



PROPOSED RULE MAKING

CR-102 (June 2004)

(Implements RCW 34.05.320)

Do **NOT** use for expedited rule making

Agency: Department of Social and Health Services, Aging and Disability Services Administration

- Preproposal Statement of Inquiry was filed as WSR 08-13-089; or
- Expedited Rule Making--Proposed notice was filed as WSR _____; or
- Proposal is exempt under RCW 34.05.310(4).

- Original Notice
- Supplemental Notice to WSR
- Continuance of WSR

Title of rule and other identifying information: (Describe Subject) The department is amending:

WAC 388-513-1315, Eligibility for long-term care (institutional, waiver, and hospice) services
WAC 388-513-1320, Determining institutional status for long-term care (LTC) services

Hearing location(s):

Blake Office Park East – Rose Room
4500 – 10th Ave. SE
Lacey, Washington 98503
(One block north of the intersection of Pacific Ave. SE and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling 360-664-6094)

Date: **February 24, 2009** Time: **10:00 a.m.**

Submit written comments to:

Name: DSHS Rules Coordinator
Address: PO Box 45850, Olympia WA, 98504-5850
Delivery: 4500 – 10th Ave. SE, Lacey, Washington 98503
E-mail: DSHSRPAURulesCoordinator@dshs.wa.gov
Fax: (360) 664-6185

by
5 p.m. on February 24, 2009

Assistance for persons with disabilities: Contact Jennisha Johnson, DSHS Rules Consultant by February 10, 2009
TTY (360) 664-6178 or (360) 664-6094 or
by e-mail at johnsjl4@dshs.wa.gov

Date of intended adoption: Not earlier than February 25, 2009 (Note: This is **NOT** the **effective** date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

- DSHS is clarifying institutional status for person(s) under the age of 18 receiving inpatient mental health treatment.
- DSHS is clarifying institutional status for person(s) age 18 through 20 in a psychiatric facility.
- DSHS is clarifying WAC to match federal rules regarding institutional status.
- DSHS is adding information in WAC 388-513-1315 regarding excess home equity in primary residence, disclosure of annuity requirement, and request for LTC services for SSI recipients, per Deficit Reduction Act (DRA) requirements.
- DSHS is clarifying those not meeting citizenship requirements of Medicaid are not eligible for Waiver programs.
- DSHS is updating WAC references and clarifying language.

Reasons supporting proposal: See above.

Statutory authority for adoption:

RCW 74.04.050; 74.04.057; 74.08.090; 74.09.500;
74.09.530; and 74.09.575

Statute being implemented:

RCW 74.04.050; 74.04.057; 74.08.090; 74.09.500;
74.09.530; and 74.09.575

Is rule necessary because of a:

- | | | |
|-------------------------|---|--|
| Federal Law? | <input checked="" type="checkbox"/> Yes | <input 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: Section 6012 of the Deficit Reduction Act (DRA) of 2005

DATE

January 14, 2009

NAME (type or print)

Stephanie Schiller

SIGNATURE

TITLE

DSHS Rules Coordinator

CODE REVISER USE ONLY

**OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED**

DATE: January 21, 2009

TIME: 7:12 AM

WSR 09-03-096

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None

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..... Lori Rolley	P.O. Box 45600, Olympia, WA 98504-5600	(360) 725-2271
Implementation.... Lori Rolley	P.O. Box 45600, Olympia, WA 98504-5600	(360) 725-2271
Enforcement..... Lori Rolley	P.O. Box 45600, Olympia, WA 98504-5600	(360) 725-2271

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone ()

fax ()

e-mail

No. Explain why no statement was prepared.

The Department has analyzed the rules and determined that no new costs will be imposed on small businesses or non-profit organizations.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone ()

fax ()

e-mail

No: Please explain:

Rules are exempt per RCW 34.05.328(5)(b)(vii), relating only to client medical or financial eligibility.

AMENDATORY SECTION (Amending WSR 07-19-129, filed 9/19/07, effective 10/20/07)

WAC 388-513-1315 Eligibility for long-term care (institutional, waiver, and hospice) services. This section describes how the department determines a client's eligibility for ~~((institutional))~~ medical for clients residing in a medical institution, on a waiver, or receiving hospice services under the categorically needy (CN) ((program and institutional or hospice services in a medical institution under the)) or medically needy (MN) programs. Also described are the eligibility requirements for these services under the general assistance (GA) program in subsection (12) and the alien emergency medical programs described in subsection (11).

(1) To be eligible for long-term care (LTC) services described in this section, a client must:

(a) Meet the general eligibility requirements for medical programs described in WAC 388-503-0505 (2) and (3)(a) through (f);

(b) Attain institutional status as described in WAC 388-513-1320;

(c) Meet functional eligibility described in chapter 388-106 WAC for waiver and nursing facility coverage; ~~((and))~~

(d) Not be subject to a penalty period of ineligibility as described in WAC 388-513-1363, 388-513-1364, 388-513-1365 and 388-513-1366;

(e) Not have equity interest greater than five hundred thousand dollars in their primary residence as described in WAC 388-513-1350; and

(f) Must disclose to the state any interest the applicant or spouse has in an annuity and meet annuity requirements described in chapter 388-561 WAC:

(i) This requirement is required for all institutional or waiver services and includes those individuals receiving supplemental security income (SSI).

(ii) A signed and completed eligibility review for long term care benefits or application for benefits form can be accepted for SSI individuals applying for long-term care services.

(2) To be eligible for institutional, waiver, or hospice services under the CN program, a client must either:

(a) Be related to the Supplemental Security Income (SSI) program as described in WAC 388-475-0050 (1), (2) and (3) and meet the following financial requirements, by having:

(i) Gross nonexcluded income described in subsection (8)(a) that does not exceed the special income level (SIL) (three hundred percent of the federal benefit rate (FBR)); and

(ii) Countable resources described in subsection (7) that do not exceed the resource standard described in WAC 388-513-1350 ~~((1), unless subsection (4) applies)); or~~

(b) Be approved and receiving the general assistance expedited medicaid disability (GA-X) or general assistance aged (GA-A) or general assistance disabled (GA-D) described in WAC

388-505-0110(6); or

(c) Be eligible for ~~((the))~~ CN ~~((children's medical program as described in WAC 388-505-0230))~~ apple health for kids described in WAC 388-505-0210; or CN family medical described in WAC 388-505-0220; or family and children's institutional medical described in WAC 388-505-0230 through 388-505-0260. Clients not meeting the citizenship requirements for federally funded medicaid described in WAC 388-424-0010 are not eligible to receive waiver services; or

(d) Be eligible for the temporary assistance for needy families (TANF) program as described in WAC ~~((388-505-0220))~~ 388-400-0005 and meet disability criteria described in WAC 388-475-0050.

(3) The department allows a client to ~~((have))~~ reduce countable resources in excess of the standard. This is described in WAC 388-513-1350 ~~((when meeting the conditions of reducing excess resources described in WAC 388-513-1350))~~.

(4) To be eligible for waiver services, a client must ~~((also))~~ meet the program requirements described in:

(a) WAC 388-515-1505 through 388-515-1509 for COPES, New Freedom, PACE, ~~((MMIP))~~ and WMIP services; or

(b) WAC 388-515-1510 through 388-515-1514 for DDD waivers; or

(c) WAC 388-515-1540 for the medically needy residential waiver (MNRW); or

(d) WAC 388-515-1550 for the medically needy in-home waiver (MNIW).

(5) To be eligible for hospice services under the CN program, a client must:

(a) Meet the program requirements described in chapter 388-551 WAC; and

(b) Be eligible for a noninstitutional categorically needy program (CN-P) if not residing in a medical institution thirty days or more; or

(c) Reside at home and benefit by using home and community based waiver rules described in WAC 388-515-1505 through 388-515-1509 (SSI related clients with income over the MNIL and at or below the 300 percent of the FBR or clients with a community spouse); or

(d) Receive home and community waiver (HCS) or DDD waiver services in addition to hospice services. The client's responsibility to pay toward the cost of care (participation) is applied to the waiver service provider first; or

~~((Reside in a state contracted and licensed alternate living facility and not on waiver services and receives medical assistance described in WAC 388-513-1305 as they are paying the facility privately.~~

~~((f)))~~ Be eligible for institutional CN if residing in a medical institution thirty days or more ~~((use institutional rules for eligibility when in a medical institution thirty days or more))~~.

(6) To be eligible for institutional or hospice services under the MN program, a client must be:

(a) Eligible for MN children's medical program described in WAC ~~((388-505-0230))~~ 388-505-0210, 388-505-0255, or 388-505-0260; or

(b) Related to the SSI program as described in WAC

~~((388-478-0050(1)))~~ 388-475-0050 and meet all requirements described in WAC 388-513-1395; or

(c) Eligible for the MN SSI related program described in WAC 388-475-0150 for hospice clients residing in a home setting; or

(d) Eligible for the MN SSI related program described in WAC 388-513-1305 for hospice clients not on a medically needy waiver and residing in an alternate living facility.

(e) Be eligible for institutional MN if residing in a medical institution thirty days or more (~~((use institutional rules for eligibility when in a medical institution thirty days or more))~~) described in WAC 388-513-1395.

(7) To determine resource eligibility for an SSI-related client under the CN or MN program, the department:

(a) Considers resource eligibility and standards described in WAC 388-513-1350; and

(b) Evaluates the transfer of assets as described in WAC 388-513-1363, 388-513-1364, 388-513-1365 and 388-513-1366.

(8) To determine income eligibility for an SSI-related client under the CN or MN program, the department:

(a) Considers income available as described in WAC 388-513-1325 and 388-513-1330;

(b) Excludes income for CN and MN programs as described in WAC 388-513-1340;

(c) Disregards income for the MN program as described in WAC 388-513-1345; and

(d) Follows program rules for the MN program as described in WAC 388-513-1395.

(9) A client who meets the requirements of the CN program is approved for a period of up to twelve months (~~for:~~

~~(a) Institutional services in a medical facility;~~

~~(b) Waiver services at home or in an alternate living facility; or~~

~~(c) Hospice services at home or in a medical facility)).~~

(10) A client who meets the requirements of the MN program is approved for a period of months described in WAC 388-513-1395(6) for:

(a) Institutional services in a medical ~~((facility))~~ institution; or

(b) Hospice services in a medical ~~((facility))~~ institution.

(11) The department determines eligibility for nursing facility and hospice services under the alien emergency medical (AEM) program described in WAC 388-438-0110 for a client age nineteen or over who meets all other requirements for such services but does not meet citizenship requirements. Nursing facility and hospice services under the AEM program must be preapproved by the department's medical consultant.

(12) The department determines eligibility for institutional services under the GA program described in WAC 388-448-0001 for a client who meets all other requirements for such services but is not eligible for programs described in subsections (9) through (11).

(13) A client is eligible for medicaid as a resident in a psychiatric facility, if the client:

(a) Has attained institutional status as described in WAC 388-513-1320; and

(b) Is ~~((less than))~~ under the age of twenty-one ~~((years old))~~

at the time of application (~~(and approval)~~); or

(c) Is receiving active psychiatric treatment just prior to their twenty-first birthday and the services extend beyond this date and the client has not yet reached age twenty-two; or

(d) Is at least sixty-five years old.

(14) The department determines a client's eligibility as it does for a single person when the client's spouse has already been determined eligible for LTC services.

(15) (~~The department considers the parents' income and resources available for a minor who is less than eighteen years old and is receiving or is expected to receive inpatient chemical dependency and/or inpatient mental health treatment~~) If an individual under age twenty one is not eligible for medicaid under SSI related in WAC 388-475-0050 or general assistance (GA) described in WAC 388-448-0001 and 388-505-0110 (6) consider eligibility under WAC 388-505-0255 or 388-505-0260.

(16) (~~The department considers the parents' income and resources available only as contributed for a client who is less than twenty-one years old and has attained institutional status as described in WAC 388-513-1320~~) Noncitizen individuals under age nineteen can be considered for the apple health for kids program described in WAC 388-505-0210 if they are admitted to a medical institution for less than thirty days. Once an individual resides or is likely to reside in a medical institution for thirty days or more, the department determines eligibility under WAC 388-505-0260.

(17) The department determines a client's (~~(participation in)~~) total responsibility to pay toward the cost of care for LTC services as (~~(described in WAC 388-513-1380 and 388-515-1505 for long-term care services under COPES, New Freedom, PACE, MMIP and WMIP or WAC 388-515-1510 for DDD waivers)~~) follows:

(a) For SSI-related clients residing in a medical institution see WAC 388-513-1380;

(b) For clients receiving HCS CN waiver services see WAC 388-515-1509;

(c) For clients receiving DDD CN waiver services see WAC 388-515-1514;

(d) For clients receiving HCS MN waiver services see WAC 388-515-1540 or 388-515-1550; or

(e) For TANF related clients residing in a medical institution see WAC 388-505-0265.

(18) Clients not living in a medical institution who are considered to be receiving SSI benefits for the purposes of medicaid do not pay service participation toward their cost of care. Clients living in a residential setting do pay room and board as described in WAC 388-515-1505 through 388-515-1509 or WAC 388-515-1514. Groups deemed to be receiving SSI and for medicaid purposes are eligible to receive CN-P medicaid. These groups are described in WAC 388-475-0880.

AMENDATORY SECTION (Amending WSR 06-07-077, filed 3/13/06, effective 4/13/06)

WAC 388-513-1320 Determining institutional status for long-term care (LTC) services. (1) Institutional status is an eligibility requirement for long-term care services (LTC) (services.

~~(1) To attain institutional status, a client)) and institutional medical programs. To attain institutional status, you must:~~

~~(a) Be approved for and receiving home and community based waiver services or hospice services; or~~

~~(b) Reside or be likely to reside in a medical institution, institution for medical diseases (IMD) or inpatient psychiatric facility for a continuous period of:~~

~~(i) ((Ninety days for a child seventeen years of age or younger receiving inpatient chemical dependency and/or inpatient mental health treatment)) Thirty days if you are an adult eighteen and older; ((or))~~

~~(ii) Thirty days ((for:~~

~~(A) An SSI-related client;~~

~~(B) A child not described in subsection (1)(b)(i); or~~

~~(C) A client related to medical eligibility as described in WAC 388-513-1315 (10) or (11)) if you are a child seventeen years of age or younger admitted to a medical institution; or~~

~~(iii) Ninety days if you are a child seventeen years of age or younger receiving inpatient chemical dependency or inpatient psychiatric treatment.~~

~~(2) ((A client's)) Once the department has determined that you meet institutional status, your status is not affected by ((a)):~~

~~(a) Transfers between medical facilities; or~~

~~(b) Changes from one kind of long-term care services (waiver, hospice or medical institutional services) to another.~~

~~(3) ((A client loses institutional status when the client:~~

~~(a) Is absent from the medical facility for at least thirty consecutive days; or~~

~~(b) Does not receive waiver or hospice services for at least thirty consecutive days)) If you are absent from the medical institution or you do not receive waiver or hospice services for at least thirty consecutive days, you lose institutional status.~~