



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) October 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 WAC 388-71-0724 to update the payment rates to Adult Day Health (ADH) centers. This emergency rule replaces rules filed as WSR 09-14-045. The United States District Court in Seattle issued an order requiring DSHS to reinstate Adult Day Health services to residential clients until certain conditions are met. The rates must be amended to prevent double payment for Medicaid costs related to transportation for ADH clients.

Citation of existing rules affected by this order:

Repealed: None
 Amended: WAC 388-71-0724
 Suspended: None

Statutory authority for adoption: RCW 74.08.090; RCW 74.09.520

Other authority: NA

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:

This emergency rule is necessary to comply with and implement a preliminary injunction order issued September 4, 2009 by the U.S. District Court for the Western District of Washington in *Washington State Long-Term Care Ombudsman v. Dreyfus*, Cause No. C09-0908RAJ. This emergency rule is also necessary to ensure receipt of federal funds for Adult Day Health services to members of the class defined in the preliminary injunction and to prevent double payment for Medicaid costs related to transportation for Adult Day Health clients.

Date adopted:

September 25, 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: September 30, 2009
TIME: 9:35 AM

WSR 09-20-037

**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:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	<u>1</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:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	<u>1</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 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. Rate adjustments are determined by the state legislature. Providers seeking current reimbursement rates can refer to SSPS billing instructions.

(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) Adult day health.

(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:))~~

((Counties	Day Health Daily
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+))~~ (8) 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+))~~ (9) Transportation to and from the program site is not reimbursed under the adult day health 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.