



PROPOSED RULE MAKING

CR-102 (October 2017) (Implements RCW 34.05.320)

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FILED

DATE: June 06, 2018

TIME: 9:04 AM

WSR 18-12-108

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

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 17-21-101 ; 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 new sections and amend and repeal existing sections in chapter 388-826 WAC "Voluntary Placement Program", and amend WAC 388-845-1515 "Are there limits to the residential habilitation services I can receive?".

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
July 25, 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 July 26, 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. July 25, 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) July 11, 2018

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The proposed rules update provider training requirements and clarify client participation and room and board requirements for children receiving Voluntary Placement Services.

Reasons supporting proposal: Proposed amendments to add references to Title 182 WAC standardize how client participation and room and board are calculated. Proposed amendments to add references to Chapter 388-829 WAC align training requirements for providers of voluntary placement services with other qualified DDA providers. Proposed amendments to WAC 388-845-1515 clarify that residential habilitation services for children under age eighteen are subject to requirements in chapter 388-826 WAC. The proposed amendments clarify the chapter by using plain language and removing redundant information.

Statutory authority for adoption: RCW 71A.12.030

Statute being implemented: RCW 74.13.350

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: None.

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	360-407-1589
Implementation:	Nichole Jensen	P.O. Box 45310, Olympia, WA 98504-5310	360-407-1521
Enforcement:	Nichole Jensen	P.O. Box 45310, Olympia, WA 98504-5310	360-407-1521

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: 360-407-1589

Fax: 360-407-0955

TTY: 1-800-833-6388

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 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:

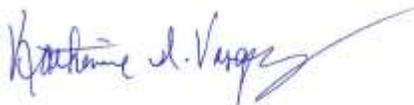
- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

Date: June 5, 2018

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



AMENDATORY SECTION (Amending WSR 02-22-057, filed 10/31/02, effective 12/1/02)

WAC 388-826-0001 ~~What ((is the purpose of the))~~ are voluntary placement ((program)) services? ~~((The purpose of the))~~ Voluntary placement ((program is to:

~~(1) Support the optimal growth and development of the child or youth in out of home placement. The sole reason for the out of home placement is the child's developmental disability.))~~ services are ((offered)) administered by ((DSHS/DDD through a voluntary placement agreement. Parents retain custody of their child or youth.

~~(2) Support)) the ((child and family with a shared parenting arrangement through the use of licensed foster care providers.~~

~~(3) Complement other public and private resources in providing supports to the child and family.~~

~~(4) Encourage the relationship between the child and parents, even when the child or youth is not living in their own home.~~

~~(5) These rules are adopted under the authority of RCW 74.13.350))~~ developmental disabilities administration (DDA) and provide temporary residential placement for a child outside of the child's regular home setting that is voluntarily agreed to by the child's parent, custodian, or guardian and DDA.

AMENDATORY SECTION (Amending WSR 02-22-057, filed 10/31/02, effective 12/1/02)

WAC 388-826-0005 What definitions((-)) apply to this chapter? ~~((**"Best interest"** includes, but is not limited to:~~

~~(1) Prevent regression or loss of skills already acquired;~~

~~(2) Achieve or maintain self sufficiency;~~

~~(3) Provide the least restrictive setting that will meet the child's/youth's medical, social, developmental and personal needs;~~

~~(4) Benefits the medical, personal, social and developmental needs of the child/youth;~~

~~(5) Maintains family relationships.))~~

"Child ((or youth))" means ((an individual)) a person who is eligible for ((division)) developmental disabilities administration (DDA) services ((per RCW 71A.16.040 and)) under chapter 388-825 WAC, ((is less than)) under eighteen ((years of age and who is)), and in the custody of a parent by blood, adoption, or legal guardianship.

"Child foster home" means a private home licensed to provide twenty-four hour care to children.

"Client ((or person))" means ((an individual is)) a person eligible for ((division)) DDA services ((per RCW 71A.16.040 and WAC 388-825-030)) under chapter 388-825 WAC.

((**"Community support services"** means one or more of the services listed in RCW 71A.12.040 including, but not limited to the following services: Architectural, social work, early childhood intervention, employment, family counseling, respite care, information and referral, health services, legal services, therapy services, residential services and support, transportation services, and vocational services.))

"Client responsibility" means the total amount of a client's participation and room and board.

"Community inclusion activities" means person-centered, age appropriate, participation in activities in a client's local community.

"Custody" means protective care or guardianship of someone; parental responsibility, especially as allocated to one of two divorcing parents.

"DDA" means the developmental disabilities administration within the department of social and health services.

"Department" means the department of social and health services of the state of Washington.

~~(("Director" means the director of the division of developmental disabilities.~~

~~"DDD" means the division of developmental disabilities of the department of social and health services.~~

~~"Emergency" means a sudden, unexpected occurrence demanding immediate action.~~

~~"Exemption" means the department's approval of a written request for an exception to a rule in this chapter.)~~

"Family" means ((individuals of any age, living together in the same household related by blood, marriage, adoption or as a result of sharing legal custody of a minor child)) one or more of the following relatives: Spouse or registered domestic partner, natural, adoptive or step parent; grandparent; child; stepchild; sibling; stepsibling; uncle; aunt; first cousin; niece; or nephew.

~~(("Foster care provider" means the individual person licensed by the DSHS, children's administration, division of licensed resources (DLR) (chapter 388 148 WAC) to provide foster care in the person's home; or a group care agency licensed by DLR to provide foster care for an individual in a group facility or staffed residential setting.~~

"In the voluntary placement program the legal status of the child" means that the child is in legal custody of the biological or adoptive parent(s) or legal and custodial guardian.)

"Group care facility" means an agency, other than a foster-family home, which is maintained and operated for the care of a group of children on a twenty-four hour basis.

"Guardian ad litem (GAL)" means a court-appointed neutral investigator whose job is to make a recommendation to the court if the proposed guardian is fit to serve and whether the client is legally incapacitated.

"((The)) Judicial determination ((and review))" means a court process ((that occurs in court and its purpose is)) to ((affirm that)) determine whether out-of-home placement is in the best interest of ((the)) a child. ((The parent is notified of the court date and may appear in court with the child's DDD social worker.))

"Legal guardian" means a person's legal guardian appointed through formal proceedings in accordance with state law.

"Legal status of the child" means that the child is in legal custody of a biological or adoptive parent or legal and custodial guardian.

"Out-of-home placement" means a ((DLR licensed)) home((, a licensed group care)) other than the child's regular home, such as a state-operated living alternative or a facility ((or another)) licensed ((setting)) by the division of licensed resources (DLR) where the child has been placed.

"Parent" means ((the individual who is the)) a biological or adoptive ((person or legal custodial guardian)) parent who has legal responsibility for and physical custody of the child.

"Participation" has the same meaning as is under WAC 182-513-1100.

"Personal needs allowance (PNA)" means an amount set aside from a client's income under WAC 182-513-1105.

"Person-centered service plan (PCSP)" means a document that identifies the client's goals and assessed health and welfare needs. The person-centered service plan also indicates the paid services and natural supports that will assist the client to achieve their goals and address their assessed needs.

"Registered nurse delegator" means a licensed registered nurse who delegates specific nursing care tasks to a qualified nursing assistant or home care aide, and supports clients in a community-based care setting or in-home care setting under RCW 18.79.260.

"Residential habilitation services" means instruction and support services under WAC 388-845-1500.

"Respite care" means short-term, intermittent care to relieve a primary caregiver.

"Room and board" has the same meaning as is under WAC 182-513-1100.

"Shared parenting" means ((biological or adoptive parents or legal guardians and foster care providers share responsibilities. Responsibilities are for the physical and emotional care, education and medical well being of child/youth who meets DDD eligibility criteria and who is in a voluntary out of home placement as is described in the shared parenting agreement)) a collaboration between the parent or legal guardian and licensed provider or state-operated living alternative (SOLA) to share in meeting the support needs of the client receiving voluntary placement services.

"Shared parenting plan" means a written plan ((among the parent, a foster care provider and DDD, with the expectation of)) for sharing responsibilities ((for care of a child/youth, including exchanging information on a routine basis about medical, education, daily routines and special situations in the life of the child/youth)) among the parent, a licensed provider or SOLA and the department, outlining the shared responsibilities for care of a child.

((~~"Voluntary out-of-home placement" for a child who is eligible for DDD services means:~~

(1) When a parent and the division of developmental disabilities (DDD) agree that it is in the best interest of the child to reside out of the home of the parents;

(2) The placement is solely due to the child's disability;

(3) There are no unresolved issues of abuse and neglect;

(4) When the parent or custodial and legal guardian and division sign a voluntary placement agreement; and

(5) When a child lives more than fifty percent of her/his life in a licensed setting that is other than in the parents' home. The setting may be a licensed foster family home, group care facility, or staffed residential home as licensed under chapter 74.15 RCW.))

"Significant change assessment" means an assessment triggered by an unexpected, documented change in a client's condition, activities of daily living, mood and behaviors, or psychological or medical conditions which affect the level of care needed for the client.

"SOLA" means state-operated living alternative.

"Staffed residential home" means a licensed facility that provides twenty-four hour care to six or fewer children who require more supervision than can be provided in a foster home.

"Supplemental security income (SSI)" means a needs-based assistance program administered by the federal social security administration for blind, disabled, and aged individuals.

"Voluntary placement agreement((7))" ((as used in this section,)) means a written agreement between the department and a child's parent, custodian, or legal guardian authorizing the department to place the child in a licensed facility or SOLA.

((~~"Written request for out-of-home placement" means a written request signed by the custodial parent requesting out-of-home placement for the child or youth under eighteen years of age.~~)

AMENDATORY SECTION (Amending WSR 02-22-057, filed 10/31/02, effective 12/1/02)

WAC 388-826-0010 Who is eligible for ((the)) voluntary placement ((program)) services? ((Children who:

(1) Are determined eligible for DDD services under RCW 71A.16.040;

(2) Are under eighteen years of age when the request for services through VPP is made;

(3) Have no unresolved issues of abuse or neglect pending with DSHS children's administration;

(4) Are in the legal and physical custody of their parent or legal guardian; and

(5) The request is made solely due to the child's disability RCW 74.13.350 and parents have used all other appropriate services for their child through DDD.))

(1) A child is eligible for voluntary placement services if:

(a) The child:

(i) Is DDA-eligible under chapter 388-825 WAC;

(ii) Will enter voluntary out-of-home placement while under eighteen;

(iii) Has accessed all other available and appropriate DDA services;

(b) The child's parent, guardian, or legal custodian:

(i) Is unable to provide care for the child needs;

(ii) Has determined that the child would benefit from voluntary out-of-home placement;

(iii) Requests out-of-home placement solely because of the child's developmental disability;

(iv) Requests voluntary placement services in writing;

(v) Complies with the voluntary placement agreement; and

(c) DDA:

(i) Has available funding;

(ii) Determines that available and appropriate in-home supports do not meet the child's needs;

(iii) Determines that voluntary out-of-home placement is in the child's best interest.

(2) The department considers voluntary out-of-home placement to be in the best interest of the child if voluntary placement services:

(a) Help maintain family relationships; and

(b) Provide the least restrictive setting that will benefit the child's medical, social, developmental, and personal needs.

(3) DDA waits to determine a client's eligibility for voluntary placement services until any pending child protective services' investigations conclude.

NEW SECTION

WAC 388-826-0011 What do voluntary placement services include?

Voluntary placement services include:

- (1) A shared parenting plan under WAC 388-826-0041;
- (2) A person-centered service plan;
- (3) Residential habilitation services;
- (4) Community inclusion activities;
- (5) Developmentally appropriate support to the child in activities of daily living;
- (6) Comprehensive health and safety reviews facilitated by DDA every ninety days;
- (7) Coordination with the medically intensive children's program under chapter 182-551 WAC;
- (8) Coordination with the early support for infants and toddlers program for eligible children under the Individuals with Disabilities Education Act, Part C; and
- (9) Coordination between the local school district and the licensed provider or SOLA to receive free and public education (FAPE) services.

NEW SECTION

WAC 388-826-0016 Where may a client receive voluntary placement services? A client may receive voluntary placement services in:

- (1) A children's state-operated living alternative; or
- (2) A home licensed under chapter 74.15 RCW, including a:
 - (a) Child foster home;
 - (b) Staffed residential home; or
 - (c) Group care facility for medically-fragile children.

AMENDATORY SECTION (Amending WSR 02-22-057, filed 10/31/02, effective 12/1/02)

WAC 388-826-0040 What is ((a)) the voluntary placement agreement? ~~((It is a mutually voluntary and written document between the parent and the department. It must be signed by the child's parent and the DSHS/DDD representative to be in effect. An agreement regarding a Native American child is not valid unless executed in writing before the court and filed with the court as provided in RCW 13.34.130. Any party to the voluntary placement agreement may terminate the agreement at any time. When one party ends the agreement, per the VPA, the voluntary agreement is ended.~~

~~The agreement authorizes DSHS/DDD to facilitate a placement for the child who is under eighteen years of age in a licensed facility. Under the term of the agreement, the parent retains legal custody. DSHS/DDD is responsible for the child's placement and care. The agreement shall at a minimum specify the legal status of the child and the rights and obligations of the parent or legal guardian, the child, and the department while the child is in placement.))~~

(1) Before a child may enter voluntary out-of-home placement, the child's parent or legal guardian must execute a voluntary placement agreement.

(2) The voluntary placement agreement must specify:

(a) That the child's parent or legal guardian retains legal custody of the child;

(b) That the department is responsible for the child's placement and care;

(c) That the signature of the child's parent or legal guardian is required;

(d) The legal status of the child;

(e) The rights and obligations of the parent or legal guardian;

(f) The rights and obligations of the child;

(g) The rights and obligations of the department while the child is in placement; and

(h) That any party to the voluntary placement agreement may terminate the agreement at any time.

(3) If a court has entered a final divorce decree or parenting plan that delineates decision-making authority, the parent must provide a copy of the document to the department.

(4) A voluntary placement agreement regarding an Indian child is invalid unless it complies with RCW 13.38.150.

(5) If a child's placement is unsuccessful under the terms of the voluntary placement agreement, the child returns to their parent's physical care until a new placement is available.

(6) Upon termination of the voluntary placement agreement, the child must return to the parent or legal guardian's care unless:

(a) Taken into custody under RCW 13.34.050 or 26.44.050;

(b) Placed in shelter care under RCW 13.34.060; or

(c) Placed in foster care under RCW 13.34.130.

NEW SECTION

WAC 388-826-0041 What is a shared parenting plan? (1) A shared parenting plan is a written agreement between the client's parent or legal guardian, the licensed provider or SOLA, and the department.

(2) The shared parenting plan must:

(a) Include a plan for the parent or legal guardian's continual involvement, including:

(i) A schedule for visiting the child in out-of-home placement;

(ii) An activities schedule;

(iii) Emergency contact information;

(iv) Consent to medical care;

(v) Routine communication about medical issues, education, daily routines, and special considerations in the life of the child; and

(vi) Expectations for each party's role, including special considerations.

- (b) Coordinate healthcare benefits;
 - (c) Designate a representative payee;
 - (d) Address the requirement to access all available income sources under WAC 182-512-0700(1);
 - (e) Include a plan for respite care if the child lives in a child foster home; and
 - (f) Be developed within forty-five days of the client's out-of-home placement and reviewed annually thereafter by the department.
- (3) If any party does not follow the shared parenting plan, all parties must review and revise the shared parenting plan.
- (4) If any party does not follow the revised shared parenting plan, DDA may terminate the client's voluntary placement services and the child will return to the parent or legal guardian's care unless:
- (a) Taken into custody under RCW 13.34.050 or 26.44.050;
 - (b) Placed in shelter care under RCW 13.34.060; or
 - (c) Placed in foster care under RCW 13.34.130.

AMENDATORY SECTION (Amending WSR 02-22-057, filed 10/31/02, effective 12/1/02)

WAC 388-826-0050 (~~(Is there an ongoing court process when the child is in out-of-home placement and how does the process work)~~) What are the judicial requirements for a child receiving voluntary placement services? (~~(The ongoing court process involves the following activities:~~

~~(1) When a child is placed in a licensed out of home setting, within one hundred eighty days, the DDD social worker must file an order with the court that says the custodial and legal parent has signed a voluntary placement agreement with DDD and voluntarily requests placement of their child in out of home care;~~

~~(2) The child's DDD social worker prepares the necessary papers and files them with the court clerk; and~~

~~(3) Once a year, the DDD social worker prepares a report that must be presented to the court. It is called an order for continued placement and it describes in the words of the social worker, why the out of home placement continues to be in the best interest of the child.)~~

When a child receives voluntary placement services, the department must:

(1) Develop a permanency plan of care no more than sixty days after the child is placed out-of-home;

(2) No more than one hundred eighty days after the child is placed out-of-home and annually thereafter, obtain a judicial determination that the placement is in the best interest of the child - a judicial determination is not required if the child's out-of-home placement ends before one hundred eighty days elapse;

(3) Conduct periodic administrative reviews as required by federal law - a review may be called at any time by the department, the parent, or the legal guardian; and

(4) Work with the department of children, youth, and families to file a dependency petition if there is reason to believe the child is a dependent child under RCW 13.34.030.

AMENDATORY SECTION (Amending WSR 02-22-057, filed 10/31/02, effective 12/1/02)

~~WAC 388-826-0070 What ((is)) are the ((responsibility of the department for the)) department's responsibilities for a child ((who is in out-of-home care)) receiving voluntary placement services? ((When DDD facilitates an out-of-home placement, DDD is responsible for:~~

- ~~(1) A voluntary placement agreement according to this section;~~
- ~~(2) Monitoring of the child's placement and care;~~
- ~~(3) A permanency plan of care for the child;~~
- ~~(4) A plan that monitors the health, safety and appropriateness of the child's placement at a minimum every ninety days, making face-to-face visits at that time;~~
- ~~(5) The DDD social worker maintains any records as required by court oversight; and~~
- ~~(6) DDD social worker facilitates a needs assessment, individual service plan and a shared parenting plan.))~~

When a child receives voluntary placement services, the department must:

- (1) Develop the shared parenting plan no more than forty-five days after the child is placed out-of-home and review the plan at each annual assessment;
- (2) Visit the child in their out-of-home placement at least every ninety days;
- (3) Review the child's person-centered service plan no more than ninety days after the child is placed out-of-home;
- (4) Monitor the child's voluntary placement services by:
 - (a) Facilitating team meetings using a wraparound planning model;
 - (b) Reviewing the child's support plans;
 - (c) Reviewing incident reports and follow-up measures involving the client;
 - (d) Authorizing payment for services; and
 - (e) Facilitating communication between the client's parent, legal guardian, and licensed provider or SOLA;
- (5) Determine eligibility for apple health coverage under chapters 182-513 WAC and 182-515 WAC;
- (6) Determine the child's participation and room and board amount, if any;
- (7) Comply with the permanency planning hearing requirements under RCW 13.34.270 no more than one-hundred eighty days after the child is placed out-of-home and annually thereafter;
- (8) Notify the child's parent or legal guardian in writing before the date of each annual permanency planning hearing;
- (9) Monitor the licensed provider or SOLA to ensure the provider complies with contract requirements, which includes compliance with DDA policies and minimum licensing rules; and
- (10) Refer a client age eighteen or older for a nurse delegation assessment, if necessary.

NEW SECTION

WAC 388-826-0071 What are the responsibilities of the licensed provider supporting a client receiving voluntary placement services?

When a client is receiving voluntary placement services, the licensed provider must:

- (1) Ensure the health and safety of the client;
- (2) Develop a quarterly report if the client is in a staffed residential home or group care facility for medically-fragile children. The quarterly report must include:
 - (a) A summary of the client's progress toward developing skills identified in the individualized treatment plan;
 - (b) An update regarding shared parenting, including a summary of family visits;
 - (c) A summary of incident reports, if any;
 - (d) School progress, including individualized education program updates;
 - (e) Any significant changes in the client's condition or prescribed medications; and
 - (f) A summary of the client's participation in community inclusion activities.
- (3) Help develop and implement the shared parenting plan;
- (4) Participate in the client's individualized education program;
- (5) Develop emergency preparedness plans under chapter 388-145 WAC;
- (6) Track, and make available to the department upon request, the client's participation in community inclusion activities - if the client is in a staffed residential home - including:
 - (a) Date of each activity;
 - (b) Cost of each activity; and
 - (c) A running balance of the client's community inclusion activities funds;
- (7) Retain all client records for at least six years after termination or expiration of their contract; and
- (8) Request an assessment for nurse delegation if the client is age eighteen or older and needs medication administration.

NEW SECTION

WAC 388-826-0072 What training must a licensed staffed residential or SOLA employee complete? To support a client receiving voluntary placement services, a licensed staffed residential or SOLA employee must complete:

- (1) Training required under chapter 388-145 WAC;
- (2) Training and continuing education required under chapter 388-829 WAC;
- (3) Client-specific training based on the client's treatment plan and person-centered service plan; and
- (4) Nurse delegation training under chapter 246-888 WAC, if applicable.

AMENDATORY SECTION (Amending WSR 02-22-057, filed 10/31/02, effective 12/1/02)

WAC 388-826-0075 ~~What are ((the)) a parent or legal guardian's responsibilities ((of the parents)) when their child ((receives)) is receiving voluntary placement services ((in the voluntary placement program))?~~ ((Parents retain custody of their child at all times when the child is receiving services in the voluntary placement program. Parents responsibilities include, but are not limited to, the following:

- ~~(1) The right to make all major nonemergency decision about medical care, enlistment in military service, marriage and other important legal decisions for the person under eighteen years of age;~~
- ~~(2) Maintain ongoing and regular contact with the child;~~
- ~~(3) Agree to work cooperatively with their child's DDD social worker and other DSHS staff and persons caring for their child;~~
- ~~(4) Participate in decision making for their child;~~
- ~~(5) Cooperate with DDD in selecting a representative payee for the child's Social Security benefits, received from the Social Security Administration, and which are used for basic maintenance while the child is in out of home care;~~
- ~~(6) Agree that if their child's out of home placement disrupts, their child will return to the parents physical care until a new placement is developed. The parent's signature on the voluntary placement agreement confirms their understanding of the responsibilities listed in the VPA.))~~

When a client is receiving voluntary placement services, the client's parent or legal guardian must:

- (1) Maintain weekly contact with the child;
- (2) Comply with the voluntary placement agreement;
- (3) Help apply for income and benefits available to the child from the Social Security Administration; and
- (4) Participate in:
 - (a) The shared parenting plan;
 - (b) Team meetings; and
 - (c) The DDA annual assessment, including the person-centered service plan.

AMENDATORY SECTION (Amending WSR 09-24-063, filed 11/25/09, effective 12/26/09)

WAC 388-826-0077 ~~((Are there limits to the)) Who is eligible for respite ((care I can receive if I receive voluntary placement)) services?~~ ((The following limitations apply to the respite care you can receive when approved for voluntary placement services:

- ~~(1) The DDD assessment will determine how much respite you can receive per chapter 388-828 WAC.~~
- ~~(2) Prior approval by the DDD regional administrator or designee is required:~~
 - ~~(a) To exceed fourteen days in a calendar per month for out of home respite; or~~

~~(b) To pay for more than eight hours in a twenty four hour period of time for respite care in any setting other than your place of residence.~~

~~(3) Respite providers have the following limitations and requirements:~~

~~(a) If respite is provided in a private home, the home must be licensed;~~

~~(b) The respite provider cannot be the spouse of the foster parent receiving respite if the spouse and the foster parent reside in the same residence;~~

~~(c) If you receive respite from a provider who requires licensure, the respite services are limited to those age specific services contained in the provider's license.~~

~~(4) DDD cannot pay for any fees associated with the respite care; for example, membership fees at a recreational facility, or insurance fees.~~

~~(5) If you require respite from a licensed practical nurse (LPN) or a registered nurse (RN), services may be authorized as skilled nursing services per WAC 388-845-1700 using an LPN or RN.~~

~~(6) Respite cannot replace daycare while your foster parent is at work.~~

~~(7) Respite cannot replace natural supports available to the child while in foster care. Family members will not be paid to provide respite.~~

~~(8) If you reside in a licensed staffed residential home or group care facility, you are not eligible to receive respite care.))~~

(1) A client who lives in a foster home is eligible for respite services.

(2) A client who lives in a licensed staffed residential, SOLA, or group home for medically-fragile children is not eligible for respite services.

(3) The DDA assessment under chapter 388-828 WAC determines the amount of respite services a client may receive.

NEW SECTION

WAC 388-826-0078 Who may provide respite services to a client receiving voluntary placement services in a child foster home? To provide respite services to a client receiving voluntary placement services, a provider must:

(1) Be a qualified provider under WAC 388-845-1615; and

(2) Have a respite contract with the developmental disabilities administration.

NEW SECTION

WAC 388-826-0079 What limits apply to respite services? Limits under WAC 388-845-1620 apply to a client receiving voluntary placement services in a child foster home.

AMENDATORY SECTION (Amending WSR 07-15-003, filed 7/6/07, effective 8/6/07)

WAC 388-826-0130 How does ~~((DDD))~~ the department determine the rate ~~((that is paid))~~ to support a ~~((child))~~ client in a licensed foster home? ~~((DDD))~~ (1) The department determines the rate that is paid to support a ~~((child))~~ client in a licensed foster home by ~~((adding:~~

~~(1) The basic foster care room and board rate published annually by children's administration per WAC 388-25-0120))~~ conducting a foster care rate assessment.

~~(2) DDA conducts the ((specialized rate identified after administering the))~~ foster care rate assessment ~~((FCRA tool))~~:

(a) No more than thirty days after the date the child is admitted to a licensed foster home;

(b) Annually; and

(c) If a significant change occurs.

NEW SECTION

WAC 388-826-0131 What does the department pay towards voluntary placement services? (1) The department pays the cost of the residential habilitation services minus the amount of client responsibility under WAC 388-826-0132.

(2) The department pays a licensed provider to provide voluntary placement services through a DDA contract and according to a rate structure established by DDA.

NEW SECTION

WAC 388-826-0132 What must a parent or legal guardian pay toward voluntary placement services? (1) A parent or legal guardian is not required to contribute financially toward the cost of voluntary placement services.

(2) The client's countable income, minus the client's personal needs allowance, must be contributed toward the cost of participation and room and board.

(3) The department determines the client's countable income under chapter 182-512 WAC. Examples of countable income include:

(a) Supplemental security income (SSI);

(b) Social security benefits, such as child survivor benefits or disability benefits; and

(c) Child support, both current and arrears payments.

(4) The client keeps a personal needs allowance (PNA) under WAC 182-513-1105. The child's representative payee may:

(a) Place the personal needs allowance into a payee account for the client, or

(b) Use the personal needs allowance to purchase items that directly benefit the client.

(5) The client may be required to pay participation and room and board. The department determines participation and room and board amounts under:

(a) WAC 182-515-1510 if the client is enrolled on a DDA home and community based services waiver; or

(b) WAC 182-515-1512 if the client is not enrolled on a DDA home and community based services waiver.

(6) A parent or legal guardian must pay for their child's clothing, activities, special events, and gifts.

NEW SECTION

WAC 388-826-0133 What is the representative payee's role? The representative payee:

(1) Receives and manages the client's countable income;

(2) Uses the client's countable income to contribute toward the cost of the client's participation and room and board;

(3) Places the client's personal needs allowance and any conserved funds in a payee account; and

(4) Monitors the child's payee account to maintain eligibility for supplemental security income (SSI) and medicaid.

AMENDATORY SECTION (Amending WSR 07-15-003, filed 7/6/07, effective 8/6/07)

WAC 388-826-0138 What questions are ((asked)) in the foster care rate assessment ((tool)) and how are ((the licensed foster home provider's)) answers scored? (1) The foster care rate assessment ((tool)) consists of thirteen questions ((that are scored by DDD based on discussion between the DSHS representative and the licensed foster home provider)).

((1)) (2) Scores are based on natural supports available, documented support plans, and report of care provided by the licensed foster home provider.

(3) The assessment excludes any additional paid supports provided, such as nursing and therapies.

(4) The hours are assessed against the number of hours expected to support a typically-developing child the same age as the client.

(5) Daily living: ((Include)) What is the average number of hours per day spent ((earing for this child beyond what is expected for his/her age on)) supporting the client with daily living tasks ((including)) like dressing, grooming, toileting, feeding and providing specialized body care? Do not include private duty nursing hours in this average.

<u>((Answers)) Hours per day</u>	<u>Score</u>
0 to 1	30
2 to 5	91
6 to 9	213
10 to 20	396

((Answers)) Hours per day	Score
Over 20	609

~~((+2))~~ (6) Physical needs: What is the average number of hours per day (~~beyond what is expected for his/her age~~) spent providing assistance to the client that is not included in the "daily living" category above? (~~(E.g., wheelchairs,~~) Examples include assistance with: Mobility; prosthetics(~~(, and)~~); communication; other assistive devices(~~(, dental/orthodontic, communication (speech, hearing, sight),~~); airway management (monitors, ventilators(~~(,)~~); pressure sores; and(~~/or intravenous~~) enteral nutrition(~~(+)~~)). Do not include private duty nursing hours in this average.

((Answers)) Hours per day	Score
0 to 1	30
2 to 5	91
6 to 20	274
Over 20	609

~~((+3))~~ (7) Behavioral needs: What is the average number of hours per day (~~the foster parent(s) will need to spend supporting and supervising the child due to behaviors disorders, emotional disorders, and mental disorders~~) spent providing behavioral, emotional, and mental health supports to the client? Do not include hours under subsection (8)(b) of this section in this average.

((Answers)) Hours per day	Score
0 to 1	30
2 to 5	91
6 to 13	335
14 to 24	578
Over 24	731

~~((+4) Participation in child's)~~ (8) Therapeutic plan: (~~In-~~clude) What is the average number of hours per week spent implementing a plan prescribed by a professional related to the child's physical, behavioral, emotional, or mental health therapy? The foster parent must provide a copy of each plan to the assessor.

(a) (~~Physical therapeutic plan (e.g., meeting with providers, attending therapy or directly giving)~~) What is the average numbers of hours per week spent providing or attending physical, occupational (~~or postsurgical~~), and speech therapy(~~(+)~~)?

((Answers)) Hours per week	Score
0 to 1	4
2 to 3	13
4 to 9	30
10 to 46	65

(b) (~~Participation in emotional/~~) What is the average number of hours per week spent participating in or implementing services identified in the client's behavioral support plan(~~(- (e.g., meeting with providers, attending therapy or directly supporting therapeutic plan)-)~~), such as applied behavior analysis (ABA) or counseling?

((Answers)) Hours per week	Score
0 to 1	4
2 to 3	13
4 to 19	48
20 to 60	104
Over 60 ((hours/week))	390

~~((5))~~ (9) Appointments: ~~((Indicate))~~ What is the average number of hours per week spent scheduling, traveling to and from, and participating in appointments (and accompanying the child)? The foster parent must provide documentation of appointments to the assessor.

(a) ~~((Medical/dental (e.g., transporting and waiting for medical services including))~~ What is the average number of hours per week spent scheduling, traveling to and from, and participating in doctor visits, dental visits, rehabilitation, and therapy visits(())?

((Answers)) Hours per week	Score
0 to 1	4
2 to 5	13
6 to 14	39
Over 14 ((hours/week))	82

(b) What is the average number of hours per week spent scheduling, traveling to and from, and participating in community activities (e.g., transporting and waiting during events including), such as recreation, leisure, sports (x), and extra-curricular activities(())?

((Answers)) Hours per week	Score
0 to 1	4
2 to 3	13
4 to 7	30
8 to 20	48
Over 20 ((hours/week))	130

~~((6))~~ (10) House care: ~~((Indicate))~~ What is the average number of times per week (to repair) spent repairing, (clean or replace) cleaning, and replacing household items(, including) and medical equipment, over and above normal wear and tear, due to:

(a) A chronic medical condition(s (e.g., lack of personal control resulting in bed wetting or incontinence, lack of muscle control or unawareness of the consequences of physical actions).)?

((Answers)) Times per week	Score
0 to 1	6
2 to 7	24
8 to 19	58
20 to 38	91
Over 38 ((times per week))	238

(b) ~~Destructive behavior ((e.g., lack of emotional control resulting in damage or destruction of property).))?~~

((Answers)) Times per week	Score
0 to 1	6
2 to 3	15
4 to 9	28
10 to 22	58
Over 22 ((times per week))	162

~~((7))~~ (11) Development and socialization skills: ((Indicate)) What is the average number of hours per week ((to provide)) spent providing guidance and assistance((-))?

(a) ~~((Direct developmental assistance (e.g.,))~~ What is the average number of hours per week spent helping with homework and ((readiness to learn)) learning new activities((-))?

((Answers)) Hours per week	Score
0 to 1	4
2 to 3	13
4 to 11	30
12 to 30	87
Over 30 ((hours/week))	249

(b) ~~((Professional interaction (e.g.))~~ What is the average number of hours per week spent interacting with other professionals, such as meeting with teachers, visiting the client's school ((either planned or in crisis)), speaking on the phone with school personnel, participating in individual education plan development and review((-))?

((Answers)) Hours per week	Score
0 to 1	4
2 to 3	13
4 to 5	22
6 to 12	30
Over 12 ((hours/week))	82

(c) What is the average number of hours per week spent developing socialization and functional life skills ((e.g.)), ((helping the child build skills, make)) like making positive choices ((and take responsibility)), ((learn about the use of)) being accountable, managing money, ((relate to peers, adults and family members and explore)) exploring the community((-)), and relating to peers, adults, and family members?

((Answers)) Hours per week	Score
0 to 1	4
2 to 7	22
8 to 19	56
20 to 60	173
Over 60 ((hours/week))	403

~~((8))~~ (12) Shared parenting: ((Indicate)) What is the average number of hours per week ((to work with the birth parents and/or siblings, including assisting in the care of the child during visits, demonstrating care techniques, planning and decision making)) spent implementing the shared parenting plan? The shared parenting plan must be available for review.

((Answers)) Hours per week	Score
0 to 1	4
2 to 3	13
4 to 12	30
Over 12	82

AMENDATORY SECTION (Amending WSR 07-15-003, filed 7/6/07, effective 8/6/07)

WAC 388-826-0145 How does ~~((DDD))~~ DDA determine the foster care level from the raw score? (1) The following are the foster care levels based on the range of aggregate scores:

Level	Low Score	High Score
1	0	320
2	321	616
3	617	1501
4	1502	2085
5	2086	2751
6	2752	999999

(2) A standardized rate for specialized services is assigned to ~~((each))~~ levels one through six.

(3) The standardized rate is published by ~~((DDD. The rate))~~ DDA and is paid monthly to the foster parent ~~((in addition to the basic rate)).~~

AMENDATORY SECTION (Amending WSR 06-04-088, filed 1/31/06, effective 3/3/06)

WAC 388-826-0150 What happens if ~~((the level assigned to the child changes))~~ a significant change assessment occurs? ~~((The care needs of all children in foster care will be reassessed annually or more often if a major life change occurs.))~~

(1) ~~((A "major life change" is an unexpected, documented))~~ If a significant change ~~((in a child's medical or psychological condition that affects the level of care required))~~ assessment occurs, DDA conducts a foster care rate assessment.

(2) If the ~~((assessed level changes and))~~ foster care rate assessment results in a rate change, the foster parent ~~((will receive at least thirty days))~~ receives a thirty-day written notice ~~((of the rate~~

change. The notice will include)) that includes the effective date ((that)) of the ((rate)) change ((takes effect)).

AMENDATORY SECTION (Amending WSR 06-04-088, filed 1/31/06, effective 3/3/06)

WAC 388-826-0160 ~~((What limitations exist on administrative hearings regarding))~~ Are foster care ((payments in VPP)) rates appealable? ((The)) A foster care ((provider and the parents are not entitled to request an)) rate is not appealable through the administrative hearing ((to dispute the established foster care rates)) process.

AMENDATORY SECTION (Amending WSR 06-04-088, filed 1/31/06, effective 3/3/06)

WAC 388-826-0170 ~~How ((are rates for))~~ does the department determine the rate to support a client in a licensed staffed residential home((s determined in VPP))? ((Rates for licensed staffed residential homes are determined by the department after review of the needs of the child, the proposal from the licensed staffed residential agency and the proposed staffing schedule.))

(1) To determine the rate to support a client in a licensed staffed residential home, the department assesses the client's support needs, including:

- (a) Activities of daily living;
- (b) Instrumental activities of daily living; and
- (c) Behavioral and supervision supports.

(2) Children are entitled to appropriate educational services including, to the extent possible, participating in a full school day. The department must not pay a provider for any hours the client is in school.

AMENDATORY SECTION (Amending WSR 07-15-003, filed 7/6/07, effective 8/6/07)

WAC 388-826-0175 ~~How does ((DDD))~~ the department determine the rate ((that is paid)) to support a ((child)) medically-fragile client in a ((licensed)) group care facility? ((A rate is negotiated by contract between DDD and the licensed group care facility.))

The department pays a group care facility a DDA-established, per-person, monthly rate to support a medically-fragile client.

AMENDATORY SECTION (Amending WSR 06-01-107, filed 12/21/05, effective 12/21/05)

WAC 388-826-0200 ~~What happens if ((the voluntary placement ends)) a licensed provider terminates a client's out-of-home placement?~~ ((The child must be returned to the physical care of the child's legal parent unless the child has been taken into custody pursuant to RCW 13.34.050 or 26.44.050, placed in shelter care pursuant to RCW 13.34.060, or placed in foster care pursuant to RCW 13.34.130. The agreement as described in RCW 74.13.350, between DDD and legal parents is completely voluntary. Per RCW 74.13.350, any party may terminate the agreement at any time.))

If a licensed provider terminates a client's out-of-home placement:

(1) The child must return to the parent or legal guardian's care unless:

(a) Taken into custody under RCW 13.34.050 or 26.44.050;

(b) Placed in shelter care under RCW 13.34.060; or

(c) Placed in foster care under RCW 13.34.130;

(2) The provider must:

(a) Notify the client's parent or legal guardian, the department, and the client's school in writing at least thirty days before the termination; and

(b) Develop a transition plan; and

(3) The department assesses the client's health and welfare needs, and may authorize supports to the family while a new out-of-home placement is identified.

NEW SECTION

WAC 388-826-0205 **What happens when a client, parent, or legal guardian request a different provider?** (1) A client, parent, or legal guardian requesting a change in provider must:

(a) Notify the DDA social worker and provider; and

(b) Determine if current services can be modified to meet the client's need.

(2) If services cannot be modified to meet the client's need, alternative residential options may be explored.

(a) The client may return home until a new placement is identified; or

(b) The client may remain in the current placement until a new provider is identified.

(3) The department may request a court review and a guardian ad litem to represent the best interest of the child.

AMENDATORY SECTION (Amending WSR 06-01-107, filed 12/21/05, effective 12/21/05)

WAC 388-826-0230 **What happens after a ((youth)) client turns eighteen?** ((When a youth turns eighteen, and is considered an adult,

while in the voluntary placement program, the youth may remain in the child foster home, in VPP, under the following circumstances:

(1) Youth remains in the education or vocational program in the local public school district in which he/she has been enrolled until graduation or age twenty one, whichever is earlier, per WAC 392-172-030(2), RCW 74.13.031 (10) and (13), 28A.155.020, and 28A.155.030;

(2) The placement remains intact and does not disrupt;

(3) When needed, youth who turns eighteen can self-administer medication;

(4) Youth cannot remain in foster care, living in a child foster home, and in VPP, after eighteen years of age when:

(a) The child foster home placement disrupts;

(b) The youth leaves education or vocational program; or

(c) The youth who turns eighteen needs someone to administer medication.

Dependency guardianships end at age eighteen. If a youth has been in a legal guardianship, under chapter 11.88 RCW and if the reason for guardianship was the minority of the child the guardianship ends.)

A client who turns eighteen while in voluntary out-of-home placement may remain there until their twenty-first birthday if:

(1) They pursue a high school or equivalency course of study (GED/HSEC) or vocational program;

(2) A voluntary placement agreement is signed by the client or their legal guardian; and

(3) The client can self-administer medication or they receive nurse delegation services.

AMENDATORY SECTION (Amending WSR 06-01-107, filed 12/21/05, effective 12/21/05)

~~WAC 388-826-0240 ((What happens if a parent disagrees with a decision made by DDD))~~ Who can appeal a department action? ((If a parent disagrees with a decision made by DDD staff, the parent has the right to pursue the appeal process, as outlined in RCW 71A.10.050 and chapter 388-02 WAC.))

(1) A client, the client's parent, or the client's authorized representative may appeal any decision under RCW 71A.10.050 or WAC 388-825-120.

(2) A request may be made orally or in writing.

(3) An appellant must request an administrative hearing no more than ninety days after the date they received notification of the disputed decision.

(4) An appellant must request an administrative hearing within the ten-day notice period under WAC 388-458-0040 if the client wishes to receive continued benefits under WAC 388-825-145.

WAC 388-845-1515 Are there limits to the residential habilitation services I can receive? (1) You may only receive one type of residential habilitation service at a time.

(2) None of the following can be paid for under the core or community protection waiver:

(a) Room and board;

(b) The cost of building maintenance, upkeep, improvement, modifications or adaptations required to assure the health and safety of residents, or to meet the requirements of the applicable life safety code;

(c) Activities or supervision already being paid for by another source;

(d) Services provided in your parent's home unless you are receiving alternative living services for a maximum of six months to transition you from your parent's home into your own home.

(3) Alternative living services in the core waiver cannot:

(a) Exceed forty hours per month;

(b) Provide personal care or protective supervision.

(4) The following persons cannot be paid providers for your service:

(a) Your spouse;

(b) Your natural, step, or adoptive parents if you are a child age seventeen or younger;

(c) Your natural, step, or adoptive parent unless your parent is certified as a residential agency per chapter 388-101 WAC or is employed by a certified or licensed agency qualified to provide residential habilitation services.

(5) The initial authorization of residential habilitation services requires prior approval by the DDA regional administrator or designee.

(6) If you are under age eighteen, the residential habilitation services you receive are subject to requirements under chapter 388-826 WAC.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- | | |
|------------------|--|
| WAC 388-826-0015 | Who else may be eligible to participate in the voluntary placement program? |
| WAC 388-826-0020 | How does the family, whose child is a client of DDD request access to the VPP? |
| WAC 388-826-0025 | What is the process for a child or youth who transfers from children's administration to get into the VPP? |
| WAC 388-826-0030 | How is a decision made for out-of-home placement? |

- WAC 388-826-0035 How is a decision made regarding participation in the voluntary placement program?
- WAC 388-826-0045 What happens after a voluntary placement agreement is signed, what are the legal issues and who is responsible?
- WAC 388-826-0055 What basic services may a child receive from the voluntary placement program?
- WAC 388-826-0060 Are there other services a child may receive in this program?
- WAC 388-826-0065 What can parents expect if they use in-home supports under this program?
- WAC 388-826-0080 What are the expectations for parents when their child is in out-of-home care?
- WAC 388-826-0085 What other DDD services are available for a child through the voluntary placement program?
- WAC 388-826-0090 What does a parent do with the child's Social Security benefits when the parent's child lives outside the parent's home?
- WAC 388-826-0095 Who pays for a child's care when a child is in out-of-home placement?
- WAC 388-826-0129 What are the residential settings that DDD uses to provide voluntary placement program services?
- WAC 388-826-0135 When does DDD administer the foster care rate assessment tool?
- WAC 388-826-0136 How often does DDD administer the foster care rate assessment tool?
- WAC 388-826-0210 When the child leaves the voluntary placement program for any reason, what DDD services are available to the child and family when voluntary placement ends?
- WAC 388-826-0220 Will a child or youth continue to receive special education or early intervention services while in VPP?
- WAC 388-826-0250 Does DDD make exceptions to the requirements in this chapter?