



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 29, 2024

TIME: 12:45 PM

WSR 24-10-071

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 24-03-108 ; 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 is proposing to amend WAC 388-449-0015, "What medical evidence do I need to provide?"

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
June 4, 2024	10:00 am	Virtually via Teams or Call in	Hearings are held virtually, see the DSHS website https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings for the most current information.

Date of intended adoption: Not earlier than June 5, 2024 (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 4, 2024, at 5:00 pm

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) May 21, 2024, at 5:00 pm

Purpose of the proposal and its anticipated effects, including any changes in existing rules: Proposed amendments will streamline medical evidence rules for the Aged, Blind, or Disabled (ABD) cash assistance program to allow functional medical evidence to be obtained within 90 days from the date of disability review.

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, 74.08.043, 74.08.090, 74.08.335, and 74.08A.100

Statute being implemented: N/A

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:	Aman Gill	PO Box 45470, Olympia WA 98504	360-407-4447
Implementation:	Aman Gill	PO Box 45470, Olympia WA 98504	360-407-4447
Enforcement:	Aman Gill	PO Box 45470, Olympia WA 98504	360-407-4447

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: These rules are exempt as allowed under 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"/> 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: **These amendments do not impact small businesses. They only impact DSHS customers.**

(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:

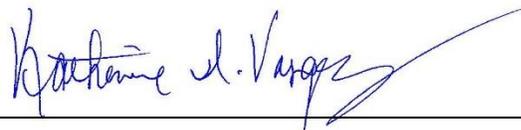
Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Date: April 23, 2024

Name: Katherine I Vasquez

Title: Dshs Rules Coordinator

Signature:



WAC 388-449-0015 What medical evidence do I need to provide?

You must give us medical evidence of your impairment(s) and how they affect your ability to perform regular and continuous work activity. Medical evidence must be in writing and be clear, objective, and complete.

(1) Objective evidence for physical impairments means:

- (a) Laboratory test results;
- (b) Pathology reports;
- (c) Radiology findings including results of X-rays and computer imaging scans;
- (d) Clinical findings, including but not limited to ranges of joint motion, blood pressure, temperature or pulse, and documentation of a physical examination; and
- (e) Hospital history and physical reports and admission and discharge summaries; or
- (f) Other medical history and physical reports related to your current impairments.

(2) Objective evidence for mental impairments means:

- (a) Clinical interview observations, including objective mental status exam results and interpretation((-)) ;
- (b) Explanation of how examination findings meet the clinical and diagnostic criteria of the most recent edition of the diagnostic and statistical manual of mental disorders (DSM)((-)) ;
- (c) Hospital, outpatient, and other treatment records related to your current impairments((-)) ; and
- (d) Testing results, if any, including:
 - (i) Description and interpretation of tests of memory, concentration, cognition, or intelligence; or
 - (ii) Interpretation of medical tests to identify or exclude a connection between the mental impairment and physical illness.

(3) Medical evidence sufficient for a disability determination must be from a medical professional described in WAC 388-449-0010 and must include:

- (a) A diagnosis for the impairment, or impairments, based on an examination performed by an acceptable medical source defined in WAC 388-449-0010 within five years of application;
- (b) A clear description of how the impairment relates to your ability to perform the work-related activities listed in WAC 388-449-0005;
- (c) Documentation of how long a condition has impaired your ability to perform work related activities;
- (d) A prognosis, or written statement of how long an impairment will impair your ability to perform work related activities; and
- (e) A written statement from a medical professional (defined in WAC 388-449-0010) describing what you are capable of doing despite your impairment (medical source statement) based on an examination performed within ((ninety)) 90 days of the date of application or ((~~forty five days before the month of~~)) disability review.

(4) We consider documentation in addition to objective evidence to support the acceptable medical source or treating provider's opinion that you are unable to perform substantial gainful employment, such as proof of hospitalization.

(5) When making a disability decision, we don't use your report of symptoms as evidence unless objective evidence shows there is an impairment that could reasonably be expected to produce those symptoms.

(6) We don't use symptoms related to substance ((abuse)) use disorder or a diagnosis of ((~~chemical dependency~~)) substance use disorder when determining disability if we have evidence substance use is material to your impairment(s).

(7) We consider substance use to be material to your impairment(s) if you are disabled primarily because of ((~~drug or alcohol abuse or addiction~~)) a substance use disorder.

(8) If your impairment will persist at least ((~~sixty~~)) 60 days after you stop using drugs or alcohol, we do not consider substance use to be material to your impairment.

(9) If you can't obtain medical evidence sufficient for us to determine if you are likely to be disabled without cost to you, and you meet the other eligibility conditions in WAC 388-400-0060, we pay the costs to obtain objective evidence based on published payment limits and fee schedules.

(10) We determine the likelihood of disability based solely on the objective information we receive. We are not obligated to accept another agency's or person's decision that you are disabled or unemployable.