



# 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 proposing to create new sections in chapter 388-106 WAC "Long-Term Care Services" for a new benefit package for Medicaid Alternative Care (MAC) and Tailored Supports for Older Adults (TSOA).

**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: **June 27, 2017** Time: **10:00 a.m.**

**Date of intended adoption:** Not earlier than June 28, 2017  
(Note: This is **NOT** the effective date)

**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. June 27, 2017**

**Assistance for persons with disabilities:** Contact:  
Jeff Kildahl, DSHS Rules Consultant by June 13, 2017  
Phone: (360) 664-6092 or TTY: (360) 664-6178  
Email: [KildaJA@dshs.wa.gov](mailto:KildaJA@dshs.wa.gov)

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

The department is proposing to create new sections in chapter 388-106 WAC "Long-Term Care Services" for a new benefit package for Medicaid Alternative Care (MAC) and Tailored Supports for Older Adults (TSOA) as part of Washington's Medicaid Transformation Project Demonstration.

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

**Statutory authority for adoption:**

RCW 74.08.090

**Statute being implemented:**

RCW 74.08.390

**Is rule necessary because of a:**

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

**DATE**  
May 2, 2017

**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: May 09, 2017**

**TIME: 11:05 AM**

**WSR 17-11-015**

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

N/A

**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:       | Debbie Johnson | P.O. Box 45600, Olympia, WA 98504-5600 | (360) 725-2531 |
| Implementation: | Debbie Johnson | P.O. Box 45600, Olympia, WA 98504-5600 | (360) 725-2531 |
| Enforcement:    | Debbie Johnson | P.O. Box 45600, Olympia, WA 98504-5600 | (360) 725-2531 |

**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.

## MAC AND TSOA SERVICES

### NEW SECTION

**WAC 388-106-1900 What definitions apply to MAC and TSOA services?** The following definitions apply to MAC and TSOA services:

**"Care receiver"** means an adult age fifty-five and over who has been authorized for MAC or TSOA services.

**"Caregiver"** means a spouse, relative, or friend (age eighteen and over) who has primary responsibility for the care or supervision of an adult who meets eligibility criteria and does not receive direct, public, or private payment such as a wage for the caregiving services her or she provides.

**"Caregiver assistance services"** are services that take the place of those typically performed by an unpaid caregiver in support of unmet needs the care receiver has for assistance with activities of daily living (ADLs) and instrumental activities of daily living (IADLs).

**"GetCare"** means a statewide web-based information system that includes a client management component for use by area agencies on aging (AAA) and other aging and disability network partners.

**"Health maintenance and therapies"** are clinical or therapeutic services that assist the care receiver to remain in his or her home or the caregiver to remain in his or her caregiving role and provide high quality care. Services are provided for the purpose of preventing further deterioration, improving, or maintaining current level of functioning.

**"Identity discrepancy"** means a negative psychological state that occurs when the activities and responsibilities that a caregiver assumes with regard to the care receiver are inconsistent with the caregiver's expectations or personal norms concerning these activities and responsibilities.

**"MAC"** means medicaid alternative care, which is a federally funded program authorized under section 1115 of the Social Security Act. It enables an array of person-centered services to be delivered to unpaid caregivers caring for a medicaid eligible person who lives in a private residence (such as his or her own home or a family member's home) and chooses to receive community based services.

**"Medicaid transformation project demonstration"** refers to the authority granted to the state by the federal government under section 1115 of the Social Security Act. This waiver is a five year demonstration to support health care systems prepare for and implement health reform and provide new targeted medicaid services to eligible individuals with significant needs. It includes MAC and TSOA programs.

**"Personal assistance services"** are supports involving the labor of another person to help the care receiver complete activities of daily living and instrumental activities of daily living that he or she is unable to perform independently. Services may be provided in the care receiver's home or to access community resources.

**"RDAD"** means reducing disability in Alzheimer's disease. This program is designed to improve the ability of the person with memory

problems to complete activities of daily living while also helping family members provide assistance to the person.

"**Service provider**" means an agency or organization contracted with the department.

"**Specialized medical equipment and supplies**" are goods and supplies needed by the care receiver that are not covered under the medicaid state plan, medicare, or private insurance.

"**TCARE**" means tailored caregiver assessment and referral which is an evidence-based caregiver coordination process designed to assist assessors who work with family caregivers to support adults living with disabilities. TCARE is designed to tailor services to the unique needs of each caregiver to help reduce stress, depression, and burdens associated with caregiving.

"**Training and education**" are services and supports to help caregivers gain skills and knowledge to implement services and supports needed by the care receiver to remain at home and skills needed by the caregiver to remain in his or her role.

"**TSOA**" means tailored supports for older adults, which is a federally-funded program approved under section 1115 of the Social Security Act. It enables the delivery of person-centered services to:

(1) Caregivers who care for an eligible person as defined in WAC 388-106-1910; and

(2) Eligible persons as defined in WAC 388-106-1910, without a caregiver.

#### NEW SECTION

**WAC 388-106-1905 Am I eligible for MAC services?** (1) You are eligible to receive MAC services if you, as a care receiver, meet the following criteria:

(a) Are age fifty-five or older;

(b) Meet nursing facility level of care as defined in WAC 388-106-0355;

(c) Meet medicaid financial eligibility requirements as defined in WAC 182-513-1605;

(d) Have an unpaid caregiver who:

(i) Is age eighteen or older;

(ii) Has participated in the following:

(A) Care plan for step one services;

(B) TCARE screen and care plan for step two services; or

(C) TCARE assessment and care plan for step three services;

(e) Live in a private residence (such as your own home or a family member's home) and choose to receive community based services; and

(f) Do not receive any other medicaid funded long-term services and supports (LTSS) while receiving MAC services.

(2) The department may use preliminary information you provide through a screen to determine if you, as the care receiver, meet the functional eligibility criteria in subsection (1) of this section in order to receive services while the formal eligibility determination is being completed. This is called presumptive eligibility.

(a) Your presumptive eligibility period ends the last day of the month following the month when your MAC services were first authorized.

(b) In the event the department implements a wait list under WAC 388-106-1970 for MAC services, your presumptive eligibility ends.

(c) You may only receive services under presumptive eligibility once within a twenty-four month period.

NEW SECTION

**WAC 388-106-1910 Am I eligible for TSOA services?** (1) You are eligible to receive TSOA services if you, as a care receiver, meet the following criteria:

(a) Are age fifty-five or older;

(b) Meet nursing facility level of care as defined in WAC 388-106-0355;

(c) Meet financial eligibility requirements defined in WAC 182-513-1615 or 182-513-1620;

(d) Live in a private residence (such as your own home or a family member's home) and choose to receive community based services; and

(e) Meet the criteria in either (e)(i) or (ii) of this subsection:

(i) Have an unpaid caregiver who is age eighteen or older and has participated in the following:

(A) A care plan for step one services;

(B) A TCARE screen and care plan for step two services; or

(C) A TCARE assessment and care plan for step three services; or

(ii) You do not have an available caregiver and have participated in the following:

(A) A care plan for step one services;

(B) A GetCare screen and care plan for step two services; or

(C) A GetCare assessment and care plan for step three services.

(2) The department may use preliminary information you provide through a screen to determine if you, as the care receiver, meet the functional eligibility criteria in subsection (1) of this section in order to receive services while the formal eligibility determination is being completed. This is called presumptive eligibility.

(a) Your presumptive eligibility period ends with the earlier date of:

(i) The day the decision was made on your TSOA application; or

(ii) The last day of the month following the month in which your presumptive eligibility services were authorized if you did not submit your TSOA application.

(b) In the event the department implements a wait list under WAC 388-106-1970 for TSOA services, your presumptive eligibility ends.

(c) You may only receive services under presumptive eligibility once within a twenty-four month period.

NEW SECTION

**WAC 388-106-1915 What services may I receive in MAC and TSOA?** MAC and TSOA services include the following three benefit levels referred to as steps. Caregivers and care receivers may receive services under any of the three steps depending upon their requests and needs

identified in the screening process for step two and the assessment process for step three. Steps do not need to be used in order. For example, an individual may begin services at step two or three. In general, step one services are used by caregivers or care receivers requesting lesser supports than those using step three services.

(1) Step one: After the department obtains your demographics and approves your program eligibility, you may receive the following services:

(a) Information and referrals to family caregiver or community resources;

(b) A selection of the following services up to a one time limit of two hundred and fifty dollars:

(i) Training and education, which includes but is not limited to:

(A) Support groups;

(B) Group training;

(C) Caregiver coping and skill building training;

(D) Consultation on supported decision making;

(E) Caregiver training to meet the needs of the care receiver;

(F) Financial or legal consultation; and

(G) Health and wellness consultation;

(ii) Specialized medical equipment and supplies for the care receiver, which includes but is not limited to:

(A) Supplies;

(B) Specialized medical equipment;

(C) Assistive technology;

(iii) Caregiver assistance services, which includes but is not limited to short term respite to allow the caregiver to attend an educational event or training series; and

(iv) Health maintenance and therapy supports, which may include but are not limited to:

(A) Adult day health;

(B) RDAD and evidence based exercise programs;

(C) Health promotion and wellness services; and

(D) Counseling related to caregiving role.

(2) Step two: After the department obtains your demographics, approves your program eligibility, and completes a GetCare or TCARE screen, you may receive the following:

(a) Information and referrals to family caregiver or community resources;

(b) The following services up to an annual limit of five hundred dollars minus any expenditures for step one services:

(i) Training and education, which includes but is not limited to:

(A) Support groups;

(B) Group training;

(C) Caregiver coping and skill building training;

(D) Consultation on supported decision making;

(E) Caregiver training to meet the needs of the care receiver;

(F) Financial or legal consultation; and

(G) Health and wellness consultation;

(ii) Specialized medical equipment and supplies for the care receiver, which includes but is not limited to:

(A) Supplies;

(B) Specialized medical equipment;

(C) Assistive technology; and

(D) Personal emergency response system (PERS);

(iii) Caregiver assistance services, which include but are not limited to:

- (A) Short-term respite to allow the caregiver to attend an educational event or training series;
- (B) Housework/errands and yard work;
- (C) Home delivered meals for the care receiver;
- (D) Minor home modifications and repairs to the care receiver's home;
- (E) Home safety evaluation of the care receiver's home;
- (F) Occupational therapist/physical therapist evaluation for the care receiver; and
- (G) Transportation, only in conjunction with the delivery of a service; and
- (iv) Health maintenance and therapy supports, which include but are not limited to:
  - (1) Adult day health;
  - (2) RDAD and evidence based exercise programs;
  - (3) Health promotion and wellness services; and
  - (4) Counseling related to the caregiving role.
- (3) Step three:
  - (a) For MAC and TSOA care receivers with caregivers:
    - (i) After the department has obtained your demographics and approved your program eligibility, the caregiver must complete a TCARE assessment in order to access step three services. In order to qualify for a TCARE assessment, the TCARE screen must result in at least three medium scores or one high score for the TCARE burdens. TCARE uses an evidence-based algorithm to identify a primary goal based on the caregiver's answers to the TCARE assessment questions. An individualized care plan will be developed that uses the strategies and services recommended by the TCARE assessment and contains the services chosen by the caregiver up to the limits established in WAC 388-106-1920.
    - (ii) The Xs in the table below indicate the services that may be available for each strategy as defined in WAC 388-106-1930 and recommended by the TCARE assessment:

| Services   | Strategies |   |   |   |   |
|--|------------|---|---|---|---|
|  | A          | B | C | D | E |
| <b><i>Training and education</i></b>                     |            |   |   |   |   |
| Group training   |            | X |   |   |   |
| Caregiver coping and skill building training             | X          | X | X | X |   |
| Consultation on supported decision making                | X          | X | X |   |   |
| Caregiver training to meet needs of care receiver        | X          | X | X |   |   |
| Financial or legal consultation                          |            | X |   |   |   |
| Health and wellness consultation                         |            | X |   |   |   |
| Support groups   | X          | X | X |   |   |
| <b><i>Specialized medical equipment and supplies</i></b> |            |   |   |   |   |
| Supplies   |            | X |   |   |   |
| Specialized medical equipment                            |            | X |   |   |   |
| Assistive technology                                     |            | X |   |   |   |
| Personal emergency response system                       |            | X |   |   |   |
| <b><i>Caregiver assistance services</i></b>              |            |   |   |   |   |
| Home delivered meals                                     |            | X |   |   |   |
| Minor home modifications and repairs                     |            | X |   |   |   |
| Housework/errands and yard work                          |            | X |   |   |   |

| Services  | Strategies |   |   |   |   |
|---|------------|---|---|---|---|
|   |            |   |   |   |   |
| In-home respite                                       |            | X |   |   |   |
| OT/PT evaluation                                      | X          | X |   | X |   |
| Home safety evaluation                                |            | X |   |   |   |
| Out-of-home respite                                   |            | X |   |   |   |
| Transportation  |            | X |   |   |   |
| <b><i>Health maintenance and therapy supports</i></b> |            |   |   |   |   |
| Adult day health                                      |            | X |   |   |   |
| RDAD and evidence based exercise programs             |            | X |   | X |   |
| Health promotion and wellness services                |            |   |   | X | X |
| Counseling related to the caregiver role              | X          |   | X | X |   |

(b) For TSOA care receivers who do not have an available caregiver:

(i) After the department has obtained your demographics and approved your program eligibility, you must complete a GetCare assessment in order to access step three services. In order to qualify for a GetCare assessment, the GetCare screen must result in a risk score of moderate or high. An individualized care plan will then be developed based upon the needs identified in the assessment and the services you have selected up to the limits established in WAC 388-106-1920;

(ii) The services available include services noted in subsections (1) and (2) of this section (except for respite) and the following personal assistance services:

- (A) Personal care;
- (B) Nurse delegation; and
- (C) Adult day care.

NEW SECTION

**WAC 388-106-1920 What is the maximum amount of step three services I may receive a month?** (1) The maximum amount of step three services you and your caregiver may receive in MAC and TSOA is an average of five hundred and fifty dollars per month not to exceed three thousand three hundred dollars in a six month period unless the department authorizes additional funds through an exception to rule under WAC 388-440-0001.

(2) If you are a care receiver who does not have an available unpaid caregiver and you are receiving TSOA personal assistance services, the maximum amount of step three services you may receive per month is five hundred and fifty dollars unless the department authorizes additional funds through an exception to rule under WAC 388-440-0001.

NEW SECTION

**WAC 388-106-1925 What are the goals in TCARE?** The three primary goals for caregivers identified in TCARE are:

(1) Maintain current identity: The goal appropriate for caregivers who experience modest levels of identity discrepancy and stress and are willing and able to continue in their current role. Suggested support services will help caregivers make small adjustments in their personal norms and the manner in which they undertake their caregiving responsibilities.

(2) Embrace caregiver identity: The goal appropriate for caregivers who are likely to benefit from embracing a stronger identity as a caregiver and releasing, to some degree, their commitment to a familial identity. Suggested support services will encourage the caregiver to accept a greater identity with the caregiver role.

(3) Reduce caregiver identity: The goal appropriate for caregivers who are engaged in a level of caregiving that requires emotional or physical resources beyond their capability. Suggested support services will encourage caregivers to explore ways to reduce workload and stress related to their caregiving role.

#### NEW SECTION

##### **WAC 388-106-1930 What is the purpose of the TCARE assessment?**

The purpose of the TCARE assessment is to gather critical information about the caregiving context, identity, strengths, problems and concerns. This data is used to identify strategies and goals to address the caregiver's burdens and stresses. Program limits are established in WAC 388-106-1915.

The five strategies in TCARE are:

(1) Strategy A: Change personal rules for care, which entails encouraging and helping the caregiver to change or adjust his or her personal rules or norms.

(2) Strategy B: Reduce or minimize work load, which focuses on reducing the amount or intensity of a caregiver's work load and therefore aligns the caregiver's behaviors with his or her expectations.

(3) Strategy C: Support positive self-appraisal, which focuses on offering positive affirmation and assuring the caregiver that the behaviors that he or she must engage in as a caregiver are consistent with his or her norms.

(4) Strategy D: Reduce generalized stress, which focuses on giving the caregiver tools and skills to cope with daily stresses of caregiving.

(5) Strategy E: Improve overall health, which encourages the caregiver to seek appropriate health services.

#### NEW SECTION

**WAC 388-106-1935 Where may I receive MAC and TSOA services?** You may receive MAC and TSOA services:

(1) In your own home; and

(2) In the community setting, where the authorized service occurs, within the state of Washington or in a recognized out-of-state bordering city as defined in WAC 182-501-0175.

NEW SECTION

**WAC 388-106-1940 When will my MAC or TSOA services be authorized?** Your MAC or TSOA services will be authorized when you:

- (1) Have completed initial requirements for intake including but not limited to screenings and assessments;
- (2) Are found to be at least presumptively eligible, both financially and functionally;
- (3) Have chosen a provider(s) qualified for payment; and
- (4) Have given written consent for services and approved your plan of care.

NEW SECTION

**WAC 388-106-1945 When do my MAC or TSOA services begin?** Your MAC or TSOA services may begin as early as the date authorized by the department.

NEW SECTION

**WAC 388-106-1950 How do I remain eligible for MAC and TSOA services?** (1) In order to remain eligible for MAC and TSOA services, you, as the care receiver must:

- (a) Remain functionally eligible as defined in WAC 388-106-0355 and financially eligible as defined in WAC 182-513-1605, 182-513-1615, and 182-513-1620; and
  - (b) Have your functional and financial eligibility reviewed at least annually.
- (2) If eligibility laws, regulations, or rules change, and if you as the caregiver or the care receiver do not meet the changed eligibility requirements, the department will terminate services, even if your circumstances have not changed. You will receive advance notice of any termination or change in your services and an opportunity to appeal.

NEW SECTION

**WAC 388-106-1955 What do I pay for if I receive MAC or TSOA services?** You, as a caregiver or a care receiver, will not be required to pay toward the cost of your MAC or TSOA services. This means that neither estate recovery nor participation towards cost of care are required.

NEW SECTION

**WAC 388-106-1960 May I be employed and receive MAC or TSOA services?** You, as the care receiver may be employed and receive MAC or TSOA services. Your caregiver may be employed in roles other than caregiving and receive services under MAC or TSOA.

NEW SECTION

**WAC 388-106-1965 Are there limits to the services I may receive?** The services you may receive under MAC or TSOA will not include the following:

- (1) Rent;
- (2) Groceries;
- (3) Car repairs;
- (4) Utility bills;
- (5) Household appliances;
- (6) Vacation expenses;
- (7) Entertainment items such as TVs, radios, computers, cell phones;
- (8) Pet care items;
- (9) Gift cards; and
- (10) Any services not defined in WAC 388-106-1900.

NEW SECTION

**WAC 388-106-1970 Who may provide MAC and TSOA services?** The following providers may provide MAC and TSOA services:

- (1) Durable medical equipment vendors and adult day health providers that have a core provider agreement with the health care authority; and
- (2) Providers who are contracted with the department to provide goods and services.

NEW SECTION

**WAC 388-106-1975 Will there be a wait list for MAC and TSOA?**

- (1) The department will implement a statewide wait list if program expenditures or enrollment exceeds availability of demonstration funding.
- (2) If the department implements a wait list for new MAC and TSOA applicants:
  - (a) We will stop conducting presumptive eligibility determinations and financial and functional eligibility assessments.
  - (b) We may reduce benefit limits for step one, two, and three to maintain department spending within available demonstration funding. If we reduce benefit limits, individuals currently receiving ben-

efits will maintain their current benefit level, including those with approved presumptive eligibility.

(c) If additional funding becomes available, applicants on a wait list for MAC or TSOA services will be considered on a first come first serve basis based upon their request date for MAC or TSOA services.

#### NEW SECTION

**WAC 388-106-1980 When may the department terminate or deny MAC or TSOA services?** (1) The department will deny or terminate MAC or TSOA services if you are not eligible for services pursuant to WAC 388-106-1905, 388-106-1910, and 388-106-1945.

(2) The department may deny or terminate your MAC or TSOA services if, after exhaustion of standard case management activities and the approaches delineated in the department's challenging cases protocol, which must include an attempt to reasonably accommodate your disability or disabilities, one or more of the following conditions exist:

(a) Your rights and responsibilities as a client of the department are reviewed with you by a department representative under WAC 388-106-1300 and 388-106-1303, and you refuse to accept those services identified in your plan of care that are vital to your health, welfare, or safety.

(b) You choose to receive services in your own home and you or others in your home demonstrate behaviors that are substantially likely to cause serious harm to you or your care provider.

(c) You choose to receive services in your own home and hazardous conditions in or immediately around your home jeopardize the health, safety, or welfare of you or your provider. Hazardous conditions include but are not limited to the following:

(i) Threatening, uncontrolled animals (such as dogs);

(ii) The manufacture, sale, or use of illegal drugs;

(iii) The presence of hazardous materials (such as exposed sewage, evidence of a methamphetamine lab). (3) The department will terminate services if the department does not receive written consent of the care plan within sixty days of the completion of your care plan. Written consent for step one and step two care plans may be provided by secure email.

#### NEW SECTION

**WAC 388-106-1985 Do I have the right to an administrative hearing regarding MAC or TSOA services?** Yes, you may request an administrative hearing based on the rules outlined in WAC 388-106-1305 to contest the department's decisions regarding MAC or TSOA services.

NEW SECTION

**WAC 388-106-1990** May I choose to receive traditional medicaid long term services and supports instead of services under the MAC program? Yes. You, as the care receiver, may choose to apply for traditional medicaid long term services and supports such as Community First Choice, COPES, New Freedom and Residential Support Waiver instead of services under the MAC program. You must contact your case manager who will assist you with this process.