



PROPOSED RULE MAKING

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

Do NOT use for expedited rule making

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: February 16, 2021

TIME: 4:23 PM

WSR 21-05-066

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 19-14-059 ; 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 388-101D-0355, Psychoactive medication treatment plan; WAC 388-101D-0360, Psychoactive medication monitoring; WAC 388-101D-0405, Functional assessment; and WAC 388-101D-0410, Positive behavior support plan.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
March 23, 2021	10:00 a.m.	Office Building 2 DSHS Headquarters 1115 Washington Street SE Olympia, WA 98501 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 March 24, 2021 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: DSHS Rules Coordinator

Address: P.O. Box 45850
Olympia, WA 98504

Email: DSHSRPAURulesCoordinator@dshs.wa.gov

Fax: 360-664-6185

Other:

By (date) 5:00 p.m. March 23, 2021

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 9, 2021

- **Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The Developmental Disabilities Administration (DDA) is amending these rules primarily to update policy on when functional assessments and positive behavior support plans are required. Other proposed major changes or new requirements to the chapter: Repeal WAC 388-101D-0360 and move requirements for reporting to the prescriber to WAC 388-101D-0355; Remove the requirement for a psychoactive medication treatment plan; Replace "psychoactive" with "psychotropic"; Replace "mental health" with "behavioral health"; Require a provider to record various information related to psychotropic medications in

the client's record; Require the provider to send a copy of the drug information sheet to the legal representative upon request; Establish new criteria for when a functional assessment is required; Clarify requirements for functional assessment content; Add criteria for when it is permissible to use a community protection client's risk assessment in place of a functional assessment; Add functional assessment timeline requirements; Establish new criteria for when a positive behavior support plan is required; Add positive behavior support plan timeline requirements for clients who are either entering residential services or are already receiving residential services and a new target behavior is identified; Update requirements for positive behavior support plan content; and Clarify data collection requirements and add timelines for reviewing data.

Reasons supporting proposal: These amendments are necessary to: Incorporate policy requirements into rule; Limit conditions under which a functional assessment and positive behavior support plan are required; Ensure providers are not required to perform tasks related to psychotropic medications that are outside their scope of practice (i.e., obtain informed consent and advise clients about medications); Use more respectful language that reflects current, professional terminology; and Ensure provider staff receive information they need to support new clients who have a positive behavior support plan.

Statutory authority for adoption: RCW 71A.12.030

Statute being implemented: RCW 71A.12.040, RCW 71A.12.110

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:	Chantelle Diaz	P.O. Box 45310, Olympia, WA 98504-5310	360-407-1589
Implementation:	Phil Diaz	P.O. Box 45310, Olympia, WA 98504-5310	360-407-1574
Enforcement:	Phil Diaz	P.O. Box 45310, Olympia, WA 98504-5310	360-407-1574

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:
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 impose disproportionate costs on small businesses.

Explanation of exemptions, if necessary: DDA has analyzed the proposed rule amendments and concludes they will 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: February 16, 2021

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



WAC 388-101D-0355 ((Psychoactive)) What must a client record contain if the client is prescribed a psychotropic medication ((treatment plan.))?

~~(1) If the ((assessing treatment professional recommends psychoactive medications, the prescribing professional or service provider must document this in)) client is prescribed psychotropic medication, the client's ((psychoactive medication treatment plan. The service provider)) record must ((ensure the plan includes the following)) contain:~~

~~(a) ((A description of the behaviors, symptoms or conditions for which the medication is prescribed and a mental health diagnosis, if available)) The date the client met with the prescriber;~~

~~(b) ((The name, dosage, and frequency of the medication and subsequent changes in dosage must be documented in the person's medical record)) Whether the provider was present when the prescriber examined the client;~~

~~(c) ((The length of time considered sufficient to determine if the medication is effective)) Any medical or behavioral information the provider conveyed to the prescriber;~~

~~(d) ((The behavioral criteria to determine whether the medication is effective and what changes in behavior, mood, thought, or functioning are considered evidence that the medication is effective)) Any instructions the provider received from the prescriber; ((and))~~

~~(e) The ((anticipated schedule of visits with the prescribing professional)) drug information sheet obtained from the prescriber or dispensing pharmacy for the psychotropic medication prescribed;~~

~~(f) The date the provider sent the client's legal representative a copy of the psychotropic drug information sheet, if requested; and~~

~~(g) Any documentation required under WAC 388-101D-0340.~~

~~(2) If the ((service)) provider ((must make sure the treatment plan is updated when there is a change in psychoactive medication type, including intraclass changes)) does not attend the appointment, the provider must document in the client record whether the client attended the appointment independently or with a third party.~~

~~(3) The ((service)) provider must report to the prescriber if:~~

~~(a) ((Review the name, purpose, potential side effects and any known potential drug interactions of the psychoactive medication(s) with the client and his/her legal representative and document the review in the client record)) The medication does not appear to have the prescriber's intended effects; ((and)) or~~

~~(b) ((Have available to staff and clients an information sheet for each psychoactive medication that is being used by each client served by the provider)) Any changes in the client's behavior or health might be an adverse side effect of the medication.~~

~~((4) The service provider must assist the client in obtaining and taking the medication when:~~

~~(a) The client's legal representative if any, is unavailable; and~~

~~(b) In the prescribing professional's opinion, medication is needed and no significant risks are associated with the use of the medication.~~

~~(5) If a client takes psychoactive medications to reduce challenging behaviors or to treat symptoms of a mental illness that are interfering with the client's ability to have positive life experien-~~

~~ees and form and maintain relationships, the service provider must develop and implement a positive behavior support plan.))~~

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

WAC 388-101D-0405 When is a functional assessment((-)) required?

~~(1) The ((service)) provider must ((conduct and document)) complete a functional assessment ((before developing and implementing)) of a ((client's positive behavior support plan)) client's behavior if:~~

~~(a) The client's supports intensity scale results indicate extensive support is necessary to prevent:~~

~~(i) Self-injury;~~

~~(ii) Sexual aggression;~~

~~(iii) Suicide attempt;~~

~~(iv) Emotional outburst;~~

~~(v) Property destruction;~~

~~(vi) Assault or injury to others; or~~

~~(vii) A behavior identified by question seventeen and documented in the case manager's comments;~~

~~(b) The client is prescribed a psychotropic medication on a pro re nata (PRN or as needed) basis to change a target behavior; or~~

~~(c) The provider uses—or plans to use—restrictive procedures or physical restraints as defined in WAC 388-101-3000.~~

~~(2) ((The service provider must start the functional assessment when the client begins to engage in challenging behaviors that interfere with the client's ability to have positive life experiences and form and maintain relationships)) Target behavior means a behavior identified by the provider that needs to be modified or replaced to meet the client's health and safety needs.~~

~~(3) The ((service provider must ensure that a)) client's ((written)) functional assessment ((addresses)) must:~~

~~(a) ((A description of the client and pertinent history)) Be based on two or more of the following:~~

~~(i) Direct observation;~~

~~(ii) Interview with anyone who has personal knowledge of the client;~~

~~(iii) Questionnaire; or~~

~~(iv) Record review;~~

~~(b) ((The client's overall quality of life)) Describe:~~

~~(i) Client history and antecedents pertinent to the target behavior;~~

~~(ii) The client's current status;~~

~~(iii) The target behavior; and~~

~~(iv) The apparent function of the target behavior; and~~

~~(c) ((The behaviors that are considered challenging and/or are of concern)) Exist:~~

~~(i) In draft form before the effective date of the client being added to the provider's contract; and~~

~~(ii) In final form no later than forty-five calendar days after the effective date of the client being added to the provider's contract~~

~~((d) The factors or events which increase the likelihood of challenging behaviors;~~
~~(e) When and where the challenging behavior(s) occurs most frequently;~~
~~(f) The factors or events which increase the likelihood of appropriate behavior;~~
~~(g) An analysis and assessment of the possible functions or purpose the challenging behavior(s) serve for the client including what he or she obtains or avoids by engaging in the behavior(s); and~~
~~(h) A concluding summary of the functions or purpose that each challenging behavior serves for the client).~~
(4) A draft functional assessment must define the target behavior and its apparent function.
(5) The ((service)) provider ((must include the following sections in the format of each client's written)) may revise a functional assessment((+
~~(a) Description and pertinent history;~~
~~(b) Definition of challenging behaviors;~~
~~(c) Data analysis/assessment procedures; and~~
~~(d) Summary statement(s))~~ written by another provider. The provider must identify the adapted functional assessment as its own.
(6) If the provider identifies a new target behavior for a client, the provider must complete a functional assessment for that behavior within forty-five days.
(7) The provider may use a community protection participant's risk assessment in place of a functional assessment if it was completed in the past eighteen months and describes:
(a) The client's history pertinent to the target behavior;
(b) The client's current status;
(c) The target behavior; and
(d) The apparent function of the target behavior.
(8) A functional assessment is required for any target behavior not included in the client's community protection program risk assessment.

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

WAC 388-101D-0410 When is a positive behavior support plan((-)) required? (1) If a client requires a functional assessment under WAC 388-101D-0405, the ((service)) provider must ((develop,)) train to((,)) and implement a written individualized positive behavior support plan ((for each client when:
~~(a) The client takes psychoactive medications to reduce challenging behavior or treat a mental illness currently interfering with the client's ability to have positive life experiences and form and maintain personal relationships; or~~
~~(b) Restrictive procedures, including physical restraints, identified in the residential services contract are planned or used))~~ based on that functional assessment.
(2) The ((service provider)) client's positive behavior support plan must:
(a) ((Base each client's positive behavior support plan on the functional assessment required in WAC 388-101-3850)) Describe:

(i) The target behavior;
(ii) Actions that may be taken to prevent the target behavior;
(iii) Actions that may be taken in response to the target behavior;
(iv) Actions that may be taken if the target behavior increases in frequency, duration, intensity, or impact;
(v) The replacement behavior that matches the target behavior's function;
(vi) How to teach the replacement behavior;
(vii) How to respond to the replacement behavior; and
(viii) Benchmarks to evaluate the positive behavior support plan's effectiveness; and
~~(b) ((Complete and implement the client's positive behavior support plan within ninety days of identifying the client's symptoms and challenging behavior))~~ Exist:
(i) In draft form before the effective date of the client being added to the provider's contract; and
(ii) In final form no later than sixty calendar days after the effective date of the client being added to the provider's contract.
(3) A draft positive behavior support plan must include direction to direct-support professionals on how to respond to target behaviors.
(4) The ((service)) provider ((must develop and implement)) may revise a positive behavior support plan ((that is consistent with the client's cross system crisis plan, if any)) written by another provider. The provider must identify the adapted positive behavior support plan as its own.
~~((4))~~ (5) If the ((service)) provider ((must include the following sections in the format of each client's written)) identifies a new target behavior for a client, the provider must implement a positive behavior support plan(:
~~(a) Prevention strategies;~~
~~(b) Teaching and training supports;~~
~~(c) Strategies for responding to challenging behaviors; and~~
~~(d) Data collection and monitoring methods))~~ addressing that behavior within sixty days.
~~((5) If data indicates that progress is not occurring after a reasonable time, but not longer than six months,))~~ (6) The ((service)) provider must collect data on:
~~(a) ((Evaluate the positive behavior support plan and the data collected))~~ The target behavior's:
(i) Frequency;
(ii) Intensity;
(iii) Duration;
(iv) Impact; and
~~(b) ((Conduct a new functional assessment when necessary))~~ The replacement behavior's:
(i) Frequency;
(ii) Intensity;
(iii) Duration; and
~~((c) Develop and implement revisions as needed))~~ (iv) Impact.
(7) The provider must analyze the data collected under subsection (6) of this section at least every six months to determine the effectiveness of the positive behavior support plan.
(8) If the analysis under subsection (7) of this section indicates the target behavior is not decreasing in frequency, intensity, duration, or impact, the provider must:
(a) Revise the positive behavior support plan; or

(b) Document the reason revising the support plan is not indicated.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-101D-0360 Psychoactive medication monitoring.