



# PROPOSED RULE MAKING

**CR-102 (July 2022)**  
**(Implements RCW 34.05.320)**  
Do **NOT** use for expedited rule making

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STATE OF WASHINGTON  
FILED

DATE: December 14, 2022

TIME: 12:03 PM

WSR 23-01-058

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

- Original Notice**
- Supplemental Notice to WSR** \_\_\_\_\_
- Continuance of WSR** \_\_\_\_\_

- Preproposal Statement of Inquiry was filed as WSR 22-16-066 ; or**
- Expedited Rule Making--Proposed notice was filed as WSR \_\_\_\_\_; or**
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or**
- Proposal is exempt under RCW \_\_\_\_\_.**

**Title of rule and other identifying information:** (describe subject) WAC 388-829B-200, What definitions apply to this chapter?, 388-829B-300, Who may DDA enroll in the enhanced case management program?, 388-829B-400, How often must the case manager visit the enhanced case management program client?, and 388-829B-600, May a client appeal an enrollment decision for the enhanced case management program?

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
January 24, 2023	10:00 a.m.	Office Building 2 DSHS Headquarters 1115 Washington Olympia WA 98504  <b>OR Virtually</b>	Public parking at 11 <sup>th</sup> and Jefferson. A map is available at: <a href="https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2">https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2</a>  Due to the COVID-19 pandemic, hearings are being held virtually. Please see the DSHS website for the most current information.

**Date of intended adoption:** Not earlier than January 25, 2023 (Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name: DSHS Rules Coordinator  
 Address: 1115 Washington St. SE, Olympia, WA 98504  
 Email: [DSHSRPAURulesCoordinator@DSHS.wa.gov](mailto:DSHSRPAURulesCoordinator@DSHS.wa.gov)  
 Fax: 360-664-6185  
 Other:  
 By (date) 5:00 pm, January 24, 2023

**Assistance for persons with disabilities:**

Contact Shelley Tencza  
 Phone: 360-664-6036  
 Fax: 360-664-6185  
 TTY: 711 Relay Service  
 Email: [tencza@dshs.wa.gov](mailto:tencza@dshs.wa.gov)  
 Other:  
 By (date) January 10, 2023

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The purpose of these amendments is to expand Enhanced Case Management Program (ECMP) capacity as directed by the Legislature and clarify appeal rights regarding enrollment onto the ECMP caseload.

**Reasons supporting proposal:** These amendments will comply with direction from the Legislature, will help identify clients who might be at increased risk of abuse and neglect, and will serve an increased number of clients on the enhanced case management caseload. This chapter is how DDA enrolls a client on the caseload, how often the CRM must visit the client, and when DDA may disenroll a client from the caseload.

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

**Statute being implemented:** RCW 71A.12.320 and chapter 43.382 RCW

**Is rule necessary because of a:**

- Federal Law?  Yes  No
- Federal Court Decision?  Yes  No
- State Court Decision?  Yes  No

If yes, CITATION:

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:**

**Type of proponent:**  Private  Public  Governmental

**Name of proponent:** (person or organization) Department of Social and Health Services, Developmental Disabilities

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Chantelle Diaz	P.O. Box 45310, Olympia, WA 98504-5310	360-407-1500
Implementation:	Heather Lum	P.O. Box 45310, Olympia, WA 98504-5310	360-407-1526
Enforcement:	Heather Lum	P.O. Box 45310, Olympia, WA 98504-5310	360-407-1526

**Is a school district fiscal impact statement required under [RCW 28A.305.135](#)?**

Yes  No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

**Is a cost-benefit analysis required under [RCW 34.05.328](#)?**

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

No: Please explain: RCW 34.05.328(5)(b)(ii): Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party. Clients and others have no obligations under the chapter that could be violated.

**Regulatory Fairness Act and Small Business Economic Impact Statement**

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

**(1) Identification of exemptions:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.061](#) because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570\(2\)](#) because it was adopted by a referendum.

- This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(3\)](#). Check all that apply:
- |   |   |
|---|---|
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(b)<br>(Internal government operations) | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(e)<br>(Dictated by statute)  |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(c)<br>(Incorporation by reference)     | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(f)<br>(Set or adjust fees)   |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(d)<br>(Correct or clarify language)    | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(g)<br>(i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(4\)](#) (does not affect small businesses).

This rule proposal, or portions of the proposal, is exempt under [RCW 34.05.328\(5\)\(b\)\(ii\)](#): “Rules relating only to internal governmental operations that are not subject to violation by a nongovernment party.”.

Explanation of how the above exemption(s) applies to the proposed rule: The proposed amendments impose no new or disproportionate costs on small businesses, so a small business economic impact statement is not required. ECMP is a program that offers clients increased contact with a case manager. There are no costs to clients or contracted providers.

**(2) Scope of exemptions:** *Check one.*

- The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.
- The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):
- The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

**(3) Small business economic impact statement:** *Complete this section if any portion is not exempt.*

If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency’s minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs.
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

**Date:** December 14, 2022

**Name:** Katherine I. Vasquez

**Title:** DSHS Rules Coordinator

**Signature:**



AMENDATORY SECTION (Amending WSR 18-07-073, filed 3/19/18, effective 4/19/18)

**WAC 388-829B-200 What definitions apply to this chapter?** The following definitions apply to this chapter.

~~(("CARE assessment" means an inventory and evaluation of a client's strengths and limitations based on an in-person interview in the client's home or place of residence.))~~

"**Caregiver**" means a person contracted with the developmental disabilities administration (DDA) to provide ~~((medicaid or waiver))~~ personal care~~((7))~~ services or respite care~~((7 or attendant care services))~~.

"**Client**" means a person who has a developmental disability as defined in RCW 71A.10.020~~((5))~~ and has been determined eligible to receive services by DDA under chapter 71A.16 RCW.

"**Collateral contact**" means a person or agency that is involved in the client's life, such as a legal guardian, family member, provider, or friend.

"DDA assessment" means an inventory and evaluation, under chapter 388-828 WAC, of a client's strengths and limitations based on an interview with the client. For the purposes of this chapter, the DDA assessment includes the "DDA assessment details."

"**Independent supports**" means an adult, other than the client's paid caregiver, who observes the care a client receives from their paid caregiver.

AMENDATORY SECTION (Amending WSR 18-07-073, filed 3/19/18, effective 4/19/18)

**WAC 388-829B-300 Who may DDA enroll in the enhanced case management program?** The developmental disabilities administration (DDA) may enroll a client in the enhanced case management program if the client ~~((is largely dependent on a paid caregiver in the client's home))~~ is currently assessed to be eligible for medicaid personal care or community first choice (CFC) services in their home under chapter 388-106 WAC and meets criteria under subsection (1), (2), or (3) of this section.~~((7))~~

(1) The client's DDA assessment indicates that the home environment may jeopardize the client's health or safety.

~~((1))~~ (2) The client's ((CARE)) DDA assessment indicates the client:

(a) ((Is not always able to supervise their)) Has difficulty communicating their needs and wants to their caregiver or inform someone when their needs are not being met;

(b) Has ((communication barriers)) a limited ability to advocate for themselves or express themselves, and has few documented collateral contacts; and

(c) Lacks additional, independent supports that regularly help the client monitor the care being provided in their home.~~((7 or~~

~~(2) The client lives with the paid caregiver and:~~

~~(a) The client has been the subject of an adult protective services or child protective services referral in the past year; or~~

~~(b-))~~ (3) DDA has concerns that the ((home environment or)) quality of care may jeopardize the client's health or safety((-)) for reasons such as:

(a) The client has been the subject of an adult protective services referral in the past year;

(b) The client has been the subject of a child protective services referral in the past year;

(c) The client's DDA assessment indicates the client is underweight;

(d) The client's DDA assessment indicates that the primary caregiver is age 65 or older or states that they are "very stressed," and the caregiver states that the caregiving situation is at "serious risk of failure" or there is concrete evidence of reduced care; or

(e) The client has experienced a destabilizing event, such as a loss of a primary caregiver, hospitalization, or victimization.

AMENDATORY SECTION (Amending WSR 18-07-073, filed 3/19/18, effective 4/19/18)

**WAC 388-829B-400 How often must the case manager visit the enhanced case management program client?** (1) The client's case manager must visit each enhanced case management program client at least once every four months at the client's home, including unannounced visits as needed. Each required visit must not occur more than four months apart.

(2) An unannounced visit may replace a scheduled visit.

~~(3) ((If a client declines a visit, announced or unannounced, the case manager must document the declined visit in the enhanced case management program section in the comprehensive assessment reporting and evaluation (CARE) tool.~~

~~(4-))~~ If the case manager is unable to meet with the client for a ~~((required))~~ visit, the case manager must:

(a) ((s)) Schedule a follow-up visit as soon as possible and no later than ((thirty)) 30 days((-)) ; and

(b) Document that the visit did not occur.

NEW SECTION

**WAC 388-829B-600 May a client appeal an enrollment decision for the enhanced case management program?** A client does not have a right to appeal:

(1) A decision whether or not to enroll on the enhanced case management program; or

(2) A decision to transfer off the enhanced case management program.