



PROPOSED RULE MAKING

CR-102 (August 2017) (Implements RCW 34.05.320) Do NOT use for expedited rule making

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FILED

DATE: September 01, 2017

TIME: 3:15 PM

WSR 17-18-067

Agency: Department of Social and Health Services, Developmental Disabilities Administration

Original Notice

Supplemental Notice to WSR 17-11-041

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 17-07-091 ; 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).

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) The department is proposing to amend WAC 388-825-083 "Is there a comprehensive list of waiver and state-only DDA services?", WAC 388-825-084 "What are the limitations of state-only funded services or programs?", WAC 388-828-9300 "What is the DDD community access acuity scale?", WAC 388-828-9310 "How does DDD determine the number of hours you may receive each month for community access services?", WAC 388-828-9330 "How does DDD determine your employment status?", WAC 388-828-9350 "Are there conditions when DDD will authorize additional hours to your monthly employment service hours?", WAC 388-845-0600 "What are community access services?", WAC 388-845-0605 "Who are qualified providers of community access services?", WAC 388-845-0610 "Are there limits to community access services I can receive?", WAC 388-845-1030 "What are individual technical assistance services?", WAC 388-845-1040 "Are there limits to the individualized technical assistance services you can receive?", WAC 388-845-1410 "Are there limits to the prevocational services you can receive?", WAC 388-845-2100 "What are supported employment services?", and WAC 388-845-2110 "Are there limits to the supported employment services I can receive?".

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
October 10, 2017 and October 11, 2017	10:00 a.m. Olympia and 1:00 p.m. Kennewick	1115 Washington Street SE, Olympia, WA 98504 and 500 N. Morain Street, Suite 2210, Kennewick, WA 99336	Two hearings will be held. One in Olympia on October 10 th and one in Kennewick on October 11 th .

Date of intended adoption: Not earlier than October 12, 2017 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: DSHS Rules Coordinator I
Address: PO Box 45850, Olympia, WA 98504
Email: DSHSRPAURulesCoordinator@dshs.wa.gov
Fax: (360) 664-6185
Other:
By (date) 5:00 p.m. October 11, 2017

Assistance for persons with disabilities:

Contact Jeff Kildahl, DSHS Rules Consultant
Phone: (360) 664-6092
Fax:
TTY: (360) 664-6178
Email: KildaJA@dshs.wa.gov
Other:
By (date) September 26, 2017

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The proposed amendments to these rules clarify language and correct outdated information, including removing prevocational services. Removing prevocational services from these rules is part of Washington's Statewide Transition Plan and complies with ESSB 6052 and 42 C.F.R Section 441.301(c)(4)-(5). These amendments also distinguish Washington State's minimum wage from other minimum wages, such as SEA-TAC's regional minimum wage. This is not a change in the department's interpretation of minimum wage, but a clarification in response to recent changes in the state that may allow for multiple interpretations as there are multiple minimum wages in Washington. These amendments are also needed for consistency with amendments to WAC 388-845-0603 filed under permanent rule adoption order WSR 17-08-102.

Reasons supporting proposal: Prevocational employment will be transitioned out by 2019. These rules changes are necessary to clarify the use of Washington State minimum wage because there are multiple minimum wages in locations throughout the state.

Statutory authority for adoption: RCW 71A.12.030

Statute being implemented: 71A.12.040

Is rule necessary because of a:

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

If yes, CITATION: 42 C.F.R. Section 441.301(c)(4)-(5)

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: The department received comments and a request for additional public involvement in response to the CR-102 filed under WSR 17-11-041. During the permanent rulemaking process, the department determined these rules are significant legislative rules and require a cost-benefit analysis. The department has prepared a cost-benefit analysis and is filing this supplemental CR-102 to provide additional opportunities for public comment in Eastern and Western Washington.

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:	Chantelle Diaz	P.O. Box 45310, Olympia, WA 98504-5310	360-407-1581
Implementation:	Branda Matson	P.O. Box 45310, Olympia, WA 98504-5310	360-407-1522
Enforcement:	Branda Matson	P.O. Box 45310, Olympia, WA 98504-5310	360-407-1522

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Is a cost-benefit analysis required under RCW 34.05.328?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:
Name: Chantelle Diaz
Address: P.O. Box 45310, Olympia, WA 98504-5310

Phone: 360-407-1581

Fax: 360-407-0955

TTY:

Email: Chantelle.Diaz@dshs.wa.gov

Other:

No: Please explain:

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- RCW 34.05.310 (4)(b) (Internal government operations)
- RCW 34.05.310 (4)(c) (Incorporation by reference)
- RCW 34.05.310 (4)(d) (Correct or clarify language)
- RCW 34.05.310 (4)(e) (Dictated by statute)
- RCW 34.05.310 (4)(f) (Set or adjust fees)
- RCW 34.05.310 (4)(g) ((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(4) because the rules do not affect small businesses.

Explanation of exemptions, if necessary: The proposed amendments will impose no new or disproportionate costs on small businesses so a small business economic impact statement is not required.

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

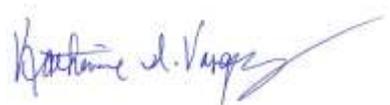
If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated. _____

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

Date: August 30, 2017	Signature: 
Name: Katherine I. Vasquez	
Title: DSHS Rules Coordinator	

WAC 388-825-083 Is there a comprehensive list of waiver and state-only DDA services? The following is a list of waiver and state-only services that the developmental disabilities administration (DDA) may authorize:

~~(1) For medicaid state plan services authorized by DDA, see WAC 388-825-068((. The following is a list of waiver and state-only services that DDA can authorize and those services that can be either a waiver or a state only service:));~~

~~((1) **Waiver personal care services that are not available with state-only funds include:**~~

- ~~(a) In-home services;~~
- ~~(b) Adult family home; and~~
- ~~(c) Adult residential care.))~~

~~(2) ((**Waiver services that can be funded as state-only services:**))~~ The following waiver services may be funded as state-only services:

~~(a) ((Assistive technology))~~ Basic plus waiver services under WAC 388-845-0210;

~~(b) ((Behavior management and consultation))~~ Children's intensive in-home behavioral support waiver services under WAC 388-845-0225;

~~(c) Community ((engagement))~~ protection waiver services under WAC 388-845-0220;

~~(d) ((Community—guide))~~ Core waiver services under WAC 388-845-0215; and

~~(e) ((Community transition))~~ Individual and family services under WAC 388-845-0230; and

~~((f) Environmental accessibility adaptations;~~

~~(g) Medical equipment and supplies;~~

~~(h) Occupational therapy;~~

~~(i) Peer mentoring;~~

~~(j) Person centered planning facilitation;~~

~~(k) Physical therapy;~~

~~(l) Respite care;~~

~~(m) Sexual deviancy evaluation;~~

~~(n) Skilled nursing;~~

~~(o) Specialized clothing;~~

~~(p) Specialized nutrition;~~

~~(q) Specialized medical equipment or supplies;~~

~~(r) Specialized psychiatric services;~~

~~(s) Speech, hearing and language therapy;~~

~~(t) Staff/family consultation and training;~~

~~(u) Supported parenting services;~~

~~(v) Therapeutic equipment and supplies;~~

~~(w) Transportation/mileage;~~

~~(x) Vehicle modification;~~

~~(y) Residential habilitation services (RHS), including:~~

~~(i) Alternative living;~~

~~(ii) Companion homes;~~

~~(iii) Supported living;~~

~~(iv) Group home;~~

~~(v) Child foster care;~~

~~(vi) Child group care;~~

~~(vii) Staffed residential; and~~

~~(viii) State operated living alternative (SOLA);
(z) Employment/day programs, including:
(i) Community access;
(ii) Prevocational services; and
(iii) Supported employment;
(aa) County programs, including child development services;
(bb) Behavioral health stabilization services, including:
(i) Behavior support and consultation;
(ii) Behavioral health crisis diversion bed services; and
(iii) Specialized psychiatric services.)~~

~~(3) ((**State-only services that are not available as a waiver service:**))~~ The following state-only funded services are not available as a waiver service:

~~(a) Adult day care;
(b) Attendant care;
(c) Child care for foster children;
(d) Child development services;
(e) Chore services;
(~~(e)~~) (f) Community services grant;
(~~(f)~~) (g) Individual and family assistance;
(~~(g)~~) (h) Information ~~(=)~~ and education;
(~~(h)~~) (i) Medical and dental services;
(~~(i)~~) (j) Medical insurance copays and costs exceeding other~~

~~coverage;~~

~~(k) Overnight planned respite services;
(~~(j)~~) (l) Parent and sibling education;
(~~(k)~~) (m) Parent training and counseling;
(n) Personal care mileage reimbursement;
(~~(l)~~) (o) Psychological counseling;
(~~(m)~~) (p) Recreational opportunities;
(q) Reimbursement to families for the purchase of approved items~~

~~or services;~~

~~(~~(n)~~) (r) State supplementary payments;
(~~(o)~~) (s) Training of the client; and
(~~(p)~~) (t) Transportation ~~(=cost))~~ costs of escort service or~~

~~travel time(=~~

~~(q) Reimbursement to families for the purchase of approved items~~

~~or services; and~~

~~(r) Overnight planned respite services)).~~

AMENDATORY SECTION (Amending WSR 15-17-094, filed 8/18/15, effective 9/18/15)

WAC 388-825-084 What are the ((limitations)) limits of state-only funded services or programs? In addition to any ((limitations)) limits for state-only funded services or programs that are contained in the program-specific rules, the following ((limitations apply to state-only funded services and programs.)) limits apply:

(1) All state-only funded services are limited ((by)) to available funding(~~(=)~~); and

(2) ((The following programs are closed to clients not currently receiving the service:

~~(a) Adult day care;
(b) Attendant care; and~~

~~(c) Chore services))~~ Adult day care is available only to a client who is currently receiving the service.

AMENDATORY SECTION (Amending WSR 13-01-080, filed 12/18/12, effective 1/18/13)

WAC 388-828-9300 What is the ~~((DDD))~~ community access acuity scale? The ~~((DDD))~~ developmental disabilities administration (DDA's) community access acuity scale is an algorithm ~~((DDD))~~ DDA uses to determine the number of support hours you may receive ~~((when))~~ if you are approved for community access services.

AMENDATORY SECTION (Amending WSR 13-01-080, filed 12/18/12, effective 1/18/13)

WAC 388-828-9310 How does ~~((DDD))~~ DDA determine the number of community access services hours you may receive each month ~~((for community access services))~~? (1) The number of hours of community access services you may receive each month is based on your community access service level.

(2) ~~((DDD))~~ The developmental disabilities administration (DDA) determines your community access service level based on your ~~((SIS))~~ support intensity scale (SIS) support needs index percentile ranking ~~((WAC 388-828-4440))~~. DDA determines your SIS support needs index percentile ranking under WAC 388-828-4440 and as detailed in the following table:

((If your)) <u>SIS support needs index percentile ((ranking according to WAC 388-828-4440 is:))</u>	((Your)) <u>Community access service level ((is:))</u>	((The number of hours you may receive for community access services each month is:)) <u>Maximum service hours per month</u>
0 - 9th percentile	A	Up to 3 hours
10th - 19th percentile	B	Up to 6 hours
20th - 29th percentile	C	Up to 9 hours
30th - 44th percentile	D	Up to 12 hours
45th - 59th percentile	E	Up to 15 hours
60th - 74th percentile	F	Up to 18 hours
75th - 100th percentile	G	Up to 20 hours

AMENDATORY SECTION (Amending WSR 13-01-076, filed 12/18/12, effective 1/18/13)

WAC 388-828-9330 How does ((DDD)) DDA determine your employment status? ((DDD determines your employment status to be:))

(1) (~~("Working"~~ when you meet one of the following conditions)) The developmental disabilities administration (DDA) considers your employment status "working" if:

(a) In the twelve months ((prior to)) before your assessment:

(i) You have been employed for nine consecutive months; and

(ii) You have earned at least Washington state's minimum wage((-)); or

(b) You are currently self-employed and ((meet one of the following)):

(i) The activities of your employment meet the Internal Revenue Service (IRS) rules for a business;

(ii) You have a business plan demonstrating feasibility as determined by the division of vocational rehabilitation or an impartial, agreed upon, third-party business expert; ((or)) and

(iii) You are licensed, if required, and follow all local, state, and federal regulations and rules.

(2) (~~("In training/job development"~~ when you do not meet either of the conditions for "working.")) DDA considers your employment status "in training/job development" if you do not meet the conditions in subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 13-01-076, filed 12/18/12, effective 1/18/13)

WAC 388-828-9350 Are there conditions when ((DDD)) DDA will authorize additional hours to your monthly employment service hours? ((DDD)) The developmental disabilities administration (DDA) may authorize ((the use of add-on)) additional hours ((in addition)) to your monthly employment service hours when your employment support plan identifies a need for additional service hours related to:

(1) Your work schedule;

(2) The number of jobs you have;

(3) The appropriateness of your job match;

(4) Natural supports available to you on the job;

(5) Health limitations that affect your job;

(6) Provider travel time and distance to your job;

(7) Behavioral or physical needs that may affect the safety of you and others while at work;

(8) Other factors ((detailed)) in your employment plan ((which)) that indicate a need for ((add-on)) additional hours ((to help you find or)) for a short-term volunteer opportunity, job development, or for you to maintain a job.

AMENDATORY SECTION (Amending WSR 12-16-095, filed 8/1/12, effective 9/1/12)

WAC 388-845-0600 What are community access services? Community access ~~((is an individualized service that provides clients with opportunities to engage in community based activities that support socialization, education, recreation and personal development for the purpose of:~~

~~(1) Building and strengthening relationships with others in the local community who are not paid to be with the person.~~

~~(2) Learning, practicing and applying skills that promote greater independence and inclusion in their community)) services:~~

~~(1) Are provided in typical integrated community settings;~~

~~(2) Are individualized services that promote skill development, independent living, and community integration for individuals learning how to actively and independently engage in their community; and~~

~~(3) Provide opportunities for individuals to develop relationships and increase independence.~~

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-0605 Who are qualified providers of community access services? Providers of community access services must be:

~~(1) A county contracted with the developmental disabilities administration (DDA) to provide community access services; or~~

~~(2) An individual or agency contracted with a county ~~((or))~~ that is contracted with DDA to provide community access services.~~

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-0610 Are there limits to community access services ~~((I can)) you may receive?~~ ~~((The following limits apply to your receipt of community access services:))~~

~~(1) You ~~((cannot))~~ must not receive community access services if you are receiving prevocational or supported employment services.~~

~~(2) The maximum hours of community access services you may receive are determined by the ~~((DDA))~~ developmental disabilities administration (DDA) assessment ~~((per))~~ under WAC 388-828-9310.~~

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-1030 What are ~~((individual))~~ individualized technical assistance services? Individualized technical ~~((assistance serv-~~

~~ice is assessment and consultation with the employment provider and/or client)) assistance services:~~

- ~~(1) Provide short-term, professional expertise to identify and address ((existing)) barriers to employment((. This is)) services; and~~
- ~~(2) Are available in addition to supports received through supported employment services ((or prevocational services)) for ((individuals)) an individual who ((have)) has not yet achieved ((their employment)) his or her goal.~~

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-1040 Are there limits to the individualized technical assistance services you ((can)) may receive? (1) The developmental disabilities administration (DDA) may authorize a maximum of three months of individualized technical assistance ((service cannot)) at a time, not to exceed ((three)) six months in ((an individual's)) the plan year.

(2) ((These)) Individualized technical assistance services are available on the basic plus, core, and ((CP)) community protection waivers.

(3) ((Individual must be)) Individualized technical assistance services are available only to individuals who are receiving supported employment ((or prevocational)) services, unless approved by the regional administrator or his or her designee.

(4) Individualized technical assistance services are limited to additional hours ((per)) under WAC 388-828-9355 and 388-828-9360.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-845-1410 Are there limits to the prevocational services you ((can)) may receive? The following ((limitations)) limits apply to your receipt of prevocational services:

(1) Effective September 1, 2015, no new referrals are accepted for prevocational services.

(2) Clinical and support needs for prevocational services are limited to those identified in your ((DDA)) developmental disabilities administration (DDA) assessment and documented in your person-centered service plan/individual support plan.

~~((2))~~ (3) You must be age twenty and graduating from high school ((prior to)) before your July or August twenty-first birthday, age twenty-one and graduated from high school, or age twenty-two or older to receive prevocational services.

~~((3) Effective September 1, 2015, no new referrals are accepted for prevocational services.)~~

(4) Prevocational services are a time limited step on the pathway toward individual employment and are dependent on your demonstrating steady progress toward gainful employment over time. Your annual employment plan will include exploration of integrated settings within

your next service year. Criteria that would trigger a review of your need for these services include, but are not limited to:

(a) Compensation at more than fifty percent of the prevailing wage;

(b) Significant progress made toward your defined goals; and

(c) Recommendation by your individual support plan team.

(5) You will not be authorized to receive prevocational services in addition to community access services or supported employment services.

(6) Your service hours are determined by the assistance you need to reach your employment outcomes as described in WAC 388-828-9325.

AMENDATORY SECTION (Amending WSR 13-24-045, filed 11/26/13, effective 1/1/14)

WAC 388-845-2100 What are supported employment services? (1)

Supported employment services are for those interested in integrated gainful employment. These services provide you with intensive ongoing support if you need individualized assistance to gain ~~((and/or))~~ employment, maintain employment, or both. These services are tailored to your individual needs, interests, abilities, and promote your career development. These services are provided in individual or group settings and are available in the basic plus, core, and community protection waivers.

~~((1))~~ (2) Individual supported employment services include activities needed to sustain Washington state's minimum wage pay or higher. These services are conducted in integrated business environments and include the following:

(a) Intake: An initial meeting to gather and share basic information and a general overview of employment supports, resources in the community, and the type of available supports that the individual may receive;

(b) Discovery: A person-centered approach to learn the individual's likes and dislikes, job preferences, and employment goals and skills;

(c) Job preparation: Includes activities of work readiness resume development, work experience, volunteer support transportation training;

(d) Marketing: A method to identify and negotiate jobs, ~~((build-ing))~~ build relationships with employers, and customize employment development;

(e) Job coaching: The supports needed to keep the job; and

(f) Job retention: The supports needed to keep the job, maintain a relationship with employer, identify opportunities, and negotiate a raise in pay, promotion ~~((and/or))~~, or increased benefits.

~~((2))~~ (3) Group supported employment services are a step on your pathway toward gainful employment in an integrated setting and include:

(a) Supports and paid training in an integrated business setting;

(b) Supervision by a qualified employment provider during working hours;

(c) Groupings of no more than eight workers with disabilities; and

(d) Individualized supports to obtain gainful employment.

WAC 388-845-2110 Are there limits to the supported employment services ((I can)) you may receive? The following ((limitations)) limits apply to your receipt of supported employment services:

(1) You must be age twenty and graduating from high school ((pri-
or to)) before your July or August twenty-first birthday, age twenty-
one and graduated from high school, or age twenty-two or older to re-
ceive supported employment services((-));

(2) ((Payment will be made only for the employment support you
require as a result of your disabilities.

(3)) Payment for individual supported employment services ex-
cludes the supervisory activities rendered as a normal part of the
business setting((-));

((4)) (3) You will not be authorized to receive supported em-
ployment services in addition to community access or prevocational
services((-)); and

((5)) (4) Your service hours are determined by the assistance
you need to reach your employment outcomes as described in WAC
388-828-9325 and might not equal the number of hours you spend on the
job or in job related activities.