



PROPOSED RULE MAKING

CR-102 (July 2022)
(Implements RCW 34.05.320)
Do **NOT** use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: February 15, 2023

TIME: 10:04 AM

WSR 23-05-102

Agency: Department of Social and Health Services, Aging and Long-Term Support Administration, HCS

- Original Notice**
- Supplemental Notice to WSR** _____
- Continuance of WSR** _____

- Preproposal Statement of Inquiry was filed as WSR 22-17-014 ; 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) Amending sections of two Community First Choice (CFC) rules related to Assistive Technology – WAC 388-106-0270(5) “What services are available under community first choice (CFC)?”, and 388-106-0274(1) and (3) “Are there limits to the assistive technology I may receive?”. The proposed amendments are to further clarify what is available as assistive technology, what does not qualify, and what knowledge a treating professional providing a written recommendation for the assistive technology must have.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
March 21, 2023	10:00 a.m.	Office Building 2 DSHS Headquarters 1115 Washington Olympia, WA 98504 or Virtually	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 COVID-19 pandemic, hearings are held virtually, see the DSHS website https://www.dshs.wa.gov/office-of-the-secretary/filings-and-rules for the most current information.

Date of intended adoption: Not earlier than March 22, 2023 (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 pm on March 21, 2023

Assistance for persons with disabilities:

Contact DSHS Rules Consultant
Phone: 360-664-6036
Fax: 360-664-6185
TTY: 711 Relay Service
Email: shelley.tencza@dshs.wa.gov
Other:
By (date) 5:00 pm on March 7, 2023

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The purpose of the proposed amendments is to provide further clarification to our stakeholders on what is CFC assistive technology, what are examples of CFC assistive technology, what are examples of items that are not covered as CFC assistive technology, and what a treating professional providing a written recommendation should know about the assistive technology item and address related to the individual requesting the assistive technology. The anticipated effects of these proposed amendments are to assist case managers and CFC clients to have a clearer idea of what CFC assistive technology is.

Reasons supporting proposal: see above

Statutory authority for adoption: RCWs 74.08.090, 74.09.520, 74.39A.400, and 42 C.F.R 441.500-590

Statute being implemented: RCWs 74.08.090, 74.09.520, 74.39A.400, and 42 C.F.R 441.500-590

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

Type of proponent: Private Public Governmental
Name of proponent: (person or organization) Department of Social and Health Services

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting: Victoria Nuesca; Manipon Manivanh; and Peggy Dotson	P.O. Box 45600, Olympia, WA 98504-5600	360-725-2393; 360-407-1572; 360-407-1563
Implementation: Victoria Nuesca; Manipon Manivanh; and Peggy Dotson	P.O. Box 45600, Olympia, WA 98504-5600	360-725-2393; 360-407-1572; 360-407-1563
Enforcement: Victoria Nuesca; Manipon Manivanh; and Peggy Dotson	P.O. Box 45600, Olympia, WA 98504-5600	360-725-2393; 360-407-1572; 360-407-1563

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: [RCW 34.05.328 \(5\)\(b\)\(vii\)](#) Rules of the department of social and health services relating only to client medical or financial eligibility

Regulatory Fairness Act and Small Business Economic Impact Statement
Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

(1) Identification of exemptions:
This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). 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:

- | | |
|---|--|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input checked="" type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> 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\(4\)](#) (does not affect small businesses).

This rule proposal, or portions of the proposal, is exempt under RCW [34.05.328 \(5\)\(b\)\(vii\)](#) Rules of the department of social and health services relating only to client medical or financial eligibility .

Explanation of how the above exemption(s) applies to the proposed rule:

(2) Scope of exemptions: *Check one.*

- The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.
- The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):
- The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

(3) Small business economic impact statement: *Complete this section if any portion is not exempt.*

If any portion of 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 minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. _____
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

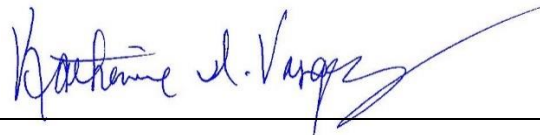
Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Date: February 8, 2023

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



WAC 388-106-0270 What services are available under community first choice (CFC)? The services you may receive under the community first choice program include:

- (1) Personal care services as defined in WAC 388-106-0010.
- (2) Relief care, which is personal care services by a second individual or agency provider as a back-up to your primary paid personal care provider.
- (3) Skills acquisition training, which is training that allows you to acquire, maintain, and enhance skills necessary to accomplish ADLs, IADLs, or health related tasks more independently. Health related tasks are specific tasks related to the needs of an individual that under state law licensed health professionals can delegate or assign to a qualified health care practitioner.
- (4) Personal emergency response systems (PERS), which are basic electronic devices that enable you to secure help in an emergency when:
 - (a) You live alone in your own home;
 - (b) You are alone in your own home for significant parts of the day and have no provider for extended periods of time; or
 - (c) No one in your home, including you, is able to secure help in an emergency.
- (5) Assistive technology, including assistive equipment, which are adaptive and assistive items that increase your independence or substitute for human assistance specifically with ADLs, IADLs, or health related tasks, including but not limited to:
 - (a) ~~((Additions to the standard)) PERS ((unit))~~ add-on services, such as fall detection, GPS, or medication ~~((delivery with or without))~~ reminder systems;
 - (b) Department approved devices that are not excluded by WAC 388-106-0274, including but not limited to: ~~((visual alert systems, voice activated systems, switches and eyegazes, and timers or electronic devices that monitor or sense movement and react in a prescribed manner such as turning on or off an appliance;))~~
 - (i) Adaptive utensils to assist with activities such as eating, dressing, and writing;
 - (ii) Communication applications/software or devices;
 - (iii) Visual alert systems;
 - (iv) Voice activated systems;
 - (v) Switches and eyegazes; and
 - (vi) Timers or electronic devices that monitor or sense movement and react in a prescribed manner such as turning on or off an appliance;
 - (c) Repair or replacing items as limited by WAC 388-106-0274; and
 - (d) Training of participants and caregivers on the maintenance or upkeep of equipment purchased under assistive technology.
- (6) Nurse delegation services as defined in WAC 246-840-910 through 246-840-970.
- (7) Nursing services when you are not already receiving nursing services from another source. A registered nurse may visit you and perform any of the following activities:
 - (a) Nursing assessment/reassessment;
 - (b) Instruction to you and your providers;

- (c) Care coordination and referral to other health care providers;
 - (d) Skilled treatment, which is care that requires authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, including but not limited to medication administration or wound care such as debridement; nursing services will only provide skilled treatment in the event of an emergency and in nonemergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, home health agency, or other appropriate resource;
 - (e) File review; and
 - (f) Evaluation of health-related care needs that affect service plan and delivery.
- (8) Community transition services, which are nonrecurring, setup items or services to assist you with discharge from a nursing facility, institution for mental diseases, or intermediate care facility for individuals with intellectual disabilities, when these items or services are necessary for you to set up your own home, including but not limited to:
- (a) Security deposits that are required to lease an apartment or home, including first month's rent;
 - (b) Essential household furnishings required to occupy and use a community domicile, including furniture, window coverings, food preparation items, and bath and linen supplies;
 - (c) Setup fees or deposits for utilities, including telephone, electricity, heating, water, and garbage;
 - (d) Services necessary for your health and safety such as pest eradication and one-time cleaning prior to occupancy;
 - (e) Moving expenses; and
 - (f) Activities to assess need, arrange for, and procure necessary resources.
- (9) Caregiver management training on how to select, manage, and dismiss personal care providers.

AMENDATORY SECTION (Amending WSR 17-03-127, filed 1/18/17, effective 2/18/17)

WAC 388-106-0274 Are there limits to the assistive technology I may receive? (1) There are limits to the assistive technology you may receive. Assistive technology excludes:

- (a) Any purchase solely for recreational purposes;
- (b) Items of general utility, meaning they are used by people in the absence of illness, injury, or disability, such as a wood splitter, facial wipes, menstrual supplies, or a slow cooker;
- (c) Subscriptions, ((and)) data plan charges, and ((monthly)) on-going recurring fees;
- (d) Educational software, game applications, or gift cards for educational/game applications;
- ((e)) (e) Medical supplies and medical equipment, items available as specialized equipment and supplies, or durable medical equipment;
- (f) Specialized clothing or slip-on shoes that are for convenience and not adaptive in nature;
- (g) Exercise equipment;

~~((d))~~ (h) Home/environmental modifications; ~~((and))~~

(i) Medically necessary items, including but not limited to compression socks/stockings, orthotics, hearing aids, and eyeglasses; and

~~((e))~~ (j) Any item that would otherwise be covered under any other payment source, including but not limited to medicare, medicaid, ~~((and))~~ private insurance, or another resource.

(2) In combination with skills acquisition training, assistive technology purchases are limited to a yearly amount determined by the department per fiscal year.

(3) To help decide whether to authorize assistive technology the department may require a treating professional's written recommendation regarding the need for an assistive technology evaluation. The treating professional who makes this recommendation must:

(a) Have personal knowledge of ~~((or))~~ and experience with the requested assistive technology that is in alignment with their profession; and

(b) Have ~~((examined))~~ evaluated you, reviewed your medical records, ~~((and))~~ have knowledge of your level of functioning, and your ability to use the requested assistive technology or device.

(4) Your choice of assistive technology is limited to the most cost effective option that meets your health and welfare needs.

(5) Replacement of an assistive technology item or piece of equipment is limited to once every two years.