



# PROPOSED RULE MAKING

## CR-102 (June 2012)

(Implements RCW 34.05.320)

Do **NOT** use for expedited rule making

**Agency:** Department of Social and Health Services, Aging and Long-Term Support Administration

- Preproposal Statement of Inquiry was filed as WSR: 14-20-116 ; or
- Expedited Rule Making--Proposed notice was filed as WSR:      ; or
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

- Original Notice
- Supplemental Notice to WSR:
- Continuance of WSR:

**Title of rule and other identifying information:** (Describe Subject)

The department is amending chapter 388-106 WAC, Long-Term Care Services, specifically Medicaid Personal Care and Community Options Program Entry System, to prepare for implementation of the Community First Choice State Plan Option effective July 1, 2015, and to add information on the room and board amount paid as an Apple Health MAGI client on MPC living in a residential setting.

**Hearing location(s):**

Office Building 2  
DSHS Headquarters  
1115 Washington  
Olympia, WA 98504  
Public parking at 11<sup>th</sup> and Jefferson. A map is available at:  
<http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>

Date: May 5, 2015 Time: 10:00 a.m.

**Submit written comments to:**

Name: DSHS Rules Coordinator  
Address: PO Box 45850  
Olympia, WA 98504  
e-mail [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov)  
fax (360) 664-6185

**by: 5:00 p.m. May 5, 2015**

**Assistance for persons with disabilities:** Contact Jeff Kildahl, DSHS Rules Consultant by TTY (360) 664-6178 or (360) 664-6092 or by email at [Kildaja@dshs.wa.gov](mailto:Kildaja@dshs.wa.gov)

**Date of intended adoption:** Not earlier than May 6, 2015  
(Note: This is **NOT** the **effective** date)

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

The purpose of the WAC changes in WAC 388-106-0300, WAC 388-106-0305, and WAC 388-106-0310 is to remove personal care, nurse delegation, and community transition services under the COPES program in preparation for these services being offered in the new Community First Choice state plan program. This is in accordance with ESHB 2746, which mandated the department to refinance Medicaid personal care services under the community first choice option. The proposed WAC also adds a new COPES waiver service, the Wellness Education service.

The purpose of the changes to WAC 388-106-0210 (2) is to clarify that when the Community First Choice program becomes available, individuals who are eligible for this program will not be eligible for the Medicaid personal care funded services. Financial eligibility rules are also clarified and corrected.

**Reasons supporting proposal:** See the purpose statement above.

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

**Statute being implemented:** RCW 74.08.090; 74.09.520

**Is rule necessary because of a:**

- Federal Law?  Yes  No
  - Federal Court Decision?  Yes  No
  - State Court Decision?  Yes  No
- If yes, CITATION:

**DATE**  
March 25, 2015

**NAME** (type or print)  
Katherine Vasquez

**SIGNATURE**

**TITLE**  
DSHS Rules Coordinator

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE: March 31, 2015**

**TIME: 8:44 AM**

**WSR 15-08-071**

**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) 725-2525
Implementation....Barbara Hanneman	P.O. Box 45600, Olympia, WA 98504-5600	(360) 725-2525
Enforcement.....Barbara Hanneman	P.O. Box 45600, Olympia, WA 98504-5600	(360) 725-2525

**Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?**

Yes. Attach copy of small business economic impact statement or school district fiscal 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 preparation of a small business economic impact statement is not required, as no new costs will be imposed on small businesses or non-profits as a result of this rule amendment.

**Is a cost-benefit analysis required under RCW 34.05.328?**

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

Phone:

fax:

e-mail:

No: Please explain:

Rules are exempt per RCW 34.05.328(5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

AMENDATORY SECTION (Amending WSR 15-03-038, filed 1/12/15, effective 2/12/15)

**WAC 388-106-0210 Am I eligible for medicaid personal care (MPC) ((-))funded services?** You are eligible for MPC-funded services when the department assesses your functional ability and determines that you meet all of the following criteria:

(1) You are certified as noninstitutional categorically needy, as defined in WAC (~~(182-513-1305)~~) 182-500-0020, or have been determined eligible for Washington apple health alternative benefit plan coverage, as described in WAC 182-505-0250. Categorically needy medical institutional programs described in chapter 182-513 and 182-515 WAC do not meet ~~((this))~~ the criteria for MPC.

(2) You do not require the level of care furnished in a hospital or nursing facility, as defined in WAC 388-106-0355, an intermediate care facility for intellectual disability, as defined in WAC 388-825-3080 and WAC 388-828-4400, an institution providing psychiatric services for individuals under the age of twenty-one, or an institution for mental disease for individuals age sixty-five or over.

(3) You are functionally eligible which means one of the following applies:

(a) You have an unmet or partially met need for assistance with at least three of the following activities of daily living, as defined in WAC 388-106-0010:

For each Activity of Daily Living, the minimum level of assistance required in:		
	Self-Performance, Status or Treatment Need is:	Support Provided is:
Eating	N/A	Setup
Toileting	Supervision	N/A
Bathing	Supervision	N/A
Dressing	Supervision	N/A
Transfer	Supervision	Setup
Bed Mobility	Supervision	Setup
Walk in Room OR Locomotion in Room OR Locomotion Outside Immediate Living Environment	Supervision	Setup
Medication Management	Assistance Required	N/A
Personal Hygiene	Supervision	N/A

For each Activity of Daily Living, the minimum level of assistance required in:		
	Self-Performance, Status or Treatment Need is:	Support Provided is:
Body care which includes: ■Application of ointment or lotions; ■Toenails trimmed; ■Dry bandage changes; (■ = if you are over eighteen years of age or older) or Passive range of motion treatment (if you are four years of age or older).	Needs or Received/Needs  Need: Coded as "Yes"	N/A
Your need for assistance in any of the activities listed in subsection (a) of this section did not occur because you were unable or no provider was available to assist you will be counted for the purpose of determining your functional eligibility.		

; or

(b) You have an unmet or partially met need for assistance or the activity did not occur (because you were unable or no provider was available) with at least one or more of the following:

For each Activity of Daily Living, the minimum level of assistance required in		
	Self-Performance, Status or Treatment Need is:	Support Provided is:
Eating	Supervision	One person physical assist
Toileting	Extensive Assistance	One person physical assist
Bathing	Physical Help/ part of bathing	One person physical assist
Dressing	Extensive Assistance	One person physical assist
Transfer	Extensive Assistance	One person physical assist
Bed Mobility and Turning and repositioning	Limited Assistance and Need	One person physical assist

For each Activity of Daily Living, the minimum level of assistance required in		
	Self-Performance, Status or Treatment Need is:	Support Provided is:
Walk in Room OR Locomotion in Room OR Locomotion Outside Immediate Living Environment	Extensive Assistance	One person physical assist
Medication Management	Assistance Required Daily	N/A
Personal Hygiene	Extensive Assistance	One person physical assist
Body care which includes: ■ Application of ointment or lotions; ■ Toenails trimmed; ■ Dry bandage changes; (■ = if you are eighteen years of age or older) or Passive range of motion treatment (if you are four years of age or older).	Needs or Received/Needs  Need: Coded as "Yes"	N/A
Your need for assistance in any of the activities listed in subsection (b) of this section did not occur because you were unable or no provider was available to assist you will be counted for the purpose determining your functional eligibility.		

AMENDATORY SECTION (Amending WSR 14-15-092, filed 7/18/14, effective 8/18/14)

**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 forty four cents per month. Effective January 1, 2009 this amount will change to~~) sixty-two dollars and seventy-nine cents;

(b) An SSI beneficiary who receives SSI and another source of income, you only pay for board and room. You are allowed to keep a per-

sonal needs allowance of ~~((forty one dollars and forty four cents. You keep an additional twenty dollars from non SSI income. Effective January 1, 2009 this amount will change to))~~ sixty-two dollars and seventy-nine cents. ~~((This new amount includes the twenty dollar disregard;))~~

(c) An SSI-related person under WAC 182-512-0050, 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 182-513-1305. You are allowed to keep a personal needs allowance of ~~((forty one dollars and forty four cents. You keep an additional twenty dollars from non SSI income. Effective January 1, 2009 this amount will change to))~~ sixty-two dollars and seventy-nine cents. ~~((This new amount includes the twenty dollar disregard; or))~~

(d) ~~((A medical care services))~~ An aged, blind, disabled (ABD) cash assistance client eligible for categorically needy medicaid coverage in an adult family home (AFH), you are allowed to keep a personal needs allowance (PNA) of thirty-eight dollars and eighty-four cents per month. The remainder of your income must be paid to the AFH as your room and board up to the ALTSA room and board standards; or

(e) ~~((A medical care services))~~ An aged, blind, disabled (ABD) cash assistance client eligible for categorically needy medicaid coverage in an assisted living facility, you are authorized a personal needs grant of up to thirty-eight dollars and eighty-four cents per month; ~~((or))~~

(f) A Washington apple health MAGI-based client as determined by WAC 182-505-0250, you pay only for room and board. If your income is less than the ALTSA room and board standard, you are allowed to keep a personal needs allowance of sixty-two dollars and seventy-nine cents and the remainder of your income goes to the provider for room and board.

(3) Personal needs allowance (PNA) standards and the ALTSA room and board standard can be found at <http://www.dshs.wa.gov/manuals/eaz/sections/LongTermCare/ltcstandardsPNAchartsubfile.shtml>.

~~((3))~~ (4) 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 15-03-038, filed 1/12/15, effective 2/12/15)

**WAC 388-106-0300 What services may I receive under community options program entry system (COPES) when I live in my own home?** When you live in your own home, you may be eligible to receive only the following services under COPES:

(1) ~~((Personal care services as defined in WAC 388-106-0010 in your own home and, as applicable, while you are out of the home accessing community resources or working.~~

~~(2))~~ Adult day care if you meet the eligibility requirements under WAC 388-106-0805.

~~((3))~~ (2) Environmental modifications, if the minor physical adaptations to your home:

- (a) Are necessary to ensure your health, welfare and safety;
- (b) Enable you to function with greater independence in the home;
- (c) Directly benefit you medically or remedially;
- (d) Meet applicable state or local codes; and
- (e) Are not adaptations or improvements, which are of general utility or add to the total square footage.

~~((4))~~ (3) Home delivered meals, providing nutritional balanced meals, limited to one meal per day, if:

- (a) You are homebound and live in your own home;
- (b) You are unable to prepare the meal;
- (c) You don't have a caregiver (paid or unpaid) available to prepare this meal; and
- (d) Receiving this meal is more cost-effective than having a paid caregiver.

~~((5))~~ (4) Home health aide service tasks in your own home, if the service tasks:

- (a) Include assistance with ambulation, exercise, self-administered medications and hands-on personal care;
- (b) Are beyond the amount, duration or scope of medicaid reimbursed home health services as described in WAC 182-551-2120 and are in addition to those available services;
- (c) Are health-related. Note: Incidental services such as meal preparation may be performed in conjunction with a health-related task as long as it is not the sole purpose of the aide's visit; and
- (d) Do not replace medicare home health services.

~~((6)(a) Personal emergency response system (PERS), if the service is necessary to enable you to secure help in the event of an emergency and if:~~

- ~~(i) You live alone in your own home;~~
- ~~(ii) You are alone, in your own home, for significant parts of the day and have no regular provider for extended periods of time; or~~
- ~~(iii) No one in your home, including you, can secure help in an emergency.~~

~~(b) A medication reminder if you:~~

- ~~(i) Are eligible for a PERS unit;~~
- ~~(ii) Do not have a caregiver available to provide the service;~~

~~and (iii) Are able to use the reminder to take your medications.~~

~~(7))~~ (5) Skilled nursing, if the service is:

- (a) Provided by a registered nurse or licensed practical nurse under the supervision of a registered nurse; and
- (b) Beyond the amount, duration or scope of medicaid-reimbursed home health services as provided under WAC 182-551-2100.

~~((8))~~ (6) Specialized durable and nondurable medical equipment and supplies under WAC 182-543-1000, if the items are:

- (a) Medically necessary under WAC 182-500-0700;
- (b) Necessary for: Life support; to increase your ability to perform activities of daily living; or to perceive, control, or communicate with the environment in which you live;
- (c) Directly medically or remedially beneficial to you; and
- (d) In addition to and do not replace any medical equipment and/or supplies otherwise provided under medicaid and/or medicare.

~~((9))~~ (7) Training needs identified in CARE or in a professional evaluation, which meet a therapeutic goal such as:

- (a) Adjusting to a serious impairment;
- (b) Managing personal care needs; or
- (c) Developing necessary skills to deal with care providers.

~~((10))~~ (8) Transportation services, when the service:

(a) Provides access to community services and resources to meet your therapeutic goal;

(b) Is not diverting in nature; and

(c) Is in addition to and does not replace the medicaid-brokered transportation or transportation services available in the community.

~~((11) Nurse delegation services, when:~~

~~(a) You are receiving personal care from a registered or certified nursing assistant who has completed nurse delegation core training;~~

~~(b) Your medical condition is considered stable and predictable by the delegating nurse; and~~

~~(c) Services are provided in compliance with WAC 246-840-930.~~

~~(12))~~ (9) Nursing services, when you are not already receiving this type of service from another resource. A registered nurse may visit you and perform any of the following activities. The frequency and scope of the nursing services is based on your individual need as determined by your CARE assessment and any additional collateral contact information obtained by your case manager.

(a) Nursing assessment/reassessment;

(b) Instruction to you and your providers;

(c) Care coordination and referral to other health care providers;

(d) Skilled treatment, only in the event of an emergency. A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement. In nonemergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, a home health agency or other appropriate resource.

(e) File review; and/or

(f) Evaluation of health-related care needs affecting service plan and delivery.

~~((13) Community transition services, if you are being discharged from the nursing facility or hospital and if services are necessary for you to set up your own home. Services:~~

~~(a) May include: Safety deposits, utility set up fees or deposits, health and safety assurances such as pest eradication, allergen control or one-time cleaning prior to occupancy, moving fees, furniture, essential furnishings, and basic items essential for basic living outside the institution; and~~

~~(b) Do not include rent, recreational or diverting items such as TV, cable or VCRs.~~

~~(14))~~ (10) Adult day health services as described in WAC 388-71-0706 when you are:

(a) 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;

(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.

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

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

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

(ii) Have referred care needs that:

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

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

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

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

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

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

(11) Wellness education, as identified in your person centered service plan to address an assessed need or condition.

AMENDATORY SECTION (Amending WSR 14-15-092, filed 7/18/14, effective 8/18/14)

**WAC 388-106-0305 What services may I receive under COPES if I live in a residential facility?** If you live in one of the following residential facilities: A licensed assisted living facility contracted with the department to provide assisted living, enhanced adult residential care, enhanced adult residential care-specialized dementia care or an adult family home, you may be eligible to receive only the following services under COPES:

~~(1) ((Personal care services as defined under WAC 388-106-0010.~~

~~(2))~~ Specialized durable and nondurable medical equipment and supplies under WAC 182-543-1000, when the items are:

(a) Medically necessary under WAC 182-500-0005; and

(b) Necessary: For life support; to increase your ability to perform activities of daily living; or to perceive, control, or communicate with the environment in which you live; and

(c) Directly medically or remedially beneficial to you; and

(d) In addition to and do not replace any medical equipment and/or supplies otherwise provided under medicaid and/or medicare; and

(e) In addition to and do not replace the services required by the department's contract with a residential facility.

~~((3))~~ (2) Training needs identified in CARE or in a professional evaluation, that are in addition to and do not replace the services required by the department's contract with the residential facility and that meet a therapeutic goal such as:

(a) Adjusting to a serious impairment;

(b) Managing personal care needs; or

(c) Developing necessary skills to deal with care providers.

~~((4))~~ (3) Transportation services, when the service:

(a) Provides access to community services and resources to meet a therapeutic goal;

(b) Is not diverting in nature;

(c) Is in addition to and does not replace the medicaid-brokered transportation or transportation services available in the community; and

(d) Does not replace the services required by DSHS contract in residential facilities.

~~((5))~~ (4) Skilled nursing, when the service is:

(a) Provided by a registered nurse or licensed practical nurse under the supervision of a registered nurse;

(b) Beyond the amount, duration or scope of medicaid-reimbursed home health services as provided under WAC 182-551-2100; and

(c) In addition to and does not replace the services required by the department's contract with the residential facility (e.g. intermittent nursing services as described in WAC 388-78A-2310).

~~((6))~~ (5) Nursing services, when you are not already receiving this type of service from another resource. A registered nurse may visit you and perform any of the following activities. The frequency and scope of the nursing services is based on your individual need as determined by your CARE assessment and any additional collateral contact information obtained by your case manager.

(a) Nursing assessment/reassessment;

(b) Instruction to you and your providers;

(c) Care coordination and referral to other health care providers;

(d) Skilled treatment, only in the event of an emergency. A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement. In nonemergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, a home health agency or other appropriate resource.

(e) File review; and/or

(f) Evaluation of health-related care needs affecting service plan and delivery.

~~((7) Community transition services, if you are being discharged from the nursing facility or hospital and if services are necessary for you to live in a residential facility. Services:~~

~~(a) May include: Safety deposits, utility set up fees or deposits, health and safety assurances such as pest eradication, allergen control or one time cleaning prior to occupancy, moving fees, furniture, essential furnishings, and basic items essential for basic living outside the institution.~~

~~(b) Do not include rent, recreational or diverting items such as TV, cable or VCRs.~~

~~(8))~~ (6) Adult day health services as described in WAC 388-71-0706 when you are:

(a) 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;

(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.

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

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

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

(ii) Have referred care needs that:

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

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

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

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

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

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

(7) Wellness education, as identified in your person centered service plan to address an assessed need or condition.

AMENDATORY SECTION (Amending WSR 12-16-026, filed 7/25/12, effective 8/25/12)

**WAC 388-106-0310 Am I eligible for COPES-funded services?** You are eligible for COPES-funded services if you meet all of the following criteria. The department must assess your needs in CARE and determine that:

(1) You are age:

(a) Eighteen or older and blind or have a disability, as defined in WAC 182-512-0050; or

(b) Sixty-five or older.

(2) You meet financial eligibility requirements. This means the department will assess your finances and determine if your income and resources fall within the limits set in WAC ((388-515-1505)) 182-515-1505, community options program entry system (COPES).

(3) ~~((You:~~

~~(a) Are not eligible for medicaid personal care services (MPC);~~  
or

~~(b) Are eligible for MPC services, but the department determines that the amount, duration, or scope of your needs is beyond what MPC can provide.~~

~~(4))~~ Your CARE assessment shows you need and are eligible for:

(a) The level of care provided in a nursing facility (or will likely need the level of care within thirty days unless COPES services are provided) which is defined in WAC 388-106-0355(1); and

(b) A COPES waiver service.

(5) You continue to receive at least one monthly waiver service.