



# 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: November 04, 2021

TIME: 11:29 AM

WSR 21-23-010

**Agency:** Department of Social and Health Services, Developmental Disabilities Administration (DDA)

**Original Notice**

**Supplemental Notice to WSR** \_\_\_\_\_

**Continuance of WSR** \_\_\_\_\_

**Preproposal Statement of Inquiry was filed as WSR 21-10-093 ; 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 388-829C-131, *How does DDA determine the daily rate?* and WAC 388-829C-135, *What requirements must a behavior support plan meet?*

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
December 21, 2021	10:00 am	Office Building 2 DSHS Headquarters 1115 Washington Olympia WA 98504  Or Virtual	Due to the COVID-19 pandemic, hearings are being held virtually. Please see the DSHS website for the most recent information

**Date of intended adoption:** Not earlier than December 22, 2021 (Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name: DSHS Rules Coordinator

Address: PO Box 45850

Email: [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov)

Fax: 360-664-6185

Other:

By (date) 5:00 pm on December 21, 2021

**Assistance for persons with disabilities:**

Contact Shelley Tencza

Phone: 360-664-6198

Fax: 360-664-6185

TTY: 711 Relay Service

Email: [Shelley.Tencza@dshs.wa.gov](mailto:Shelley.Tencza@dshs.wa.gov)

Other:

By (date) 5:00 pm on December 7, 2021

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** DDA is amending this rule to remove the daily rate multiplier from rule, to remove the DSHS 10-234 requirement, and to establish requirements for clients who require a positive behavior support plan and receive services from a companion home provider.

**Reasons supporting proposal:** DDA removed the multiplier because it changes too frequently for the permanent rule to remain accurate. Instead of codifying the multiplier in rule, DDA will publish companion home provider rates on the [Office of Rates Management's website](#) under [Developmental Disabilities Rates](#).

Typically, DSHS 10-234 was only completed at the time of a client's referral to a companion home. Removing the requirement that a client have a challenging behavior documented on form DSHS 10-234 will allow providers supporting a client who develops a need for behavior support after referral to potentially become eligible for a higher rate.

DDA added behavior support plan requirements to align with those established in DDA policy.

**Statutory authority for adoption:** RCW 71A.12.030

**Statute being implemented:** RCW 71A.12.040

**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:** none

**Name of proponent:** (person or organization) Department of Social and Health Services, Developmental Disabilities Administration

<input type="checkbox"/> Private
<input type="checkbox"/> Public
<input checked="" type="checkbox"/> Governmental

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Chantelle Diaz	P.O. Box 45310, Olympia, WA 98504-5310	
Implementation:	Olga Lutsyk	P.O. Box 45310, Olympia, WA 98504-5310	
Enforcement:	Olga Lutsyk	P.O. Box 45310, Olympia, WA 98504-5310	

**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](mailto: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)(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 19.85.030 – Does not impose any new costs.

Explanation of exemptions, if necessary: The proposed amendments impose no new or disproportionate costs on small businesses. No costs will be imposed because companion home providers are already required by policy and contract to meet the behavior support plan requirements in new section WAC 388-829C-135. (Companion home providers are in the scope of DDA Policy 5.21, Functional Assessments and Positive Behavior Support Plans. Companion home provider contracts also require providers to follow DDA Policy 5.21.)

If a companion home provider finds that a client's behavior support plan does not meet requirements of WAC 388-829C-135, the provider can request assistance from DDA psychology associates. This technical assistance should mitigate any costs a provider might incur in order to update a client's behavior support plan.

**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:

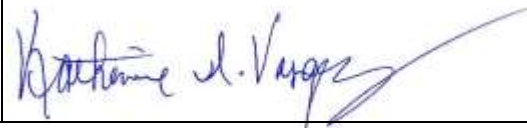
Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

**Date:** November 3, 2021

**Name:** Katherine I. Vasquez

**Title:** DSHS Rules Coordinator

**Signature:**



**WAC 388-829C-131 How does DDA determine the daily rate?** (1) A companion home daily rate ~~((equals the sum of))~~ is based on the client's ((support)) DDA assessment ((scale scores multiplied by 14.2)) under chapter 388-828 WAC. The DDA assessment uses an algorithm to convert raw scores into support assessment scales.

~~(2) ((The residential algorithm under chapter 388-828 WAC determines the level of services and supports a companion home client may receive.~~

~~(3))~~ The ((CARE)) following support assessment ((assigns)) scales are used to calculate a companion home daily rate. Each support ((levels)) assessment scale is assigned an acuity level of "none," "low," "medium," or "high" ((to each support)) by the DDA assessment ((scale that correspond)) algorithm and corresponds to the values below:

<u>Category Support Assessment Scale</u>	<u>Acuity Levels</u>			
	None	Low	Medium	High
Activities of daily living	0	1	2	3
Behavior	0	1	2	3
Interpersonal support	0	1	2	3
Medical	0	1	2	3
Mobility	0	1	2	3
Protective supervision	0	1	2	3

~~((4))~~ (3) DDA assigns a behavior score of four if ((the client has a):

(a) The client has an acuity level of "high" for behavior ((score of three)) on the support assessment scale; and

~~(b) ((Challenging behavior documented on form DSHS 10-234; and~~

~~(c) Current positive))~~ The client has a behavior support plan that meets requirements under WAC 388-829C-135.

(4) The sum of the assessment scale scores corresponds to an established daily rate. Rates are set prospectively in accordance with state legislative appropriations and will be adjusted accordingly.

~~(5) ((DDA reviews a))~~ DSHS publishes companion home daily rate ((annually and if a significant change assessment occurs during the plan year)) on the office of rates management's website.

~~(6) DDA may adjust a companion home daily rate if:~~

~~(a) ((Any of))~~ The sum of the client's support assessment ((scale)) acuity levels ((change)) changes; or

~~(b) ((The multiplier changes due to a vendor rate change; or~~

~~(c) The annual cost of respite services increased because))~~ DDA ((approved)) approves additional respite hours under WAC 388-829C-234(3) ((and the client's assessed support needs remain unchanged since the most recent CARE assessment)).

NEW SECTION

**WAC 388-829C-135 What requirements must a behavior support plan meet?** (1) A client's behavior support plan must:

(a) Be based on a functional assessment; and

- (b) 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 behavior support plan's effectiveness.
- (2) If the client has a behavior support plan, the provider must collect data on:
  - (a) The target behavior's:
    - (i) Frequency;
    - (ii) Intensity;
    - (iii) Duration; and
    - (iv) Impact;
  - (b) The replacement behavior's:
    - (i) Frequency;
    - (ii) Intensity;
    - (iii) Duration; and
    - (iv) Impact.
- (3) The provider must analyze the data collected under subsection (2) of this section at least every six months to determine the effectiveness of the behavior support plan.
- (4) If the analysis under subsection (3) of this section indicates the target behavior is not decreasing in frequency, intensity, duration, or impact, the provider must:
  - (a) Revise the behavior support plan; or
  - (b) Document the reason revising the support plan is not indicated.