



# PROPOSED RULE MAKING

## CR-102 (December 2017) (Implements RCW 34.05.320)

Do **NOT** use for expedited rule making

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STATE OF WASHINGTON  
FILED

DATE: February 16, 2018

TIME: 3:19 PM

WSR 18-05-073

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

- Original Notice**
- Supplemental Notice to WSR** \_\_\_\_\_
- Continuance of WSR** \_\_\_\_\_

- Preproposal Statement of Inquiry was filed as WSR 17-11-094 ; 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 388-106-1045 "Can I receive PDN services in a licensed adult family home (AFH)?" and create two new sections, WAC 388-106-1046 "When may an adult family home (AFH) be paid an all-inclusive daily rate for private duty nursing (PDN) services?" and WAC 388-106-1047 "What is included in the all-inclusive daily rate payment to the adult family home (AFH) providing private duty nursing (PDN) services?".

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
March 27, 2018	10:00 a.m.	Office Building 2 DSHS Headquarters 1115 Washington Olympia, WA 98504	Public parking at 11 <sup>th</sup> and Jefferson. A map is available at: <a href="https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2">https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2</a>

**Date of intended adoption:** Not earlier than March 28, 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](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov)  
 Fax: 360-664-6185  
 Other:  
 By (date) 5:00 p.m. March 27, 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](mailto:Kildaja@dshs.wa.gov)  
 Other:  
 By (date) March 13, 2018

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The department is proposing to amend WAC 388-106-1045 and create WAC 388-106-1046 and WAC 388-106-1047 in order to clarify the definition for nurse services intervention, specifically Private Duty Nursing, to define the scope of services to be authorized and the necessity for documentation to support the required services in contracted Adult Family Homes.

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

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

**Statute being implemented:** RCW 74.09.520

**Is rule necessary because of a:**

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

**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

<input type="checkbox"/> Private
<input type="checkbox"/> Public
<input checked="" type="checkbox"/> Governmental

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Jevahly Wark	P.O. Box 45600, Olympia, WA 98504-5600	360-725-1737
Implementation:	Jevahly Wark	P.O. Box 45600, Olympia, WA 98504-5600	360-725-1737
Enforcement:	Jevahly Wark	P.O. Box 45600, Olympia, WA 98504-5600	360-725-1737

**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: 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.

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

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:

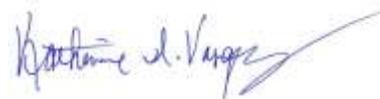
Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

**Date:** February 14, 2018

**Name:** Katherine I. Vasquez

**Title:** DSHS Rules Coordinator

**Signature:**



**WAC 388-106-1045** ~~((Can))~~ When may I receive private duty nursing (PDN) services in a ((licensed)) contracted PDN adult family home (AFH)? You may ~~((be eligible to))~~ receive private duty nursing (PDN) services ((if you are residing)) in an adult family home (AFH) ((if the AFH provider (owner and operator)) when:

~~(1) ((Possesses a current Washington state registered nurse license and is in good standing))~~ You are assessed;

~~((2) Signs a contract amendment with ADSA by which the provider agrees to ensure provision of twenty four hour personal care and nursing care services. Nursing care services must be provided in accordance with chapter 18.79 RCW))~~ (a) Using the comprehensive assessment reporting evaluation (CARE) assessment tool as provided in WAC 388-106-0500; and

~~((3) Provides your PDN service through an RN or an LPN under the supervision of an RN. The level of PDN services provided to you is based on the CARE assessment, the department designated PDN skilled task log or its approved equivalent, and other documentation that determines eligibility and the number))~~ (b) By an aging and long-term support administration (AL TSA) community nurse consultant (CNC) or developmental disabilities administration (DDA) nurse care consultant (NCC) who, using their professional judgment, determines that you require a minimum of eight hours of PDN ((hours to be authorized;)) services per day.

~~((4) Provides the PDN services to you. Your service plan may authorize you to receive four to eight hours per day and cannot exceed eight PDN care hours per day;~~

~~(5) Has a nursing service plan prescribed for you by your primary care provider. The primary care provider must))~~ (2) You reside in an AFH that:

~~(a) ((Oversee your care plan, which must be updated at least once every six months))~~ Meets all AFH licensing requirements under chapter 388-76 WAC; and

~~(b) ((Monitor your client's medical stability))~~ Has a PDN contract with AL TSA; and

(c) Meets all other requirements in WAC 388-106-1046.

~~((6) Document the services provided in the care plan, including the submission of the PDN seven day look back skilled nursing task log by the licensed nursing to the CN or NCC for review for initial eligibility and ongoing eligibility every six months; and~~

~~(7) Maintain records in compliance with AFH licensing and contract requirements))~~ (3) Your detailed service plan is reviewed and signed by your primary care provider at your initial assessment and at least every six months thereafter, and your detailed service plan is submitted to an AL TSA CNC or DDA NCC for review along with the following documents:

(a) Physical exam findings completed by your physician;

(b) Current Physician's orders;

(c) Current nursing assessment;

(d) Current plan of care;

(e) The nursing progress notes for the seven days prior to assessment, if applicable; and

(f) The PDN skilled nursing task log for dates corresponding with the nursing progress notes, if applicable.

NEW SECTION

**WAC 388-106-1046** When may an adult family home (AFH) be paid an all-inclusive daily rate for private duty nursing (PDN) services? An adult family home (AFH) may be paid for private duty nursing (PDN) services when:

(1) The AFH provider, as defined in WAC 388-76-10000, ensures that personal care and nursing services are available in the home 24 hours per day.

(2) The AFH provider is either:

(a) A registered nurse (RN) licensed in Washington state in good standing under RCW 18.79.030(1); or

(b) Operates an in-home services agency licensed through the Washington state department of health (DOH) to provide home health services under chapter 246-335 WAC; and

(i) Employs a resident manager or entity representative, who is a registered nurse licensed in Washington state in good standing under RCW 18.79.030(1); and

(ii) The PDN program manager has approved a plan submitted by the AFH provider to replace the resident manager or entity representative in the event the resident manager or entity representative is no longer employed by the AFH; and

(iii) Ensures that a sufficient number of capable, qualified, and trained staff are available to provide necessary care and services consistent with each client's negotiated service agreement at all times, including but not limited to routine conditions, emergencies, fires, and disaster situations; and

(iv) May use nurses employed by their own in-home services agency to provide PDN for clients in the AFH.

(3) The RN resident manager or RN entity representative employed by the AFH provider, as required under subsection (2):

(a) Manages the daily operations of the AFH and oversees the care provided to the client; and

(b) Must notify the local fire agency, gas, phone, and electric companies at the time of each PDN client's admission to the AFH.

NEW SECTION

**WAC 388-106-1047** What is included in the all-inclusive daily rate payment to the adult family home (AFH) providing private duty nursing (PDN) services? Department of social and health services (DSHS) will pay the adult family home (AFH) an all-inclusive daily rate for a private duty nursing (PDN) client, which includes payment for PDN services, all skilled nursing tasks, and all personal care services. DSHS will not authorize payment for nurse delegation services or hours provided by the in-home services agency nurses in addition to the PDN all-inclusive daily rate.