



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 08-12-071 ; 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 creating new WAC 388-96-758 and WAC 388-96-759 to increase compensation for low-wage workers in nursing homes beginning July 1, 2008, and to establish a system of reporting to ensure that the low wage add-on increased the compensation/benefits for low wage workers, increased staff, and/or paid for wage compression when low wage workers' compensation was increased.

Hearing location(s):

Office Building 2 - Auditorium
(DSHS Headquarters)
1115 Washington
Olympia, WA 98504
Public parking at 11th and Jefferson. A map is available at:
<http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>
or by calling 360-664-6094.

Date: **March 10, 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 March 10, 2009

Assistance for persons with disabilities: Contact Jennisha Johnson, DSHS Rules Consultant by February 24, 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 March 11, 2009
(Note: This is **NOT** the effective date)

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

The Legislature directed the department to increase compensation for low-wage workers in nursing homes beginning July 1, 2008. The department shall provide an add-on per resident day, per facility, based on the total funding divided by the total number of fiscal year 2009 Medicaid patient days as forecasted by the caseload forecast council (CFC), not to exceed \$1.57. The department may reduce the level of add-on if necessary to fit within this appropriation if the caseload forecasted days increase from the February 2008 forecast. The department by rule shall implement reporting requirements and a settlement process to ensure that the funds are spent according to this subsection.

Reasons supporting proposal:

See above

Statutory authority for adoption:

Chapter 329, Laws of 2008 Section 206 (9)

Statute being implemented:

Chapter 74.46 RCW

Is rule necessary because of a:

- Federal Law? Yes No
- Federal Court Decision? Yes No
- State Court Decision? Yes No

If yes, CITATION:

DATE

January 28, 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: February 02, 2009

TIME: 4:31 PM

WSR 09-04-066

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..... Patricia Hague	MS 45600 Olympia, WA 98504	(360) 725-2447
Implementation.... Ed Southon	MS 45600 Olympia, WA 98504	(360) 725-2469
Enforcement..... Ed Southon	MS 45600 Olympia, WA 98504	(360) 725-2469

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.

Under RCW 19.85.025 (3) and 030 (1) (a); RCW 34.05.310 (4)(f), the department is exempt from preparing a SBEIS.

RCW 19.85.025 (3) This chapter does not apply to the adoption of a rule described in RCW [34.05.310](#)(4).

RCW 34.05.310(4) This section does not apply to:

(f) Rules that set or adjust fees or rates pursuant to legislative standards;

The adoption of rules to set or adjust fees is cost neutral.

RCW 19.85.030 (1) (a) In the adoption of a rule under chapter [34.05](#) RCW, an agency shall prepare a small business economic impact statement: (a) If the proposed rule will impose more than minor costs on businesses in an industry;

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:

Under RCW 34.05.328 (5) (b) (vi), the department is exempt from preparing a CBA for these rules. The rules set or adjust fees or rates pursuant to legislative standards

RCW 34.05.328 (5) (b) This section does not apply to:

(vi) Rules that set or adjust fees or rates pursuant to legislative standards;

NEW SECTION

WAC 388-96-758 Add-on for low-wage workers. (1) Under section 206, chapter 329, Laws of 2008, effective July 1, 2008, the department will grant a low wage add-on payment not to exceed one dollar and fifty-seven cents per resident day to any nursing home provider that has indicated a desire to receive the add-on by May 30, 2008. A nursing home may use the add-on only for in-house staff and not for allocated, home office, or purchased service increases. A nursing home may use the add on to:

(a) Increase wages, benefits, and/or staffing levels for certified nurse aides;

(b) Increase wages and/or benefits but not staffing levels for dietary aides, housekeepers, laundry aides, or any other category of worker whose statewide average dollars-per-hour wage was less than fifteen dollars in calendar year 2006, according to cost report data. The department has determined that the additional categories of workers qualifying under this standard are:

(i) Activities directors and assistants;

(ii) Patient choices coordinators;

(iii) Central supply/ward clerks;

(iv) Expanded community service workers; and

(v) Social workers; and

(c) Address wage compression for related job classes immediately affected by wage increases to low-wage workers.

(2) A nursing home that received effective July 1, 2008 a low-wage add-on under chapter 329, Laws of 2008 shall report to the department its expenditure of that add-on by:

(a) Completing Cost Report Schedule L 1; and

(b) Returning it to the department by January 31, 2009.

(3) By examining Cost Report Schedule L 1, the department will determine whether the nursing home complied with the statutory requirements for distribution of the low wage add-on. When the department is unable to determine or unsure that the statutory requirements have been met, it will conduct an on site audit.

(4) When the department determines that the statutory requirements have been met, the low wage add-on will be reconciled at the same time as the regular settlement process but as a separate reconciliation. The reconciliation process will compare gross dollars received in the add-on to gross dollars spent.

(5) When the department determines that the low wage add-on has not been spent in compliance with the statutory requirements, then it will recoup the noncomplying amount as an overpayment.

(6) The department also will require the completing of Cost Report Schedule L 1 for any calendar year in which the low wage add-on is paid for six months or more. Subsections (1) through (5) of this section will apply to all completions of Cost Report Schedule L 1 irrespective of the calendar year in which it is paid.

(7) If the legislature extends the low-wage worker add-on in the state fiscal year 2010 budget, nursing home providers will have the opportunity again to elect whether they wish to receive the

add-on in their July 1, 2009 rates.

NEW SECTION

WAC 388-96-759 Standards for low-wage workers add-on. (1) In accordance with WAC 388-96-758, the low-wage worker add-on must be used to provide increases in wages or benefits, or to address resulting wage compression beginning on or after the date on which the add-on is first included in the rate. For the first year, that date is July 1, 2008. It may be used to increase staffing levels for certified nurse aides only. The add-on may not be used after July 1 to pay for increases beginning before that date.

(2) Any type of traditional employee benefit is allowable. Such benefits typically fall in one of two categories: retirement, and life or health insurance. However, nontraditional benefits are also allowable (for example, wellness benefits, subsidized meals, or assistance with daycare).

(3) The employer's share of payroll taxes associated with wages and benefits may be covered with the add-on.

(4) For purposes of wage compression, an "immediately affected" job class is one that is related to the low-wage worker category, either in the organizational structure (for example, it supervises the low-wage worker category) or by existing practice (for example, the facility has a benchmark of paying that job class a certain percentage more than the low-wage worker category). Facilities must be able to explain the basis of the relationship if requested. Because the statute refers to "resulting wage compression," a facility must use a portion of the add-on to increase wages or benefits before it may use any of the add-on to address any wage compression caused by such increase.

(5) A facility may use the add-on in relation to any of the job categories listed in WAC 388-96-758, regardless of whether the average wage it pays to its own employees is above fifteen dollars per hour, either before or after including the additional wages funded by the add-on.

(6) Wages or benefits, including employee bonuses, otherwise properly paid with the add on will not be considered as unallowable costs per RCW 74.46.410(2)(x).