



# 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: April 29, 2022

TIME: 3:53 PM

WSR 22-10-051

**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 21-20-130 ; 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 388-829-0085, *How many hours of continuing education must DDA community residential staff complete each year?*; WAC 388-829-0086, *When must a direct support professional employed during the COVID-19 public health emergency complete training?*; WAC 388-829-0087, *When must continuing education be completed when public health emergency waivers are lifted, and what continuing education credit is granted to direct support professionals employed during the pandemic?*

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
June 7, 2022	10:00 a.m.	Office Building 2 DSHS Headquarters 1115 Washington Olympia, WA 98504  <b>Or Virtually</b>	Public parking at 11 <sup>th</sup> and Jefferson. A map is available at: <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>  Due to the COVID-19 pandemic, hearings are being held virtually. Please see the DSHS website for the most up to date information.

**Date of intended adoption:** Not earlier than June 8, 2022 (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. on June 7, 2022

**Assistance for persons with disabilities:**

Contact Shelley Tencza, Rules Consultant

Phone: 360-664-6036

Fax: 360-664-6185

TTY: 711 Relay Service

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

Other:

By (date) 5:00 p.m. on May 24, 2022

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** DDA amended WAC 388-829-0085 to clarify when continuing education credits must be completed. New WACs 388-829-0086 and 388-829-0087 establish training and continuing education requirements for people employed during the COVID-19 public health emergency.

**Reasons supporting proposal:** These amendments are necessary to clarify, and in some circumstances extend, the due dates for providers who are required to complete training and continuing education requirements under chapter 388-829 WAC.

**Statutory authority for adoption:** RCW 71A.12.030, RCW 74.39A.074

**Statute being implemented:**

**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, Developmental Disabilities Administration

- Private  
 Public  
 Governmental

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Chantelle Diaz	P.O. Box 45310, Olympia, WA 98504-5310	360-407-1500
Implementation:	Sarah Blanchette	P.O. Box 45310, Olympia, WA 98504-5310	360-407-1540
Enforcement:	Sarah Blanchette	P.O. Box 45310, Olympia, WA 98504-5310	360-407-1540

**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: 360-407-1500

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 19.85.0030 because the rules do not impose new costs.

Explanation of exemptions, if necessary: While providers do pay for their staff to attend trainings, continuing education training reimbursement is built into the provider's rate.

**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:** April 28, 2022

**Name:** Katherine I. Vasquez

**Title:** DSHS Rules Coordinator

**Signature:**



AMENDATORY SECTION (Amending WSR 17-14-090, filed 6/30/17, effective 8/1/17)

**WAC 388-829-0085 How many hours of continuing education must DDA community residential staff complete each year?** (1) ~~((Effective January 1, 2016, service providers))~~ A direct support professional must complete ~~((twelve))~~ 12 hours of continuing education: ~~((CE))~~

(a) Each calendar year, except in the calendar year they complete ~~((the))~~ one-time basic training ~~((requirement.))~~; or

(b) By their birth date each year if the direct support professional is also a:

(i) Registered nurse;

(ii) Licensed practical nurse;

(iii) Nurse technician;

(iv) Advanced registered nurse practitioner; or

(v) Home care aide certified.

~~((2) Service providers who are not credentialed through the department of health (DOH) must complete their CE by the end of the calendar year.~~

~~((3) Service providers must complete DOH required CE (such as home care aide certification) by their birth date each year.))~~

(2) A direct support professional employed during the COVID-19 public health emergency must complete:

(a) Training according to WAC 388-829-0086; and

(b) Continuing education according to WAC 388-829-0087.

NEW SECTION

**WAC 388-829-0086 When must a direct support professional employed during the COVID-19 public health emergency complete training, including specialty training?** (1) A direct support professional employed during the COVID-19 public health emergency must complete training, including specialty training, as follows:

<b>Worker hired during the time frame of:</b>	<b>Must complete 75-hour new employee training no later than:</b>
8/17/2019 to 9/30/2020	10/31/2022
10/1/2020 to 4/30/2021	1/31/2023
5/1/2021 to 3/31/2022	4/30/2023
4/1/2022 to 9/30/2022	8/31/2023
10/1/2022 to 12/31/2022 or the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later	9/30/2023 or no more than 120 days after the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later

After the end of the COVID-19 training waivers established by gubernatorial proclamation or beginning 1/1/2023, whichever is later	As required under WAC 388-829-0015
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(2) Nothing in this section prevents a direct support professional hired between 8/17/2019 and 9/30/2022 from completing training in advance of the deadlines in subsection (1) of this section.

NEW SECTION

**WAC 388-829-0087 What continuing education credit is granted to direct support professionals employed during the pandemic and when must continuing education be completed?**

(1) The department finds that direct support professionals employed during the COVID-19 pandemic between March 1, 2020, and February 28, 2021, required emergent and intensive on-the-job training. Direct support professionals received critical, ongoing training in such topics as:

- (a) Donning and doffing personal protective equipment (PPE);
- (b) Hand hygiene;
- (c) Disinfection of high-touch surfaces;
- (d) Managing visitations and physical distancing;
- (e) Responding to newly infected residents;
- (f) Promotion of vaccination;
- (g) Protocols for quarantine;
- (h) Use of cloth face coverings;
- (i) Personal protection outside of the work environment; and
- (j) How to reduce exposure and spread.

(2) This on-the-job training was required of all service providers under WAC 388-829-0005. Instruction included infection control and the availability and distribution of personal protective equipment. Recognition of this training as a valid learning experience, in its various forms, was agreed upon with input from consumer and worker representatives, as the content was based on guidelines established by the Centers for Disease Control (CDC) and other federal, state, and local health care authorities.

(3) During this time, direct support professionals required ongoing critical training because guidance from the CDC, department of labor and industries, and other health authorities changed as more was learned about the SARS-CoV-2 virus. The department finds that this unprecedented on-the-job training comprised of at least 12 hours of continuing education between March 1, 2020, and February 28, 2021, and that this training:

- (a) Is not considered to be repeated training as described in WAC 388-829-0100; and
- (b) Satisfies the 12 hours of annual continuing education training.

(4) The direct support professional may apply the 12 hours of on-the-job training towards continuing education for either 2020 or 2021. The hours must be applied no later than December 31, 2021.

(5) All direct support professionals employed during the dates in subsection (3) of this section are granted 12 hours of DSHS-approved

continuing education credit for the training entitled "COVID-19 On-The-Job Training Protocols," bearing the DSHS approval code CE2135218. No physical certificate for this training will be issued or required.

(6) The department recognizes that direct support professionals may not have completed training hours in excess of the 12 hours of CE granted in subsection (4) of this section due to the COVID-19 public health emergency. All direct support professionals have until December 31, 2022, or 120 days from the end of the COVID-19 training waivers established by gubernatorial proclamation, whichever is later, to complete any additional CE that may have become due while training waivers were in place in excess of the 12 hours of CE granted in subsection (4) of this section. For an employee required to complete training by their birthday under WAC 388-101D-0085(1)(b), the employee will have 120 days from the end of the training waivers to complete the required CE if the employee's birthday is fewer than 120 days after the training waivers are lifted.