



# 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: April 12, 2023

TIME: 9:20 AM

WSR 23-09-026

**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 22-24-108 ; 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) The Department of Social and Health Services (department) is proposing to amend WAC 388-106-1900 What definitions apply to Medicaid Alternative Care (MAC) and Tailored Support for Older Adults (TSOA) services? and 388-106-1915 What services may I receive in MAC and TSOA? The department is not proceeding with amendments to other sections listed on the CR 101 preproposal at this time. The department determined they did not need to be amended for this proposal. The proposed rules clarify definitions and amend services provided to MAC and TSOA recipients.

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
May 23, 2023	10:00 AM	Office Building 2 DSHS Headquarters 1115 Washington Street 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-directons-office-bludg-2">https://www.dshs.wa.gov/office-of-the-secretary/driving-directons-office-bludg-2</a>  Due to COVID-19 pandemic, hearings are held virtually, see the DSHS website <a href="https://www.dshs.wa.gov/office-of-the-secretary/filings-and-rules">https://www.dshs.wa.gov/office-of-the-secretary/filings-and-rules</a> for the most current information

**Date of intended adoption:** Not earlier than May 24, 2023 (Note: This is **NOT** the **effective** date)

<b>Submit written comments to:</b> Name: DSHS Rules Coordinator Address: PO Box 45850 Email: <a href="mailto:DSHSRPAURulesCoordinator@dshs.wa.gov">DSHSRPAURulesCoordinator@dshs.wa.gov</a> Fax: 360-664-6185 Other: By (date) <u>May 23, 2023, at 5:00 p.m.</u>	<b>Assistance for persons with disabilities:</b> Contact <u>DSHS Rules Consultant</u> Phone: 360-664-6036 Fax: 360-664-6185 TTY: Email: <a href="mailto:shelley.tencza@dshs.wa.gov">shelley.tencza@dshs.wa.gov</a> Other: By (date) <u>May 9, 2023, at 5:00 p.m.</u>
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**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The department is amending chapter 388-106 WAC to update definition language, add additional services that are included in the 1115 Medicaid Transformation Waiver Renewal, and clarifying eligibility and updating language.

**Reasons supporting proposal:** See purpose statement above.

**Statutory authority for adoption:** RCW 74.08.090 and 74.39A.030

**Statute being implemented:** RCW 74.08.090 and 74.39A.030

**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:	Resa Lee-Bell	PO Box 45600, Olympia, WA 98504-5600	564-999-1287
Implementation:	Resa Lee-Bell	PO Box 45600, Olympia, WA 98504-5600	564-999-1287
Enforcement:	Resa Lee-Bell	PO Box 45600, Olympia, WA 98504-5600	564-999-1287

**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) which states in part, [t]his section does not apply to...rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents,

**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"/> <a href="#">RCW 34.05.310</a> (4)(b)<br>(Internal government operations) | <input checked="" type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(e)<br>(Dictated by statute)   |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(c)<br>(Incorporation by reference)     | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(f)<br>(Set or adjust fees)   |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(d)<br>(Correct or clarify language)    | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(g)<br>(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 RCW 34.05.328(5)(b)(vii) .

Explanation of how the above exemption(s) applies to the proposed rule: These amendments do not impact small businesses. They only impact DSHS clients.

**(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:

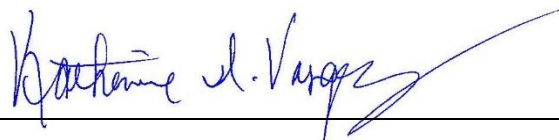
Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

**Date:** April 11, 2023

**Name:** Katherine I. Vasquez

**Title:** DSHS Rules Coordinator

**Signature:**



**WAC 388-106-1900 What definitions apply to MAC and TSOA services?** The following definitions apply to MAC and TSOA services:

**"Care plan"** means the plan developed by the department in GetCare that summarizes the services described in WAC 388-106-1915 that you chose to receive.

**"Care receiver"** means an adult age 55 and over who has been authorized for MAC or TSOA services.

**"Caregiver"** means a spouse, relative, or friend (age 18 and over) who has primary responsibility for the care or supervision of an adult who meets eligibility criteria and does not receive direct, public, or private payment such as a wage for the caregiving services they provide.

**"Caregiver assistance services"** are services that take the place of those typically performed by an unpaid caregiver in support of the care receiver's unmet needs for assistance with activities of daily living (ADLs) and instrumental activities of daily living (IADLs).

**"Caregiver phases"** means the phases a caregiver experiences as the needs of the care receiver change, which in turn changes the responsibilities and tasks of caregiving. The change in responsibilities and tasks impacts the relationship between the caregiver and the care receiver. There are five phases showing the change in relationship roles from primarily family member to primarily caregiver. The five phases are:

(1) Phase one - Acting as a relative/friend almost all of the time;

(2) Phase two - Acting most often as a relative/friend, but sometimes as a caretaker;

(3) Phase three - Acting equally as a relative/friend and as a caregiver;

(4) Phase four - Acting most often as a caregiver, but sometimes you are still a relative/friend; and

(5) Phase five - Acting as a caregiver almost all of the time.

**"Family caregiver"** means the same as "caregiver."

**"GetCare"** means a statewide web-based information system that includes a client management component that includes screening and assessment tools for use by area agencies on aging (AAA) and other aging and disability network partners.

**"GetCare assessment"** is a process during which the department gathers information for an individual without a caregiver in the following areas: Functional needs, diagnoses and conditions, behavior health supports, oral health, and nutritional health to assist the individual with choosing step three services.

**"GetCare screening"** is a process during which the department gathers information for an individual without a caregiver in order to determine risk scores. The information covers the following areas: Function needs, fall risk, availability of informal help, memory and decision-making issues, and emotional well-being. The risk scores are used to determine if the individual is referred for a full GetCare assessment.

**"Health maintenance and therapies"** are clinical or therapeutic services that assist the care receiver to remain in their home or the caregiver to remain in their caregiving role and provide high quality

care. Services are provided for the purpose of preventing further deterioration, improving, or maintaining current level of functioning.

**"Identity discrepancy"** means a negative psychological state that occurs when the activities and responsibilities that a caregiver assumes with regard to the care receiver are inconsistent with the caregiver's expectations or personal norms concerning these activities and responsibilities.

**"MAC"** means medicaid alternative care, which is a federally funded program authorized under section 1115 of the Social Security Act. It enables an array of person-centered services to be delivered to unpaid caregivers caring for a medicaid eligible person who lives in a private residence (such as their own home or a family member's home) and chooses to receive community-based services.

**"Medicaid transformation ((demonstration) project"** refers to the authority granted to the state by the federal government under section 1115 of the Social Security Act. This ((waiver)) is a five year demonstration waiver to support health care systems prepare for and implement health reform and provide new targeted medicaid services to eligible individuals with significant needs. It includes MAC and TSOA programs.

**"Personal assistance services"** are supports involving the labor of another person to help the care receiver complete activities of daily living and instrumental activities of daily living that they are unable to perform independently. Services may be provided in the care receiver's home or to access community resources.

**"RDAD"** means reducing disability in Alzheimer's disease. This program is designed to improve the ability of the person with memory problems to complete activities of daily living while also helping caregivers provide assistance to the person.

**"Service provider"** means an agency or organization contracted with the department.

**"Specialized medical equipment and supplies"** are goods and supplies needed by the care receiver that are not covered under the medicaid state plan, medicare, or private insurance.

**"TCARE"** means tailored caregiver assessment and referral, which is an evidence-based caregiver coordination process designed to assist department assessors who work with family caregivers to support adults living with disabilities. TCARE is designed to tailor services to the unique needs of each caregiver to help reduce stress, depression, and burdens associated with caregiving. TCARE was developed by a research team at the University of Wisconsin-Milwaukee led by Dr. Rhonda Montgomery in collaboration with over 30 organizations serving family caregivers. The TCARE process is licensed for use by Tailored Care Enterprises, Inc.

**"TCARE assessment"** is a part of the TCARE process during which the department assessors gather responses to all of the TCARE screening questions and additional questions focused on both the caregiver's experience and the care receiver's situation, such as memory issues, behavioral needs, assistance needs with activities of daily living and instrumental activities of daily living, and diagnoses/conditions.

**"TCARE screening"** is a part of the TCARE process during which the department gathers information from the caregiver to determine scores and ranges for the caregiver's identity discrepancy, burdens, uplifts, and depression. The ranges are used to determine if the caregiver is referred for a full TCARE assessment.

**"Training and education"** are services and supports to help caregivers gain skills and knowledge to implement services and supports

needed by the care receiver to remain at home and skills needed by the caregiver to remain in their role.

"TSOA" means tailored supports for older adults, which is a federally-funded program approved under section 1115 of the Social Security Act. It enables the delivery of person-centered services to:

(1) Caregivers who care for an eligible person as defined in WAC 388-106-1910; and

(2) Eligible persons as defined in WAC 388-106-1910, without a caregiver.

AMENDATORY SECTION (Amending WSR 22-18-004, filed 8/25/22, effective 9/25/22)

**WAC 388-106-1915 What services may I receive in MAC and TSOA?**

MAC and TSOA services include the following three benefit levels referred to as steps in subsections (1) through (3) of this section. You and your family caregiver may receive services under any of the three steps depending upon your requests and needs identified in the screening process for step two and the assessment process for step three. Steps do not need to be used in order. For example, you may begin services at step two or three. In general, step one services are used by caregivers or care receivers requesting lesser supports than those using step three services.

(1) Step one: After the department obtains your demographics and approves your program eligibility, you may receive the following services:

(a) Information and referrals to family caregiver or community resources;

(b) A selection of the following services up to a one time limit of \$250:

(i) Training and education, which includes but is not limited to:

(A) Support groups;

(B) Group training;

(C) Caregiver coping and skill building training;

(D) Consultation on supported decision making;

(E) Caregiver training to meet the needs of the care receiver;

(F) Financial or legal consultation; and

(G) Health and wellness consultation;

(ii) Specialized medical equipment and supplies for the care receiver, which includes but is not limited to:

(A) Supplies;

(B) Specialized medical equipment, which includes durable medical equipment; and

(C) Assistive technology;

(iii) Caregiver assistance services, which includes but is not limited to short term respite to allow the caregiver to attend an educational event or training series; and

(iv) Health maintenance and therapy supports, which may include but are not limited to:

(A) Adult day health;

(B) RDAD and evidence based exercise programs;

(C) Health promotion and wellness services; and

(D) Counseling related to caregiving role.

(2) Step two: After the department obtains your demographics, approves your program eligibility, and completes a GetCare or TCARE screening, you may receive the following:

(a) Information and referrals to family caregiver or community resources;

(b) The following services up to an annual limit of \$500 minus any expenditures for step one services:

(i) Training and education, which includes but is not limited to:

(A) Support groups;

(B) Group training;

(C) Caregiver coping and skill building training;

(D) Consultation on supported decision making;

(E) Caregiver training to meet the needs of the care receiver;

(F) Financial or legal consultation; and

(G) Health and wellness consultation;

(ii) Specialized medical equipment and supplies for the care receiver, which includes but is not limited to:

(A) Supplies;

(B) Specialized medical equipment, which includes durable medical equipment;

(C) Assistive technology; and

(D) Personal emergency response system (PERS);

(iii) Caregiver assistance services, which include but are not limited to:

(A) Short-term respite and, if necessary, nurse delegation to allow the caregiver to attend an educational event or training series;

(B) Home delivered meals for the care receiver and caregiver;

(C) Minor home modifications and repairs to the care receiver's home;

(D) Home safety evaluation of the care receiver's home; and

(E) Transportation, (~~only in conjunction with the delivery of a service~~) in accordance with the assessment to facilitate access to waiver and other community services, activities, and resources as specified by the individualized care plan; and

(F) Bath aide;

(iv) Health maintenance and therapy supports, which include but are not limited to:

(A) Adult day health;

(B) RDAD and evidence based exercise programs;

(C) Health promotion and wellness services such as massage therapy and acupuncture therapy; and

(D) Counseling related to the caregiving role; and

(v) Personal assistance services for the TSOA without an unpaid caregiver, as described in WAC 388-106-1910 (e)(ii), which include but are not limited to:

(A) Adult day care;

(B) Transportation, (~~only in conjunction with the delivery of a service~~) in accordance with the assessment to facilitate access to waiver and other community services, activities, and resources as specified by the individualized care plan;

(C) Home delivered meals;

(D) Home safety evaluation of the care receiver's home; and

(E) Minor home modifications and repairs to the care receiver's home.

(3) Step three:

(a) For MAC and TSOA care receivers with caregivers:

(i) You may receive information and referrals to family caregiver or community resources.

(ii) After the department has obtained your demographics and approved your program eligibility, your caregiver must complete a TCARE assessment in order to access step three services. In order to qualify for a TCARE assessment, the TCARE screening must result in at least three medium scores or one high score for the TCARE measures described in WAC 388-106-1932. TCARE uses an evidence-based algorithm to identify a primary goal based on your caregiver's answers to the TCARE assessment questions. The department will assist you to develop an individualized care plan containing the services chosen by you and your caregiver up to the limits established in WAC 388-106-1920.

(iii) The table below lists the available step three services. The Xs in the table indicate the services that may be recommended by the TCARE strategies, defined in WAC 388-106-1930, from your caregiver's assessment. You may request services in this step that the TCARE assessment does not list as a recommendation.

Services	Strategies				
	A	B	C	D	E
<b><i>Training and education</i></b>					
Group training		X			
Caregiver coping and skill building training	X	X	X	X	
Consultation on supported decision making	X	X	X		
Caregiver training to meet needs of care receiver	X	X	X		
Financial or legal consultation		X			
Health and wellness consultation		X			
Support groups	X	X	X		
<b><i>Specialized medical equipment and supplies</i></b>					
Supplies		X			
Specialized medical equipment		X			
Assistive technology		X			
Personal emergency response system		X			
<b><i>Caregiver assistance services</i></b>					
Home delivered meals		X			
Minor home modifications and repairs		X			
Housework/errands and yard work		X			
In-home respite, including a bath aide		X			
OT/PT evaluation	X	X		X	
Home safety evaluation		X			
Out-of-home respite		X			
Transportation		X			
<u>Pest eradication services</u>		X			
<u>Specialized deep cleaning services</u>		X			
<u>Nurse delegation, in conjunction with respite care</u>		X			
<b><i>Health maintenance and therapy supports</i></b>					
Adult day health		X			
RDAD and evidence based exercise programs		X		X	
Health promotion and wellness services such as acupuncture and massage therapy				X	X
Counseling related to the caregiver role	X		X	X	



(b) For TSOA care receivers who do not have an available caregiver:

(i) You may receive information and referrals to community resources.

(ii) After the department has obtained your demographics and approved your program eligibility, you must complete a GetCare assessment in order to access step three services. In order to qualify for a GetCare assessment, the GetCare screening must result in a risk score of moderate or high as described in WAC 388-106-1933. The department will assist you to develop an individualized care plan that includes the services you have chosen up to the limits established in WAC 388-106-1920.

(iii) The services available include any step one and step two services noted in subsections (1) and (2) of this section (except for respite) and the following (~~personal assistance services~~):

(A) Personal (~~care~~) assistance services which include:

(a) Personal care;

~~((B))~~ (b) Nurse delegation; and

~~((C))~~ (c) Housework/errands and yard work((~~-~~));

(B) Pest eradication services;

(C) Specialized deep cleaning; and

(D) Community choice guide services.