



PROPOSED RULE MAKING

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

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FILED

DATE: May 22, 2019

TIME: 11:55 AM

WSR 19-11-137

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** 19-05-084 ; 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 388-106-0300 "What services may I receive under community options program entry systems (COPES) when I live in my own home?" and WAC 388-106-0305 "What services may I receive under COPES if I live in a residential facility?".

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
June 25, 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 June 26, 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. June 25, 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) June 11, 2019

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The Centers for Medicare and Medicaid Services (CMS) approved the addition of two additional services in COPES, a 1915 (c) waiver, in August of 2018. The department is planning to add these services to the COPES WAC: 1) Community Choice Guiding (CCG), to assist an individual establish or stabilize a community living arrangement; and 2) Community Supports: Goods and Services which will provide necessary goods and services for individuals who choose to move from a residential living arrangement to an in-home setting. Also, the home health aide benefit was removed from the COPES waiver and needs to be removed from WAC.

Currently, state funded WA Roads provides CCG and stabilizing goods and services to individuals already residing in the community who are at risk of losing their current setting of care. By adding these services to the COPES waiver, the state can receive federal match while providing stabilizing services to individuals in the community to prevent unnecessary institutionalizations.

Reasons supporting proposal: See purpose statement above.

Statutory authority for adoption: RCW 74.08.090

Statute being implemented: RCW 74.08.090, RCW 74.09.520

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:	Debbie Blackner	P.O. Box 45600, Olympia, WA 98504-5600	360-725-3231
Implementation:	Debbie Blackner	P.O. Box 45600, Olympia, WA 98504-5600	360-725-3231
Enforcement:	Debbie Blackner	P.O. Box 45600, Olympia, WA 98504-5600	360-725-3231

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)(vii), rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents.

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:

- | | |
|---|--|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> 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 34.05.328(5)(b)(vii).

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:

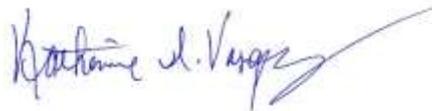
Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Date: May 20, 2019

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



WAC 388-106-0300 What services may I receive under community options program entry system (COPEs) when I live in my own home? When you live in your own home, you may be eligible to receive (~~only~~) the following services under COPEs:

(1) Adult day care if you meet the eligibility requirements under WAC 388-106-0805(~~-~~);

(2) Environmental modifications, if the minor physical adaptations to your home:

(a) Are necessary to ensure your health, welfare, and safety;

(b) Enable you to function with greater independence in the home;

(c) Directly benefit you medically or remedially;

(d) Meet applicable state or local codes; and

(e) Are not adaptations or improvements, which are of general utility or add to the total square footage(~~-~~);

(3) Home delivered meals(~~, providing nutritional~~) which provide one nutritionally balanced (~~(meals, limited to one)~~) meal per day(~~-~~) if:

(a) You are homebound and live in your own home;

(b) You are unable to prepare the meal;

(c) You don't have a caregiver (paid or unpaid) available to prepare this meal; and

(d) Receiving this meal is more cost-effective than having a paid caregiver(~~-~~);

(4) (~~Home health aide service tasks~~) Community choice guiding are services to help you establish or stabilize your living arrangement in your own home(~~-~~) if (~~(the service tasks)~~):

(a) (~~Include assistance with ambulation, exercise, self-administered medications and hands-on personal care~~) You have frequent institutional contacts;

(b) (~~Are beyond the amount, duration or scope of medicaid reimbursed home health services as described in WAC 182-551-2120 and are in addition to those available services~~) You have frequent turn-over of caregivers; or

(c) You are (~~(health-related. Note: Incidental services such as meal preparation may be performed in conjunction with a health-related task as long as it is not the sole purpose of the aide's visit)~~) in imminent jeopardy of eviction or loss of your current community setting; (~~and~~

~~(d) Do not replace medicare home health services.~~)

(5) Skilled nursing, if the service is:

(a) Provided by a registered nurse or licensed practical nurse under the supervision of a registered nurse; and

(b) Beyond the amount, duration, or scope of medicaid-reimbursed home health services as provided under WAC 182-551-2100(~~-~~);

(6) Specialized (~~(durable and nondurable)~~) medical equipment and supplies under WAC 182-543-1000, if the items (~~(are)~~):

(a) (~~(Medically necessary under WAC 182-500-0700;~~

~~(b)-~~) Are necessary for:

(i) Life support;

(ii) To increase your ability to perform activities of daily living; or

(iii) To perceive, control, or communicate with the environment in which you live; or

~~((e))~~ (b) Are directly ~~((medically or))~~ remedially beneficial to you; and

~~((d) In addition to and))~~ (c) Do not replace any medical equipment ~~((and/or))~~ or supplies otherwise provided under either medicaid ~~((and/or))~~ or medicare~~((-))~~;

(7) Training needs identified in the CARE ~~((or in a professional evaluation,))~~ assessment which meet a therapeutic goal such as:

(a) Adjusting to a serious impairment;

(b) Managing personal care needs; or

(c) Developing necessary skills to deal with care providers~~((-))~~;

(8) Transportation services, when the service:

(a) Provides access to community services and resources to meet ~~((your))~~ a therapeutic goal;

(b) Is not diverting in nature; and

(c) ~~((Is in addition to and))~~ Does not replace the medicaid-brokered transportation or transportation services available in the community~~((-))~~;

(9) Nursing services from a registered nurse based on your individual need as determined by your CARE assessment, when you are not already receiving this type of service from another resource ~~((A registered nurse may visit you and perform))~~, which may include any of the following activities ~~((The frequency and scope of the nursing services is based on your individual need as determined by your CARE assessment and any additional collateral contact information obtained by your case manager.))~~;

(a) Nursing assessment/reassessment;

(b) Instruction to you and your providers;

(c) Care coordination and referral to other health care providers;

(d) Skilled treatment, ~~((only))~~ in the event of an emergency ~~((A skilled treatment is care that would require))~~, which requires authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement ~~((In nonemergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, a home health agency or other appropriate resource.))~~;

(e) File review; ~~((and/or))~~ or

(f) Evaluation of health-related care needs affecting service plan and delivery~~((-))~~;

(10) Adult day health services as described in WAC 388-71-0706 when you are:

(a) Assessed as having an unmet need for skilled nursing under WAC 388-71-0712 or skilled rehabilitative therapy under WAC 388-71-0714 and:

(i) There is a reasonable expectation that these services will improve, restore, or maintain your health status, or in the case of a progressive disabling condition, will either restore or slow the decline of your health and functional status or ease related pain or suffering;

(ii) You are at risk for deteriorating health, deteriorating functional ability, or institutionalization; and

(iii) You have a chronic or acute health condition that you are not able to safely manage due to a cognitive, physical, or other functional impairment~~((-))~~;

(b) Assessed as having needs for personal care or other core services, whether or not those needs are otherwise met~~((-))~~; however

- (c) You are not eligible for adult day health if you:
 - (i) Can independently perform or obtain the services provided at an adult day health center; or
 - (ii) Have referred care needs that:
 - (A) Exceed the scope of authorized services that the adult day health center is able to provide;
 - (B) Do not need to be provided or supervised by a licensed nurse or therapist;
 - (C) Can be met in a less structured care setting;
 - (D) In the case of skilled care needs, are being met by paid or unpaid caregivers;
 - (E) Live in a nursing home or other institutional facility; or
 - (F) Are not capable of participating safely in a group care setting(~~(-)~~);
- (11) Wellness education, as identified in your person centered service plan to address an assessed need or condition; and
- (12) Community support: Goods and services are nonrecurring set-up items and services to assist with expenses if you choose to move from a residential setting to an in-home setting and may include:
 - (a) Security deposits that are required to lease an apartment or home;
 - (b) Activities to assess need, arrange for, and obtain needed resources, including essential household furnishings;
 - (c) Set-up fees or deposits for utility or services access, including telephone, electricity, heating, water, and garbage;
 - (d) Services necessary for your health and safety such as pest eradication, and one-time cleaning prior to occupancy;
 - (e) Moving expenses; and
 - (f) Necessary home accessibility adaptations.

AMENDATORY SECTION (Amending WSR 15-11-049, filed 5/15/15, effective 7/1/15)

WAC 388-106-0305 What services may I receive under COPES if I live in a residential facility? If you live in one of the following residential facilities: A licensed assisted living facility contracted with the department to provide assisted living, enhanced adult residential care, enhanced adult residential care-specialized dementia care, or an adult family home, you may be eligible to receive only the following services under COPES:

- (1) Specialized (~~(durable and nondurable)~~) medical equipment and supplies under WAC 182-543-1000, when the items (~~(are)~~):
 - (a) (~~(Medically necessary under WAC 182-500-0005; and~~ ~~(b-))~~) Are necessary for: (~~(For)~~)
 - (i) Life support;
 - (ii) To increase your ability to perform activities of daily living; or
 - (iii) To perceive, control, or communicate with the environment in which you live; (~~(and)~~) or
 - (~~(e))~~) (b) Are directly (~~(medically or)~~) remedially beneficial to you; (~~(and)~~)
 - (~~(d) In addition to and))~~) (c) Do not replace any medical equipment (~~(and/or)~~) or supplies otherwise provided under either medicaid (~~(and/or)~~) or medicare; and

~~((e) In addition to and)) (d) Do not replace the services required by the department's contract with a residential facility~~((-))~~;~~

(2) Training needs identified in the CARE ~~((or in a professional evaluation,))~~ assessment that are in addition to and do not replace the services required by the department's contract with the residential facility and that meet a therapeutic goal such as:

- (a) Adjusting to a serious impairment;
 - (b) Managing personal care needs; or
 - (c) Developing necessary skills to deal with care providers~~((-))~~;
- (3) Transportation services, when the service:

(a) Provides access to community services and resources to meet a therapeutic goal;

(b) Is not diverting in nature;

(c) ~~((Is in addition to and))~~ Does not replace the medicaid-brokered transportation or transportation services available in the community; and

(d) Does not replace the services required by DSHS contract in residential facilities~~((-))~~;

(4) Skilled nursing, when the service is:

(a) Provided by a registered nurse or licensed practical nurse under the supervision of a registered nurse;

(b) Beyond the amount, duration or scope of medicaid-reimbursed home health services as provided under WAC 182-551-2100; and

(c) In addition to and does not replace the services required by the department's contract with the residential facility (e.g. intermittent nursing services as described in WAC 388-78A-2310)~~((-))~~;

(5) Nursing services from a registered nurse based on your individual need as determined by your CARE assessment, when you are not already receiving this type of service from another resource~~((. A registered nurse may visit you and perform any of the following activities. The frequency and scope of the nursing services is based on your individual need as determined by your CARE assessment and any additional collateral contact information obtained by your case manager.))~~, which may include any of the following activities:

- (a) Nursing assessment/reassessment;
- (b) Instruction to you and your providers;
- (c) Care coordination and referral to other health care providers;

(d) Skilled treatment~~((, only))~~ in the event of an emergency~~((. A skilled treatment is care that would require))~~, which requires authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement~~((. In nonemergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, a home health agency or other appropriate resource.))~~;

(e) File review; ~~((and/or))~~ or

(f) Evaluation of health-related care needs affecting service plan and delivery.

(6) Adult day health services as described in WAC 388-71-0706 when you are:

(a) Assessed as having an unmet need for skilled nursing under WAC 388-71-0712 or skilled rehabilitative therapy under WAC 388-71-0714, and:

(i) There is a reasonable expectation that these services will improve, restore or maintain your health status, or in the case of a progressive disabling condition, will either restore or slow the de-

cline of your health and functional status or ease related pain or suffering;

(ii) You are at risk for deteriorating health, deteriorating functional ability, or institutionalization; and

(iii) You have a chronic or acute health condition that you are not able to safely manage due to a cognitive, physical, or other functional impairment((-));

(b) Assessed as having needs for personal care or other core services, whether or not those needs are otherwise met((-)); however

(c) You are not eligible for adult day health if you:

(i) Can independently perform or obtain the services provided at an adult day health center;

(ii) Have referred care needs that:

(A) Exceed the scope of authorized services that the adult day health center is able to provide;

(B) Do not need to be provided or supervised by a licensed nurse or therapist;

(C) Can be met in a less structured care setting;

(D) In the case of skilled care needs, are being met by paid or unpaid caregivers;

(E) Live in a nursing home or other institutional facility; or

(F) Are not capable of participating safely in a group care setting((-));

(7) Wellness education, as identified in your person centered service plan to address an assessed need or condition;

(8) Community choice guiding are services to help you establish or stabilize your living arrangement in your own home or a residential setting if:

(a) You have frequent institutional contacts;

(b) You have frequent turn-over of caregivers; or

(c) You are in imminent jeopardy of eviction or loss of your current community setting; and

(9) Community support: Goods and services are nonrecurring set-up items and services to assist with expenses if you choose to move from a residential setting to an in-home setting and may include:

(a) Security deposits that are required to lease an apartment or home;

(b) Activities to assess need, arrange for, and obtain needed resources, including essential household furnishings;

(c) Set-up fees or deposits for utility or services access, including telephone, electricity, heating, water, and garbage;

(d) Services necessary for your health and safety such as pest eradication, and one-time cleaning prior to occupancy;

(e) Moving expenses; and

(f) Necessary home accessibility adaptations.