



# 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 08-16-138
- 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 chapter 388-828 WAC, Division of Developmental Disabilities Assessment. See attachment for specific sections.

**Hearing location(s):**

Blake Office Park East – Rose Room  
4500 – 10<sup>th</sup> 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://www.dshs.wa.gov/msa/rpau/docket.html> or by calling 360-664-6094)

Date: **July 7, 2009** Time: **10:00 a.m.**

**Submit written comments to:**

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

by  
**5 p.m. on July 7, 2009**

**Assistance for persons with disabilities:** Contact Jennisha Johnson, DSHS Rules Consultant by June 23, 2009

TTY (360) 664-6178 or (360) 664-6097 or by e-mail at [johnsjl@dshs.wa.gov](mailto:johnsjl@dshs.wa.gov)

**Date of intended adoption:** Not earlier than July 8, 2009  
(Note: This is **NOT** the **effective** date)

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

These rules add language to clarify the Individual Support Plan process and amend sections to complete housekeeping changes.

See attachment for the specific changes proposed for each section.

**Reasons supporting proposal:** see above

**Statutory authority for adoption:**  
RCW 71A.12.030, RCW 71A.12.040

**Statute being implemented:**  
Title 71A RCW

**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:

**DATE**  
May 26, 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: May 28, 2009**

**TIME: 1:19 PM**

**WSR 09-12-060**

**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..... Debbie Roberts	640 Woodland Square Loop SE Lacey, WA 98503-1045 PO Box 45310, Olympia, WA 98507-5310 E-mail roberdx@dshs.wa.gov	(360) 725-3400 FAX (360) 404-0955
Implementation.... Don Clintsman	640 Woodland Square Loop SE Lacey, WA 98503-1045 PO Box 45310, Olympia, WA 98507-5310 E-mail ClintDL@dshs.wa.gov	(360) 725-3421 FAX (360) 404-0955
Enforcement..... Don Clintsman	640 Woodland Square Loop SE Lacey, WA 98503-1045 PO Box 45310, Olympia, WA 98507-5310 E-mail ClintDL@dshs.wa.gov	(360) 725-3421 FAX (360) 404-0955

**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. DDD has analyzed these rules and concluded that they do not impact small businesses or small non-profits

**Is a cost-benefit analysis required under RCW 34.05.328?**

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

Name: Debbie Roberts

Address: 640 Woodland Square Loop SE  
Lacey, WA 98503-1045

phone (360)725-3400

fax (360) 404-0955

e-mail roberdx@dshs.wa.gov

No:

**Attachment to CR 102  
DDD ASSESSMENT  
SUMMARY OF RULES  
March 2009**

Washington Administrative Code	Effect of Rule
<b>388-828-1020 Amended</b>	Housekeeping changes to add definition for Necessary Supplemental Accomodation Representative and remove the definition for Plan of CARE.
<b>388-828-1440 Amended</b>	Housekeeping change to update terminology from Family Support to Individual and Family Services per chapter 388-832 WAC.
<b>388-828-1460 Amended</b>	Housekeeping change to remove outdated reference “ DDD intends to assess all clients by June 30, 2008”.
<b>388-828-1520 Amended</b>	Clarifies language regarding where DDD Assessments and reassessments are conducted.
<b>388-828-5640 Amended</b>	Housekeeping change to correct the terminology for caregiver assistance scoring to reflect the computerized assessment.
<b>388-828-8065 New</b>	Adds language to clarify process
<b>388-828-8070 New</b>	Adds language to clarify when your individual support plan is effective.
<b>388-828-8075 New</b>	Adds language to clarify when a change to your individual support plan is effective
<b>388-828-8080 New</b>	Adds language to clarify who signs or gives consent for the individual support plan.
<b>388-828-8085 New</b>	Adds language to clarify how long an individual support plan is effective.
<b>388-828-8090 New</b>	Adds language to clarify the process when there is not consent for the individual support plan.
<b>388-828-8095 New</b>	Adds language to clarify when you may request a review of your individual support plan.

AMENDATORY SECTION (Amending 07-10-029, filed 4/23/07, effective 6/1/07)

**WAC 388-828-1020 What definitions apply to this chapter?** The following definitions apply to this chapter:

"AAIDD" means the American Association on Intellectual and Developmental Disabilities.

"Acuity Scale" refers to an assessment tool that is intended to provide a framework for documenting important assessment elements and for standardizing the key questions that should be asked as part of a professional assessment. The design helps provide consistency from client to client by minimizing subjective bias and assists in promoting objective assessment of a person's support needs.

"ADSA" means the aging and disability services administration (ADSA), an administration within the department of social and health services, which includes the following divisions: Home and community services, residential care services, management services and division of developmental disabilities.

"ADSA contracted provider" means an individual or agency who is licensed, certified, and/or contracted by ADSA to provide services to DDD clients.

"Adult family home" or "AFH" means a residential home in which a person or persons provide personal care, special care, room and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services (see RCW 70.12.010).

"Agency provider" means a licensed and/or ADSA certified business who is contracted with ADSA or a county to provide DDD services (e.g., personal care, respite care, residential services, therapy, nursing, employment, etc.).

"Algorithm" means a numerical formula used by the DDD assessment for one or more of the following:

- (1) Calculation of assessed information to identify a client's relative level of need;
- (2) Determination regarding which assessment modules a client receives as part of his/her DDD assessment; and
- (3) Assignment of a service level to support a client's assessed need.

"Authorization" means DDD approval of funding for a service as identified in the individual support plan or evidence of payment for a service.

"CARE" refers to the comprehensive assessment reporting evaluation assessment per chapter 388-106 WAC.

"Client" means a person who has a developmental disability as defined in RCW 71A.10.020(3) who also has been determined eligible to receive services by the division under chapter (~~71A.16 RCW~~) 388-823 WAC.

"Collateral contact" means a person or agency that is involved in the client's life (e.g., legal guardian, family member, care provider, friend, etc.).

"Companion home" is a DDD contracted residential service that provides twenty-four hour training, support, and supervision, to one adult living with a paid provider.

"DDD" means the division of developmental disabilities, a division with the aging and disability services administration (ADSA), department of social and health services (DSHS).

"Department" means the department of social and health services (DSHS).

"Group home" or "GH" means an ADSA licensed adult family home or boarding home contracted and certified by ADSA to provide residential services and support to adults with developmental disabilities.

"ICF/MR" means a facility certified as an intermediate care facility for the mentally retarded to provide habilitation services to DDD clients.

"ICF/MR level of care" is a standardized assessment of a client's need for ICF/MR level of care per 42 CFR 440 and 42 CFR 483. In addition, ICF/MR level of care refers to one of the standards used by DDD to determine whether a client meets minimum eligibility criteria for one of the DDD HCBS waivers.

"Individual support plan" or "ISP" is a document that authorizes and identifies the DDD paid services to meet a client's assessed needs.

"Legal guardian" means a person/agency, appointed by a court, who is authorized to make some or all decisions for a person determined by the court to be incapacitated. In the absence of court intervention, parents remain the legal guardians for their child until the child reaches the age of eighteen.

"LOC score" means a score for answers to questions in the support needs assessment for children that are used in determining if a client meets eligibility requirements for ICF/MR level of care.

"Modules" refers to three sections of the DDD assessment. They are: The support assessment, the service level assessment, and the individual support plan (ISP).

"Necessary supplemental accommodation representative" means an individual who receives copies of DDD planned action notices (PANs) and other department correspondence in order to help a client understand the documents and exercise the client's rights. A necessary supplemental accommodation representative is identified by a client of DDD when the client does not have a legal guardian and the client is requesting or receiving DDD services.

"Panel" refers to the visual user-interface in the DDD assessment computer application where assessment questions are typically organized by topic and you and your respondents' answers are recorded.

~~(( "Plan of care" or "POC" refers to the paper-based assessment and service plan for clients receiving services on one of the DDD HCBS waivers prior to June 1, 2007.))~~

"Raw score" means the numerical value when adding a person's "Frequency of support," "Daily support time," and "Type of support" scores for each activity in the support needs and supplemental protection and advocacy scales of the supports intensity scale (SIS) assessment.

"Residential habilitation center" or "RHC" is a state-operated facility certified to provide ICF/MR and/or nursing facility level

of care for persons with developmental disabilities per chapter 71A.20 RCW.

"Respondent" means the adult client and/or another person familiar with the client who participates in the client's DDD assessment by answering questions and providing information. Respondents may include ADSA contracted providers.

"SIS" means the supports intensity scale developed by the American Association of Intellectual and Developmental Disabilities (AAIDD). The SIS is in the support assessment module of the DDD assessment.

"Service provider" refers to an ADSA contracted agency or person who provides services to DDD clients. Also refers to state operated living alternative programs (SOLA).

"SOLA" means a state operated living alternative program for adults that is operated by DDD.

"State supplementary payment" or "SSP" is the state paid cash assistance program for certain DDD eligible Social Security Income clients per chapter 388-827 WAC.

"Supported living" or "SL" refers to residential services provided by ADSA certified residential agencies to clients living in homes that are owned, rented, or leased by the clients or their legal representatives.

"Waiver personal care" means physical or verbal assistance with activities of daily living (ADL) and instrumental activities of daily living (IADL) due to your functional limitations per chapter 388-106 WAC to individuals who are authorized to receive services available in the Basic, Basic Plus, and Core waivers per chapter 388-845 WAC.

"Waiver respite care" means short-term intermittent relief for persons normally providing care to individuals who are authorized to receive services available in the Basic, Basic Plus, and Core waivers per chapter 388-845 WAC.

"You/Your" means the client.

AMENDATORY SECTION (Amending 07-10-029, filed 4/23/07, effective 6/1/07)

**WAC 388-828-1440 What is the definition of DDD "paid service" in chapter 388-828 WAC?** For the purpose of this chapter, a DDD paid service is defined as an authorization of a program and/or service as evidenced by one or more of the following:

(1) An open social service payment system (SSPS) authorization within the past ninety days used for payment of a service or SSP; or

(2) A current county service authorization for one of the following services:

- (a) Person to person; or
- (b) Individual employment; or
- (c) Group supported employment; or
- (d) Prevocational/specialized industries; or
- (e) Community access; or
- (f) Individual and family assistance.

- (3) A current (~~waiver POC or~~) waiver ISP; or
- (4) Residence in a state operated living alternative (SOLA) program; or
- (5) Authorization of (~~family support services~~) individual and family services per chapter 388-832 WAC within the last twelve months (~~per chapter 388-825 WAC~~); or
- (6) Documentation of DDD approval of your absence from DDD paid services for more than ninety days with available funding for your planned return to services; or
- (7) Evidence of approval for funding of a DDD service or enrollment in a DDD HCBS waiver; or
- (8) Payment of services using Form A-19 state of Washington invoice voucher for receipt of:
  - (a) Dangerous mentally ill offender funds;
  - (b) Crisis stabilization services;
  - (c) Specialized psychiatric services; or
  - (d) Diversion bed services.

AMENDATORY SECTION (Amending 07-10-029, filed 4/23/07, effective 6/1/07)

**WAC 388-828-1460 When will you receive an initial DDD assessment?** (~~DDD intends to assess all clients per WAC 388-828-1100 by June 30, 2008.~~) DDD must administer an initial DDD assessment when:

- (1) You are receiving a DDD paid service and your annual reassessment is due for continuation of the DDD paid service; or
- (2) You are receiving a DDD paid service and a reassessment is needed due to a significant change that may affect your support needs; or
- (3) You are receiving SSP in lieu of a DDD paid service and your eligibility for SSP needs to be redetermined per WAC 388-827-0120;
- (4) You are approved for funding of a DDD paid service and an assessment must be performed prior to the authorization of services; or
- (5) You make a request to have a DDD assessment administered and meet the criteria in WAC 388-828-1100; or
- (6) You are contacted by DDD and offered an opportunity to have a DDD assessment.

AMENDATORY SECTION (Amending WSR 07-10-029, filed 4/23/07, effective 6/1/07)

**WAC 388-828-1520 Where (~~is the~~) are DDD assessments and reassessments (administered) conducted?** (~~The~~) DDD assessments and reassessments (are administered) are face-to-face interviews conducted in your place of residence with you and your

respondent (s).

AMENDATORY SECTION (Amending 07-10-029, filed 4/23/07, effective 6/1/07)

**WAC 388-828-5640 How does DDD determine your behavioral acuity level?** DDD uses your frequency, severity, and caregiver assistance scores to determine your behavioral acuity level using the following table:

If your score for frequency is:	And your score for severity is:	And your score for caregiver assistance is:	Then your behavioral acuity level is:
Rare	Minor	None	Low
		Verbal redirection	Low
		Physical guiding or (( <del>selection</del> )) <u>intervention</u>	Low
		Physical restraint	Low
	Potentially Dangerous	None	Low
		Verbal redirection	Low
		Physical guiding or (( <del>selection</del> )) <u>intervention</u>	Medium
		Physical restraint	High
	Life-Threatening	None	Medium
		Verbal redirection	Medium
		Physical guiding or (( <del>selection</del> )) <u>intervention</u>	High
		Physical restraint	High
Occasional	Minor	None	Low
		Verbal redirection	Low
		Physical guiding or (( <del>selection</del> )) <u>intervention</u>	Low
		Physical restraint	Medium

If your score for frequency is:	And your score for severity is:	And your score for caregiver assistance is:	Then your behavioral acuity level is:
	Potentially Dangerous	None	Medium
		Verbal redirection	Medium
		Physical guiding or (( <del>selection</del> )) <u>intervention</u>	Medium
		Physical restraint	High
	Life Threatening	None	Medium
		Verbal redirection	Medium
		Physical guiding or (( <del>selection</del> )) <u>intervention</u>	High
		Physical restraint	High
Frequent	Minor	None	Low
		Verbal redirection	Low
		Physical guiding or (( <del>selection</del> )) <u>intervention</u>	Medium
		Physical restraint	Medium
	Potentially Dangerous	None	Medium
		Verbal redirection	Medium
		Physical guiding or (( <del>selection</del> )) <u>intervention</u>	High
		Physical restraint	High
	Life-Threatening	None	High
		Verbal redirection	High
		Physical guiding or (( <del>selection</del> )) <u>intervention</u>	High
		Physical restraint	High

NEW SECTION

**WAC 388-828-8065 What if I need assistance to understand my individual support plan?** If you are unable to understand your individual support plan and the individual who has agreed to provide assistance to you as your necessary supplemental accommodation representative is unable to assist you with understanding your individual support plan, DDD will take the following steps:

(1) Consult with the office of the attorney general to determine if you require a legal representative or guardian to assist you with your individual support plan.

(2) Continue your current DDD paid service(s).

(3) If the office of the attorney general or a court determines that you do not need a legal representative, DDD will continue to try to provide necessary supplemental accommodations in order to help you understand your individual support plan.

NEW SECTION

**WAC 388-828-8070 When is my individual support plan effective?** Your individual support plan is effective:

(1) After a signature or verbal consent is obtained from you and/or your guardian; and

(2) On the date it is approved and signed by DDD.

NEW SECTION

**WAC 388-828-8075 May a change in my individual support plan be effective before I sign it?** If you verbally request a change in service to occur immediately, DDD may sign the individual support plan and approve it prior to receiving your signature.

(1) Your individual support plan will be mailed to you for signature.

(2) You retain the same appeal rights as if you had signed the individual support plan.

NEW SECTION

**WAC 388-828-8080 Who is required to sign or give verbal consent to my individual support plan?** (1) If you do not have a legal representative, you must sign or give verbal consent to the individual support plan.

(2) If you have a legal representative, your legal

representative must sign or give verbal consent to the individual support plan.

(3) If you need assistance to understand your individual support plan, DDD will follow the steps outlined in WAC 388-828-8065(1) and (3).

#### NEW SECTION

**WAC 388-828-8085 How long is my plan effective?** Your individual support plan is effective through the last day of the twelfth month following the effective date or until another ISP is completed, whichever occurs sooner.

#### NEW SECTION

**WAC 388-828-8090 What happens if I do not sign or verbally consent to my individual support plan (ISP)?** If DDD is unable to obtain the necessary signature or verbal consent for an initial, reassessment or review of your individual support plan (ISP), DDD will take one or more of the following actions:

(1) If this individual support plan is an initial plan, DDD will be unable to provide DDD paid services. DDD will not assume consent for an initial plan and will follow the steps described in WAC 388-828-8065 (1) and (3).

(2) If this individual support plan is a reassessment or review and you are able to understand your ISP:

(a) DDD will continue providing services as identified in your most current individual support plan until the end of the ten-day advance notice period as stated in WAC 388-825-105.

(b) At the end of the ten-day advance notice period, unless you file an appeal, DDD will assume consent and implement the new ISP without the required signature or verbal consent as defined in WAC 388-828-8065(2).

(3) If this individual support plan is a reassessment or review and you are not able to understand your ISP, DDD will continue your existing services and take the steps described in WAC 388-828-8065.

(4) You will be provided written notification and appeal rights to this action to implement the new ISP.

(5) Your appeal rights are in WAC 388-845-4000 and 388-825-120 through 388-825-165.

#### NEW SECTION

**WAC 388-828-8095 What if my support needs change?** You may request a review of your individual support plan at any time by contacting your case manager.