



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 14, 2019

TIME: 11:25 AM

WSR 19-05-043

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 19-02-053 ; 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 388-101D-0025 "Service provider responsibilities" and repeal WAC 388-101D-0120 "Approval of staff-coverage schedules".

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
March 26, 2019	10:00 a.m.	Office Building 2 DSHS Headquarters 1115 Washington Olympia, WA 98504	Public parking at 11th 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 March 27, 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 March 26, 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) March 12, 2019

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The proposed amendments remove requirements for residential service providers to schedule within contracted hours and obtain approval of staff coverage schedules. These administrative activities are no longer necessary as part of the tiered rates system.

Reasons supporting proposal: ESSB 6032 (2018) directs the department to replace hourly payment methodology with a tiered rate methodology for residential services providers. The Centers for Medicare and Medicaid Services (CMS) approved the Developmental Disabilities Administration's waiver amendments, which require implementation of the tiered rate system on January 1, 2019. Amending these rules is necessary to implement the tiered rates system.

Statutory authority for adoption: RCW 71A.12.030

Statute being implemented: RCW 71A.12.120, ESSB 6032 (2018)

Is rule necessary because of a:

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

If yes, CITATION: 42 U.S.C. Sections 1396b and 1396n

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:	Valerie Kindschy	P.O. Box 45310, Olympia, WA 98504-5310	360-407-1550
Enforcement:	Valerie Kindschy	P.O. Box 45310, Olympia, WA 98504-5310	360-407-1550

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: Under ESSB 6032 (2018) section 205(v) the Legislature directed DDA to implement a tiered rate methodology by January 1, 2019. DDA submitted a waiver amendment to the Centers for Medicare and Medicaid Services (CMS) that said the Department would implement a tiered rate methodology by January 1, 2019. CMS approved the change.

DDA must provide services in compliance with its approved waiver amendments. Removing administrative requirements that were part of the hourly payment methodology is necessary to transition residential service providers into the tiered rate system. As required under 42 U.S.C. Sections 1396b and 1396n, the state must provide services in accordance with the Medicaid state plan, and any approved waivers, in order to receive federal funding.

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: February 7, 2019

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



AMENDATORY SECTION (Amending WSR 16-14-058, filed 6/30/16, effective 8/1/16)

WAC 388-101D-0025 Service provider responsibilities. (1) Service providers must meet the requirements of:

- (a) This chapter;
 - (b) Each contract and statement of work entered into with the department;
 - (c) Each client's individual support plan when the individual support plan identifies the service provider as responsible; and
 - (d) Each client's individual instruction and support plan.
- (2) The service provider must:
- (a) Have a designated administrator and notify the department when there is a change in administrator;
 - (b) Ensure that clients have immediate access to staff, or the means to contact staff, at all times;
 - (c) Provide adequate staff (~~((within contracted hours to administer the program and))~~) to meet the needs of clients as identified in their person-centered service plans;
 - (d) Not routinely involve clients in the unpaid instruction and support of other clients;
 - (e) Not involve clients receiving crisis diversion services in the instruction and support of other clients; and
 - (f) Retain all records and other material related to the residential services contract for six years after expiration of the contract.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-101D-0120 Approval of staff-coverage schedules.