



EXPEDITED RULE MAKING

CR-105 (December 2017) (Implements RCW 34.05.353)

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STATE OF WASHINGTON
FILED

DATE: March 26, 2020

TIME: 9:05 AM

WSR 20-08-064

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

Title of rule and other identifying information: (describe subject) WAC 388-114-0080, When may the department temporarily approve a client specific increase to an individual provider's work week limit?

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The department is proposing to amend WAC 388-114-0080 to correct a typographical error in the reference to WAC 388-114-0030.

Reasons supporting proposal: The proposed change is for housekeeping purposes only to correct a typographical error.

Statutory authority for adoption: RCW 74.08.090, RCW 74.09.520

Statute being implemented: RCW 74.08.090, RCW 74.09.520

Is rule necessary because of a:

- | | | |
|-------------------------|------------------------------|--|
| Federal Law? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If yes, CITATION:

Name of proponent: (person or organization) Department of Social and Health Services

<input type="checkbox"/> Private
<input type="checkbox"/> Public
<input checked="" type="checkbox"/> Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Jennifer Karlson	PO Box 45600, Olympia WA 98504-5600	360-810-1654
Implementation:	Jennifer Karlson	PO Box 45600, Olympia WA 98504-5600	360-810-1654
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Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Expedited Adoption - Which of the following criteria was used by the agency to file this notice:

- Relates only to internal governmental operations that are not subject to violation by a person;
- Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;
- Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect;
- Content is explicitly and specifically dictated by statute;
- Have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or
- Is being amended after a review under RCW 34.05.328.

Expedited Repeal - Which of the following criteria was used by the agency to file notice:

- The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule;
- The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute;
- The rule is no longer necessary because of changed circumstances; or
- Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

Explanation of the reason the agency believes the expedited rule-making process is appropriate pursuant to RCW 34.05.353(4): Correcting a typographical error in WAC

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO

Name: DSHS Rules Coordinator

Agency: Department of Social and Health Services

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AND RECEIVED BY (date) 5:00 p.m. June 1, 2020

Date: March 24, 2020

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



WAC 388-114-0080 When may the department temporarily approve a client specific increase to an individual provider's work week limit?

(1) The department may temporarily increase an individual provider's work week limit if it determines the increase is necessary:

(a) Due to a lack of available providers who are able to adequately meet a client's care needs, as evaluated by the department in its consideration of:

(i) The overall availability of providers in the geographic region;

(ii) Whether the client has complex medical or behavioral needs;

(iii) Whether the client requires a provider with specific language skills; and

(iv) The client's good faith efforts and cooperation to manage his or her service hours and locate and select additional providers, examples of which may include:

(A) Making schedule adjustments within the work week limits of current providers who are providing services;

(B) Seeking a qualified family or friend to contract as an individual provider;

(C) Utilizing the home care referral registry; and

(D) Requesting a worker through a home care agency, unless doing so would cost more than paying the individual provider overtime;

(b) To protect a client's health and safety, as evaluated by the department in its consideration of:

(i) Whether the request is to approve service hours the individual provider spent caring for the client because of an emergent condition;

(ii) The nature and severity of the emergent condition; and

(iii) Whether the need could have been postponed until another provider could have arrived;

(c) To prevent an increased risk that the client will be unable to remain in a home or community based setting, except in cases where there are additional qualified providers available to select and the client has chosen not to select them; or

(d) To enable a client to assign to an individual provider the same number of hours in months with thirty days as are assigned in months with thirty-one days, provided that:

(i) The client is unable to assign the same number of the hours due to the individual provider's permanent work week limit;

(ii) There is no other qualified provider assigned that can work the hours within his or her permanent work week limit;

(iii) The increase does not result in a monthly total that exceeds the number of hours assigned to an individual provider in a thirty-one day month; and

(iv) The increase does not exceed two and one-half hours per week.

(2) When a client specific increase is no longer approved by the department, the individual provider's work week limit will revert back to the permanent work week limit described in WAC ((~~388-11-0030~~)) 388-114-0030.

(3) The department may only approve a client specific work week limit in excess of eighty service hours per week for an individual provider if the client's circumstances meet the criteria set out in

WAC 388-440-0001 (1)(a) through (e) and where the department is unaware of any reason that the individual provider will be unable to appropriately meet the needs of the client.

(4) The department will not approve additional service hours to any individual provider's permanent work week limit that would result in a monthly total that exceeds the client's monthly service hours.

(5) The individual provider is not entitled to an administrative hearing under chapter 34.05 RCW regarding the department's decision on whether to approve or continue a client specific temporary increase to the work week limit.