



PROPOSED RULE MAKING

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

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: December 29, 2017

TIME: 10:19 AM

WSR 18-02-061

Agency: Department of Social and Health Services, Economic Services Administration

- Original Notice**
- Supplemental Notice to WSR** _____
- Continuance of WSR** _____

- Preproposal Statement of Inquiry was filed as WSR 17-11-086 ; 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); or**
- Proposal is exempt under RCW _____.**

Title of rule and other identifying information: (describe subject) The department is proposing to amend WAC 388-449-0010 "What evidence do we consider to determine disability?" and WAC 388-447-0005 "What evidence does the department consider to determine incapacity?".

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
February 6, 2018	10:00 a.m.	Office Building 2 DSHS Headquarters 1115 Washington Olympia, WA 98504	Public parking at 11 th and Jefferson. A map is available at: https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2

Date of intended adoption: Not earlier than February 7, 2018 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: DSHS Rules Coordinator
 Address: PO Box 45850
 Olympia, WA 98504

Email: DSHSRPAURulesCoordinator@dshs.wa.gov
 Fax: 360-664-6185
 Other:

By (date) 5:00 p.m. February 6, 2018

Assistance for persons with disabilities:

Contact Jeff Kildahl, DSHS Rules Consultant
 Phone: 360-664-6092
 Fax: 360-664-6185
 TTY: 711 Relay Service
 Email: Kildaja@dshs.wa.gov
 Other:

By (date) January 23, 2018

Purpose of the proposal and its anticipated effects, including any changes in existing rules: These changes ensure that the eligibility standards adopted by the department for the Aged, Blind, or Disabled (ABD) and the Housing and Essential Needs (HEN) Referral programs are consistent with, and not more restrictive than, standards adopted by the Social Security Administration (SSA).

Reasons supporting proposal: The Social Security Administration adopted new standards, DI 22505.003 Evidence from an Acceptable Medical Source (AMS), which expanded the federal definition of an AMS.

Statutory authority for adoption: RCW 74.04.005, RCW 74.04.050, RCW 74.04.055, RCW 74.04.057, RCW 74.08.090, RCW 74.08A.100, RCW 74.04.770, RCW 74.62.030, RCW 41.05.021, RCW 74.09.035, and RCW 74.09.530.

Statute being implemented:

Is rule necessary because of a:

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

If yes, CITATION:

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:	Nicholas Swiatkowski	712 Pear St. SE, Olympia, WA 98501	360.725.4638
Implementation:	Nicholas Swiatkowski	712 Pear St. SE, Olympia, WA 98501	360.725.4638
Enforcement:	Nicholas Swiatkowski	712 Pear St. SE, Olympia, WA 98501	360.725.4638

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

No: Please explain: These rules do not impact small businesses. They only impact DSHS clients.

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:

- | | |
|--|--|
| <input checked="" type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> 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 34.05.328(5)(b)(vii).

Explanation of exemptions, if necessary:

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: December 27, 2017

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



WAC 388-447-0005 What evidence ~~((does the department))~~ do we consider to determine incapacity? (1) To determine whether a medical-ly determinable impairment exists, we ~~((accept))~~ consider medical evidence from ~~((the following sources when considering incapacity))~~ "acceptable medical sources." "Acceptable medical sources" include the following:

~~((1))~~ (a) For a physical impairment, a health professional licensed in Washington state or where the examination was performed:

~~((a) A physician, which includes:)~~

(i) Medical doctor ~~((M.D.))~~ (MD); ~~((and))~~

(ii) Doctor of osteopathy ~~((D.O.))~~ (DO);

~~((b) An advanced registered nurse practitioner (ARNP) for physical impairments that are within their area of certification to treat;~~

~~(c) A Physician's assistant (P.A.);~~

~~(d) A)~~ (iii) Doctor of optometry ~~((O.D.))~~ (OD) for visual ~~((acuity impairments))~~ disorders;

~~((e))~~ (iv) Doctor of podiatry ~~((D.P.))~~ (DP) for foot and ankle disorders;

(v) Physician assistant (PA) for impairments within their licensed scope of practice;

(vi) Advanced registered nurse practitioner (ARNP) for impairments within their licensed scope of practice;

(vii) Audiologist for impairments of hearing loss, auditory processing disorders, and balance disorders within their licensed scope of practice;

(viii) Qualified speech-language pathologist, for purposes of establishing speech or language impairments;

~~((f))~~ (ix) Doctor of dental surgery ~~((D.D.S.))~~ (DDS) or doctor of medical dentistry ~~((D.M.D.))~~ (DMD) for tooth abscesses or temporomandibular joint (TMJ) disorders; ~~((or))~~ and

~~((g) The)~~ (x) Chief of ~~((medical administration))~~ staff of ~~((the Veterans' Administration))~~ a U.S. Department of Veterans Affairs medical center, or their designee, as authorized in federal law.

~~((2))~~ (b) For a mental impairment, a health professional licensed in Washington state or where the examination was performed:

~~((a) A)~~ (i) Psychiatrist;

~~((b) A)~~ (ii) Psychologist;

~~((c) An ARNP certified in psychiatric nursing; or~~

~~(d) At the department's discretion;~~

(i) A person identified as a mental health professional within the regional support network mental health treatment system provided the person's training and qualifications at a minimum include having a master's degree and two years of mental health treatment experience; or

(ii) A physician who is currently treating you for a mental impairment.

(3) We do not accept medical evidence from the medical professionals listed in (1) and (2) above, unless they are licensed in Washington state or the state where the examination was performed) (iii) Advanced registered nurse practitioner (ARNP) for impairments within their licensed scope of practice;

(iv) Physician assistant (PA) for impairments within their licensed scope of practice;

(v) School psychologist or other licensed or certified individual who performs the same function as a school psychologist in a school setting for impairments of intellectual disability, learning disability, or borderline intellectual functioning;

(vi) Clinical social worker;

(vii) Mental health professional (MHP); and

(viii) Physician treating you for a mental impairment.

~~((4))~~ (2) "Supplemental medical evidence" means information from a licensed health professional (not listed in (1) or (2) above) who can provide supporting documentation for impairments established by (a medical professional) an "acceptable medical source" listed in subsection (1) (or (2) above) of this section. "Supplemental medical evidence" sources include, but are not limited to:

~~(a) (Health professionals who have conducted tests or provided ongoing treatment to you, such as a physical therapist, chiropractor, nurse, naturopath, audiologist, or licensed social worker;~~

~~(b) Workers at state institutions and agencies who are not health professionals and are providing or have provided medical or health related services to you; or~~

~~(c) Chemical dependency professionals (CDPs) when requesting information on the effects of alcohol or drug abuse)~~ Naturopath;

(b) Chiropractor;

(c) Physical therapist; and

(d) Chemical dependency professional (CDP) when requesting information on the effects of substance use disorders.

~~((5))~~ (3) "Other evidence" means information from (either) sources not listed (above) in subsections (1) and (2) of this section who can provide supporting documentation of functioning for impairments established by an "acceptable medical (sources) source" in ((subsections)) subsection (1) (or (2)) of this section. Sources of "other evidence" may include public and private agencies, schools, ((parents)) family members, friends, caregivers, and employers (, and practitioners such as social workers)).

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

WAC 388-449-0010 What evidence do we consider to determine disability? (1) To determine whether a medically determinable impairment exists, we consider medical evidence from "acceptable medical sources." "Acceptable medical sources" include the following:

~~((1))~~ (a) For a physical impairment, a health professional licensed in Washington state or where the examination was performed:

~~((a) A physician, which includes:)~~

~~(i) Medical doctor ((M.D.))~~ (MD);

~~(ii) Doctor of osteopathy ((D.O.))~~ (DO);

~~(iii) Doctor of optometry ((O.D.))~~ (OD) for visual disorders;

~~(iv) Doctor of podiatry ((D.P.))~~ (DP) for foot and ankle disorders;

(v) Physician assistant (PA) for impairments within their licensed scope of practice;

(vi) Advanced registered nurse practitioner (ARNP) for impairments within their licensed scope of practice;

(vii) Audiologist for impairments of hearing loss, auditory processing disorders, and balance disorders within their licensed scope of practice; and

~~((v))~~ (viii) Qualified speech-language pathologist(s), for purposes of establishing speech or language impairments (only).

~~((2))~~ (b) For a mental impairment, (professionals) a health professional licensed in Washington state or where the examination was performed:

~~((a)A)~~ (i) Psychiatrist; (or

~~(b)A)~~ (ii) Psychologist;

(iii) Advanced registered nurse practitioner (ARNP) for impairments within their licensed scope of practice;

(iv) Physician assistant (PA) for impairments within their licensed scope of practice; and

(v) School psychologist or other licensed or certified individual who performs the same function as a school psychologist in a school setting for impairments of intellectual disability, learning disability, or borderline intellectual functioning.

~~((3))~~ (2) We accept medical evidence of how your impairment(s) affect your ability to function from "treating medical sources" once a diagnosis of a medically determinable impairment has been established by an "acceptable medical source" listed in subsection (1) (and (2) above, "treating)) of this section. "Treating medical sources" must be licensed to provide healthcare and include, but are not limited to:

~~((All medical professionals listed in (1) and (2) above;~~

~~(b)A)~~ Physician treating you for a mental impairment;

~~((c) A physician's assistant for physical impairments; and~~

~~(d) An advanced nurse practitioner for conditions within their certification))~~ (b) Clinical social worker;

(c) Mental health professional (MHP);

(d) Naturopath;

(e) Chiropractor;

(f) Physical therapist; and

(g) Chemical dependency professional (CDP) when requesting information on the effects of substance use disorders.

~~((4))~~ (3) "Other evidence" means information from (other) sources not listed in (subsection) subsections (1)(7) and (2)(7 or (3)) of this section who can provide supporting documentation of functioning for impairments established by an "acceptable medical (sources) source" in (subsections) subsection (1) (or (2)) of this section. Sources of "other evidence" may include public and private agencies, schools, (parents) family members, friends, caregivers, and employers(, and practitioners such as social workers, mental health professionals, naturopaths, chiropractors, physical therapists, and audiologists)).