



# RULE-MAKING ORDER

## CR-103 (June 2004) (Implements RCW 34.05.360)

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

Permanent Rule  
 Emergency Rule

**Effective date of rule:**

**Permanent Rules**

31 days after filing.  
 Other (specify) \_\_\_\_\_ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

**Effective date of rule:**

**Emergency Rules**

Immediately upon filing.  
 Later: October 27, 2008

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

Yes  No If Yes, explain:

**Purpose:**

The department is amending the following rules to increase the personal needs allowance 3.3%, as directed by the Washington State 2007-09 Operating Budget (SHB 1128, Chapter 522, Laws of 2007):

- WAC 388-515-1505, Financial eligibility requirements for long-term care services under COPES, New Freedom, PACE, MMIP, and WMIP; and
- WAC 388-106-0225, How do I pay for MPC?

**Citation of existing rules affected by this order:**

Repealed: None  
Amended: WAC 388-515-1505; 388-106-0225  
Suspended: None

**Statutory authority for adoption:** RCW 74.04.050; 74.04.057; 74.08.090; 74.09.500; and 74.09.530

**Other authority:** Washington State 2007-09 Operating Budget (Substitute House Bill 1128)

**PERMANENT RULE ONLY (Including Expedited Rule Making)**

Adopted under notice filed as WSR \_\_\_\_\_ on \_\_\_\_\_.(date)

Describe any changes other than editing from proposed to adopted version:

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: \_\_\_\_\_ phone ( ) \_\_\_\_\_  
Address: \_\_\_\_\_ fax ( ) \_\_\_\_\_  
e-mail \_\_\_\_\_

**EMERGENCY RULE ONLY**

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: The Washington State 2007-09 Operating Budget (SHB 1128, Chapter 522, Laws of 2007) increases the personal needs allowance (PNA) 3.3% effective July 1, 2008. A CR-101 was filed as WSR 08-09-012 on April 4, 2008; and a CR-102 was filed as WSR 08-19-101 on September 17, 2008. An emergency rule is necessary while the department completes adoption of permanent rules.

**Date adopted:**

October 20, 2008

**NAME (TYPE OR PRINT)**

Stephanie Schiller

**SIGNATURE**

**TITLE**

Rules and Policies Assistance Unit

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: October 27, 2008

TIME: 6:29 AM

**WSR 08-22-013**

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

<b>Federal statute:</b>	New	___	Amended	___	Repealed	___
<b>Federal rules or standards:</b>	New	___	Amended	___	Repealed	___
<b>Recently enacted state statutes:</b>	New	___	Amended	<u>2</u>	Repealed	___

**The number of sections adopted at the request of a nongovernmental entity:**

New	___	Amended	___	Repealed	___
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**The number of sections adopted in the agency's own initiative:**

New	___	Amended	___	Repealed	___
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	___	Amended	___	Repealed	___
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**The number of sections adopted using:**

<b>Negotiated rule making:</b>	New	___	Amended	___	Repealed	___
<b>Pilot rule making:</b>	New	___	Amended	___	Repealed	___
<b>Other alternative rule making:</b>	New	___	Amended	<u>2</u>	Repealed	___

AMENDATORY SECTION (Amending WSR 08-11-047, filed 5/15/08, effective 6/15/08)

**WAC 388-106-0225 How do I pay for MPC?** (1) If you live in your own home, you do not participate toward the cost of your personal care services.

(2) If you live in a residential facility and are:

(a) An SSI beneficiary who receives only SSI income, you only pay for board and room. You are allowed to keep a personal needs allowance of forty-one dollars and (~~twelve~~) forty-four cents per month;

(b) An SSI beneficiary who receives SSI and SSA benefits, you only pay for board and room. You are allowed to keep a personal needs allowance of forty-one dollars and (~~twelve~~) forty-four cents. You keep an additional twenty dollar disregard from non-SSI income;

(c) An SSI-related person under WAC 388-475-0050, you may be required to participate towards the cost of your personal care services in addition to your board and room if your financial eligibility is based on the facility's state contracted rate described in WAC 388-513-1305. You are allowed to keep a personal needs allowance of forty-one dollars and (~~twelve~~) forty-four cents. You keep an additional twenty dollar disregard from non-SSI income; or

(d) A GA-X client in a residential care facility, you are allowed to keep a personal allowance of only thirty-eight dollars and eighty-four cents per month. The remainder of your grant must be paid to the facility.

(3) The department pays the residential care facility from the first day of service through the:

(a) Last day of service when the Medicaid resident dies in the facility; or

(b) Day of service before the day the Medicaid resident is discharged.

AMENDATORY SECTION (Amending WSR 07-19-127, filed 9/19/07, effective 10/20/07)

**WAC 388-515-1505 Financial eligibility requirements for long-term care services under COPES, New Freedom, PACE, MMIP, and WMIP.** (1) This section describes the financial eligibility requirements and the rules used to determine a client's participation in the total cost of care for home or community-based long-term care (LTC) services provided under the following programs:

(a) Community options program entry system (COPES);

(b) Program of all-inclusive care for the elderly (PACE);

(c) Medicare/Medicaid integration project (MMIP);  
(d) Washington Medicaid integration partnership (WMIP);  
(e) New Freedom consumer directed services (New Freedom); and  
(f) Hospice services for clients not in a medical institution with gross income at or below the SIL and not eligible for another CN or MN Medicaid program.

(2) To be eligible, a client must:

(a) Meet the program and age requirements for the specific program, as follows:

- (i) COPEs, per WAC 388-106-0310;
- (ii) PACE, per WAC 388-106-0705;
- (iii) MMIP waiver services, per WAC 388-106-0725;
- (iv) WMIP waiver services, per WAC 388-106-0750;
- (v) New Freedom, per WAC 388-106-1410; or
- (vi) Hospice, per chapter 388-551 WAC.

(b) Meet the aged, blind or disability criteria of the Supplemental Security Income (SSI) program as described in WAC 388-475-0050(1);

(c) Require the level of care provided in a nursing facility as described in WAC 388-106-0355;

(d) Be residing in a medical facility as defined in WAC 388-500-0005, or likely to be placed in one within the next thirty days in the absence of home or community-based LTC services provided under one of the programs listed in subsection (1) of this section;

(e) Have attained institutional status as described in WAC 388-513-1320;

(f) Be determined in need of home or community-based LTC services and be approved for a plan of care as described in subsection (2)(a);

(g) Be able to live at home with community support services and choose to remain at home, or live in a department-contracted:

- (i) Enhanced adult residential care (EARC) facility;
- (ii) Licensed adult family home (AFH); or
- (iii) Assisted living (AL) facility.

(h) Not be subject to a penalty period of ineligibility for the transfer of an asset as described in WAC 388-513-1363, 388-513-1364, 388-513-1365 and 388-513-1366; and

(i) Meet the resource and income requirements described in subsections (3), (4), and (5) or be an SSI beneficiary not subject to a penalty period as described in subsection (2)(h).

(3) Refer to WAC 388-513-1315 for rules used to determine countable resources, income and eligibility standards.

(4) Excess resources are reduced in an amount equal to medical expenses incurred by the institutional client as described in WAC 388-513-1350 and:

(a) Must result in countable resources being at or below the resource standard in WAC 388-513-1350(1).

(b) If remaining resources are over the standard, the client is ineligible.

(5) Nonexcluded income must be at or below the SIL (300% of the federal benefit rate (FBR)) and is allocated in the following order:

(a) An earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income;

(b) Maintenance and personal needs allowances as described in

subsection (7), (8), (9), (10), and (11) of this section;

(c) Guardianship fees and administrative costs including any attorney fees paid by the guardian only as allowed by chapter 388-79 WAC;

(d) Income garnished for child support or withheld according to a child support order in the month of the garnishment (for current and back support):

(i) For the time period covered by the PNA; and

(ii) Is not counted as the child's income when determining the family allocation amount.

(e) Monthly maintenance needs allowance for the community spouse not to exceed that in WAC 388-513-1380 (5)(b) unless a greater amount is allocated as described in subsection (6) of this section. This amount:

(i) Is allowed only to the extent that the client's income is made available to the community spouse; and

(ii) Consists of a combined total of both:

(A) One hundred fifty percent of the two person federal poverty level. This standard increases annually on July 1st (<http://aspe.os.dhhs.gov/poverty/>); and

(B) Excess shelter expenses. For the purposes of this section, excess shelter expenses are the actual required maintenance expenses for the community spouse's principal residence. These expenses are:

(I) Rent;

(II) Mortgage;

(III) Taxes and insurance;

(IV) Any maintenance care for a condominium or cooperative; and

(V) The food assistance standard utility allowance (for LTC services this is set at the standard utility allowance (SUA) for a four-person household), provided the utilities are not included in the maintenance charges for a condominium or cooperative;

(VI) LESS the standard shelter allocation. This standard is based on thirty percent of one hundred fifty percent of the two person federal poverty level. This standard increases annually on July 1st (<http://aspe.os.dhhs.gov/poverty/>); and

(VII) Is reduced by the community spouse's gross countable income.

(f) A monthly maintenance needs amount for each minor or dependent child, dependent parent or dependent sibling of the community or institutionalized spouse based on the living arrangement of the dependent. If the dependent:

(i) Resides with the community spouse, the amount is equal to one-third of the community spouse income allocation as described in WAC 388-513-1380 (5)(b)(i)(A) that exceeds the dependent family member's income;

(ii) Does not reside with the community spouse, the amount is equal to the MNIL for the number of dependent family members in the home less the income of the dependent family members.

(iii) Child support received from a noncustodial parent is the child's income;

(g) Medical expenses incurred by the client and not used to reduce excess resources. Allowable medical expenses and reducing excess resources are described in WAC 388-513-1350.

(6) The amount allocated to the community spouse may be

greater than the amount in subsection (5)(e) only when:

(a) A court enters an order against the client for the support of the community spouse; or

(b) A hearings officer determines a greater amount is needed because of exceptional circumstances resulting in extreme financial duress.

(7) A client who receives SSI, and lives at home as defined in WAC 388-106-0010 does not use income to participate in the cost of personal care.

(8) A client who receives SSI and lives in an enhanced adult residential center (EARC), adult family home (AFH) or assisted living (AL) does not use income to participate in the cost of personal care and:

(a) Retains a personal needs allowance (PNA) of sixty-two dollars and (~~(seventy-eight))~~ seventy-nine cents; and

(b) Uses income to pay the facility for the cost of room and board.

(c) Room and board is the SSI FBR minus sixty-two dollars and (~~(seventy-eight))~~ seventy-nine cents.

(9) A client who is eligible to receive CN-P Medicaid described in WAC 388-475-0100 (2)(a) and (b) and lives at home, defined in WAC 388-106-0010, does not use income to participate in the cost of personal care.

(10) A client who is eligible to receive CN-P Medicaid described in WAC 388-475-0100 (2)(a) and (b) and lives in an EARC, AFH or AL does not use income to participate in the cost of personal care and:

(a) Retains a personal needs allowance (PNA) of sixty-two dollars and (~~(seventy-eight))~~ seventy-nine cents; and

(b) Uses income to pay the facility for the cost of room and board.

(c) Room and board is the SSI FBR minus sixty-two dollars and (~~(seventy-eight))~~ seventy-nine cents.

(11) An institutionalized SSI-related client living:

(a) At home, retains a maintenance needs amount equal to the following:

(i) Up to one hundred percent of the one-person FPL, if the client is:

(A) Single; or

(B) Married, and is:

(I) Not living with the community spouse; or

(II) Whose spouse is receiving long-term care (LTC) services outside of the home.

(ii) Up to one hundred percent of the one-person FPL for each client, if both spouses are receiving COPES, New Freedom, PACE, MMIP, or WMIP services;

(iii) Up to the one-person medically needy income level (MNIL) for a married client who is living with a community spouse who is not receiving COPES, New Freedom, PACE, MMIP, or WMIP.

(b) In an EARC, AFH, or AL, retains a maintenance needs amount equal to the SSI FBR and:

(i) Retains a personal needs allowance (PNA) of sixty-two dollars and (~~(seventy-eight))~~ seventy-nine cents from the maintenance needs; and

(ii) Pays the remainder of the maintenance needs to the facility for the cost of room and board. (Refer to subsection (14))

in this section for allocation of the balance of income remaining over maintenance needs.)

(12) A client who is eligible for the general assistance expedited Medicaid disability (GAX) program does not participate in the cost of personal care. When such a client lives:

(a) At home, the client retains the cash grant amount authorized under the general assistance program;

(b) In an AFH, the client retains a PNA of thirty-eight dollars and eighty-four cents, and pays remaining income and GAX grant to the facility for the cost of board and room; or

(c) In an EARC or AL, the client only receives a PNA of thirty-eight dollars and eighty-four cents and retains it.

(13) The total of the following amounts cannot exceed the SIL:

(a) Maintenance and personal needs allowances as described in subsections (7), (8), (9), (10), (11), and (12).

(b) Earned income deduction of the first sixty-five dollars plus one-half of the remaining earned income in subsection (5)(a); and

(c) Guardianship fees and administrative costs in subsection (5)(c).

(14) The client's remaining income after the allocations described in subsections (5) through (12) is the client's responsibility in the cost of care.