



PROPOSED RULE MAKING

CR-102 (June 2024) (Implements RCW 34.05.320) Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: January 30, 2025

TIME: 4:32 PM

WSR 25-04-059

Agency: Department of Social and Health Services, Developmental Disabilities Administration (DDA)

☒ **Original Notice**

☐ **Supplemental Notice to WSR** _____

☐ **Continuance of WSR** _____

☒ **Preproposal Statement of Inquiry was filed as WSR** 24-12-017 ; 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 388-829R-005 What definitions apply to this chapter?, 388-829R-011 Who is eligible to receive overnight planned respite services?, 388-829R-0019 What are the financial responsibilities of a primary caregiver or legal representative when the client is receiving overnight planned respite services?, 388-829R-025 What requirements must a provider meet to contract with DDA to provide overnight planned respite services?, 388-829R-026 Must a provider be certified?, 388-829R-027 Is a site visit required and what does DDA review during a site visit?, 388-829R-030 Who must have a background check?, 388-847-0050 What does SAIF provide?, 388-847-0260 Must SAIF be certified?, and 388-847-0261 Is a site visit required and what does DDA review during a site visit? (Repeal) 388-829R-220 What is initial certification?, 388-829R-225 What is standard certification?, 388-829R-230 What is provisional certification?, 388-829R-235 What must an overnight planned respite services provider comply with to maintain certification?, 388-829R-240 When may DDA decertify an overnight planned respite services provider?, 388-829R-245 How does DDA monitor overnight planned respite services?, 388-829R-250 How must the overnight planned respite services provider participate in the certification evaluation process?, 388-829R-255 What if the overnight planned respite services provider disagrees with a certification evaluation or certification decision?, and 388-829R-260 What if the overnight planned respite services provider disagrees with a certification action or the outcome of an informal dispute resolution?

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
March 25, 2025	10:00 a.m.	Virtually via Teams or Call in	Hearings are held virtually, see the DSHS website at https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings for the most current information.

Date of intended adoption: No earlier than March 26, 2025 (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

Beginning (date and time) noon on February 5, 2025

By (date and time) 5:00 p.m. on March 25, 2025

Assistance for persons with disabilities:

Contact Shelley Tencza, Rules Consultant
Phone 360-664-6036
Fax 360-664-6185
TTY 711 Relay Service
Email shelley.tencza@dshs.wa.gov
Other

By (date) 5:00 p.m. on March 11, 2025

Purpose of the proposal and its anticipated effects, including any changes in existing rules: DDA is amending these rules primarily to create a connection to the new certification rules under development by the administration, which will be adopted as a new chapter 388-825A WAC. Other changes have been made to clarify language, correct background check requirements, and establish financial responsibility for clients receiving overnight planned respite services. Several sections are also being repealed.

Reasons supporting proposal: These amendments are necessary to support the creation of a standardized certification process for DDA-certified providers, which includes OPRS and SAIF providers.

Statutory authority for adoption: RCW 71A.12.030

Statute being implemented: RCW 71A.12.040 and 71A.12.120

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:

Name of proponent: (person or organization) Department of Social and Health Services

Type of proponent: ☐ Private. ☐ Public. ☒ Governmental.

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	Rae Graham	P.O. Box 45310, Olympia, WA 98504-5310	360-280-3362
Enforcement	Rae Graham	P.O. Box 45310, Olympia, WA 98504-5310	360-280-3362

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 P.O. Box 45310, Olympia WA 98504-5310

Phone 360-790-4732

Fax

TTY 711 Relay service

Email 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"/> 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 _____.
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:

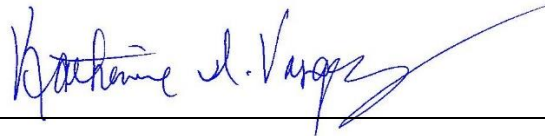
Name
Address
Phone
Fax
TTY
Email
Other

Date: January 30, 2025

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



WAC 388-829R-005 What definitions apply to this chapter? The following definitions apply to this chapter:

"Administrator" means the person responsible for daily management and operation of the overnight planned respite services site. The administrator may also be the owner.

"Authorization" means DDA approval of funding for a service as identified in the person-centered service plan or evidence of payment for a service.

"Backup caregiver" means an identified secondary person who will assume the role of providing direct care to and support of the client in instances of emergencies and in the absence of the primary caregiver who is unable to care for or respond to the client.

"Client" means a person who has a developmental disability as defined in RCW 71A.10.020 and who the DDA has determined eligible to receive services under chapter 71A.16 RCW. When used in this section, "you" is interchangeable with client.

"DDA" means the developmental disabilities administration, an administration of the department of social and health services and its employees and authorized agents.

"Direct support professional" means a person who interacts directly with a client during an overnight planned respite stay to provide services outlined in the client's overnight planned respite services individualized agreement.

"DSHS" or "the department" means the state of Washington department of social and health services and its employees and authorized agents.

"Family" means one or more of the following relatives: Spouse or registered domestic partner; natural; adoptive; or stepparent; grandparent; child; stepchild; sibling; stepsibling; uncle; aunt; first cousin; niece; or nephew.

"Legal representative" means a parent of a client if the client is under age 18 and parental rights have not been terminated or revoked, a court-appointed guardian if a decision is within the scope of the guardianship order, or any other person authorized by law to act for the client.

"Mandatory reporter" means any person working with vulnerable adults required to report suspected incidents of abandonment, abuse, neglect, financial exploitation under chapter 74.34 RCW.

"Nurse delegation" means the process by which a registered nurse transfers the performance of select nursing tasks to a nursing assistant-registered or nursing assistant-certified in select situations as set forth in chapter 18.79 RCW and WAC 246-840-910 through 246-840-970.

"Overnight planned respite services" means services that are intended to provide short-term intermittent relief for a person who lives with and acts as a DDA client's primary caregiver.

"Overnight planned respite services provider" and "provider" means an agency that is contracted to provide overnight planned respite services.

"Owner" means the person who accepts or delegates responsibility for the management and operation of the overnight planned respite services site. The owner may also be the administrator.

"Primary caregiver" means the person who provides the majority of the client's care and supervision and lives with the client.

AMENDATORY SECTION (Amending WSR 23-13-030, filed 6/12/23, effective 7/13/23)

WAC 388-829R-011 Who is eligible to receive overnight planned respite services? To be eligible to receive overnight planned respite services, a ~~((client))~~ person must:

(1) Be DDA-eligible ~~((for DDA services))~~ under chapter 388-823 WAC;

(2) Be 18 or older;

(3) Live at home with a primary caregiver and not currently receive:

(a) Community first choice residential services; or

(b) Residential habilitation services, unless receiving services from a companion home provider; ~~((or))~~ and

~~((b) Community first choice residential services; and))~~

(4) Identify a backup caregiver to respond in an emergency if the primary caregiver is unavailable.

NEW SECTION

WAC 388-829R-0019 What are the financial responsibilities of a primary caregiver or legal representative when the client is receiving overnight planned respite services? (1) A primary caregiver or legal representative remains financially responsible for all expenses for the client that the overnight planned respite services provider is not required to provide under this chapter.

(2) For a client subject to a dependency action who is court ordered in out-of-home placement, under federal regulations, the child welfare agency is responsible for paying the client's room, board, and supervision.

AMENDATORY SECTION (Amending WSR 20-08-033, filed 3/24/20, effective 5/1/20)

WAC 388-829R-025 What requirements must a provider meet to contract with DDA to provide overnight planned respite services? To be eligible to contract with DDA to provide overnight planned respite services, a provider must:

(1) Be approved as a contractor by the department; and

(2) ~~((Receive))~~ Obtain initial certification ~~((no more than ninety days after the first date of service delivery))~~ in accordance with WAC 388-825A-0040.

NEW SECTION

WAC 388-829R-026 Must a provider be certified? A provider of overnight planned respite services must be certified by DDA under chapter 388-825A WAC.

NEW SECTION

WAC 388-829R-027 Is a site visit required and what does DDA re-view during a site visit? (1) To be certified, a provider must participate in site visits as required under chapter 388-825A WAC.

(2) During a site visit, DDA reviews the provider's service site for the following safety requirements:

- (a) The common areas of the home are unrestricted.
- (b) All entrances and exits are unblocked.
- (c) The home is in good repair and maintained in a sanitary manner.
- (d) The home has a storage area for flammable and combustible materials.
- (e) Every floor of the home has working smoke and carbon monoxide detectors.
- (f) The home has a fire extinguisher that meets requirements for the residence type. There must be a fire extinguisher in the kitchen and at least one on every floor of the home.
- (g) The home has a stocked first-aid kit.
- (h) The home has a working and accessible telephone.
- (i) The home has a working and accessible flashlight or alternative light source.
- (j) Emergency contact information is available and accessible in the home (e.g., 911, poison control, nonemergency 911, adult protective services, child protective services).
- (k) The contact information for the developmental disabilities ombuds is available and accessible in the home.
- (l) The water temperature at the home is 120 degrees Fahrenheit or less.
- (m) There is a safety plan for any body of water more than 24 inches deep at the home.
- (n) The home has an evacuation plan and an emergency food and water supply.
- (o) The home has a backup power source (e.g., generator, battery pack) if the provider supports a client who uses life sustaining medical equipment.

AMENDATORY SECTION (Amending WSR 20-08-033, filed 3/24/20, effective 5/1/20)

WAC 388-829R-030 Who must have a background check? (1) An overnight planned respite services provider employee, administrator, owner, direct support professional, volunteer, and any other employee who

may have unsupervised access to a DDA client must have a background check.

(2) Any person required to have a background check under this section must have a nondisqualifying background check result before having unsupervised access to a client and every ((two)) three years thereafter, or more frequently if required by ((DSHS)) DDA.

AMENDATORY SECTION (Amending WSR 22-11-056, filed 5/16/22, effective 6/16/22)

WAC 388-847-0050 What does SAIF provide? (1) The stabilization, assessment, and intervention facility (SAIF) provides the following:

- (a) Stabilization services under WAC 388-845-1100;
- (b) Functional assessment under WAC 388-847-0080;
- (c) The creation and implementation of a behavior support plan under WAC 388-847-0090;
- (d) ~~((Services))~~ Supports assigned to SAIF in the client's person-centered service plan;
- (e) Opportunities for the client's residential provider to participate in individualized team meetings, discuss effective environmental strategies, collaborate on techniques for implementing the client's behavior support plan; and
- (f) Medication administration and medication assistance as needed.

(2) SAIF must provide the following to clients:

- (a) Three meals per day plus snacks;
- (b) Toiletries and personal care items;
- (c) Bedding and towels;
- (d) Access to laundry facilities;
- (e) Access to a telephone;
- (f) Opportunities for accessing the community; and
- (g) Transportation to necessary appointments or services.

AMENDATORY SECTION (Amending WSR 22-11-056, filed 5/16/22, effective 6/16/22)

WAC 388-847-0260 Must SAIF be certified? ~~((1) The stabilization, assessment, and intervention facility (SAIF) must be certified by DDA no more than 90 days after the first date of service delivery.~~

- ~~(2) DDA certifies SAIF through a certification evaluation.~~
- ~~(3) DDA contracted evaluators conduct the certification evaluations.~~
- ~~(4) SAIF must participate in a certification evaluation at least once every 12 months.)~~

SAIF must be certified by DDA under chapter 388-825A WAC.

NEW SECTION

WAC 388-847-0261 Is a site visit required and what does DDA re-view during a site visit? (1) To be certified, a provider must participate in site visits as required under chapter 388-825A WAC.

(2) During a site visit, DDA reviews the provider's service site for the following safety requirements:

- (a) The common areas of the home are unrestricted.
- (b) All entrances and exits are unblocked.
- (c) The home is in good repair and maintained in a sanitary manner.
- (d) The home has a storage area for flammable and combustible materials.
- (e) Every floor of the home has working smoke detectors.
- (f) The home has a fire extinguisher that meets requirements for the residence type. There must be a fire extinguisher in the kitchen and one on at least every floor of the home.
- (g) The home has a stocked first-aid kit.
- (h) The home has a working and accessible telephone.
- (i) The home has a working and accessible flashlight or alternative light source.
- (j) Emergency contact information is available and accessible in the home (e.g., 911, poison control, nonemergency 911, adult protective services, child protective services).
- (k) The contact information for the developmental disabilities ombuds is available and accessible in the home.
- (l) The water temperature at the home is 120 degrees Fahrenheit or less.
- (m) There is a safety plan for any body of water more than 24 inches deep at the home.
- (n) The home has an evacuation plan and an emergency food and water supply.
- (o) The home has a backup power source (e.g., generator, battery pack) if the provider supports a client who uses life sustaining medical equipment.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-829R-220	What is initial certification?
WAC 388-829R-225	What is standard certification?
WAC 388-829R-230	What is provisional certification?
WAC 388-829R-235	What must an overnight planned respite services provider comply with to maintain certification?
WAC 388-829R-240	When may DDA decertify an overnight planned respite services provider?
WAC 388-829R-245	How does DDA monitor overnight planned respite services?

- WAC 388-829R-250 How must the overnight planned respite services provider participate in the certification evaluation process?
- WAC 388-829R-255 What if the overnight planned respite services provider disagrees with a certification evaluation or certification decision?
- WAC 388-829R-260 What if the overnight planned respite services provider disagrees with a certification action or the outcome of an informal dispute resolution?