



# RULE-MAKING ORDER EMERGENCY RULE ONLY

## CR-103E (August 2017) (Implements RCW 34.05.350 and 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: September 07, 2017

TIME: 9:06 AM

WSR 17-19-004

**Agency:** Department of Social and Health Services, Developmental Disabilities Administration

**Effective date of rule:**

**Emergency Rules**

- Immediately upon filing.
- Later (specify)

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

- Yes  No If Yes, explain:

**Purpose:** The department is amending WAC 388-845-1615 and WAC 388-845-1620 as part of the Developmental Disabilities Administration's waiver renewal process. These emergency rules reflect the changes approved by the Centers for Medicare and Medicaid Services (CMS) in August 2017.

**Citation of rules affected by this order:**

New: None  
 Repealed: None  
 Amended: WAC 388-845-1615, WAC 388-845-1620  
 Suspended: None

**Statutory authority for adoption:** RCW 71A.12.030, RCW 71A.12.120

**Other authority:**

**EMERGENCY RULE**

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

**Reasons for this finding:** The Developmental Disabilities Administration (DDA) must not authorize waiver services unless they are part of a waiver application approved by CMS. CMS has approved DDA's waiver applications. These emergency rules are necessary for DDA to provide the services approved by CMS, and for DDA to receive federal funding.

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	<u>2</u>	Repealed	___

**The number of sections adopted at the request of a nongovernmental entity:**

New	___	Amended	___	Repealed	___
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**The number of sections adopted on the agency's own initiative:**

New	___	Amended	___	Repealed	___
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	___	Amended	___	Repealed	___
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**The number of sections adopted using:**

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	<u>2</u>	Repealed	___

**Date adopted:** September 6, 2017

**Name:** Katherine Vasquez

**Title:** DSHS Rules Coordinator

**Signature:**



AMENDATORY SECTION (Amending WSR 17-12-011, filed 5/26/17, effective 6/26/17)

**WAC 388-845-1615 Who may be qualified providers of respite care?**

Providers of respite care may be any of the following individuals or agencies contracted with the developmental disabilities administration (DDA) for respite care:

(1) Individuals who meet the provider qualifications under chapter 388-825 WAC;

(2) Homecare/home health agencies licensed under chapter 246-335 WAC, Part 1;

(3) Licensed and contracted group homes, foster homes, child placing agencies, staffed residential homes, and foster group care homes;

(4) Licensed and contracted adult family homes;

(5) Licensed and contracted adult residential care facilities;

(6) Licensed and contracted adult residential treatment facilities under chapter 246-337 WAC;

(7) Licensed child care centers under chapter 170-295 WAC;

(8) Licensed child day care centers under chapter 170-295 WAC;

(9) Adult day care providers under chapter 388-71 WAC contracted with DDA;

(10) Certified providers under chapter 388-101 WAC when respite is provided within the DDA contract for certified residential services; or

(11) A licensed practical nurse (LPN) or registered nurse (RN) acting within the scope of the standards of nursing conduct or practice under chapter 246-700 WAC and contracted with DDA to provide this service; or

(12) Other DDA contracted providers such as a community center, senior center, parks and recreation, and summer programs.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

**WAC 388-845-1620 Are there limits to the respite care you can receive?** The following limitations apply to the respite care you can receive:

(1) For basic plus, core, and CIIBS waivers, the DDA assessment will determine how much respite you can receive per chapter 388-828 WAC.

(2) For the IFS waiver, the dollar amount for your annual allocation in your IFS waiver limits the amount of respite care you may receive.

(3) Respite cannot replace:

(a) Day care while your parent or guardian is at work; or

(b) Personal care hours available to you. When determining your unmet need, DDA will first consider the personal care hours available to you.

(4) Respite providers have the following limitations and requirements:

(a) If respite is provided in a private home, the home must be licensed unless it is the client's home or the home of a relative of specified degree per WAC 388-825-345;

(b) The respite provider cannot be the spouse of the caregiver receiving respite if the spouse and the caregiver reside in the same residence; and

(c) If you receive respite from a provider who requires licensure, the respite services are limited to those age-specific services contained in the provider's license.

(5) Your individual respite provider may not provide:

(a) Other DDA services for you during your respite care hours; or

(b) DDA paid services to other persons during your respite care hours.

(6) Your primary caregivers may not provide other DDA services for you during your respite care hours.

(7) If your personal care provider is your parent and you live in your parent's adult family home you may not receive respite.

(8) DDA may not pay for any fees associated with the respite care; for example, membership fees at a recreational facility, or insurance fees.

(9) If you require respite care from a licensed practical nurse (LPN) or a registered nurse (RN), respite services may be authorized (~~(as skilled nursing services per WAC 388-845-1700)~~) using an LPN or RN. Respite services are limited to the assessed respite care ((from a) hours identified in your person-centered service plan. Respite provided by an LPN or RN requires a prior approval ((per WAC 388-845-1700(2). If you are on the IFS or basic plus waiver, skilled nursing services are limited to the dollar amounts of your basic plus aggregate services or IFS annual allocation per WAC 388-845-0210 and 388-845-0230)) by the regional administrator or designee.