



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: May 01, 2023

TIME: 12:13 PM

WSR 23-10-058

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 21-09-071 ; 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 is adding a new section in chapter 388-106 WAC describing Long-Term Services and Supports (LTSS) Presumptive Eligibility (PE) and functional eligibility criteria for clients who are discharging from acute care hospitals or diverting from community psychiatric facilities into an in-home setting with home and community based (HCB) services.

The Health Care authority will also be filing rules amending chapter 182-513 WAC and chapter 182-515 WAC to define financial eligibility for LTSS Presumptive Eligibility.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
June 6, 2023	10:00 a.m.	Office Building 2 DSHS Headquarters 1115 Washington Street 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 June 7, 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) June 6, 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
Other:
By (date) May 22, 2023, at 5:00 PM

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The department is adding a new section in chapter 388-106 WAC describing LTSS Presumptive Eligibility and functional eligibility criteria for clients who are discharging from acute care hospitals or diverting from community psychiatric facilities into an in-home setting with home and community based (HCB) services. LTSS PE is included in the 1115 Waiver amendment currently under review by CMS.

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:	Debbie Johnson	PO Box 45600, Olympia, WA 98504-5600	360-725-2531
Implementation:	Debbie Johnson	PO Box 45600, Olympia, WA 98504-5600	360-725-2531
Enforcement:	Debbie Johnson	PO Box 45600, Olympia, WA 98504-5600	360-725-2531

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: Rules are exempt per RCW 34.05.328(5)(b)(vii) 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"/> 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 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 19.85.025\(4\)](#) because the proposed amendments do not impact small businesses and impose no new or disproportionate costs on small businesses, so a small business economic impact statement is not required. These rules impact determination of care for DSHS clients.
- 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:

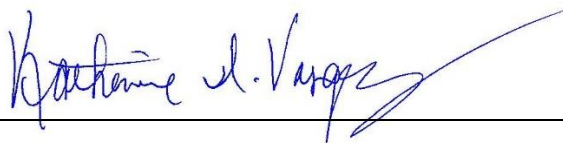
Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Date: April 27, 2023

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



LONG-TERM SERVICES AND SUPPORTS (LTSS) PRESUMPTIVE ELIGIBILITY (PE)

NEW SECTION

WAC 388-106-1800 What definitions apply to LTSS PE? "Acute care hospital" as defined in chapter 182-550 WAC, may offer inpatient services, outpatient services, continuous nursing services, pharmacy services, food services, and necessary ancillary services. These hospitals may offer specialized patient care services including alcoholism and chemical dependency units or services.

"Care plan" means the document generated using the presumptive eligibility assessment screening tool in CARE that identifies the long-term services and supports you are eligible to receive during the presumptive eligibility period.

"Community psychiatric hospital" means a specialized psychiatric hospital or psychiatric unit within a community hospital that is certified to provide involuntary evaluation and treatment services.

"Diversion" means you have discharged from a local community psychiatric facility onto HCS LTSS and have a 90- or 180-day commitment order for further involuntary treatment; or you are detained through the Involuntary Treatment Act and are stabilized and discharged onto LTSS prior to the need to petition for a 90- or 180- day commitment order.

"LTSS" means Long-term Services and Supports as defined in WAC 182-513-1100.

"MPC" means Medicaid Personal Care which is defined as personal care services in WAC 388-106-0010.

"NFLOC" means nursing facility level of care as defined in WAC 388-106-0355.

"PE screening" means the functional and financial assessment completed using the presumptive eligibility screening tool within CARE to determine presumptive eligibility for LTSS NFLOC PE services or LTSS MPC PE services.

"Presumptive eligibility" means a determination made using a screening process completed by the department to gather preliminary information to determine if you meet the eligibility criteria described in WAC 388-106-1805 and 388-106-1815 of this section to receive services while the final eligibility determination is being completed. This is also known as PE.

NEW SECTION

WAC 388-106-1805 Am I eligible for LTSS NFLOC PE services? You are eligible to receive LTSS NFLOC PE services if you meet the following criteria based upon the attested information in your PE screening:

(1) Meet functional eligibility requirements as defined in WAC 388-106-0355(1) (a), (b), (c), or (d); and

- (2) Meet financial eligibility requirements as defined in WAC 182-513-1315; and
- (3) Will be discharging from an acute care hospital or diverting from a community psychiatric hospital; or
- (4) Have discharged or diverted from an acute care hospital or community psychiatric hospital in the last 30 days; and
- (5) Live in your own home as defined in WAC 388-106-0010; and
- (6) Are not receiving any other medicaid funded long-term services and supports.

NEW SECTION

WAC 388-106-1810 What services may I receive under LTSS NFLOC PE? You may receive the following services under LTSS NFLOC PE:

- (1) Up to a maximum of 103 hours a month of personal care services as defined in WAC 388-106-0010;
- (2) Nurse delegation, as defined in WAC 388-106-0270;
- (3) Personal Emergency Response System (PERS), as defined in WAC 388-106-0270;
- (4) Home delivered meals, as defined in WAC 388-106-0300;
- (5) Specialized medical equipment and supplies, as defined in WAC 388-106-0300;
- (6) Assistive/Adaptive technology and equipment, as defined in WAC 388-106-0270;
- (7) Community transition or sustainability services as defined in WAC 388-106-0270, which are nonrecurring set-up items and services to assist with expenses to move from an acute care hospital or diversion from a psychiatric hospital stay to an in-home setting and may include:
 - (a) Security deposits that are required to lease an apartment or home;
 - (b) Activities to assess need, arrange for, and obtain needed resources, including essential household furnishings;
 - (c) Set-up fees or deposits for utility or services access, 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) Minor home accessibility modifications necessary for hospital discharge.
- (8) Community choice guide: specialty services which provide assistance and support to ensure an individual's successful transition to the community or maintenance of independent living, as defined in WAC 388-106-0300; and
- (9) Supportive Housing as defined in WAC 388-106.

NEW SECTION

WAC 388-106-1815 Am I eligible for LTSS MPC PE Services? You are eligible to receive LTSS MPC PE services if you meet the following criteria based upon the attested information in your PE screening:

- (1) Meet functional eligibility requirements as defined in WAC 388-106-0210; and
- (2) Meet financial eligibility requirements as defined in WAC 182-513-1225; and
- (3) Will be discharging from an acute care hospital or diverting from a community psychiatric hospital; or
- (4) Have discharged or diverted from an acute care hospital or community psychiatric hospital in the last 90 days; and
- (5) Live in your own home as defined in WAC 388-106-0010; and
- (6) Are not receiving any other medicaid funded long-term services and supports.

NEW SECTION

WAC 388-106-1820 What services may I receive under LTSS MPC PE? Under LTSS MPC PE you may receive up to 34 hours per month of personal care services as defined in WAC 388-106-0010.

NEW SECTION

WAC 388-106-1825 Who can provide long-term care services when I am eligible for LTSS NFLOC or LTSS MPC PE services? The following types of providers can provide long-term care services:

- (1) Individual providers (IPs) as defined in WAC 388-115-0503, who provide services to clients in the client's own home.
- (2) Home care agencies that provide services to clients in the client's own home. Home care agencies must be licensed under chapter 70.127 RCW and chapter 246-335 WAC and contracted with the department.
- (3) Providers who have contracted with the department to perform other services.

NEW SECTION

WAC 388-106-1830 When will the department authorize my LTSS NFLOC or LTSS MPC PE services? The department will authorize LTSS NFLOC PE or LTSS MPC PE services when you:

- (1) Are found both financially and functionally eligible for PE services by completing your PE screening which includes the amount of participation toward the cost of your care that you must pay (if any);
- (2) Have given consent for services and approved your care plan; and
- (3) Have chosen a DSHS qualified provider(s), per WAC 388-71-0510.

In the event the department implements a wait list under WAC 388-106-1860 for LTSS NFLOC PE or LTSS MPC PE services, the department will not be able to authorize PE services for new applicants.

NEW SECTION

WAC 388-106-1835 When do LTSS NFLOC PE or LTSS MPC PE services end? (1) Your LTSS NFLOC PE or LTSS MPC PE services end with the earlier date of:

(a) The date the decision was made on your application as defined in WAC 388-106-0010;

(b) The date you were confirmed by a CARE assessment to not meet functional eligibility criteria as defined in WAC 388-106-0355 or 388-106-0210; or

(c) The last day of the month following the month in which your presumptive eligibility services were authorized if you did not submit your application.

(2) You may only receive LTSS NFLOC PE or LTSS MPC PE services once within a 24-month period.

NEW SECTION

WAC 388-106-1840 Where can I receive LTSS NFLOC PE or LTSS MPC PE services? You can receive LTSS NFLOC PE or LTSS MPC PE services:

(1) In your own home as defined in WAC 388-106-0010;

(2) While you are out of your home accessing the community or working while:

(a) within the state of Washington; or

(b) in a recognized out-of-state bordering city as defined in WAC 182-501-0175.

NEW SECTION

WAC 388-106-1845 What do I pay for if I receive LTSS NFLOC PE or LTSS MPC PE services? (1) If you receive LTSS MPC PE services you are not required to pay toward the cost of care for those services.

(2) If you receive LTSS NFLOC PE, you may be required to pay toward the cost of your care as outlined in WAC 182-515-1509. You are allowed to keep some of your income for a maintenance allowance.

NEW SECTION

WAC 388-106-1850 Do I have a right to an administrative hearing on LTSS NFLOC PE or LTSS MPC PE determinations? Applicants do not have an administrative hearing right as defined in chapter 388-02 WAC on LTSS NFLOC PE or LTSS MPC PE eligibility determinations.

NEW SECTION

WAC 388-106-1855 Can an exception to rule (ETR) be granted for eligibility or service determinations? ETRs will not be granted for LTSS NFLOC PE or LTSS MPC PE eligibility determinations or service determinations.

NEW SECTION

WAC 388-106-1860 Will there be a wait list for LTSS NFLOC PE or LTSS MPC PE? (1) The department will implement a statewide wait list if program expenditures or enrollment exceeds availability of funding.

(2) If the department implements a wait list for LTSS NFLOC PE or LTSS MPC PE:

(a) We will stop conducting presumptive eligibility assessments and determinations.

(b) If additional funding becomes available, applicants on a wait list for LTSS NFLOC PE or LTSS MPC PE will be considered on a first come first serve basis based upon their request date for LTSS NFLOC PE or LTSS MPC PE.