



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: December 14, 2018

TIME: 2:26 PM

WSR 19-01-063

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 18-11-117 ; 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 388-828-9310 "How does DDA determine the number of community access services hours you may receive each month?", WAC 388-828-9330 "How does DDA determine your employment status?", WAC 388-828-9335 "How does DDD determine your employment service level?", WAC 388-828-9350 "Are there conditions when DDA will authorize additional hours to your monthly employment service hours?", and WAC 388-845-2100 "What are supported employment services?".

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
January 22, 2019	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 January 23, 2019 (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. January 22, 2019

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 8, 2019

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The proposed amendments replace "community access" with "community inclusion" to align with changes to chapter 388-845 WAC, change employment status verbiage from "in training/job development" to "working at subminimum wage or in job development," and remove provider travel time as a reason for authorizing additional employment hours.

Reasons supporting proposal: Amendments to WAC 388-828-9335 and 388-845-2100 make changes requested by stakeholders. Removing provider travel time and replacing “community access” with “community inclusion” align with waiver amendments approved by CMS.

Statutory authority for adoption: RCW 71A.12.030

Statute being implemented: RCW 71A.12.120, RCW 34.05.330, RCW 71A.12.040

Is rule necessary because of a:

Federal Law?	<input checked="" type="checkbox"/> Yes	<input 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: 42 U.S.C. Section 1396n(c)

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:	Chantelle Diaz	P.O. Box 45310, Olympia, WA 98504-5310	360-407-1589
Implementation:	Branda Matson	P.O. Box 45310, Olympia, WA 98504-5310	360-407-1522
Enforcement:	Branda Matson	P.O. Box 45310, Olympia, WA 98504-5310	360-407-1522

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

If yes, insert statement here:

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

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

Is a cost-benefit analysis required under RCW 34.05.328?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name: Chantelle Diaz
Address: P.O. Box 45310, Olympia, WA 98504-5310
Phone: 360-407-1589
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.

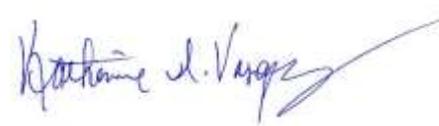
COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

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: December 13, 2018	Signature: 
Name: Katherine I. Vasquez	
Title: DSHS Rules Coordinator	

AMENDATORY SECTION (Amending WSR 18-03-174, filed 1/23/18, effective 2/23/18)

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

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

SIS support needs index percentile	Community ((access)) <u>inclusion</u> service level	Maximum service hours per month
0 - 9th percentile	A	Up to 3 hours
10th - 19th percentile	B	Up to 6 hours
20th - 29th percentile	C	Up to 9 hours
30th - 44th percentile	D	Up to 12 hours
45th - 59th percentile	E	Up to 15 hours
60th - 74th percentile	F	Up to 18 hours
75th - 100th percentile	G	Up to 20 hours

AMENDATORY SECTION (Amending WSR 18-03-174, filed 1/23/18, effective 2/23/18)

WAC 388-828-9330 How does DDA determine your employment status? (1) The developmental disabilities administration (DDA) considers your employment status "working" if:

- (a) In the twelve months before your assessment:
 - (i) You have been employed for nine consecutive months; and
 - (ii) You have earned at least Washington state's minimum wage; or
- (b) You are currently self-employed and:
 - (i) The activities of your employment meet the Internal Revenue Service (IRS) rules for a business;
 - (ii) You have a business plan demonstrating feasibility as determined by the division of vocational rehabilitation or an impartial, agreed upon, third-party business expert; and
 - (iii) You are licensed, if required, and follow all local, state, and federal regulations and rules.

(2) DDA considers your employment status (~~("in training/job development")~~) "working at sub-minimum wage or in job development" if you do not meet the conditions in subsection (1) of this section.

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

WAC 388-828-9335 How does ((DDD)) DDA determine your employment service level? ((DDD)) DDA determines your employment service level using the following table:

If your employment support level in WAC 388-828-9205 is:	And your employment status in WAC 388-828-9330 is:	Then your employment service level is:	And your employment service hours per month are:
None	Working	A	0
	((In Training/ Job Development)) Working at sub-minimum wage or in job development	B	0
Low	Working	C	4
	((In Training/ Job Development)) Working at sub-minimum wage or in job development	D	7
Medium	Working	E	7
	((In Training/ Job Development)) Working at sub-minimum wage or in job development	F	9
High	Working	G	11
	((In Training/ Job Development)) Working at sub-minimum wage or in job development	H	12

AMENDATORY SECTION (Amending WSR 18-03-174, filed 1/23/18, effective 2/23/18)

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

- (1) Your work schedule;
- (2) The number of jobs you have;
- (3) The appropriateness of your job match;
- (4) Natural supports available to you on the job;
- (5) Health limitations that affect your job;
- (6) ~~((Provider travel time and distance to your job;~~

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

~~((8))~~ (7) Other factors in your employment plan that indicate a need for additional hours for a short-term volunteer opportunity, job development, or for you to maintain a job.

AMENDATORY SECTION (Amending WSR 18-03-174, filed 1/23/18, effective 2/23/18)

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

Supported employment services are for those interested in integrated gainful employment and should facilitate paid employment that is covered by the Washington State Minimum Wage Act under chapter 49.46 RCW and the Fair Labor Standards Act under 29 U.S.C. Section 201. These services provide you with intensive ongoing support if you need individualized assistance to gain employment, maintain employment, or both. These services are tailored to your individual needs, interests, abilities, and promote your career development. These services are provided in individual or group settings and are available in the basic plus, core, and community protection waivers.

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

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

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

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

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

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

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

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

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

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

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

(d) Individualized supports to obtain gainful employment.