



# 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: February 13, 2023

TIME: 10:54 AM

WSR 23-05-064

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

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

- Preproposal Statement of Inquiry was filed as WSR 22-22-013 ; 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 388-828-1020, *What definitions apply to this chapter?*, and 388-828-1520, *Where is the DDA assessment administered and when do home visits occur?*

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
March 21, 2023	10:00 a.m.	Office Building 2 DSHS Headquarters 1115 Washington Olympia, WA 98504  <b>or Virtually</b>	Public parking at 11th 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 COVID-19 pandemic, hearings are held virtually, see the DSHS website <a href="https://www.dshs.wa.gov/office-of-the-secretary/filings-and-rules">https://www.dshs.wa.gov/office-of-the-secretary/filings-and-rules</a> for the most current information

**Date of intended adoption:** Not earlier than March 22, 2023 (Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name: DSHS Rules Coordinator  
 Address: PO Box 45850, Olympia WA 98504  
 Email: [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov)  
 Fax: 360-664-6185  
 Other:  
 By (date) 5:00 p.m. on March 21, 2023

**Assistance for persons with disabilities:**

Contact DSHS [Rules Consultant](#)  
 Phone: 360-664-6036  
 Fax: 360-664-6185  
 TTY: 711 Relay Service  
 Email: [shelley.tencza@dshs.wa.gov](mailto:shelley.tencza@dshs.wa.gov)  
 Other:  
 By (date) 5:00 p.m. on March 7, 2023

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The Developmental Disabilities Administration (DDA) is amending these rules to add and revise definitions for the chapter; add options for how an assessment is completed; clarify when and where home visits occur; and require home visits for all clients receiving a paid service.

**Reasons supporting proposal:** Requiring DDA to conduct a home visit for all clients receiving a paid service will give clients the opportunity to see their case manager in-person when completing an assessment or home visit. Expanding these visits to more clients could result in increased health and safety oversight.

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

**Statute being implemented:** RCW 71A.12.310 and 71A.16.050

**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) Public proponents, specifically self-advocates, have requested to see DDA staff in their homes. The governmental proponent, the Developmental Disabilities Administration, has an opportunity to assess a person's health and safety while conducting a home visit and viewing their living quarters.

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Chantelle Diaz	PO Box 45310, Olympia, WA 98504-5310	360-790-4732
Implementation:	Melissa Randles	PO Box 45310, Olympia, WA 98504-5310	360-407-1515
Enforcement:	Melissa Randles	PO Box 45310, Olympia, WA 98504-5310	360-407-1515

**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: Chantelle Diaz

Address: PO Box 45310, Olympia WA 98504-5310

Phone: 360-790-4732

Fax:

TTY:

Email: [chantelle.diaz@dshs.wa.gov](mailto:chantelle.diaz@dshs.wa.gov)

Other:

No: Please explain:

**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: RCW 71A.12.310 requires case managers to meet with clients in an in-person setting. The case manager must request to view the client's living quarters and note observations if the client receives personal care services or services from a supported living provider.

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 \_\_\_\_\_.

Explanation of how the above exemption(s) applies to the proposed rule:

**(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. DDA clients have a right to choose how their assessment is conducted. These amendments spell out the options for completing an assessment in-person, remotely, or some combination of the two. These methods do not impose costs on small businesses. Benefits include supporting client choice and autonomy.
- 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:

<b>Date:</b> February 10, 2023	<b>Signature:</b> 
<b>Name:</b> Katherine I. Vasquez	
<b>Title:</b> DSHS Rules Coordinator	

**WAC 388-828-1020 What definitions apply to this chapter?** The following definitions apply to this chapter:

"AAIDD" means the American Association on Intellectual and Developmental Disabilities.

"Acuity Scale" refers to an assessment tool that is intended to provide a framework for documenting important assessment elements and for standardizing the key questions that should be asked as part of a professional assessment. The design helps provide consistency from client to client by minimizing subjective bias and assists in promoting objective assessment of a person's support needs.

"Administration" means the developmental disabilities administration of the department of social and health services.

"Adult family home" or "AFH" means a residential home in which a person or ~~((persons))~~ entity is licensed to provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood, adoption, or marriage to ((the person or persons providing the services per chapter 388-76 WAC)) a provider, entity representative, resident manager, or caregiver who resides in the home. An adult family home may be licensed to provide care to up to eight adults if the home receives approval under chapter 388-76 WAC.

"Agency provider" means a business that is licensed, certified, or both, and that is contracted with the department or a county to provide DDA services.

"Algorithm" means a numerical formula used by the DDA assessment for one or more of the following:

- (1) Calculation of assessed information to identify a client's relative level of need; and
- (2) Assignment of a service level to support a client's assessed need.

"Authorization" means DDA approval of funding for a service as identified in the person-centered service plan or evidence of payment for a service.

"CARE" refers to the comprehensive assessment reporting evaluation assessment per chapter 388-106 WAC.

"Client" means a person who has a developmental disability as defined in RCW 71A.10.020(~~((+3))~~) who also has been determined eligible to receive services by the administration under chapter 71A.16 RCW.

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

"Companion home" is a DDA contracted residential service that provides ~~((twenty-four))~~ 24 hour training, support, and supervision, to one adult living with a paid provider.

"Contracted provider" means an individual provider contracted with the department, individual provider employed by the consumer directed employer, or an individual or agency who is one or more of the following: Licensed, certified, or contracted by the department to provide services to DDA clients.

"DDA" means the developmental disabilities administration of the department of social and health services.

"Department" means the department of social and health services (DSHS).

"Group home" or "GH" means a licensed adult family home or assisted living facility contracted and certified to provide residential services and support to adults with developmental disabilities.

"Home visit" means viewing a client's living quarters with the client present.

~~"ICF/IID" means a ((facility)) medicaid-certified ((as an intermediate care)) facility ((for individuals with intellectual disabilities)) operating under Title XIX of the Social Security Act in 42 C.F.R. 440-150 to ((provide)) furnish health or rehabilitation services ((to DDA clients)).~~

"ICF/IID level of care" is a standardized assessment of a client's need for ICF/IID level of care per 42 C.F.R. Sec. 440 and 42 C.F.R. Sec. 483. In addition, ICF/IID level of care refers to one of the standards used by DDA to determine whether a client meets minimum eligibility criteria for one of the DDA HCBS waivers or the community first choice program.

"Legal guardian" means a person/agency, appointed by a court, who is authorized to make some or all decisions for a person determined by the court to be incapacitated. In the absence of court intervention, parents remain the legal guardians for their child until the child reaches the age of ~~((eighteen))~~ 18.

"Living quarters" means the client's bedroom and main living area(s).

"LOC score" means a level of care score for answers to questions in the support needs assessment for children that are used in determining if a client meets eligibility requirements for ICF/IID level of care.

"Panel" refers to the visual user-interface in the DDA assessment computer application where assessment questions are typically organized by topic and you and your respondents' answers are recorded.

"Person-centered service plan (PCSP)" is a document that identifies your goals and assessed health and welfare needs. Your person-centered service plan also indicates the paid services and natural supports that will assist you to achieve your goals and address your assessed needs.

"Raw score" means the numerical value when adding a person's "frequency of support," "daily support time," and "type of support" scores for each activity in the support needs and supplemental protection and advocacy scales of the supports intensity scale (SIS) assessment.

~~"Residential habilitation center" or "RHC" is a state-operated facility ((certified to provide ICF/IID or nursing facility level of care for persons with developmental disabilities per chapter 71A.20 RCW)) under RCW 71A.20.020.~~

"Respondent" means the adult client or another person familiar with the client who participates in the client's DDA assessment by answering questions and providing information. Respondents may include DDA contracted providers.

~~((("SIS" means the supports intensity scale developed by the American Association of Intellectual and Developmental Disabilities (AAIDD).))~~

"Service provider" refers to a department contracted agency or person who provides services to DDA clients. Also refers to state operated living alternative programs (SOLA).

"Significant change assessment" means a DDA assessment completed any time a change is reported in a client's support needs, such as an increased need for medical or behavioral supports.

"SIS" means the supports intensity scale developed by the American Association of Intellectual and Developmental Disabilities (AAIDD).

"SOLA" means a state operated living alternative program for adults that is operated by DDA.

"State supplementary payment" or "SSP" is the state paid cash assistance program for certain DDA eligible Social Security income clients per chapter 388-827 WAC.

"Supported living" or "SL" refers to residential services provided by DDA certified residential agencies to clients living in homes that are owned, rented, or leased by the clients or their legal representatives.

"Waiver respite care" means short-term intermittent relief for persons normally providing care to individuals who are authorized to receive services available in the individual and family services (IFS), children's intensive in-home behavioral support (CIIBS), basic plus, and core waivers per chapter 388-845 WAC.

"You" and "your" means the client.

AMENDATORY SECTION (Amending WSR 17-12-012, filed 5/26/17, effective 6/26/17)

**WAC 388-828-1520 Where is the DDA assessment (~~(and reassessment)~~) administered and when do home visits occur?** (1) ~~((DDA))~~ Initial, annual, and significant change assessments ((and reassessments)) are administered at a location and in a way that is convenient to you, such as:

- (a) In-person at your home ((or place of residence.));
- (b) In-person in another setting;
- (c) Remotely using approved technology; or
- (d) A combination of in-person and remote.

~~((2))~~ If you receive or plan to receive a DDA-paid service in your home or place of residence and the DDA assessment is not administered in your home or place of residence, DDA will conduct a follow-up home visit to ensure your person-centered service plan/individual support plan can be implemented in your living environment.)

~~((3))~~ (2) If your initial, annual, or significant change assessment is not completed face-to-face in your home, DDA must still see you in person. ((receive or plan to receive a DDA-paid service in your home or place of residence,)) DDA must ((ask permission to)) conduct a home visit and while in your home must ask to view your living quarters ((during the DDA assessment or follow-up home visit)).

(3) DDA may conduct the home visit:

- (a) During your assessment;
- (b) Up to 30 days before or after your assessment;
- (c) Up to 30 days after you move from an institutional setting to

a community-based setting.