



PROPOSED RULE MAKING

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

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: September 27, 2023
TIME: 9:25 AM

WSR 23-20-038

Agency: Department of Social and Health Services, Economic Services Administration

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

- Preproposal Statement of Inquiry was filed as WSR 23-13-026 ; 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 proposing amendments to WAC 388-447-0120 "How does alcohol or drug dependence affect my eligibility for referral to the housing and essential needs (HEN) program?" and WAC 388-449-0220, "How does alcohol or drug dependence affect my eligibility for the ABD cash and pregnant women assistance programs?"

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
November 7, 2023	10:00 am	Virtually via Teams or call in	Hearings are being held virtually. Please see the DSHS website for the most up to date information

Date of intended adoption: Not earlier than November 8, 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) November 7, 2023, at 5:00 p.m.

Assistance for persons with disabilities:

Contact Shelley Tencza, DSHS Rules Consultant
 Phone: 360-664-6036
 Fax: 360-664-6185
 TTY: 711 Relay Service
 Email: Tencza@dshs.wa.gov
 Other:
 By (date) October 24, 2023, at 5:00 p.m.

Purpose of the proposal and its anticipated effects, including any changes in existing rules: These amendments implement provisions of ESHB 1260 (Chapter 289, Laws of 2023) that expand circumstances where good cause for failing to participate in substance use disorder assessment or treatment as a condition of eligibility must be found for the ABD, HEN Referral, and PWA programs. These amendments are in effect as of July 23, 2023, under emergency rule filed as WSR 23-16-002.

Reasons supporting proposal: See above

Statutory authority for adoption: RCW 74.04.005, 74.04.050, 74.04.0052, 74.04.055, 74.04.057, 74.04.510, 74.04.655, 74.04.770, 74.08.025, 74.08.043, 74.08.090, 74.08.335, 74.08A.100, and 74.62.030

Statute being implemented: RCW 74.04.805 and 74.62.005

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:	Sarah Mintzer	PO Box 45470, Olympia, WA 98504-5770	360-764-0050
Implementation:	Sarah Mintzer	PO Box 45470, Olympia, WA 98504-5770	360-764-0050
Enforcement:	Sarah Mintzer	PO Box 45470, Olympia, WA 98504-5770	360-764-0050

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: This amendment is exempt as allowed under RCW 34.05.328(5)(b)(vii) which states in part, "this section does not apply 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 34.05.328(5)(b)(vii).

Explanation of how the above exemption(s) applies to the proposed rule: The proposed rules 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: September 22, 2023

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



AMENDATORY SECTION (Amending WSR 13-24-044, filed 11/26/13, effective 1/1/14)

WAC 388-447-0120 How does ~~((alcohol or drug dependence))~~ substance use affect my eligibility for referral to the housing and essential needs (HEN) program? (1) ~~((When we have information that indicates you may be chemically dependent,))~~ You must complete a ~~((chemical dependency))~~ substance use disorder assessment ~~((unless you have good cause to not do so))~~ when we have information that indicates you may have a substance use disorder.

(2) You must participate in ~~((drug or alcohol))~~ substance use treatment if a certified ~~((chemical dependency))~~ substance use disorder professional indicates a need for treatment, unless you have good cause ~~((to not do so))~~. Good cause includes, but is not limited to,

~~((3))~~ We consider the following reasons ~~((to be good cause for not following through with a chemical dependency assessment or treatment))~~:

(a) We determine that your physical or mental health impairment prevents you from participating in treatment ~~((+))~~.

(b) The outpatient ~~((chemical dependency))~~ substance use disorder treatment you need isn't available in the county where you live ~~((+ or))~~.

(c) The inpatient ~~((chemical dependency))~~ substance use disorder treatment you need isn't available at a location you can reasonably access.

(d) You are a parent or other relative personally providing care for a minor child or an incapacitated individual living in your household, child care or day care is necessary for you to participate in substance use disorder treatment, and such care is not available.

~~((4))~~ (3) If you refuse or ~~((fail to))~~ do not complete an assessment or treatment without good cause, your HEN referral eligibility will end ~~((following advance notification rules under WAC 388-458-0030))~~ until you provide proof you are pursuing an assessment or treatment as required.

AMENDATORY SECTION (Amending WSR 12-10-042, filed 4/27/12, effective 6/1/12)

WAC 388-449-0220 How does ~~((alcohol or drug dependence))~~ substance use affect my eligibility for the aged, blind, or disabled (ABD) cash and pregnant women assistance (PWA) programs? (1) ~~((You))~~ For purposes of ABD, you must complete a ~~((chemical dependency))~~ substance use disorder assessment when we have information that indicates you may ~~((be chemically dependent))~~ have a substance use disorder.

(2) For purposes of PWA, you must complete a substance use disorder assessment when we have information that indicates you may have a substance use disorder.

~~((2))~~ (3) You must ~~((accept an assessment referral and))~~ participate in ~~((drug or alcohol))~~ substance use disorder treatment if a certified ~~((chemical dependency counselor))~~ substance use disorder professional indicates a need for treatment, unless you ~~((meet one of))~~ have good cause. Good cause includes, but is not limited to, the following ~~((good cause))~~ reasons:

(a) We determine that your physical or mental health impairment prevents you from participating in treatment.

(b) The outpatient (~~(chemical dependency)~~) substance use disorder treatment you need isn't available in the county you live in.

(c) You need inpatient (~~(chemical dependency)~~) substance use disorder treatment at a location that you can't reasonably access.

(d) You are a parent or other relative personally providing care for a minor child or an incapacitated individual living in your household, child care or day care is necessary for you to participate in substance use disorder treatment, and such care is not available.

(3) If you refuse or (~~fail to~~) do not complete an assessment or treatment without good cause, your benefits will end until you provide proof you are pursuing an assessment or treatment as required.