



PROPOSED RULE MAKING

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

Do NOT use for expedited rule making

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FILED

DATE: March 29, 2019

TIME: 8:43 AM

WSR 19-08-043

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 18-18-102 ; 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 388-825-091 "Am I eligible for residential habilitation center (RHC) services?" and WAC 388-837-9010 "Must a client who is admitted by a residential habilitation center's ICF/IID be in need of and receiving active treatment services?".

Hearing location(s):

| Date: | Time: | Location: (be specific) | Comment: |
|-------------|------------|--|--|
| May 7, 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 May 8, 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. on May 7, 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) April 23, 2019

Purpose of the proposal and its anticipated effects, including any changes in existing rules: These rules clarify eligibility criteria for residential habilitation centers (RHCs) by distinguishing between nursing facility level of care and ICF/IID level of care.

Reasons supporting proposal: These rules are necessary to comply with federal Medicaid law and to receive federal funding. Under 42 C.F.R. 483.440, a client residing in an ICF/IID "must receive a continuous active treatment program".

Statutory authority for adoption: RCW 71A.12.030

Statute being implemented: RCW 71A.12.120, 42 C.F.R. 483.440

Is rule necessary because of a:

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

If yes, CITATION: 42 C.F.R. 483.440

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: | Mick Pettersen | P.O. Box 45310, Olympia, WA 98504-5310 | 360-407-1559 |
| Enforcement: | Mick Pettersen | P.O. Box 45310, Olympia, WA 98504-5310 | 360-407-1559 |

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: March 28, 2019

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



WAC 388-825-091 Am I eligible for residential habilitation center (RHC) services? (1) If you are twenty-one years of age or over, you are eligible to receive residential habilitation center (RHC) services if:

- (a) You have been determined to meet DDA eligibility criteria;
- (b) You choose to receive services in the RHC;
- (c) ~~((You need the level of care provided at the RHC; and~~
- ~~(d-))~~ DDA has determined that you can be supported safely in an RHC environment and will not pose a danger to other residents of the RHC; ~~((~~or~~))~~ and

(d) You need the level of care provided at the RHC, which is either:

(i) Nursing facility level of care under WAC 388-106-0355 for a client admitted to, or seeking admission to, a state-operated nursing facility; or

(ii) Intermediate care facility for individuals with intellectual disabilities (ICF/IID) level of care under WAC 388-828-1020 for a client admitted to, or seeking admission to, a state-operated ICF/IID.

(2) If you are sixteen through twenty years of age, and meet (1)(a) through (d) above you may not be admitted to receive services at a residential habilitation center unless there are no service options available in the community to appropriately meet your needs. Such admission is limited to the provision of short-term respite or crisis stabilization services.

(3) If you are under age sixteen you are not eligible to receive services at a residential habilitation center.

(4) Admission to a nursing facility at a RHC also requires completion of preadmission screening and resident review (PASRR) requirements as described in chapter 388-97 WAC.

NEW SECTION

WAC 388-837-9010 Must a client who is admitted by a residential habilitation center's ICF/IID be in need of and receiving active treatment services? (1) An individual who is admitted by a residential habilitation center's intermediate care facility for individuals with intellectual disabilities must be in need of and receiving active treatment services.

(2) Active treatment services means a continuous active treatment program, which includes aggressive, consistent implementation of a program of specialized and generic training, treatment, health services, and related services described in 42 C.F.R. 483.400 through 483.480, that is directed toward:

(a) The acquisition of the behaviors necessary for the client to function with as much self-determination and independence as possible; and

(b) The prevention or deceleration of regression or loss of current optimal functional status.