



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 09-11-100 ; 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 388-105-0005 The daily Medicaid payment rates for clients assessed using the comprehensive assessment reporting evaluation (CARE) tool and that reside in adult family homes (AFH) and boarding homes contracted to provide assisted living (AL), adult residential care (ARC), and enhanced adult residential care (EARC) services; and
 WAC 388-105-0045 Bed or unit hold -- Medicaid resident discharged for a hospital or nursing home stay from an adult family home (AFH) or a boarding home contracted to provide adult residential care (ARC), enhanced adult residential care (EARC), or assisted living services (AL).

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: **September 22, 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 September 22, 009

Assistance for persons with disabilities: Contact Jennisha Johnson, DSHS Rules Consultant by September 8, 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 September 23, 2009 (Note: This is **NOT** the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:
 The purpose of amending WAC 388-105-0005 is to adopt permanently the approximate four percent reduction of the daily Medicaid payment rates for clients assessed using the comprehensive assessment reporting evaluation (CARE) tool and that reside in AFHs and licensed boarding homes contracted to provide AL, ARC, and EARC services. Previously, the department filed in WSR 09-14-094 the emergency adoption of the four percent reduction effective July 1, 2009.

The purpose of amending WAC 388-105-0045 is to require notice within twenty-fours when a resident is discharged on medical leave to a nursing home or hospital from the AFH, ARC, EARC, or AL facility.

Statutory authority for adoption:
 RCW 74.39A.030 (3) and RCW 18.20.290
 Section 206(4), chapter 564, Laws of 2009

Statute being implemented:
 RCW 74.39A.030 and RCW 18.20.290

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
 August 6, 2009

NAME (type or print)
 Don Goldsby

SIGNATURE

TITLE
 Manager, Rules and Policies Assistance Unit

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
 STATE OF WASHINGTON
 FILED

DATE: August 18, 2009

TIME: 8:55 AM

WSR 09-17-102

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.... Ken Callaghan	MS 45600 Olympia, WA 98504	(360) 725-249
Enforcement..... Ken Callaghan	MS 45600 Olympia, WA 98504	(360) 725-2499

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;

AMENDATORY SECTION (Amending WSR 09-11-053, filed 5/13/09, effective 6/13/09)

WAC 388-105-0005 The daily medicaid payment rates for clients assessed using the comprehensive assessment reporting evaluation (CARE) tool and that reside in adult family homes (AFH) and boarding homes contracted to provide assisted living (AL), adult residential care (ARC), and enhanced adult residential care (EARC) services. For contracted AFH and boarding homes contracted to provide AL, ARC, and EARC services, the department pays the following daily rates for care of a medicaid resident:

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE					
KING COUNTY					
CARE CLASSIFICATION	AL Without Capital Add-on	AL With Capital Add-on	ARC	EARC	AFH
A Low	\$(69.22) <u>66.45</u>	\$(74.64) <u>71.87</u>	\$(48.95) <u>46.99</u>	\$(48.95) <u>46.99</u>	\$(48.32) <u>46.39</u>
A Med	\$(74.95) <u>71.95</u>	\$(80.37) <u>77.37</u>	\$(55.54) <u>53.32</u>	\$(55.54) <u>53.32</u>	\$(54.83) <u>52.64</u>
A High	\$(84.10) <u>80.74</u>	\$(89.52) <u>86.16</u>	\$(61.00) <u>58.56</u>	\$(61.00) <u>58.56</u>	\$(61.35) <u>58.90</u>
B Low	\$(69.22) <u>66.45</u>	\$(74.64) <u>71.87</u>	\$(48.95) <u>46.99</u>	\$(48.95) <u>46.99</u>	\$(48.56) <u>46.62</u>
B Med	\$(77.24) <u>74.15</u>	\$(82.66) <u>79.57</u>	\$(62.14) <u>59.65</u>	\$(62.14) <u>59.65</u>	\$(61.66) <u>59.19</u>
B Med-High	\$(87.48) <u>83.98</u>	\$(92.90) <u>89.40</u>	\$(66.07) <u>63.43</u>	\$(66.07) <u>63.43</u>	\$(66.06) <u>63.42</u>
B High	\$(92.09) <u>88.41</u>	\$(97.51) <u>93.83</u>	\$(75.53) <u>72.51</u>	\$(75.53) <u>72.51</u>	\$(75.53) <u>72.51</u>
C Low	\$(74.95) <u>71.95</u>	\$(80.37) <u>77.37</u>	\$(55.54) <u>53.32</u>	\$(55.54) <u>53.32</u>	\$(54.83) <u>52.64</u>
C Med	\$(84.10) <u>80.74</u>	\$(89.52) <u>86.16</u>	\$(69.72) <u>66.93</u>	\$(69.72) <u>66.93</u>	\$(70.02) <u>67.22</u>
C Med-High	\$(104.70) <u>100.51</u>	\$(110.12) <u>105.93</u>	\$(92.94) <u>89.22</u>	\$(92.94) <u>89.22</u>	\$(91.73) <u>88.06</u>
C High	\$(105.74) <u>101.51</u>	\$(111.16) <u>106.93</u>	\$(93.82) <u>90.07</u>	\$(93.82) <u>90.07</u>	\$(93.01) <u>89.29</u>

D Low	\$((77.24)) <u>74.15</u>	\$((82.66)) <u>79.57</u>	\$((75.07)) <u>72.07</u>	\$((75.07)) <u>72.07</u>	\$((71.38)) <u>68.52</u>
D Med	\$((85.82)) <u>82.39</u>	\$((91.24)) <u>87.81</u>	\$((86.98)) <u>83.50</u>	\$((86.98)) <u>83.50</u>	\$((87.36)) <u>83.87</u>
D Med-High	\$((110.98)) <u>106.54</u>	\$((116.40)) <u>111.96</u>	\$((110.61)) <u>106.19</u>	\$((110.61)) <u>106.19</u>	\$((105.12)) <u>100.92</u>
D High	\$((119.59)) <u>114.81</u>	\$((125.01)) <u>120.23</u>	\$((119.59)) <u>114.81</u>	\$((119.59)) <u>114.81</u>	\$((119.69)) <u>114.90</u>
E Med	\$((144.53)) <u>138.75</u>	\$((149.95)) <u>144.17</u>	\$((144.53)) <u>138.75</u>	\$((144.53)) <u>138.75</u>	\$((144.63)) <u>138.84</u>
E High	\$((169.47)) <u>162.69</u>	\$((174.89)) <u>168.11</u>	\$((169.47)) <u>162.69</u>	\$((169.47)) <u>162.69</u>	\$((169.57)) <u>162.79</u>

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE					
METROPOLITAN COUNTIES*					
CARE CLASSIFICATION	AL Without Capital Add-on	AL With Capital Add-on	ARC	EARC	AFH
A Low	\$((63.49)) <u>60.95</u>	\$((68.41)) <u>65.87</u>	\$((48.95)) <u>46.99</u>	\$((48.95)) <u>46.99</u>	\$((48.32)) <u>46.39</u>
A Med	\$((66.94)) <u>64.26</u>	\$((71.86)) <u>69.18</u>	\$((53.34)) <u>51.21</u>	\$((53.34)) <u>51.21</u>	\$((52.66)) <u>50.55</u>
A High	\$((81.81)) <u>78.54</u>	\$((86.73)) <u>83.46</u>	\$((58.17)) <u>55.84</u>	\$((58.17)) <u>55.84</u>	\$((58.08)) <u>55.76</u>
B Low	\$((63.49)) <u>60.95</u>	\$((68.41)) <u>65.87</u>	\$((48.95)) <u>46.99</u>	\$((48.95)) <u>46.99</u>	\$((48.56)) <u>46.62</u>
B Med	\$((72.65)) <u>69.74</u>	\$((77.57)) <u>74.66</u>	\$((58.84)) <u>56.49</u>	\$((58.84)) <u>56.49</u>	\$((58.37)) <u>56.04</u>
B Med-High	\$((82.29)) <u>79.00</u>	\$((87.21)) <u>83.92</u>	\$((62.57)) <u>60.07</u>	\$((62.57)) <u>60.07</u>	\$((62.60)) <u>60.10</u>
B High	\$((89.81)) <u>86.22</u>	\$((94.73)) <u>91.14</u>	\$((73.40)) <u>70.46</u>	\$((73.40)) <u>70.46</u>	\$((73.40)) <u>70.46</u>
C Low	\$((66.94)) <u>64.26</u>	\$((71.86)) <u>69.18</u>	\$((53.56)) <u>51.42</u>	\$((53.56)) <u>51.42</u>	\$((53.05)) <u>50.93</u>
C Med	\$((81.81)) <u>78.54</u>	\$((86.73)) <u>83.46</u>	\$((68.82)) <u>66.07</u>	\$((68.82)) <u>66.07</u>	\$((68.31)) <u>65.58</u>

C Med-High	\$((101.25)) <u>97.20</u>	\$((106.17)) <u>102.12</u>	\$((86.34)) <u>82.89</u>	\$((86.34)) <u>82.89</u>	\$((85.23)) <u>81.82</u>
C High	\$((102.26)) <u>98.17</u>	\$((107.18)) <u>103.09</u>	\$((91.84)) <u>88.17</u>	\$((91.84)) <u>88.17</u>	\$((90.43)) <u>86.81</u>
D Low	\$((72.65)) <u>69.74</u>	\$((77.57)) <u>74.66</u>	\$((74.04)) <u>71.08</u>	\$((74.04)) <u>71.08</u>	\$((69.80)) <u>67.01</u>
D Med	\$((83.48)) <u>80.14</u>	\$((88.40)) <u>85.06</u>	\$((85.24)) <u>81.83</u>	\$((85.24)) <u>81.83</u>	\$((85.01)) <u>81.61</u>
D Med-High	\$((107.33)) <u>103.04</u>	\$((112.25)) <u>107.96</u>	\$((107.87)) <u>103.56</u>	\$((107.87)) <u>103.56</u>	\$((101.92)) <u>97.84</u>
D High	\$((116.30)) <u>111.65</u>	\$((121.22)) <u>116.57</u>	\$((116.30)) <u>111.65</u>	\$((116.30)) <u>111.65</u>	\$((115.79)) <u>111.16</u>
E Med	\$((140.04)) <u>134.44</u>	\$((144.96)) <u>139.36</u>	\$((140.04)) <u>134.44</u>	\$((140.04)) <u>134.44</u>	\$((139.53)) <u>133.95</u>
E High	\$((163.78)) <u>157.23</u>	\$((168.70)) <u>162.15</u>	\$((163.78)) <u>157.23</u>	\$((163.78)) <u>157.23</u>	\$((163.27)) <u>156.74</u>

*Benton, Clark, Franklin, Island, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom, and Yakima counties.

COMMUNITY RESIDENTIAL DAILY RATES FOR CLIENTS ASSESSED USING CARE					
NONMETROPOLITAN COUNTIES**					
CARE CLASSIFICATION	AL Without Capital Add-on	AL With Capital Add-on	ARC	EARC	AFH
A Low	\$((62.36)) <u>59.87</u>	\$((67.60)) <u>65.11</u>	\$((48.95)) <u>46.99</u>	\$((48.95)) <u>46.99</u>	\$((48.32)) <u>46.39</u>
A Med	\$((66.94)) <u>64.26</u>	\$((72.18)) <u>69.50</u>	\$((52.25)) <u>50.16</u>	\$((52.25)) <u>50.16</u>	\$((51.58)) <u>49.52</u>
A High	\$((81.81)) <u>78.54</u>	\$((87.05)) <u>83.78</u>	\$((57.23)) <u>54.94</u>	\$((57.23)) <u>54.94</u>	\$((57.01)) <u>54.73</u>
B Low	\$((62.36)) <u>59.87</u>	\$((67.60)) <u>65.11</u>	\$((48.95)) <u>46.99</u>	\$((48.95)) <u>46.99</u>	\$((48.56)) <u>46.62</u>
B Med	\$((72.65)) <u>69.74</u>	\$((77.89)) <u>74.98</u>	\$((57.75)) <u>55.44</u>	\$((57.75)) <u>55.44</u>	\$((57.29)) <u>55.00</u>
B Med-High	\$((82.29)) <u>79.00</u>	\$((87.53)) <u>84.24</u>	\$((61.40)) <u>58.94</u>	\$((61.40)) <u>58.94</u>	\$((61.38)) <u>58.92</u>
B High	\$((89.81)) <u>86.22</u>	\$((95.05)) <u>91.46</u>	\$((69.42)) <u>66.64</u>	\$((69.42)) <u>66.64</u>	\$((69.42)) <u>66.64</u>

C Low	\$((66.94)) <u>64.26</u>	\$((72.18)) <u>69.50</u>	\$((52.25)) <u>50.16</u>	\$((52.25)) <u>50.16</u>	\$((51.58)) <u>49.52</u>
C Med	\$((81.81)) <u>78.54</u>	\$((87.05)) <u>83.78</u>	\$((65.05)) <u>62.45</u>	\$((65.05)) <u>62.45</u>	\$((65.70)) <u>63.07</u>
C Med-High	\$((101.25)) <u>97.20</u>	\$((106.49)) <u>102.44</u>	\$((83.04)) <u>79.72</u>	\$((83.04)) <u>79.72</u>	\$((81.98)) <u>78.70</u>
C High	\$((102.26)) <u>98.17</u>	\$((107.50)) <u>103.41</u>	\$((86.81)) <u>83.34</u>	\$((86.81)) <u>83.34</u>	\$((85.52)) <u>82.10</u>
D Low	\$((72.65)) <u>69.74</u>	\$((77.89)) <u>74.98</u>	\$((69.99)) <u>67.19</u>	\$((69.99)) <u>67.19</u>	\$((66.01)) <u>63.37</u>
D Med	\$((83.48)) <u>80.14</u>	\$((88.72)) <u>85.38</u>	\$((80.57)) <u>77.35</u>	\$((80.57)) <u>77.35</u>	\$((80.39)) <u>77.17</u>
D Med-High	\$((107.33)) <u>103.04</u>	\$((112.57)) <u>108.28</u>	\$((101.96)) <u>97.88</u>	\$((101.96)) <u>97.88</u>	\$((96.37)) <u>92.52</u>
D High	\$((109.93)) <u>105.53</u>	\$((115.17)) <u>110.77</u>	\$((109.93)) <u>105.53</u>	\$((109.93)) <u>105.53</u>	\$((109.48)) <u>105.10</u>
E Med	\$((132.36)) <u>127.07</u>	\$((137.60)) <u>132.31</u>	\$((132.36)) <u>127.07</u>	\$((132.36)) <u>127.07</u>	\$((131.92)) <u>126.64</u>
E High	\$((154.80)) <u>148.61</u>	\$((160.04)) <u>153.85</u>	\$((154.80)) <u>148.61</u>	\$((154.80)) <u>148.61</u>	\$((154.36)) <u>148.19</u>

** Nonmetropolitan counties: Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Orielle, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla and Whitman.

AMENDATORY SECTION (Amending WSR 09-11-053, filed 5/13/09, effective 6/13/09)

WAC 388-105-0045 Bed or unit hold--Medicaid resident discharged for a hospital or nursing home stay from an adult family home (AFH) or a boarding home contracted to provide adult residential care (ARC), enhanced adult residential care (EARC), or assisted living services (AL). (1) When an AFH, ARC, EARC, or AL contracts to provide services under chapter 74.39A RCW, the AFH, ARC, EARC, and AL contractor must hold a medicaid eligible resident's bed or unit when:

(a) Short-term care is needed in a nursing home or hospital;
(b) The resident is likely to return to the AFH, ARC, EARC, or AL; and

(c) Payment is made under subsection (3) of this section.

(2)(a) When the department pays the contractor to hold the medicaid resident's bed or unit during the resident's short-term nursing home or hospital stay, the contractor must hold the bed or unit for up to twenty days. If during the twenty day bed hold period, a department case manager determines that the medicaid resident's hospital or nursing home stay is not short term and the medicaid resident is unlikely to return to the AFH, ARC, EARC or AL facility, the department will cease paying for the bed hold the day the case manager notifies the contractor of his/her decision.

(b) A medicaid resident's discharge from an AFH, ARC, EARC, or an AL facility for a short term stay in a nursing home or hospital must be longer than twenty-four hours before subsection (3) of WAC 388-105-0045 applies.

(c) When a medicaid resident on bed hold leave returns to an AFH, ARC, EARC, or an AL facility but remains less than twenty-four hours, the bed hold leave on which the resident returned applies after the resident's discharge. A new bed hold leave will begin only when the returned resident has resided in the facility for more than twenty-four hours before the resident's next discharge.

(d) When an AFH, ARC, EARC, or AL facility discharges a resident to a nursing home or hospital and the resident is out of the facility for more than twenty-four hours, then by using e-mail, fax or telephone, the facility must notify the department of the resident's discharge within twenty-four hours after the initial twenty-four hours has passed. When the end of the initial twenty-four hours falls on a weekend or state holiday, then the facility must notify the department of the discharge within twenty-four hours after the weekend or holiday.

(3) The department will compensate the contractor for holding the bed or unit for the:

(a) First through seventh day at seventy percent of the medicaid daily rate paid for care of the resident before the hospital or nursing home stay; and

(b) Eighth through the twentieth day, at eleven dollars a day.

(4) The AFH, ARC, EARC, or AL facility may seek third-party payment to hold a bed or unit for twenty-one days or longer. The

third-party payment shall not exceed the medicaid daily rate paid to the facility for the resident. If third-party payment is not available and the returning medicaid resident continues to meet the admission criteria under chapter 388-71 and/or 388-106 WAC, then the medicaid resident may return to the first available and appropriate bed or unit.

(5) The department's social worker or case manager determines whether the:

(a) Stay in a nursing home or hospital will be short-term; and

(b) Resident is likely to return to the AFH, ARC, EARC, or AL facility.

(6) When the resident's stay in the hospital or nursing home exceeds twenty days or the department's social worker or case manager determines that the medicaid resident's stay in the nursing home or hospital is not short-term and the resident is unlikely to return to the AFH, ARC, EARC, or AL facility, then only subsection (4) of this section applies to any private contractual arrangements that the contractor may make with a third party in regard to the discharged resident's unit or bed.