



STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES
Aging and Long-Term Support Administration
PO Box 45600, Olympia, Washington 98504-5600

November 30, 2022

Lisa Brodoff

Korematsu Center at Seattle University School of Law
<mailto:lbrodoff@seattleu.edu>

SUBJECT: Petition for Adoption of a Rule under RCW 34.05.330 to Provide a Resident Right to Appeal a Discharge Notice

Dear Lisa Brodoff:

This letter is in response to the rule-making petition, received October 3, 2022, requesting that DSHS amend rules in chapters 388-76, 388-78A, and 388-107 WAC to provide a right to an administrative appeal of a discharge notice from an adult family home, assisted living facility, or enhanced services facility. This notice is to inform you Residential Care Services (RCS) is denying your petition in accordance with RCW 34.05.330. RCS has reviewed your petition and concluded that such rules would exceed its rulemaking authority, as it goes beyond the scope of resident rights granted in statute.¹

Chapter 70.129 RCW mandates certain rights for residents in assisted living facilities, enhanced services facilities, and adult family homes. You are correct that the intent section of the chapter does reference 42 C.F.R. part 483, which gives residents of nursing homes many rights, including the right to appeal a notice of discharge. RCW 70.129.110 includes requirements facilities must follow prior to discharge or transfer of a resident. This list is nearly identical to the list contained in 42 C.F.R. § 483.15(c). However, the Legislature did not include one distinct provision that is found in the federal regulation, and that is appeal rights. “Where the legislature omits language from a statute, intentionally or inadvertently, this court will not read into the statute the language it believes was omitted.”² Because the language in the statute closely mirrors the rights granted by the federal government to nursing home residents, with the exception of the right to appeal a discharge, RCS has concluded the omission of this right is intentional.

While RCS supports the concept of appeal rights for residents being discharged from long-term care settings, we cannot exceed the rulemaking authority granted in statute. Therefore, we must deny the petition. However, we would like to work with you, your partners and provider representatives to explore options to protect residents in adult family homes, assisted living facilities, and enhanced services facilities from improper discharges.

¹ While we recognize there have been some examples of administrative judges and the Health Care Authority's Board of Appeals judges granting appeal rights, we do not consider this established case law and do not see this as an alternative to the interpretation of the statutory authority.

² *State v. Cooper*, 156 Wn.2d 475, 480 (2006); *State v. Nelson*, 195 Wn. App. 261, 266 (2016) (“We recognize that the legislature intends to use the words it uses and intends not to use words it does not use.”); *Kilian v. Atkinson*, 147 Wn.2d 16, 21 (2002) (courts must decline “to add language to an unambiguous statute even if it believes the Legislature intended something else but did not adequately express it.”).

If you disagree with this decision, RCW 34.05.330 explains the available appeal options.

Please contact me at bea.rector@dshs.wa.gov if you have any questions.

Sincerely,

Bea Rector

Bea Rector

Assistant Secretary, Aging and Long-Term Support Administration

cc: Katherine Vasquez, Rules and Policies Assistant Unit
Patricia Hunter, State Long-Term Care Ombuds