



PROPOSED RULE MAKING

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

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STATE OF WASHINGTON
FILED

DATE: October 29, 2020

TIME: 1:22 PM

WSR 20-22-054

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** 20-12-096 ; 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) WAC 388-823-1095, What are my rights as a DDA client?

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
December 8, 2020	10:00 a.m.	Office Building 2 DSHS Headquarters 1115 Washington Street SE Olympia, WA 98504 Or by Skype	Public parking at 11th and Jefferson. A map is available at: https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2 Due to the COVID 19 pandemic, hearing may be held via Skype, see DSHS website for most up to date information.

Date of intended adoption: Not earlier than December 9, 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

Fax: 360-664-6185

Other:

By (date) 5:00 p.m. December 8, 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

Other:

By (date) November 24, 2020

Purpose of the proposal and its anticipated effects, including any changes in existing rules: Proposed amendments to WAC 388-823-1095 implement Second Substitute House Bill 1651 (2019), which is related to the rights of DDA clients.

Reasons supporting proposal: See purpose statement above.																			
Statutory authority for adoption: RCW 71A.12.030																			
Statute being implemented: Chapter 71A.26 RCW																			
Is rule necessary because of a: <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div> Federal Law? Federal Court Decision? State Court Decision? </div> <div> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No </div> </div>																			
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			<input type="checkbox"/> Private <input type="checkbox"/> Public <input checked="" type="checkbox"/> Governmental																
Name of agency personnel responsible for: <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th style="width: 10%;"></th> <th style="width: 30%;">Name</th> <th style="width: 40%;">Office Location</th> <th style="width: 20%;">Phone</th> </tr> </thead> <tbody> <tr> <td>Drafting:</td> <td>Chantelle Diaz</td> <td>P.O. Box 45310, Olympia, WA 98504-5310</td> <td>360-407-1589</td> </tr> <tr> <td>Implementation:</td> <td>Teresa Boden</td> <td>P.O. Box 45310, Olympia, WA 98504-5310</td> <td>360-407-1502</td> </tr> <tr> <td>Enforcement:</td> <td>Teresa Boden</td> <td>P.O. Box 45310, Olympia, WA 98504-5310</td> <td>360-407-1502</td> </tr> </tbody> </table>					Name	Office Location	Phone	Drafting:	Chantelle Diaz	P.O. Box 45310, Olympia, WA 98504-5310	360-407-1589	Implementation:	Teresa Boden	P.O. Box 45310, Olympia, WA 98504-5310	360-407-1502	Enforcement:	Teresa Boden	P.O. Box 45310, Olympia, WA 98504-5310	360-407-1502
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Is a school district fiscal impact statement required under RCW 28A.305.135? If yes, insert statement here:			<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No																
<p>The public may obtain a copy of the school district fiscal impact statement by contacting:</p> <p>Name:</p> <p>Address:</p> <p>Phone:</p> <p>Fax:</p> <p>TTY:</p> <p>Email:</p> <p>Other:</p>																			
Is a cost-benefit analysis required under RCW 34.05.328?																			
<input type="checkbox"/> Yes: A preliminary cost-benefit analysis may be obtained by contacting: <div style="margin-left: 20px;"> Name: Address: Phone: Fax: TTY: Email: Other: </div>																			
<input checked="" type="checkbox"/> No: Please explain: DDA is exempt from preparing a CBA under RCW 34.05.328(5)(b)(iii) because the content is copied from statute without material change.																			

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 34.05.310(4)(e) because the content is explicitly and specifically dictated by statute.

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: October 29, 2020

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



WAC 388-823-1095 What are ((my)) a person's rights as a DDA client or eligible person? ((As a DDA client, you have the following rights:))

(1) The ((right to be free from any kind of abuse or punishment (verbal, mental, physical, and/or sexual); or being sent to a place by yourself, if you do not choose to be alone;

(2) The right to appeal any decision by DDA that denies, reduces, or terminates your eligibility, your services or your choice of provider;

(3) The right to receive only those services you agree to;

(4) The right to meet with and talk privately with your friends and family;

(5) The right to personal privacy and confidentiality of your personal and other records;

(6) The right to choose activities, schedules, and health care that meet your needs;

(7) The right to be free from discrimination because of your race, color, creed, national origin, religion, sex, age, disability, marital status, gender identity, or sexual orientation;

(8) The right to set your own rules in your home and to know what rules your providers have when you are living in their house or working in their facility;

(9) The right to request information regarding services that may be available from DDA;

(10) The right to know what your doctor wants you to do or take and to help plan how that will happen;

(11) The right to be free from unnecessary medication, restraints and restrictions;

(12) The right to vote and help people get elected to office;

(13) The right to complain and not to have someone "get even";

(14) The right to have your provider listen to your concerns including those about the behavior of other people where you live;

(15) The right to receive help from an advocate;

(16) The right to manage your money or choose other persons to assist you;

(17) The right to be part of the community;

(18) The right to make choices about your life;

(19) The right to wear your clothes and hair the way you want;

(20) The right to work and be paid for the work you do; and

(21) The right to decide whether or not to participate in research after the research has been explained to you, and after you or your guardian gives written consent for you to participate in the research)) following definitions apply to this section:

(a) "Administration" means the division of the department responsible for providing services to eligible persons, but does not include the division of the department responsible for the licensing and certification of services and facilities for eligible persons.

(b) "Assessment" has the same meaning as defined in RCW 71A.10.020.

(c) "Client" means a person who has a developmental disability as defined in RCW 71A.10.020 and has been determined to be eligible to receive services under chapter 71A.16 RCW.

(d) "Department" means the department of social and health services.

(e) "Developmental disabilities ombuds" means the office created under chapter 43.382 RCW.

(f) "Eligible person" has the same meaning as defined in RCW 71A.10.020.

(g) "Legal representative" means a parent of a client under age eighteen, a court-appointed guardian or limited guardian under Title 11 RCW if the subject matter is within the scope of the guardianship order, or any other person authorized by law to act for the client.

(h) "Necessary supplemental accommodation representative" means an individual who receives copies of administration correspondence to help a client or eligible person understand the documents and exercise the client or eligible person's rights. The necessary supplemental accommodation representative is identified by the client or eligible person when the client or eligible person does not have a legal guardian and is requesting or receiving services from the administration.

(i) "Provider" means an individual, a facility, or an agency that is one or more of the following: Licensed, certified, contracted by the department, or state operated to provide services to administration clients.

(j) "Restraint" includes:

(i) Physical restraint, which is a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the client's body that restricts freedom of movement or access to the client's body, is used for discipline or convenience, and is not required to treat the client's medical symptoms; and

(ii) Chemical restraint, which is a psychopharmacologic drug that is used for discipline or convenience and is not required to treat the client's medical symptoms.

(k) "Restriction" means a limitation on the client's use or enjoyment of property, social activities, or engagement in the community.

(1) "Service plan" means any plan required by the department to deliver the services authorized by the administration to the client

(2) The rights set forth in this section are the minimal rights guaranteed to all clients of the administration, and are not intended to diminish rights set forth in other state or federal laws that may contain additional rights.

(3) The administration must notify the individual and the individual's legal representative or necessary supplemental accommodation representative of the rights set forth in this section upon determining the individual is an eligible person. The notification the administration provides must be in written form. The administration must document the date that the notification required in this subsection was provided.

(4) The administration must notify a client and a client's legal representative or necessary supplemental accommodation representative of the rights set forth in this section upon conducting a client's assessment. The notification the administration provides must be in written form. The administration must document the date it provided the notification required in this subsection.

(5) The client has the right to exercise autonomy and choice free from provider interference. This includes the client's right to:

(a) Be free from sexual, physical, and mental abuse, corporal punishment, and involuntary seclusion;

(b) Be free from discrimination based on race, color, creed, national origin, religion, sex, age, disability, marital and family status, gender identity, or sexual orientation;

(c) Make choices regarding the type of food available within the client's resources and service plan;

(d) Have visitors at the client's home and associate with persons of the client's choosing and subject to limitations as negotiated with the client's housemates;

(e) Control the client's schedule and choose activities, schedules, and health care that meet the client's needs;

(f) Information about the treatment ordered by the client's health care provider and help plan how the treatment will be implemented;

(g) Be free from unnecessary medication, restraints, and restrictions;

(h) Vote, participate in the democratic process, and help people with getting elected to office;

(i) Manage the client's money or choose a person to assist;

(j) Be part of the community;

(k) Make choices about the client's life;

(l) Choose the clothes and hairstyle the client wears;

(m) Furnish and decorate the client's bedroom to the client's preferences or furnish and decorate the client's home to the client's preferences subject to agreement with the client's housemates;

(n) Seek paid employment;

(o) Receive the services that the client agrees to receive;

(p) Decide whether or not to participate in research after the research has been explained to the client, and after the client or the client's legal representative gives written consent for the client to participate in the research; and

(q) Be free from financial exploitation.

(6) The client has the right to participate in the administration's service planning. This includes the client's right to:

(a) Be present and provide input on the client's service plans written by the administration and providers;

(b) Have meaningful opportunities to lead planning processes;

(c) Have the client's visions for a meaningful life and the client's goals for education, employment, housing, relationships, and recreation included in the planning process;

(d) Choose an advocate to attend the planning processes with the client; and

(e) Have access to current and accurate information about recreation, education, and employment opportunities available in the client's community.

(7) The client has the right to access information about services and health care. This includes the client's right to:

(a) View a copy of all of the client's service plans;

(b) Possess full copies of the client's current service plans;

(c) Review copies of the policies and procedures for any service the client receives, at any time. This includes policies and procedures about how the client may file a complaint to providers and the department;

(d) Examine the results of the department's most recent survey or inspection conducted by state surveyors or inspectors, statements of deficiency, and plans of correction in effect with respect to the client's provider and the client's residence. The client's service pro-

vider must assist the client with locating and accessing this information upon the client's request; and

(e) Receive written notification of enforcement actions taken by the department against the client's provider. The administration's case manager or designee must provide notification to the client and the client's legal representative or necessary supplemental accommodation representative within twenty days, excluding weekends and holidays, of the date of enforcement. For purposes of this subsection, a "provider" means an entity that provides residential services received by a client that is operated by or contracted through the administration. An enforcement action that requires this notification includes:

- (i) Conditions placed on the provider certification or license;
- (ii) Suspension or limited suspension of referrals or admissions;
- (iii) Imposition of provisional certification or decertification;

or

(iv) Denial, suspension, or revocation of a license or certification.

(8) The client has the right to file complaints and grievances, and to request appeals. This includes the client's right to:

(a) Appeal any decision by the department that denies, reduces, or terminates the client's eligibility, services, or choice of provider as defined in federal medicaid law and state public assistance laws;

(b) Submit grievances to the client's provider about the client's services or other concerns. This includes, but is not limited to, concerns about the behavior of other people where the client lives. The provider must maintain a written policy on the grievance process that includes timelines and possible remedies. If a grievance is unresolved, the provider must provide the client with information on how to submit the grievance to the department;

(c) File complaints and grievances, and request appeals without penalty or retaliation by the department or providers; and

(d) Receive information about how to obtain accommodation for disability in the appeal process.

(9) The client has the right to privacy and confidentiality. This includes the client's right to:

(a) Personal privacy and confidentiality of the client's personal records;

(b) Communicate privately, including the right to send and receive mail and email, and the right to use a telephone in an area where calls can be made without being overheard; and

(c) Meet with and talk privately with the client's friends and family.

(10) The client has rights during discharge, transfer, and termination of services as set forth in this subsection.

(a) Clients who are residents of a long-term care facility that is licensed under chapter 18.20, 72.36, or 70.128 RCW have the rights set forth in RCW 70.129.110.

(b) Clients who receive certified community residential services have the right to:

(i) Remain with the client's provider. Services must not be terminated unless the provider determines and documents that:

(A) The provider cannot meet the needs of the client;

(B) The client's safety or the safety of other individuals in the facility or residence is endangered;

(C) The client's health or the health of other individuals in the facility or residence would otherwise be endangered; or

(D) The provider ceases to operate.

(ii) Receive written notice from the provider of any potential termination of services at least thirty days before such termination, except when there is a health and safety emergency that requires termination of service, in which case notice must be provided at least seventy-two hours before the date of termination. The notice must be provided to the client and the client's legal representative or necessary supplemental accommodation representative. The notice must include:

(A) The reason for termination of services; and

(B) The effective date of termination of services.

(iii) Receive a transition plan at least two days before the effective date of the termination of services, or if the termination was based on a health and safety emergency receive a transition plan within two days of the administration's receipt of notice for emergency termination. The administration must provide the client and the client's legal representative or necessary supplemental accommodation representative with the plan. The plan must include:

(A) The location where the client will be transferred;

(B) The mode of transportation to the new location; and

(C) The name, address, and telephone number of the developmental disabilities ombuds.

(c) A provider that provides services to clients in a residence owned by the provider must exhaust the procedures for termination of services prior to the commencement of any unlawful detainer action under RCW 59.12.030.

(11) The client has the right to access advocates. The client has the right to receive information from agencies acting as client advocates, and be afforded the opportunity to contact these agencies. The provider must not interfere with the client's access to any of the following:

(a) Any representative of the state;

(b) The resident's individual physician;

(c) The developmental disabilities ombuds; or

(d) Any representative of the organization designated to implement the protection and advocacy program pursuant to RCW 71A.10.080.

(12) If a client is subject to a guardianship order pursuant to chapter 11.88 RCW, the rights of the client under this section are exercised by the client's guardian if the subject matter is within the scope of the guardianship order.