



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: January 17, 2024
TIME: 9:21 AM

WSR 24-03-086

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 23-05-081 ; 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 WAC 388-106-0336 – What services may I receive under the residential support waiver?

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
February 27, 2024	10:00 AM	Virtually or Teams 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 February 28, 2024 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: DSHS Rules Coordinator
 Address: PO Box 45850, Olympia, WA 98504-5600
 Email: DSHSRPAURulesCoordinator@dshs.wa.gov
 Fax: 360-664-6185
 Other:
 By (date) February 27, 2024, by 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) February 13, 2024, by 5:00 PM

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The department added a new service, Community Stability Supports, under the Residential Support Waiver amendment WA.1086.R01.10. Minor language changes are made to this WAC for consistency in service language.

Reasons supporting proposal: 42 C.F.R. § 441.300-310

Statutory authority for adoption: RCW 74.08.090, 74.09.520, 74.39A.400, 42 C.F.R. § 441.500-590, RCW 74.39A.030, 42 C.F.R. § 441.300-310

Statute being implemented: RCW 74.08.090, 74.09.520, 74.39A.400, 42 C.F.R. § 441.300-310

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:	Allison KF Garza	DSHS HCS 1200 Alder Street, Union Gap, WA 98902	360-239-6906
Implementation:	James Selby	ALTSA HQ 4450 10 th Avenue SE, Lacey WA 98504-5600	360-890-2640
Enforcement:	Residential Care Services	ALTSA HQ 4450 10 th Avenue SE, Lacey WA 98504-5600	360-724-2400

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: Allison KF Garza

Address: DSHS HCS 1200 Alder Street, Union Gap, WA 98902

Phone: 360-239-6906

Fax:

TTY:

Email: allison.garza@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:

[RCW 34.05.310](#) (4)(b)
(Internal government operations)

[RCW 34.05.310](#) (4)(e)
(Dictated by statute)

[RCW 34.05.310](#) (4)(c)
(Incorporation by reference)

[RCW 34.05.310](#) (4)(f)
(Set or adjust fees)

[RCW 34.05.310](#) (4)(d)
(Correct or clarify language)

[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 _____.

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. This rule doesn't impose a cost and is just a description of the program requirements.
- 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:

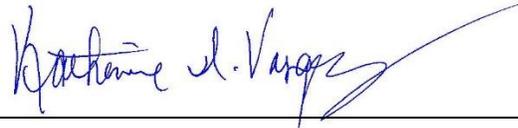
Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Date: January 16, 2024

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



WAC 388-106-0336 What services may I receive under the residential support waiver? You may receive the following services under the residential support waiver:

(1) Adult family homes and assisted living facilities with an expanded community services contract that will provide:

- (a) Personal care;
- ~~(b) ((Supportive services;~~
- ~~(c) Supervision in the home and community;~~
- ~~(d) Twenty-four)) 24-hour on-site support and response staff;~~
- ~~((e))~~ (c) The development and implementation of an individualized behavior support plan to prevent and respond to crises;
- ~~((f))~~ (d) Medication management; and
- ~~((g))~~ (e) Coordination and collaboration with a contracted behavior support provider;

(2) Adult family homes with a specialized behavior support contract that will provide:

- (a) Personal care;
- ~~(b) ((Supportive services;~~
- ~~(c) Supervision in the home and community;~~
- ~~(d) Twenty-four)) 24-hour on-site support and response staff;~~
- ~~((e))~~ (c) The development and implementation of an individualized behavior support plan to prevent and respond to crises;
- ~~((f))~~ (d) Medication management;
- ~~((g))~~ (e) Coordination and collaboration with a contracted behavior support provider; and
- ~~((h))~~ (f) Specialized behavior support that provides you with six to eight hours a day of individualized staff time;

(3) Assisted living facilities with a community stability supports contract that will provide:

- (a) Personal care;
- (b) 24-hour on-site support and response staff;
- (c) The development and implementation of an individualized behavior support plan to prevent and respond to crises;
- (d) Medication management; and
- (e) On-site staffing ratios and professional staffing as described in the contract;

~~((3))~~ (4) Enhanced services facilities that will provide:

- (a) Personal care;
- ~~(b) ((Supportive services;~~
- ~~(c) Supervision in the home and community;~~
- ~~(d) Twenty-four)) 24-hour on-site support and response staff;~~
- ~~((e))~~ (c) The development and implementation of an individualized behavior support plan to prevent and respond to crises;
- ~~((f))~~ (d) Medication management; and
- ~~((g))~~ (e) On-site staffing ratios and professional staffing as described in WAC 388-107-0230 through ((WAC)) 388-107-0270;

~~((4))~~ (5) Specialized durable and nondurable medical equipment and supplies under WAC 182-543-1000 when:

- (a) Medically necessary under WAC 182-500-0005;
- (b) Necessary:
 - (i) For life support;
 - (ii) To increase your ability to perform activities of daily living; or

(iii) To perceive, control, or communicate with the environment in which you live;

(c) Directly medically or remedially beneficial to you;

(d) They are additional and do not replace any medical equipment or supplies otherwise provided under medicaid, or medicare, or both; and

(e) In addition to and do not replace the services required by the department's contract with a residential facility;

~~((5))~~ (6) Client support training to address your needs identified in your CARE assessment or other professional evaluation that are additional and do not replace the services required by the department's contract with the residential facility and meet a therapeutic goal, such as:

(a) Adjusting to a serious impairment;

(b) Managing personal care needs; or

(c) Developing necessary skills to deal with care providers;

~~((6))~~ (7) Nurse delegation under RCW 18.79.260 when:

(a) You receive personal care from a registered or certified nursing assistant who has completed nurse delegation core training;

(b) The delegating nurse considers your medical condition stable and predictable;

(c) The services comply with WAC 246-840-930; and

(d) The services are additional and do not replace the services required by the department's contract with the residential facility;

~~((7))~~ (8) Skilled nursing when:

(a) Provided by a registered nurse or licensed practical nurse under a registered nurse's supervision;

(b) Beyond the amount, duration, or scope of medicaid-reimbursed home health services as provided under WAC 182-551-2100; and

(c) Additional and do not replace the services required by the department's contract with the residential facility;

~~((8))~~ (9) Nursing services not already received from another resource, based on your individual need as determined by your CARE assessment and any additional collateral contact information obtained by your case manager, including any one or more of the following activities performed by a registered nurse:

(a) Nursing assessment/reassessment;

(b) Instruction to you, your providers, and your caregivers;

(c) Care coordination and referral to other health care providers;

(d) Skilled treatment, only in the event of an emergency as in nonemergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider or other appropriate resource;

(e) File review; or

(f) Evaluation of health-related care needs affecting service plan and delivery;

~~((9))~~ (10) Adult day health services as described in WAC 388-71-0706 when:

(a) Your CARE assessment shows an unmet need for personal care or other core services, whether or not those needs are otherwise met; and

(b) Your CARE assessment shows an unmet need for skilled nursing under WAC 388-71-0712 or skilled rehabilitative therapy under ~~((WAC))~~ 388-71-0714 and:

(i) There is a reasonable expectation that the services will improve, restore, or maintain your health status, or in the case of a progressive disabling condition, will either restore or slow the de-

cline of your health and functional status or ease related pain and suffering;

(ii) You are at risk for deteriorating health, deteriorating functional ability, or institutionalization; or

(iii) You have a chronic acute health condition that you are not able to safely manage due to a cognitive, physical, or other functional impairment.