



# 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 09-04-087; 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 chapter 388-71 WAC, Home and Community Services and Programs.

**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: **November 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 – 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 November 24, 2009**

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

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

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

RCW 74.39A.360 requires all training for individual providers represented by an exclusive bargaining representative to be provided by a training partnership. The purpose of the new language in Chapter 388-71 WAC is to add this requirement. The purpose of new rules in WAC 388-71-05850 through WAC 388-71-05890 is to clarify that the requirements for nurse delegation core training also apply to the nurse delegation specialized diabetes training.

**Reasons supporting proposal:**

See above.

**Statutory authority for adoption:** RCW 74.08.090;  
RCW 74.39A.360

**Statute being implemented:** RCW 74.39A.360

**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**

October 15, 2009

**NAME** (type or print)

Stephanie Vaughn

**SIGNATURE**

**TITLE**

DSHS Rules Coordinator

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE:** October 20, 2009

**TIME:** 1:01 PM

**WSR 09-21-095**

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..... Barbara Hanneman	P.O. Box 45600, Olympia, WA 98504-5600	(360) 725-2540
Implementation.... Barbara Hanneman	P.O. Box 45600, Olympia, WA 98504-5600	(360) 725-2540
Enforcement..... Barbara Hanneman	P.O. Box 45600, Olympia, WA 98504-5600	(360) 725-2540

**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: Tiffany Sevrut

Address: Home and Community Services Division

P.O. Box 45600

Olympia, WA 98504-5600

phone (360) 725-2538

fax (360) 407-7582

e-mail sevruta@dshs.wa.gov

No: Please explain:

AMENDATORY SECTION (Amending WSR 04-16-029, filed 7/26/04, effective 8/26/04)

**WAC 388-71-05665 What definitions apply to WAC 388-71-05670 through 388-71-05909? "Client"** means an individual age eighteen or older, receiving in-home services through medicaid personal care, COPES, MNIW, or Chore programs.

**"Competency"** means the minimum level of information and skill trainees are required to know and be able to demonstrate.

**"DSHS"** refers to the department of social and health services.

**"Learning outcomes"** means the specific information, skills and behaviors desired of the learner as a result of a specific unit of instruction, such as what they would learn by the end of a single class or an entire course. Learning outcomes are generally identified with a specific lesson plan or curriculum.

**"Routine interaction"** means contact with clients that happens regularly.

**"Training partnership"** means a joint partnership or trust that includes the office of the governor and the exclusive bargaining representative of individual providers under RCW 74.39A.270 with the capacity to provide training, peer mentoring, and workforce development, or other services to individual providers.

AMENDATORY SECTION (Amending WSR 04-02-001, recodified as § 388-71-05690, , filed 12/24/03, effective 1/24/04)

**WAC 388-71-05690 What documentation is required for orientation?** The home care agency or individual provider must maintain documentation of completion of orientation, issued by the home care agency(, area agency on aging,) or ((DSHS office)) the training entity that provides the orientation, that includes:

- (1) The trainee's name;
- (2) A list of the specific information taught;
- (3) ((Signature)) Name of the person or training entity overseeing the orientation indicating completion of the required information;
- (4) The trainee's date of employment;
- (5) The location of the orientation; and
- (6) The date(s) of orientation.

AMENDATORY SECTION (Amending WSR 06-05-022, filed 2/6/06, effective 3/9/06)

**WAC 388-71-05695 Who is required to complete orientation, and when must it be completed?** (1) Home care agency providers must complete orientation before working with the agency's clients. Orientation must be provided by appropriate agency staff or the training entity.

(2) Individual providers must complete orientation provided by ~~((DSHS, the area agency on aging (AAA), or managed care entity))~~ the training partnership no later than fourteen calendar days after beginning to work with their first DSHS client. Individual providers ~~((who live and are providing care at a great distance from the DSHS or AAA office))~~ may be oriented by distance learning, with phone contact by the person overseeing the orientation to answer questions.

(3) Parents who are individual providers for their adult children are exempt from the orientation requirement.

AMENDATORY SECTION (Amending WSR 04-02-001, recodified as § 388-71-05775, , filed 12/24/03, effective 1/24/04)

**WAC 388-71-05775 What is continuing education?** Continuing education is additional caregiving-related training designed to increase and keep current a person's knowledge and skills. ~~((DSHS does not preapprove continuing education programs or instructors))~~ Training entities and home care agencies may provide continuing education without prior approval of curricula or instructors by the department.

AMENDATORY SECTION (Amending WSR 04-02-001, amended and recodified as § 388-71-05850, , filed 12/24/03, effective 1/24/04)

**WAC 388-71-05850 What training must include the DSHS-developed competency test?** Basic training, modified basic training, and nurse delegation core and specialized diabetes training must include the DSHS-developed competency test.

AMENDATORY SECTION (Amending WSR 04-02-001, amended and recodified as § 388-71-05860, , filed 12/24/03, effective 1/24/04)

**WAC 388-71-05860 What form of identification must providers show a tester before taking a competency or challenge test?** Providers must show a tester photo identification before taking a competency test (or challenge test, when applicable) for basic training, modified basic training, or nurse delegation core and specialized diabetes training.

AMENDATORY SECTION (Amending WSR 04-02-001, amended and recodified as § 388-71-05875, , filed 12/24/03, effective 1/24/04)

**WAC 388-71-05875 Must instructors be approved by DSHS ((or an AAA))?** (1) DSHS must approve any instructor ((under)) through a contract with DSHS to conduct basic training, modified basic training, or nurse delegation core and specialized diabetes training classes using the training curricula developed by DSHS. DSHS may select contracted instructors using any applicable contracting procedures. Contractors must meet the minimum qualifications for instructors under this chapter and any additional qualifications established through the contracting procedure.

(2) ~~((DSHS contracts with area agencies on aging (AAA) or other entities to conduct))~~ The training partnership is legislatively mandated to provide orientation, basic, modified basic, six hour DDD parent provider training, nurse delegation core and specialized diabetes training, and continuing education training programs for individual providers ((and home care agency providers)). The training ((entity must approve any instructor under contract with the entity to conduct training programs. The entity's contractors must meet the minimum qualifications for instructors under this chapter and any additional qualifications established through the entity's contracting procedures)) partnership will ensure instructors meet the minimum qualifications under this chapter. The training partnership or their contracted training entity must maintain a record for each instructor which, at a minimum must contain:

(a) Copy of current professional licenses.

(b) Documentation to verify the instructor meets the required minimum instructor qualifications.

(3) Home care agencies shall utilize a DSHS approved instructor or training entity.

AMENDATORY SECTION (Amending WSR 04-02-001, amended and recodified as § 388-71-05880, , filed 12/24/03, effective 1/24/04)

**WAC 388-71-05880 Can DSHS ((or the AAA)) deny or terminate a contract with an instructor or training entity?** (1) DSHS ~~((or an area agency on aging (AAA), as applicable,))~~ may determine not to accept an offer by a person or organization seeking a contract with DSHS ~~((or the AAA))~~ to conduct training programs. No administrative remedies are available to dispute DSHS' ~~((or the AAA's))~~ decision not to accept an offer, except as may be provided through the contracting process.

(2) DSHS ~~((or the AAA))~~ may terminate any training contract in accordance with the terms of the contract. The contractor's

administrative remedies shall be limited to those specified in the contract.

AMENDATORY SECTION (Amending WSR 04-02-001, amended and recodified as § 388-71-05890, , filed 12/24/03, effective 1/24/04)

**WAC 388-71-05890 What are the minimum qualifications for an instructor for basic, modified basic or nurse delegation core and specialized diabetes training?** An instructor for basic, modified basic, or nurse delegation core and specialized diabetes training must meet the following minimum qualifications:

(1) General qualifications:

(a) Twenty-one years of age;

(b) Has not had a professional health care or social services license or certification revoked in Washington state (however, no license or certification is required).

(2) Education and work experience:

(a) Upon initial approval or hire, must have:

(i) A high school diploma and one year of professional or caregiving experience within the last five years in an adult family home, boarding home, supported living through DDD per chapter 388-820 WAC, or home care setting; or

(ii) An associate degree in a health field and six months of professional or caregiving experience within the last five years in an adult family home, boarding home, supported living through DDD per chapter 388-820 WAC, or home care setting.

(3) Teaching experience:

(a) Must have one hundred hours of experience teaching adults on topics directly related to the basic training; or

(b) Must have forty hours of teaching while being mentored by an instructor who meets these qualifications, and must attend a class on adult education that meets the requirements of WAC 388-71-05899.

(4) The instructor must be experienced in caregiving practices and capable of demonstrating competency with respect to the course content or units being taught;

(5) Instructors who will administer tests must have experience or training in assessment and competency testing; and

(6) If required under WAC 388-71-05730 or 388-71-05760, instructors must successfully complete basic or modified basic training prior to beginning to train others.