



# 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 14, 2023

TIME: 12:43 PM

WSR 23-09-040

**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 23-06-054 ; 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 388-829-0087, What continuing education credit is granted to direct support professionals employed during the pandemic and when must continuing education be completed?

**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)

**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) May 23, 2023, at 5:00 PM

**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](mailto:shelley.tencza@dshs.wa.gov)

Other:

By (date) May 9, 2023, at 5:00 PM

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** DDA is amending WAC 388-829-0087 to extend due dates for continuing education credits required under chapter 388-829 WAC.

**Reasons supporting proposal:** Direct service providers hired during the COVID-19 public health emergency (PHE) were required to complete 12 hours of continuing education annually. As a result of the PHE, the number of training programs available to provide department-approved continuing education significantly diminished. Changing rules, standards, and a sudden shift to electronic training resulted in both a delay in available training and an increased demand. Providers have reported that there are still a significant number of workers who need to complete continuing education hours that were due while PHE-related training waivers were in place. This is affecting their ability to meet requirements for current renewal cycles because hours must be applied to the older renewal cycles first. Without an extension, direct service providers could end up out of compliance, which could limit client access to qualified providers.

**Statutory authority for adoption:** RCW 74.39A.341

**Statute being implemented:** RCW 74.39A.341

**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) This extension was requested by providers required to comply with Chapter 388-829 WAC.

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Chantelle Diaz	P.O. Box 45310, Olympia, WA 98504-5310	360-790-4732
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: PO Box 45310, Olympia WA 98504  
Phone: 360-790-4732  
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 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 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 19.85.025\(5\)](#).

Explanation of how the above exemption(s) applies to the proposed rule: DDA prepared an analysis under RCW 34.05.328, which revealed that there are no new costs imposed. While providers do pay for their staff to attend trainings, continuing education training reimbursement is built into provider rates.

**(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:

<b>Date:</b> April 12, 2023	<b>Signature:</b> 
<b>Name:</b> Katherine I. Vasquez	
<b>Title:</b> DSHS Rules Coordinator	

**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.

(a) 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,~~) ~~August 31, 2023,~~ to complete any additional CE that may have become due ((~~while training waivers were in place~~) ~~between January 1, 2020, and February~~

28, 2023, in excess of the 12 hours of CE granted in subsection (4) of this section.

(b) For an employee required to complete training by their birthday under WAC ((~~388-101D-0085~~) ~~388-829-0085~~ (1)(b), the employee ((will have 120 days from the end of the training waivers)) has until August 31, 2023, to complete ((the required CE if the employee's birthday is fewer than 120 days after the training waivers are lifted)) any additional CE that may have become due between January 1, 2020, and February 28, 2023, in excess of the 12 hours of CE granted in subsection (4) of this section.