



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: March 11, 2021

TIME: 8:29 AM

WSR 21-07-043

Agency: Department of Social and Health Services, Aging and Long-Term Support Administration

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify) March 12, 2021

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

- Yes
 - No
- If Yes, explain:

Purpose: In light of the public health emergency, the Centers for Medicare and Medicaid Services waived rules requiring in-person assessments. In addition, this change clarifies instances in which in-person interviews are not required. Therefore, the department is amending WAC 388-106-0050, What is an assessment?.

Citation of rules affected by this order:

- New: None
- Repealed: None
- Amended: WAC 388-106-0050
- Suspended: None

Statutory authority for adoption: RCW 74.09.520

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 department wants to continue providing personal care services to vulnerable people during the pandemic. To do that, federal Medicaid law requires an assessment of the person's functional eligibility. Because of the COVID-19 pandemic, in-person assessments increase the risk of transmission and the beneficiaries are often in high risk groups. Immediate amendment of this rule is necessary for the preservation of the public health and safety because without it the department may not be able to safely assess vulnerable adults so that they can receive needed Medicaid services. Without the amendment it may be difficult for the department to comply with Medicaid regulations and receive federal financial participation. Existing federal law allows for the assessment to be performed remotely if the person agrees. The requirement that the beneficiary agrees to a remote assessment has been temporarily waived by the Centers for Medicaid and Medicare services. The amendment aligns the state rule with federal requirements. The amendment is remedial and curative and is intended to be applied retroactively.

The department filed a CR-102 Proposed Rule Making on February 1, 2021 as WSR 21-04-107 for a public hearing on March 9, 2021. This emergency filing allows the emergency rule to remain in effect while the department completes the permanent rulemaking process.

**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	___	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>1</u>	Repealed	___

Date Adopted: March 8, 2021

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



WAC 388-106-0050 What is an assessment? (1) An assessment is an in-person interview in your home, current residence, or another location that is convenient to you that is conducted by the department, to inventory and evaluate your ability to care for yourself. The department will assess you at least every twelve months, or more often when there are significant changes necessitating revisions to your CARE plan, or at your request. If your assessment did not take place in the residence where you receive services, the department must visit that residence to evaluate your living situation and environment, for you to continue to receive services.

(2) Between assessments, the department may modify your current assessment without an in-person interview in your home or place of residence. The reasons that the department may modify your current assessment without conducting an in-person interview in your home or place of residence include but are not limited to the following:

(a) Errors made by department staff in coding the information from your in-person interview;

(b) New information requested by department staff at the time of your assessment and received after completion of the in-person interview (e.g. medical diagnosis);

(c) Changes in the level of informal support available to you; or

(d) Clarification of the coding selected.

(3) When the department modifies your current assessment, it will notify you using a Planned Action Notice of the modification regardless of whether the modification results in a change to your benefits. You will also receive a new service summary and assessment details, if requested.

(4) An assessment interview does not need to be in-person under the following circumstances:

(a) You agree to the interview being conducted remotely, and have adequate support to participate in the assessment if you need it; or

(b) An in-person interview is not required by the applicable federal regulation or the requirement is waived by the centers for medicare and medicaid services.