



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: April 03, 2018

TIME: 11:29 AM

WSR 18-08-072

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 17-17-074 ; 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 create WAC 388-71-0548 "When is an individual provider subject to an overpayment?".

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
May 8, 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 May 9, 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. May 8, 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) April 24, 2018

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The purpose for adding this new overpayment section for individual providers to chapter 388-71 WAC is to define the circumstances in which an Individual Provider is subject to an overpayment, clarify the department's authority to collect an overpayment, clarify an Individual Provider's right to an administrative hearing when they receive an overpayment notice, and provide information about how an Individual Provider requests an administrative hearing related to an overpayment.

Reasons supporting proposal: See purpose statement above.

Statutory authority for adoption: RCW 43.20B.675, RCW 74.09.220, RCW 74.09.290, RCW 74.09.520

Statute being implemented: RCW 43.20B.675, RCW 41.05A.170

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:	Stacy Graff	P.O. Box 45600, Olympia, WA 98504-5600	360-725-2533
Implementation:	Stacy Graff	P.O. Box 45600, Olympia, WA 98504-5600	360-725-2533
Enforcement:	Stacy Graff	P.O. Box 45600, Olympia, WA 98504-5600	360-725-2533

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: Rules are exempt per RCW 34.05.328(5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

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 ____.

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: April 2, 2018

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:

NEW SECTION

WAC 388-71-0548 When is an individual provider subject to an overpayment? (1) Unless payment is otherwise required by state or federal law, it is an overpayment as defined in RCW 43.20B.010 and 41.05A.170 if an individual provider (IP) is paid by the department and:

- (a) Did not actually perform the work;
- (b) Payment is for dates of service after the death of the client;
- (c) Payment is for services provided when the client was admitted to a hospital, nursing home, or other institutional setting;
- (d) Payment is for dates of service when the client was outside of the United States;
- (e) Did not have a valid IP services contract at the time the services were provided and had been notified by the department to stop the provision of services;
- (f) Had not completed required training or obtained required certification at the time the services were provided and had been notified by the department to stop the provision of services;
- (g) Had a disqualifying crime or negative action at the time the services were provided and had been notified by the department to stop the provision of services;
- (h) Provided services after being notified by the department to stop the provision of services;
- (i) Provided services that are not included in the client's plan of care;
- (j) Provided services that exceeded the amount of the client's benefit in the client's plan of care where those services were not necessitated by an emergent and immediate need of the client and the IP is not a family member or household member of the client; or
- (k) Received duplicate payment(s).

(2) If the department determines an IP was overpaid, even if it was due to department error, the department recovers any moneys that the IP received as a result of overpayments, as authorized under chapter 41.05A RCW or 43.20B RCW.

- (a) The department will send the IP notice of the overpayment.
- (b) The IP has a right to request an administrative hearing when notice of an overpayment is received from the department.
- (c) To request an administrative hearing, an IP must send a written request to the office of financial recovery within twenty-eight days of the IP's receipt of notice of the overpayment that:
 - (i) States the basis for contesting the overpayment notice;
 - (ii) Includes a copy of the department's notice with the request;and
 - (iii) Is sent by certified mail return receipt requested (CMRRR) or another trackable delivery service.
- (d) The appeal process will be governed by the Administrative Procedure Act (chapter 34.05 RCW).