



# RULE-MAKING ORDER EMERGENCY RULE ONLY

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

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: December 12, 2018

TIME: 4:40 PM

WSR 19-01-037

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

**Effective date of rule:**

**Emergency Rules**

- Immediately upon filing.
- Later (specify) December 13, 2018

**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 388-825-091 "Am I eligible for residential habilitation center (RHC) services?" and creating WAC 388-837-9010 "Must a client in an ICF/IID be able to benefit from active treatment?" to correctly reflect federal ICF/IID eligibility requirements.

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

New: WAC 388-837-9010  
 Repealed: None  
 Amended: WAC 388-825-091  
 Suspended: None

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

**Other authority:** 42 C.F.R. 483.440

**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:** These rules are necessary to comply with federal Medicaid law. Failure to enact these rules immediately jeopardizes the receipt of federal funds. This is the second emergency rule filing on these rules. The department is progressing through the permanent rulemaking process on these rules. The rules have been through internal and external review. Currently, the department is considering the comments received from external stakeholders. This subsequent filing is necessary to keep the rule effective until the permanent rulemaking process is complete.

**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	<u>1</u>	Amended	<u>1</u>	Repealed	___
Recently enacted state statutes:	New	___	Amended	___	Repealed	___

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

New \_\_\_\_ Amended \_\_\_\_ Repealed \_\_\_\_

**The number of sections adopted on the agency's own initiative:**

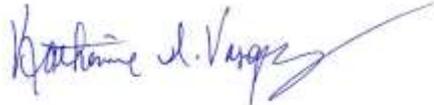
New \_\_\_\_ Amended \_\_\_\_ Repealed \_\_\_\_

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

New \_\_\_\_ Amended \_\_\_\_ Repealed \_\_\_\_

**The number of sections adopted using:**

Negotiated rule making:	New	____	Amended	____	Repealed	____
Pilot rule making:	New	____	Amended	____	Repealed	____
Other alternative rule making:	New	<u>1</u>	Amended	<u>1</u>	Repealed	____

<b>Date Adopted:</b> December 5, 2018	<b>Signature:</b> 
<b>Name:</b> Katherine I. Vasquez	
<b>Title:</b> DSHS Rules Coordinator	

AMENDATORY SECTION (Amending WSR 15-17-094, filed 8/18/15, effective 9/18/15)

**WAC 388-825-091 Am I eligible for residential habilitation center (RHC) services?** (1) If you are twenty-one years of age or over, you are eligible to receive residential habilitation center (RHC) services if:

- (a) You have been determined to meet DDA eligibility criteria;
- (b) You choose to receive services in the RHC;
- (c) ~~((You need the level of care provided at the RHC; and~~  
~~(d))~~) DDA has determined that you can be supported safely in an RHC environment and will not pose a danger to other residents of the RHC; ~~((or))~~ and

(d) You need the level of care provided at the RHC, which is either:

(i) Nursing facility level of care under WAC 388-106-0355 for a client admitted to a state-operated nursing facility; or

(ii) Intermediate care facility for individuals with intellectual disabilities (ICF/IID) level of care under WAC 388-837-9010, WAC 388-828-1020, and 42 C.F.R. 483.440 for a client admitted to a state-operated ICF/IID.

(2) If you are sixteen through twenty years of age, and meet (1)(a) through (d) above you may not be admitted to receive services at a residential habilitation center unless there are no service options available in the community to appropriately meet your needs. Such admission is limited to the provision of short-term respite or crisis stabilization services.

(3) If you are under age sixteen you are not eligible to receive services at a residential habilitation center.

(4) Admission to a nursing facility at a RHC also requires completion of preadmission screening and resident review (PASRR) requirements as described in chapter 388-97 WAC.

NEW SECTION

**WAC 388-837-9010 Must a client in an ICF/IID be able to benefit from active treatment?** An individual admitted to a residential habilitation center's intermediate care facility for individuals with intellectual disabilities must be in need of and able to benefit from continuous and aggressive active treatment.