



RULE-MAKING ORDER

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

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

Emergency Rule Only

Effective date of rule:

Emergency Rules

- Immediately upon filing
- Later (specify)

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 388-106-0125, "If I am age 21 or older, How does CARE use criteria to place me in a classification group for in-home care?"; and adopting New WAC 388-106-0126, "If I am under age 21, How does CARE use criteria to place me in a classification group for in-home care?"

These emergency rules replace rules filed as WSR 09-14-046 and WSR 09-20-038. The department is revising WAC 388-106-0125 to amend the in-home classifications to allow for the reduction of in-home base hours for each of the 17 classification groups. The department is adopting new WAC to comply with a United States District Court order to exclude children and youth under the age of 21 from the rules filed as WSR 09-14-046. This filing is a correction to the previous filing, which inadvertently excluded persons who are age 21 from either group.

Citation of existing rules affected by this order:

Repealed: None
 Amended: WAC 388-106-0125
 Suspended: None

Statutory authority for adoption: RCW 74.08.090, 74.09.520

Other authority: Washington State 2009-11 Budget (Engrossed Substitute House Bill 1244)

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: The Washington State 2009-11 Operating Budget (Engrossed Substitute House Bill 1244) directs the department to reduce the number of in-home hours authorized. The hours awarded for in-home long-term care for each of the seventeen CARE classification groups are reduced by a certain percentage. As instructed by the Legislature, classification groups with greater care needs receive a smaller percentage reduction than classification groups with lesser care needs.

The United States District Court in Tacoma issued an order stating "that the Department will not apply the emergency rules contained in WSR 09-14-046 to the Medicaid in-home personal care services provided to children and youth under the age of 21." These emergency rules replace rules filed as WSR 09-14-046 and WSR 09-20-038.

Date adopted:

October 14, 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 16, 2009
TIME: 12:56 PM

WSR 09-21-074

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

AMENDATORY SECTION (Amending WSR 08-10-022, filed 4/25/08, effective 5/26/08)

WAC 388-106-0125 If I am age twenty-one or older, how does CARE use criteria to place me in a classification group for in-home care? CARE uses the criteria of cognitive performance score as determined under WAC 388-106-0090, clinical complexity as determined under WAC 388-106-0095, mood/behavior and behavior point score as determined under WAC 388-106-0100, ADLS as determined under WAC 388-106-0105, and exceptional care as determined under WAC 388-106-0110 to place you into one of the following seventeen in-home groups. CARE classification is determined first by meeting criteria to be placed into a group, then you are further classified based on ADL score or behavior point score into a classification sub-group following a classification path of highest possible base hours to lowest qualifying base hours.

(1) If you meet the criteria for exceptional care, then CARE will place you in **Group E**. CARE then further classifies you into:

(a) **Group E High** with ~~((420))~~416 base hours if you have an ADL score of 26-28; or

(b) **Group E Medium** with ~~((350))~~346 base hours if you have an ADL score of 22-25.

(2) If you meet the criteria for clinical complexity and have cognitive performance score of 4-6 or you have cognitive performance score of 5-6, then you are classified in **Group D** regardless of your mood and behavior qualification or behavior points. CARE then further classifies you into:

(a) **Group D High** with ~~((280))~~277 base hours if you have an ADL score of 25-28; or

(b) **Group D Medium-High** with ~~((240))~~234 base hours if you have an ADL score of 18-24; or

(c) **Group D Medium** with ~~((190))~~185 base hours if you have an ADL score of 13-17; or

(d) **Group D Low** with ~~((145))~~138 base hours if you have an ADL score of 2-12.

(3) If you meet the criteria for clinical complexity and have a CPS score of less than 4, then you are classified in **Group C** regardless of your mood and behavior qualification or behavior points. CARE then further classifies you into:

(a) **Group C High** with ~~((200))~~194 base hours if you have an ADL score of 25-28; or

(b) **Group C Medium-High** with ~~((180))~~174 base hours if you have an ADL score of 18-24; or

(c) **Group C Medium** with ~~((140))~~132 base hours if you have an ADL score of 9-17; or

(d) **Group C Low** with ~~((95))~~87 base hours if you have an ADL score of 2-8.

(4) If you meet the criteria for mood and behavior qualification and do not meet the classification for C, D, or E groups, then you are classified into **Group B**. CARE further classifies you into:

- (a) **Group B High** with ((155))147 base hours if you have an ADL score of 15-28; or
- (b) **Group B Medium** with ((90))82 base hours if you have an ADL score of 5-14; or
- (c) **Group B Low** with ((52))47 base hours if you have an ADL score of 0-4; or
- (5) If you meet the criteria for behavior points and have a CPS score of greater than 2 and your ADL score is greater than 1, and do not meet the classification for C, D, or E groups, then you are classified in **Group B**. CARE further classifies you into:
 - (a) **Group B High** with ((155))147 base hours if you have a behavior point score 12 or greater; or
 - (b) **Group B Medium-High** with ((110))101 base hours if you have a behavior point score greater than 6; or
 - (c) **Group B Medium** with ((90))82 base hours if you have a behavior point score greater than 4; or
 - (d) **Group B Low** with ((52))47 base hours if you have a behavior point score greater than 1.
- (6) If you are not clinically complex and your CPS score is less than 5 and you do not qualify under either mood and behavior criteria, then you are classified in **Group A**. CARE further classifies you into:
 - (a) **Group A High** with ((78))71 base hours if you have an ADL score of 10-28; or
 - (b) **Group A Medium** with ((62))56 base hours if you have an ADL score of 5-9; or
 - (c) **Group A Low** with ((29))26 base hours if you have an ADL score of 0-4.

NEW SECTION

WAC 388-106-0126 If I am under age twenty-one, how does CARE use criteria to place me in a classification group for in-home care? CARE uses the criteria of cognitive performance score as determined under WAC 388-106-0090, clinical complexity as determined under WAC 388-106-0095, mood/behavior and behavior point score as determined under WAC 388-106-0100, ADLS as determined under WAC 388-106-0105, and exceptional care as determined under WAC 388-106-0110 to place you into one of the following seventeen in-home groups. CARE classification is determined first by meeting criteria to be placed into a group, then you are further classified based on ADL score or behavior point score into a classification sub-group following a classification path of highest possible base hours to lowest qualifying base hours.

- (1) If you meet the criteria for exceptional care, then CARE will place you in **Group E**. CARE then further classifies you into:
 - (a) **Group E High** with 420 base hours if you have an ADL score of 26-28; or
 - (b) **Group E Medium** with 350 base hours if you have an ADL score of 22-25.
- (2) If you meet the criteria for clinical complexity and have cognitive performance score of 4-6 or you have cognitive

performance score of 5-6, then you are classified in **Group D** regardless of your mood and behavior qualification or behavior points. CARE then further classifies you into:

(a) **Group D High** with 280 base hours if you have an ADL score of 25-28; or

(b) **Group D Medium-High** with 240 base hours if you have an ADL score of 18-24; or

(c) **Group D Medium** with 190 base hours if you have an ADL score of 13-17; or

(d) **Group D Low** with 145 base hours if you have an ADL score of 2-12.

(3) If you meet the criteria for clinical complexity and have a CPS score of less than 4, then you are classified in **Group C** regardless of your mood and behavior qualification or behavior points. CARE then further classifies you into:

(a) **Group C High** with 200 base hours if you have an ADL score of 25-28; or

(b) **Group C Medium-High** with 180 base hours if you have an ADL score of 18-24; or

(c) **Group C Medium** with 140 base hours if you have an ADL score of 9-17; or

(d) **Group C Low** with 95 base hours if you have an ADL score of 2-8.

(4) If you meet the criteria for mood and behavior qualification and do not meet the classification for C, D, or E groups, then you are classified into **Group B**. CARE further classifies you into:

(a) **Group B High** with 155 base hours if you have an ADL score of 15-28; or

(b) **Group B Medium** with 90 base hours if you have an ADL score of 5-14; or

(c) **Group B Low** with 52 base hours if you have an ADL score of 0-4; or

(5) If you meet the criteria for behavior points and have a CPS score of greater than 2 and your ADL score is greater than 1, and do not meet the classification for C, D, or E groups, then you are classified in **Group B**. CARE further classifies you into:

(a) **Group B High** with 155 base hours if you have a behavior point score 12 or greater; or

(b) **Group B Medium-High** with 110 base hours if you have a behavior point score greater than 6; or

(c) **Group B Medium** with 90 base hours if you have a behavior point score greater than 4; or

(d) **Group B Low** with 52 base hours if you have a behavior point score greater than 1.

(6) If you are not clinically complex and your CPS score is less than 5 and you do not qualify under either mood and behavior criteria, then you are classified in **Group A**. CARE further classifies you into:

(a) **Group A High** with 78 base hours if you have an ADL score of 10-28; or

(b) **Group A Medium** with 62 base hours if you have an ADL score of 5-9; or

(c) **Group A Low** with 29 base hours if you have an ADL score of 0-4.