



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

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

Permanent Rule Only

Effective date of rule:

Permanent Rules

- 31 days after filing.
- Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

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 chapter 388-106 WAC, Long-Term Care Services to add Enhanced Services Facilities. The purpose is to add ESF as a service provider under the Residential Support Waiver. The rules identify the scope of services and client eligibility, and make minor edits regarding this facility type.

Citation of existing rules affected by this order:

Repealed: None
 Amended: 388-106-0015, 0030, 0040, 0120, 0336, and 0344
 Suspended: None

Statutory authority for adoption: RCW 74.08.090; RCW 74.09.520

Other authority : N/A

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 14-21-073 on October 10, 2014.
 Describe any changes other than editing from proposed to adopted version: None

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting: N/A

Name: _____ phone () _____
 Address: _____ fax () _____
 e-mail _____

Date adopted:

December 12, 2014

NAME (TYPE OR PRINT)

Kathleen Vasquez

SIGNATURE

TITLE

DSHS Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: December 16, 2014

TIME: 9:27 AM

WSR 15-01-085

**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Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____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>6</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	Repealed	_____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New	_____	Amended	_____	Repealed	_____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 in 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New	_____	Amended	_____	Repealed	_____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>6</u>	Repealed	_____

WAC 388-106-0015 What long-term care services does the department provide? The department provides long-term care services through programs that are designed to help you remain in the community. These programs offer an alternative to nursing home care (which is described in WAC 388-106-0350 through 388-106-0360). You may receive services from any of the following:

(1) **Medicaid personal care (MPC)** is a medicaid state plan program authorized under RCW 74.09.520. Clients eligible for this program may receive personal care in their own home or in a residential facility.

(2) **Community options program entry system (COPEs)** is a medicaid waiver program authorized under RCW 74.39A.030. Clients eligible for this program may receive personal care in their own home or in a residential facility.

(3) **Chore** is a state-only funded program authorized under RCW 74.39A.110. Grandfathered clients may receive assistance with personal care in their own home.

(4) **Volunteer chore** is a state-funded program that provides volunteer assistance with household tasks to eligible clients.

(5) **Program of all-inclusive care for the elderly (PACE)** is a medicaid/medicare managed care program authorized under 42 CFR 460.2. Clients eligible for this program may receive personal care and medical services in their own home, in residential facilities, and in adult day health centers.

(6) **Adult day health** is a supervised daytime program providing skilled nursing and rehabilitative therapy services in addition to core services outlined in WAC 388-106-0800.

(7) **Adult day care** is a supervised daytime program providing core services, as defined under WAC 388-106-0800.

(8) **Medical care services** is a state-funded program authorized under RCW 74.09.035. Clients eligible for this program may receive personal care services in an adult family home or an adult residential care facility.

(9) **Residential care discharge allowance** is a service that helps eligible clients to establish or resume living in their own home.

(10) **Private duty nursing** is a medicaid service that provides an alternative to institutionalization in a hospital or nursing facility setting. Clients eligible for this program may receive at least four continuous hours of skilled nursing care on a day to day basis in their own home.

(11) **Senior Citizens Services Act (SCSA)** is a program authorized under chapter 74.38 RCW. Clients eligible for this program may receive community-based services as defined in RCW 74.38.040.

(12) **Respite program** is a program authorized under RCW 74.41.040 and WAC 388-106-1200. This program provides relief care for unpaid family or other caregivers of adults with a functional disability.

(13) **Programs for persons with developmental disabilities** are discussed in chapter 388-823 through 388-850 WAC.

(14) **Nursing facility.**

(15) **New Freedom consumer directed services (NFCDs)** is a medicaid waiver program authorized under RCW 74.39A.030.

(16) **Residential support** is a medicaid waiver program authorized under RCW 74.39A.030. Clients eligible for this program may receive personal care in a licensed and contracted enhanced services facility

or in a licensed adult family home with a contract to provide specialized behavior services.

AMENDATORY SECTION (Amending WSR 14-15-092, filed 7/18/14, effective 8/18/14)

WAC 388-106-0030 Where can I receive services? You may receive services:

- (1) In your own home.
- (2) In a residential facility, which includes licensed:
 - (a) Adult family homes, as defined in RCW 70.128.010(~~(-)~~) ; and
 - (b) Assisted living facilities. Types of licensed and contracted (~~(+boarding homes+)~~) (~~(+)~~) assisted living facilities (~~(+)~~) include:
 - (i) Assisted living facilities, as defined in WAC 388-110-020;
 - (ii) Enhanced adult residential care facilities, as defined in WAC 388-110-020;
 - (iii) Enhanced adult residential care facilities-specialized dementia care, as defined in WAC 388-110-020; and
 - (iv) Adult residential care facilities, as defined in WAC 388-110-020(~~(+)~~).
- (~~(+e+)~~) (3) In an (~~(E)~~) enhanced services facility, (~~(when available)~~) as defined in RCW 70.97.010(12) and chapter 388-107 WAC.
- (~~(+3+)~~) (4) In a nursing home, as defined in WAC 388-97-005.

AMENDATORY SECTION (Amending WSR 14-15-092, filed 7/18/14, effective 8/18/14)

WAC 388-106-0040 Who can provide long-term care services? The following types of providers can provide long-term care services:

- (1) Individual providers (IPs), who provide services to clients in their own home. IPs must meet the requirements outlined in WAC 388-71-0500 through 388-71-05640.
- (2) Home care agencies that provide services to clients in their own home. Home care agencies must be licensed under chapter 70.127 RCW and chapter 246-335 WAC and contracted with area agency on aging.
- (3) Residential providers, which include licensed adult family homes, enhanced services facilities (~~(+when available+)~~), and assisted living facilities, that contract with the department to provide assisted living, adult residential care, and enhanced adult residential care services (which may also include specialized dementia care).
- (4) Providers who have contracted with the department to perform other services.
- (5) In the case of New Freedom consumer directed services (NFCDS), additional providers meeting NFCDS HCBS waiver requirements contracting with a department approved provider of fiscal management services.

AMENDATORY SECTION (Amending WSR 14-15-092, filed 7/18/14, effective 8/18/14)

WAC 388-106-0120 What is the payment rate that the department will pay the provider if I receive personal care services in a residential facility? The department publishes rates and/or adopts rules to establish how much the department pays toward the cost of your care in a residential facility.

(1) For COPES, MPC, medical care services, RCL, and new freedom programs, the department assigns payment rates to the CARE classification group. Under these programs, payment for care in a residential facility corresponds to the payment rate assigned to the classification group in which the CARE tool has placed you.

(2) ~~((When the service is available, the))~~ The enhanced services facility rate is determined by legislative action and appropriation.

(3) The rate for adult family homes with a specialized behavior support contract is based on the CARE classification group and an add-on amount, which is negotiated through the collective bargaining process.

AMENDATORY SECTION (Amending WSR 14-15-092, filed 7/18/14, effective 8/18/14)

WAC 388-106-0336 What services may I receive under the residential support waiver? You may receive the following services under the residential support waiver:

(1) Adult family homes with a specialized behavior support contract will provide personal care, supportive services, ~~((nurse delegation,))~~ supervision in the home and community, and 24-hour on-site response staff;

(2) Enhanced services facilities provide personal care, supportive services, supervision in the home and community, and twenty-four hour on-site response staff;

(3) Specialized durable and nondurable medical equipment and supplies under WAC 182-543-1000, when the items are:

(a) Medically necessary under WAC 182-500-0005; and

(b) Necessary: for life support; to increase your ability to perform activities of daily living; or to perceive, control, or communicate with the environment in which you live; and

(c) Directly medically or remedially beneficial to you; and

(d) In addition to and do not replace any medical equipment and/or supplies otherwise provided under medicaid and/or medicare; and

(e) In addition to and do not replace the services required by the department's contract with a residential facility.

~~((3))~~ (4) Client support training needs identified in CARE or in a professional evaluation, that are in addition to and do not replace the services required by the department's contract with the residential facility and that meet a therapeutic goal such as:

(a) Adjusting to a serious impairment;

(b) Managing personal care needs; or

(c) Developing necessary skills to deal with care providers.

~~((4))~~ (5) Nurse delegation, as allowed in RCW 18.79.260, when:

(a) You are receiving personal care from a registered or certified nursing assistant who has completed nurse delegation core training;

(b) Your medical condition is considered stable and predictable by the delegating nurse; ~~((and))~~

(c) Services are provided in compliance with WAC 246-840-930~~((-))~~; and

(d) It is in addition to, and does not replace, the services required by the department's contract with the residential facility.

~~((+5))~~ (6) Skilled nursing, when the service is:

(a) Provided by a registered nurse or licensed practical nurse under the supervision of a registered nurse;

(b) Beyond the amount, duration or scope of medicaid-reimbursed home health services as provided under WAC 182-551-2100; and

(c) In addition to and does not replace the services required by the department's contract with the residential facility.

~~((+6))~~ (7) Nursing services, when you are not already receiving this type of service from another resource. A registered nurse may perform any of the following activities. The frequency and scope of the nursing services is based on your individual need as determined by your CARE assessment and any additional collateral contact information obtained by your case manager.

(a) Nursing assessment/reassessment;

(b) Instruction to you, your providers, and your caregivers;

(c) Care coordination and referral to other health care providers;

(d) Skilled treatment, only in the event of an emergency. A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement. In nonemergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider or other appropriate resource.

(e) File review; and/or

(f) Evaluation of health-related care needs affecting service plan and delivery.

AMENDATORY SECTION (Amending WSR 14-15-092, filed 7/18/14, effective 8/18/14)

WAC 388-106-0344 How do I pay for residential support waiver services? Depending on your income and resources, you may be required to pay participation toward the cost of your care, as outlined in WAC 182-515-1505. If you have nonexempt income that exceeds the cost of residential support services, you may retain the difference. If you are receiving services ~~((in an adult family home with a specialized behavior support contract))~~ under the residential support waiver you must use your income to pay for your room and board and services. You are allowed to keep some of your income for personal needs allowance (PNA). The department determines the amount of PNA that you may keep. The department pays the facility for the difference between what you pay and the department-set rate for the facility. The department pays the residential care facility from the first day of service through the:

- (1) Last day of service when the medicaid resident dies in the facility; or
- (2) Day of service before the day the medicaid resident is discharged.