth background check no later than one ((business)) working day after conditional employment;
- (2) Requires the individual to sign a disclosure statement and the individual denies having a disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113 WAC, or a negative action that is listed in WAC 388-76-10180;
- (3) Does not allow the individual to have unsupervised access to any resident;
- (4) Ensures direct supervision, as defined in WAC 388-76-10000, of the individual; and
- (5) Ensures the individual is competent and receives the necessary training to perform assigned tasks and meets the staff training requirements under chapter 388-112A WAC.

[Statutory Authority: RCW 74.39A.056 and chapters 74.34, 18.20 RCW. WSR 14-14-028, § 388-76-10175, filed 6/24/14, effective 7/25/14. Statutory Authority: RCW 70.128.040. WSR 12-16-087, § 388-76-10175, filed 7/31/12, effective 8/31/12. Statutory Authority: RCW 70.128.040, chapter 74.39A RCW. WSR 10-16-082, § 388-76-10175, filed 7/30/10, effective 1/1/11. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. WSR 07-21-080, § 388-76-10175, filed 10/16/07, effective 1/1/08.]

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

WAC 388-76-10191 Liability insurance required. The adult family home must:

- (1) Obtain ((liability insurance upon licensure and maintain the insurance as required in WAC 388-76-10192 and 388-76-10193)) and maintain both:((; and))

(a) Commercial general liability insurance or business liability insurance covering the adult family home; and

(b) Professional liability insurance or errors and omissions insurance covering the adult family home.

(2) Obtain the liability insurance required in subsection (1) of this section before whichever of the following events happens first:

(a) Admitting the first resident after issuance of a new adult family home license; or

(b) 10 working days have passed since the issuance of the license.

(3) Have evidence of liability insurance coverage available if requested by the department.

(4) Notify the department's complaint resolution unit if there is any lapse in required liability insurance coverage.

[Statutory Authority: RCW 70.128.040. WSR 10-03-064, § 388-76-10191, filed 1/15/10, effective 2/15/10.]

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

WAC 388-76-10192 Liability insurance required—(~~Commercial general liability insurance or business liability insurance coverage~~)

Coverage requirements. (1) The (~~adult family home must have commercial general liability insurance or business~~) liability insurance coverage required under WAC 388-76-10191 must (~~that~~) (~~includes~~) include:

(~~1~~) (~~Coverage for the acts~~) (a) Losses or allegations or both caused by errors and omissions of (~~any~~) the adult family home or its (~~employee~~) employees (~~and~~) or (~~volunteer~~) volunteers;

(~~2~~) (~~b~~) Coverage for bodily injury, property damage, and contractual liability; and

(~~3~~) (~~c~~) Coverage for premises, operations, (~~independent contractors~~) products-completed operations, personal injury, advertising injury, and liability assumed under an insured contract. (~~and~~)

(~~4~~) (2) Each of the required liability insurance policies must cover a minimum (~~limits~~) limit of:

(a) Each occurrence at (~~five hundred thousand dollars~~) \$500,000; and

(b) General aggregate at (~~one million dollars~~) \$1,000,000.

(3) The liability insurance policies must indemnify, hold harmless, and provide insurance coverage for the State of Washington, the department, its elected and appointed officials, agents, and employees of the state for any and all claims, losses, liability, damages, or fines arising out of the acts or omissions of the adult family home licensee, its staff, contractors, and residents. The State of Washington, the department, its elected and appointed officials, agents, and employees must be listed as additional insureds on all insurance policies relating to the operation or premises of the adult family home.

(4) If the home serves residents whose care is paid for by Medicaid, the Medicaid contract may require a higher minimum insurance limit.

[Statutory Authority: RCW 70.128.040. WSR 10-03-064, § 388-76-10192, filed 1/15/10, effective 2/15/10.]

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

WAC 388-76-10780 Toilets and bathing facilities. (1) ~~((The))~~ All adult family homes must ensure the home has toilets and bathing facilities that provide each resident with privacy and include at least:

(a) One indoor flush toilet for each five persons including residents and household members in the home; and

(b) Sinks with hot and cold running water.

(2) Homes licensed after July 1, 2007, must also ensure each resident has access to a toilet, ~~((shower or tub))~~ and bathing facilities without going through another ~~((resident's))~~ person's room.

(3) Homes licensed after August 1, 2023, that have a licensed capacity of more than five residents must have at least two indoor flush toilets available and accessible for resident use without requiring any resident to go through another person's room.

[Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. WSR 07-21-080, § 388-76-10780, filed 10/16/07, effective 1/1/08.]

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

WAC 388-76-11050 Management agreements—General. (1) As used in WAC 388-76-11050 through 388-76-11070, the term "manager" means the individual or entity providing management services under a management agreement. It does not mean a resident manager.

(2) The requirements contained in WAC 388-76-11050 through 388-76-11070 apply to management agreements and not the temporary management program described in RCW 70.128.163.

~~((1))~~ (3) If the adult family home ~~((uses))~~ contracts with a manager, the adult family home must have a written management agreement ~~((approved by the department))~~ that is consistent with chapter 388-76 WAC requirements.

~~((2))~~ (4) The adult family home must notify the department of its use of a manager when:

(a) Entering into a management agreement following initial ~~((application))~~ licensure;

(b) Changing managers; or

(c) Modifying an existing management agreement.

~~((3))~~ (5) An applicant must notify the department of its use of a manager when:

(a) Applying for an adult family home license; or

(b) Entering into a management agreement prior to licensure.

~~((4))~~ (6) The adult family home must submit the written management agreement, including an organizational chart which shows the relationship between the adult family home, ~~((management company))~~ man-

ager, and all related entities, including ~~((management))~~ manager staff.

(7) The adult family home must submit a management agreement attestation form signed and dated by the home and the manager to demonstrate that both understand and agree to comply with the requirements of chapter 388-76 WAC.

~~((5))~~ (8) The written management agreement must be submitted to the department:

(a) With the initial license, change of ownership, or change of location applications; and

(b) ~~((Sixty))~~ 60 days prior to the proposed change of ownership date or the effective date of the management agreement.

~~((6))~~ (9) The adult family home must submit any amendment to an existing management agreement to the department ~~((thirty))~~ 30 days before the amendment takes effect.

~~((7))~~ (10) The adult family home must notify current residents and their representatives ~~((sixty))~~ 60 days before ~~((entering into a))~~ the effective date of the management agreement.

[Statutory Authority: RCW 70.128.040. WSR 10-03-064, § 388-76-11050, filed 1/15/10, effective 2/15/10.]

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

WAC 388-76-11055 Management agreements—Adult family home. (1)

The adult family home is responsible for:

(a) The daily operations and provision of care and services to residents;

(b) Compliance with all applicable laws and rules;

(c) Ensuring the manager complies with the ~~((department approved))~~ management agreement; and

(d) Ensuring the manager does not represent itself as, or give the appearance that it is the provider.

(2) The adult family home ~~((must))~~ may not give the manager responsibilities that are so extensive the adult family home is relieved of responsibility for the daily operations and provision of care and services to residents. If the adult family home relinquishes responsibility for daily operation and provision of care and services to residents, the department will determine that a change of ownership has occurred. If the department determines a change of ownership has occurred, then the department may take licensing action.

(3) The adult family home and manager must act in accordance with the terms of the department approved management agreement. If the department determines they are not, then the department may take licensing action.

(4) The adult family home may enter into a management agreement only if the management agreement creates a principal/agent relationship between the adult family home and manager.

[Statutory Authority: RCW 70.128.040. WSR 10-03-064, § 388-76-11055, filed 1/15/10, effective 2/15/10.]

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-76-10193 Liability insurance required—
Professional liability insurance
coverage.