



# RULE-MAKING ORDER

**CR-103E (May 2009)**  
**(Implements RCW 34.05.360)**

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

**Emergency Rule Only**

**Effective date of rule:**

**Emergency Rules**

- Immediately upon filing. \_\_\_\_\_
- Later (specify) July 1, 2009

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

- Yes
  - No
- If Yes, explain:

**Purpose:** Amending and adopting new rules in Ch. 388-71 WAC, Home and Community Services and Programs; and sections in Ch. 388-106 WAC, Long-Term Care Services, to implement changes required due to Federal requirements and the 2009-11 Washington State legislative budget.

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

Repealed: None  
 Amended: WAC 388-71-0724; 388-71-0726; 388-71-0728; 388-71-0734; 388-106-0815  
 Suspended: None

**Statutory authority for adoption:** RCW 74.08.090; RCW 74.09.520

**Other authority** Washington State 2009-11 Budget (Engrossed Substitute House Bill 1244), section 206 (10); and section 1915(i) of the Social Security Act.

**EMERGENCY RULE**

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.
- That in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this finding: Federal funds for this program end June 30, 2009, due to a Federal directive requiring Adult Day Health (ADH) Services to be removed from the rehabilitative services section of the Medicaid State Plan. In order to continue ADH services, Aging and Disability Services Administration will provide ADH services under Section 1915(i) of the Social Security Act. The 1915(i) option has different financial eligibility rules that require non-excluded income to be at or below 150% of the federal poverty level (FPL).

The Legislature in Engrossed Substitute House Bill (ESHB) 1244, section 206 (10), made significant service changes to ADH. Starting July 1, 2009, Aging and Disability Services Administration (ADSA) will no longer pay for Adult Day Health for people who live in adult family homes, licensed boarding homes, Division of Developmental Disabilities (DDD) group homes, DDD companion homes or who receive DDD supported living services. Transportation to Adult Day Health currently provided by the Medicaid Transportation Broker will be included as part of the rate for Adult Day Health. Adult Day Health providers will be required to coordinate or provide transportation as necessary to assure access to the service.

**Date adopted:**

June 23, 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: June 24, 2009

TIME: 2:20 PM

**WSR 09-14-045**

**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	<u>1</u>	Amended	<u>5</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	<u>1</u>	Amended	<u>5</u>	Repealed	_____

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

**WAC 388-71-0724 Adult day services--Contracting and rates.**

(1) The department, or an area agency on aging (or other department designee) as authorized by the department, must determine that the adult day care or day health center meets the applicable adult day care or day health requirements and any additional requirements for contracting with the area agency on aging through a COPES contract or with the department through a medicaid provider contract. If a center is contracting for both day care and day health, requirements of both adult day services must be met.

(a) A prospective provider desiring to provide adult day services shall be provided an application form from the department or the area agency on aging.

(b) The prospective provider will provide the area agency on aging with evidence of compliance with, or administrative procedures to comply with, the adult day service rules under this chapter.

(c) The area agency on aging will conduct a site inspection of the adult day center and review of the requirements for contracting.

(d) Within thirty days of completing the site visit, the area agency on aging will advise the prospective provider in writing of any deficiencies in meeting contracting requirements.

(e) The area agency on aging will verify correction of any deficiencies within thirty days of receiving notice from the prospective provider that deficiencies have been corrected, before contracting can take place.

(f) The area agency on aging will provide the department with a written recommendation as to whether or not the center meets contracting requirements.

(2) Minimum application information required to apply for contract with the department, or an area agency on aging includes:

(a) Mission statement, articles of incorporation, and bylaws, as applicable;

(b) Names and addresses of the center's owners, officers, and directors as applicable;

(c) Organizational chart;

(d) Total program operating budget including all anticipated revenue sources and any fees generated;

(e) Program policies and operating procedure manual;

(f) Personnel policies and job descriptions of each paid staff position and volunteer position functioning as staff;

(g) Policies and procedures meeting the requirements of mandatory reporting procedures as described in chapter 74.34 RCW to adult protective services for vulnerable adults and local law enforcement for other participants;

(h) Audited financial statement;

(i) Floor plan of the facility;

(j) Local building inspection, fire department, and health

department reports;

(k) Updated TB test for each staff member according to local public health requirements;

(l) Sample client case file including all forms that will be used; and

(m) Activities calendar for the month prior to application, or a sample calendar if the day service provider is new.

(3) The area agency on aging or other department designee monitors the adult day center at least annually to determine continued compliance with adult day care and/or adult day health requirements and the requirements for contracting with the department or the area agency on aging.

(a) The area agency on aging will send a written notice to the provider indicating either compliance with contacting requirements or any deficiencies based on the annual monitoring visit and request a corrective action plan. The area agency on aging will determine the date by which the corrective action must be completed

(b) The area agency on aging will notify the department of the adult day center's compliance with contracting requirements or corrected deficiencies and approval of the corrective action plan for continued contracting.

(4) Adult day care services

(a) Adult day care services are reimbursed on an hourly basis up to four hours per day. Service provided four or more hours per day will be reimbursed at the daily rate.

~~((5) Payment rates are established on an hourly and daily basis for adult day care centers as may be adopted in rule.))~~

(b) Rate adjustments are determined by the state legislature. ((Providers seeking current reimbursement rates can refer to SSPS billing instructions)) Information on current reimbursement rates are available at <http://www.adsa.wa.gov/professional> under the "office of rates management" section.

(c) Transportation to and from the program site is not reimbursed under the adult day care rate. Transportation arrangements are made with locally available transportation providers or informal resources.

~~((6) Rates as of July 1, 2002, are as follows:~~

Counties	COPES Adult Day Care	
	Daily Rate	Hourly Rate
King	\$36.48	\$9.10
Benton, Clark, Franklin, Island, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom, & Yakima	\$32.45	\$8.11
All other counties	\$30.75	\$7.69

~~(7))~~ (5) Adult day health services

(a) Payment rates are established on a ((daily)) per day basis for adult day health centers ((as may be adopted in rule)). Rate

adjustments are determined by the state legislature. ((Providers seeking)) Information on current reimbursement rates ((can refer to MAA billing instructions or <http://maa.dshs.wa.gov>)) is available at <http://www.adsa.dshs.wa.gov/professional> under the "office of rates management" section.

(8) ((Rates as of July 1, 2002, are as follows:

<u>Counties</u>	<u>Day Health Daily</u>
King	\$47.48
Benton, Clark, Franklin, Island, Kitsap, Pierce, Snohomish, Spokane, Thurston, Whatcom, & Yakima	\$43.06
All other counties	\$40.68

) (b) A one-time only initial intake evaluation provided by an adult day health center, including development of a negotiated care plan, is reimbursed at an established rate ((as may be adopted in rule)). ((The rate as of July 1, 2002 is eighty-nine dollars and thirty-eight cents)) Information on current reimbursement rates is available at <http://www.adsa.dshs.wa.gov/professional> under the "office of rates management" section. Rate adjustments are determined by the state legislature. Separate reimbursement is not available for subsequent evaluations.

(9) ((Transportation to and from the program site is not reimbursed under the adult day care rate. Transportation arrangements are made with locally available transportation providers or informal resources.

(10)) Transportation to and from the program site is ((not reimbursed under the)) included in the adult day health service rate. ((Transportation arrangements for eligible medicaid clients are made with local medicaid transportation brokers, informal providers, or other available resources per chapter 388-546 WAC.))

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

**WAC 388-71-0726 Adult day health transportation.** ((The following rules apply if medicaid transportation services are requested:))

(1) ((The day health center must refer the client to a local medicaid transportation broker. The broker may consult with the client, the client's physician, family, case manager, or day health center as needed in making any transportation arrangements)) Adult day health providers must coordinate or provide transportation as necessary to assure client access to service.

(2) ((In referring the client to a day health center, the case manager may consider: The frailty and endurance of the client, the client's skilled nursing or rehabilitative therapy needs, and a reasonable round-trip travel time that may not exceed two hours,

~~unless there is no closer center that can meet the client's skilled care needs. Documentation of language barriers may be considered on an exception to rule basis by the case manager.~~

~~(3) All brokered transportation under this subsection is subject to the requirements of chapter 388-546 WAC or its successors. In the case of any conflicts, the provisions of chapter 388-546 WAC take precedence)) ADH providers may provide transportation either directly or through an arrangement with a third party.~~

AMENDATORY SECTION (Amending WSR 03-06-024, filed 2/24/03, effective 7/1/03)

**WAC 388-71-0728 Coordination of services.** (1) ((A ~~COPEs-eligible client~~)) An individual receiving COPEs services in his or her home may receive adult day care services on some days and adult day health services on different days if the service plan documents which level of service is to be provided on which days. However, core services must be provided on all days that adult day health skilled services are provided, and reimbursement is limited to the day health rate on days that day health services are provided.

(2) Clients receiving residential services from the department in an adult family home, boarding home, or other licensed community residential facility may not receive ((COPEs-funded)) state paid adult day care((, but may receive medicaid adult day health services when the skilled nursing or rehabilitative services are approved by the client's case manager as part of the client's service plan)).

(3) Clients receiving residential services from an adult family home, licensed boarding home, division of developmental disabilities (DDD) group home, DDD companion home or receive DDD supported living services may not receive state paid adult day health.

(4) A licensed boarding home providing department-approved day care under chapter 388-78A WAC is subject to any applicable provisions of that chapter and is also subject to the rules under this chapter if the facility contracts with an area agency on aging or the department to provide COPEs or other medicaid-funded adult day services.

AMENDATORY SECTION (Amending WSR 05-02-064, filed 1/4/05, effective 2/4/05)

**WAC 388-71-0734 Limiting expenditures.** (1) In order to provide adult day services within the limits of available funding, the department may limit services when program expenditures exceed the budget appropriation or when limiting services is required to

prevent expenditures from exceeding the appropriation.

(2) When adult day health program expenditures exceed available funding, the department may limit adult day health services based on the four care level system as determined through the established department assessment and described in chapter 388-105 WAC.

(a) Using the care level determined by the department assessment tool, the department will limit adult day services on a statewide basis to clients whose total scores exceed the assessed need level identified by the department as necessary to provide adult day health services to the extent of available funding.

(b) At least thirty days before implementing the limitation on services under this subsection, the department will notify the area agencies on aging, adult day health centers, and the affected adult day health clients that services are being limited and for what period of time the limitation is estimated to remain in effect.

(c) For purposes of RCW 74.08.080, the reduction in services shall be deemed an assistance adjustment for an entire class of recipients that is required by state laws prohibiting the department from expending funds in excess of appropriations.

(3) The department may adopt additional or alternative rules to control costs, such as, but not limited to, imposing a moratorium on contracting with new adult day centers, limiting services to clients based on level of care need, or reducing the numbers of days per week that clients may receive services or develop a wait list for ADH services.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

**WAC 388-106-0815 Am I eligible for adult day health?** (1) You are eligible for adult day health services if you meet all of the following criteria. You are:

(a) Age eighteen years or older.

(b) Enrolled in one of the following medical assistance programs:

(i) Categorically needy (CNP);

(ii) Categorically needy qualified medicare beneficiaries (CNP-QMB);

(iii) General assistance--Expedited medicaid disability (GA-X); or

(iv) Alcohol and Drug Abuse Treatment and Support Act (ADATSA).

(c) Your nonexcluded income does not exceed one hundred fifty percent of the federal poverty level (FPL);

(d) Assessed as having an unmet need for skilled nursing under WAC 388-71-0712 or skilled rehabilitative therapy under WAC 388-71-0714; and

(i) There is a reasonable expectation that these services will improve, restore or maintain your health status, or in the case of a progressive disabling condition, will either restore or slow the decline of your health and functional status or ease related pain

or suffering; and

(ii) You are at risk for deteriorating health, deteriorating functional ability, or institutionalization; and

(iii) You have a chronic or acute health condition that you are not able to safely manage due to a cognitive, physical, or other functional impairment.

~~((d))~~ (e) Assessed as having needs for personal care or other core services, whether or not those needs are otherwise met.

(2) You are not eligible for adult day health if you:

(a) Can independently perform or obtain the services provided at an adult day health center;

(b) Have referred care needs that:

(i) Exceed the scope of authorized services that the adult day health center is able to provide;

(ii) Do not need to be provided or supervised by a licensed nurse or therapist;

(iii) Can be met in a less structured care setting; or

(iv) In the case of skilled care needs, are being met by paid or unpaid caregivers.

(c) Live in a nursing home or other institutional facility;  
~~((or))~~

(d) Receive residential long-term care services from an adult family home, licensed boarding home, division of developmental disabilities (DDD) group home, DDD companion home or receive DDD supported living services;

(e) Are not capable of participating safely in a group care setting.

#### NEW SECTION

##### **WAC 388-106-0820 Is there a wait list for adult day health?**

The department will create a waiting list in accordance with caseload limits determined by legislative funding. Wait listed clients will gain access in the following manner:

(1) Residents of nursing homes, ICFs/MR, or hospital patients requiring ADH services to safely discharge to an in-home setting will be ranked first on the wait list by date of application for services;

(2) For all other applicants, the client with the earlier application for services will have priority over later applications for services.