



# 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: March 25, 2020

TIME: 8:16 AM

WSR 20-08-042

**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** 20-03-124 ; 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 388-106-0715, How do I end my enrollment in the PACE program?.

### Hearing location(s):

| Date:       | Time:      | Location: (be specific)                                                        | Comment:                                                                                                                                                                                                                                                    |
|-------------|------------|--------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| May 5, 2020 | 10:00 a.m. | Office Building 2<br>DSHS Headquarters<br>1115 Washington<br>Olympia, WA 98504 | Public parking at 11 <sup>th</sup> and Jefferson. A map is available at:<br><a href="https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2">https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2</a> |

**Date of intended adoption:** Not earlier than May 6, 2020 (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](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov)

Fax: 360-664-6185

Other:

By (date) 5:00 p.m. May 5, 2020

### 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](mailto:Kildaja@dshs.wa.gov)

Other:

By (date) April 21, 2020

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The department is proposing to amend WAC 388-106-0715 to provide PACE clients, PACE organizations, and other stakeholders information about how clients can end their enrollment in the PACE program. This rule making will give guidance how to disenroll and the specific timelines. The amendment updates the WAC language to align with recent Centers for Medicare and Medicaid (CMS) changes to CFR 460.162 and CFR 460.164.

**Reasons supporting proposal:** See purpose statement above.

**Statutory authority for adoption:** RCW 74.08.090, RCW 74.09.520, RCW 74.39A.010, RCW 74.39A.020

**Statute being implemented:** RCW 74.08.090, RCW 74.09.520

**Is rule necessary because of a:**

|                         |                              |                                        |
|-------------------------|------------------------------|----------------------------------------|
| Federal Law?            | <input type="checkbox"/> Yes | <input checked="" 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:

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:**

**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:       | Kathryn Pittelkau | P.O. Box 45600, Olympia, WA 98504-5600 | 360-725-2366 |
| Implementation: | Kathryn Pittelkau | P.O. Box 45600, Olympia, WA 98504-5600 | 360-725-2366 |
| Enforcement:    | Kathryn Pittelkau | P.O. Box 45600, Olympia, WA 98504-5600 | 360-725-2366 |

**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: This amendment is exempt as allowed under RCW 34.05.328(5)(b)(vii) which states in part, "[t]his section does not apply to...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:

RCW 34.05.310 (4)(b)  
(Internal government operations)

RCW 34.05.310 (4)(e)  
(Dictated by statute)

RCW 34.05.310 (4)(c)  
(Incorporation by reference)

RCW 34.05.310 (4)(f)  
(Set or adjust fees)

RCW 34.05.310 (4)(d)  
(Correct or clarify language)

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 .

Explanation of exemptions, if necessary: The proposed rule does not have an economic impact on small businesses. It only impacts DSHS clients.

**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 19, 2020

**Name:** Katherine I. Vasquez

**Title:** DSHS Rules Coordinator

**Signature:**



**WAC 388-106-0715 How do I end my enrollment in the PACE program?**

(1) You may choose to voluntarily end your enrollment in the PACE program without cause at any time. To do so, you must give the PACE provider written notice. ~~((If you give notice:~~

~~(a) Before the fifteenth of the month, the department will end your enrollment effective at the end of the month; or~~

~~(b) After the fifteenth, the department will end your enrollment effective until the end of the following month))~~ A PACE participant's voluntary disenrollment is effective on the first day of the month following the date the PACE organization receives the participant's notice of voluntary disenrollment.

(2) Your enrollment may also end involuntarily if you:

(a) Move out of the designated service area or are out of the service area for more than thirty consecutive days, unless the PACE provider agrees to a longer absence due to extenuating circumstances;

(b) Engage in disruptive or threatening behavior such that the behavior jeopardizes your health or safety, or the safety of others;

(c) Fail to comply with your plan of care or the terms of the PACE enrollment agreement;

(d) Fail to pay or make arrangements to pay your part of the costs after the thirty-day grace period;

(e) Become financially ineligible for medicaid services, unless you choose to pay privately;

(f) Are enrolled with a provider that loses its license ~~((and/ or))~~ or contract, or both; or

(g) No longer meet the nursing facility level of care requirement as defined in WAC 388-106-0205.

(3) For any of the above reasons, the PACE provider must give you written notice, including your appeal rights, explaining that they are terminating benefits. ~~((If the provider gives you notice:~~

~~(a) Before the fifteenth of the month, then the department will end your enrollment at the end of the month; or~~

~~(b) After the fifteenth, then the department will end your enrollment at the end of the following month))~~ A PACE participant's involuntary disenrollment is effective on the first day of the next month that begins thirty days after the day the PACE organization sends notice of the disenrollment to the participant.

(4) Before the PACE provider can involuntarily end your enrollment in the PACE program, the department must review and approve it.