



# 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: **16-16-011** ; 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 WAC 388-106-0270 "What services are available under community first choice (CFC)?" and WAC 388-106-0274 "Are there limits to the assistive technology I may receive?".

**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:  
<https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2>

Date: **December 27, 2016** 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. December 27, 2016**

**Assistance for persons with disabilities:** Contact:  
Jeff Kildahl, DSHS Rules Consultant by December 13, 2016  
Phone: (360) 664-6092 or TTY: (360) 664-6178  
Email: [KildaJA@dshs.wa.gov](mailto:KildaJA@dshs.wa.gov)

**Date of intended adoption:** Not earlier than December 28, 2016  
(Note: This is **NOT** the effective date)

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

The department is amending WAC 388-106-0270 and WAC 388-106-0274 to clarify language related to service descriptions and limits.

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

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

**Statute being implemented:**  
RCW 74.39A.400

**Is rule necessary because of a:**

- Federal Law?  Yes  No
- Federal Court Decision?  Yes  No
- State Court Decision?  Yes  No

If yes, CITATION:  
**Home Care Association of America, et. al v David Weil**

**DATE**  
November 22, 2016

**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: November 23, 2016**

**TIME: 11:56 AM**

**WSR 16-23-169**

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:**

**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:	Jacqueline Echols	P.O. Box 45600, Olympia, WA 98504-5600	(360) 725-3216
Implementation:	Jacqueline Echols	P.O. Box 45600, Olympia, WA 98504-5600	(360) 725-3216
Enforcement:	Jacqueline Echols	P.O. Box 45600, Olympia, WA 98504-5600	(360) 725-3216

**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.

**WAC 388-106-0270 What services are available under community first choice (CFC)?** The services you may receive under the community first choice program include:

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

(2) Relief care, which is personal care services by a second individual or agency provider as a back-up to your primary paid personal care provider.

(3) Skills acquisition training, which is training that allows you to acquire, maintain, and enhance skills necessary to accomplish ADLs, IADLs, or health related tasks more independently. Health related tasks are specific tasks related to the needs of an individual(~~(τ~~ ~~which~~)) that under state law licensed health professionals can delegate or assign to a qualified health care practitioner.

(4) Personal emergency response systems (PERS), which (~~is a~~) are basic electronic (~~device~~) devices that (~~enable~~) enables you to secure help in an emergency when:

(a) You live alone in your own home; (~~or~~))

(b) You are alone in your own home for significant parts of the day and have no provider for extended periods of time; or

(c) No one in your home, including you, is able to secure help in an emergency.

(5) Assistive technology, including assistive equipment, which are items that increase your independence or substitute for human assistance specifically with ADL, IADL, or health related tasks, including but not limited to:

(a) Additions to the standard PERS unit, such as fall detection, GPS, or medication delivery with or without reminder systems(~~(. For cost allocation purposes, the cost of additions to the standard PERS unit will be considered assistive technology; or))~~);

(b) Department approved devices, (~~which include~~) including but (~~are~~) not limited to(~~(+)~~) visual alert systems, voice activated systems, switches and eyegazes, and timers or electronic devices that monitor or sense movement and react in a prescribed manner such as turning on or off an appliance;

(c) Repair or replacing items as limited by WAC 388-106-0274; and

(d) Training of participants and caregivers on the maintenance or upkeep of equipment purchased under assistive technology.

(6) Nurse delegation services((~~τ~~)) as defined in WAC 246-840-910 through 246-840-970.

(7) Nursing services((~~τ~~)) when you are not already receiving (~~this type of service~~) nursing services from another source. A registered nurse may visit you and perform any of the following activities:

(a) Nursing assessment/reassessment;

(b) Instruction to you and your providers;

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

(d) Skilled treatment, which is care that (~~would require~~) requires authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, including but not limited to(~~(τ)~~) medication administration or wound care such as debridement(~~(-)~~); nursing services will only provide skilled treatment in the event of an emergency(~~(-)~~) and in nonemergency situations, the

nurse will refer the need for any skilled medical or nursing treatments to a health care provider, home health agency, or other appropriate resource((-));

(e) File review; and

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

(8) Community transition services, which are ((non-recurring)) nonrecurring, ((set-up)) setup items or services to assist you with ((being-discharged)) discharge from a nursing facility, institution for mental diseases, or intermediate care facility for individuals with intellectual disabilities, when these items or services are necessary for you to set up your own home((Community transition services may include)), including but not limited to:

(a) Security deposits that are required to lease an apartment or home, including first month's rent;

(b) Essential household furnishings required to occupy and use a community domicile, including furniture, window coverings, food preparation items, and bath and linen supplies;

(c) ((Set-up)) Setup fees or deposits for utilities, including telephone, electricity, heating, water, and garbage;

(d) Services necessary for your health and safety such as pest eradication and one-time cleaning prior to occupancy;

(e) Moving expenses; and

(f) Activities to assess need, arrange for, and procure necessary resources.

(9) Caregiver management training on how to select, manage and dismiss personal care providers((Training is provided in written, DVD, and web based formats)).

AMENDATORY SECTION (Amending WSR 16-04-020, filed 1/22/16, effective 2/22/16)

**WAC 388-106-0274 Are there limits to the assistive technology I may receive?** (1) There are limits to the assistive technology you may receive. Assistive technology excludes:

(a) Any purchase ((that-is)) solely for recreational purposes;

(b) ((Applications for devices that are sold separately from the device,)) Subscriptions((-)) and data plan charges, ((or items that require a)) and monthly recurring ((fee)) fees;

(c) Medical supplies and medical equipment;

(d) Home modifications; and

(e) Any item that would otherwise be covered under any other payment source, including but not limited to((-)) medicare, medicaid, and private insurance.

(2) In combination with skills acquisition training, assistive technology purchases are limited to a yearly amount determined by the department per fiscal year.

(3) To help decide whether to authorize ((this-service,)) assistive technology the department may require a treating professional's written recommendation regarding the need for ((the)) an assistive technology evaluation. The treating professional ((making)) who makes this recommendation must:

(a) Have personal knowledge of or experience with the requested assistive technology; and

(b) Have examined you, reviewed your medical records, and have knowledge of your level of functioning, and ability to use the technology.

(4) Your choice of (~~services~~) assistive technology is limited to the most cost effective option that meets your health and welfare needs.

(5) Replacement of an assistive technology item or piece of equipment is limited to once every two years.