



RULE-MAKING ORDER PERMANENT RULE ONLY

CR-103P (December 2017) (Implements RCW 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: October 05, 2023

TIME: 3:54 PM

WSR 23-21-012

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

Effective date of rule:

Permanent Rules

- 31 days after filing.
- Other (specify) November 6, 2023 (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 adopting new sections in chapter 388-106 WAC describing Long-Term Services and Supports (LTSS) Presumptive Eligibility (PE) and functional eligibility criteria for clients who are discharging from acute care hospitals or diverting from community psychiatric facilities into an in-home setting with home and community-based services.

Citation of rules affected by this order:

New: WACs 388-106-1800, 388-106-1805, 388-106-1810, 388-106-1815, 388-106-1820, 388-106-1825, 388-106-1830, 388-106-1835, 388-106-1840, 388-106-1845, 388-106-1850, 388-106-155

Repealed:

Amended:

Suspended:

Statutory authority for adoption: RCW 74.08.090 and RCW 74.39A.030

Other authority:

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 23-10-058 on May 1, 2023 (date).

Describe any changes other than editing from proposed to adopted version: The changes from the proposed version to the adopted version is that the waitlist language has been removed from WAC 388-106-1830(3) and the department is not proceeding with adopting WAC 388-106-1860. Also, a technical correction was made in WAC 388-106-1815(4) – “90 days” was changed to “30 days”. This change maintains consistency with WAC 388-106-1805(4)

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

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Web site:
- Other:

**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	<u>12</u>	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	<u>12</u>	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	<u>12</u>	Amended	___	Repealed	___
-----	-----------	---------	-----	----------	-----

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

New	<u>12</u>	Amended	___	Repealed	___
-----	-----------	---------	-----	----------	-----

The number of sections adopted using:

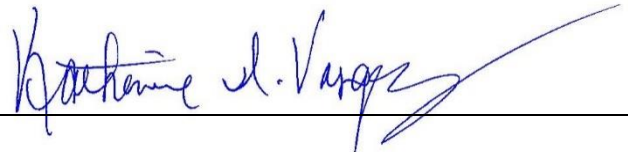
Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	<u>12</u>	Amended	___	Repealed	___

Date Adopted: October 5, 2023

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



LONG-TERM SERVICES AND SUPPORTS (LTSS) PRESUMPTIVE ELIGIBILITY (PE)

NEW SECTION

WAC 388-106-1800 What definitions apply to LTSS PE? "Acute care hospital" as defined in chapter 182-550 WAC, may offer inpatient services, outpatient services, continuous nursing services, pharmacy services, food services, and necessary ancillary services. These hospitals may offer specialized patient care services including alcoholism and chemical dependency units or services.

"Care plan" means the document generated using the presumptive eligibility assessment screening tool in CARE that identifies the long-term services and supports you are eligible to receive during the presumptive eligibility period.

"Community psychiatric hospital" means a specialized psychiatric hospital or psychiatric unit within a community hospital that is certified to provide involuntary evaluation and treatment services.

"Diversion" means you have discharged from a local community psychiatric facility onto HCS LTSS and have a 90- or 180-day commitment order for further involuntary treatment; or you are detained through the Involuntary Treatment Act and are stabilized and discharged onto LTSS prior to the need to petition for a 90- or 180- day commitment order.

"LTSS" means Long-term Services and Supports as defined in WAC 182-513-1100.

"MPC" means Medicaid Personal Care which is defined as personal care services in WAC 388-106-0010.

"NFLOC" means nursing facility level of care as defined in WAC 388-106-0355.

"PE screening" means the functional and financial assessment completed using the presumptive eligibility screening tool within CARE to determine presumptive eligibility for LTSS NFLOC PE services or LTSS MPC PE services.

"Presumptive eligibility" means a determination made using a screening process completed by the department to gather preliminary information to determine if you meet the eligibility criteria described in WAC 388-106-1805 and 388-106-1815 of this section to receive services while the final eligibility determination is being completed. This is also known as PE.

NEW SECTION

WAC 388-106-1805 Am I eligible for LTSS NFLOC PE services? You are eligible to receive LTSS NFLOC PE services if you meet the following criteria based upon the attested information in your PE screening:

(1) Meet functional eligibility requirements as defined in WAC 388-106-0355(1) (a), (b), (c), or (d); and

- (2) Meet financial eligibility requirements as defined in WAC 182-513-1315; and
- (3) Will be discharging from an acute care hospital or diverting from a community psychiatric hospital; or
- (4) Have discharged or diverted from an acute care hospital or community psychiatric hospital in the last 30 days; and
- (5) Live in your own home as defined in WAC 388-106-0010; and
- (6) Are not receiving any other medicaid funded long-term services and supports.

NEW SECTION

WAC 388-106-1810 What services may I receive under LTSS NFLOC PE? You may receive the following services under LTSS NFLOC PE:

- (1) Up to a maximum of 103 hours a month of personal care services as defined in WAC 388-106-0010;
- (2) Nurse delegation, as defined in WAC 388-106-0270;
- (3) Personal Emergency Response System (PERS), as defined in WAC 388-106-0270;
- (4) Home delivered meals, as defined in WAC 388-106-0300;
- (5) Specialized medical equipment and supplies, as defined in WAC 388-106-0300;
- (6) Assistive/Adaptive technology and equipment, as defined in WAC 388-106-0270;
- (7) Community transition or sustainability services as defined in WAC 388-106-0270, which are nonrecurring set-up items and services to assist with expenses to move from an acute care hospital or diversion from a psychiatric hospital stay to an in-home setting and may include:
 - (a) Security deposits that are required to lease an apartment or home;
 - (b) Activities to assess need, arrange for, and obtain needed resources, including essential household furnishings;
 - (c) Set-up fees or deposits for utility or services access, including telephone, electricity, heating, water, and garbage;
 - (d) Services necessary for your health and safety such as pest eradication and one-time cleaning prior to occupancy;
 - (e) Moving expenses; and
 - (f) Minor home accessibility modifications necessary for hospital discharge.
- (8) Community choice guide: specialty services providing assistance and support to ensure an individual's successful transition to the community or maintenance of independent living, as defined in WAC 388-106-0300; and
- (9) Supportive Housing as defined in WAC 388-106.

NEW SECTION

WAC 388-106-1815 Am I eligible for LTSS MPC PE services? You are eligible to receive LTSS MPC PE services if you meet the following criteria based upon the attested information in your PE screening:

- (1) Meet functional eligibility requirements as defined in WAC 388-106-0210; and
- (2) Meet financial eligibility requirements as defined in WAC 182-513-1225; and
- (3) Will be discharging from an acute care hospital or diverting from a community psychiatric hospital; or
- (4) Have discharged or diverted from an acute care hospital or community psychiatric hospital in the last 30 days; and
- (5) Live in your own home as defined in WAC 388-106-0010; and
- (6) Are not receiving any other medicaid funded long-term services and supports.

NEW SECTION

WAC 388-106-1820 What services may I receive under LTSS MPC PE? Under LTSS MPC PE you may receive up to 34 hours per month of personal care services as defined in WAC 388-106-0010.

NEW SECTION

WAC 388-106-1825 Who can provide long-term care services when I am eligible for LTSS NFLOC or LTSS MPC PE services? The following types of providers can provide long-term care services:

- (1) Individual providers (IPs) as defined in WAC 388-115-0503, who provide services to clients in the client's own home.
- (2) Home care agencies that provide services to clients in the client's own home. Home care agencies must be licensed under chapter 70.127 RCW and chapter 246-335 WAC and contracted with the department.
- (3) Providers who have contracted with the department to perform other services.

NEW SECTION

WAC 388-106-1830 When will the department authorize my LTSS NFLOC or LTSS MPC PE services? The department will authorize LTSS NFLOC PE or LTSS MPC PE services when you:

- (1) Are found both financially and functionally eligible for PE services by completing your PE screening which includes the amount of participation toward the cost of your care that you must pay (if any);
- (2) Have given consent for services and approved your care plan; and
- (3) Have chosen a DSHS qualified provider(s), per WAC 388-71-0510.

NEW SECTION

WAC 388-106-1835 When do LTSS NFLOC PE or LTSS MPC PE services end? (1) Your LTSS NFLOC PE or LTSS MPC PE services end with the earlier date of:

(a) The date the decision was made on your application as defined in WAC 388-106-0010;

(b) The date you were confirmed by a CARE assessment to not meet functional eligibility criteria as defined in WAC 388-106-0355 or 388-106-0210; or

(c) The last day of the month following the month in which your presumptive eligibility services were authorized if you did not submit your application.

(2) You may only receive LTSS NFLOC PE or LTSS MPC PE services once within a 24-month period.

NEW SECTION

WAC 388-106-1840 Where can I receive LTSS NFLOC PE or LTSS MPC PE services? You can receive LTSS NFLOC PE or LTSS MPC PE services:

(1) In your own home as defined in WAC 388-106-0010;

(2) While you are out of your home accessing the community or working while:

(a) within the state of Washington; or

(b) in a recognized out-of-state bordering city as defined in WAC 182-501-0175.

NEW SECTION

WAC 388-106-1845 What do I pay for if I receive LTSS NFLOC PE or LTSS MPC PE services? (1) If you receive LTSS MPC PE services you are not required to pay toward the cost of care for those services.

(2) If you receive LTSS NFLOC PE, you may be required to pay toward the cost of your care as outlined in WAC 182-515-1509. You are allowed to keep some of your income for a maintenance allowance.

NEW SECTION

WAC 388-106-1850 Do I have a right to an administrative hearing on LTSS NFLOC PE or LTSS MPC PE determinations? Applicants do not have an administrative hearing right as defined in chapter 388-02 WAC on LTSS NFLOC PE or LTSS MPC PE eligibility determinations.

NEW SECTION

WAC 388-106-1855 Can an exception to rule (ETR) be granted for eligibility or service determinations? ETRs will not be granted for LTSS NFLOC PE or LTSS MPC PE eligibility determinations or service determinations.