



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: March 14, 2023

TIME: 2:13 PM

WSR 23-07-080

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 22-22-078 ; 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 388-829C-131, How does DDA determine the daily rate?, 388-829C-230, What is respite and where can a companion home client access respite?, 388-829C-232, How does DDA determine the amount of waiver-funded respite a companion home client may receive?, 388-829C-233, May the client or companion home provider request additional waiver-funded respite hours?, 388-829C-234, Will DDA reduce the companion home daily rate if additional waiver-funded respite hours are approved?, 388-829C-235, Will DDA reduce the companion home daily rate if a client receives state-funded respite?, 388-829R-005, What definitions apply to this chapter?, 388-829R-011, Who is eligible to receive overnight planned respite services?, 388-829R-165, What must overnight planned respite services providers do to plan for and respond to emergencies?, and 388-829R-170, What records must overnight planned respite services providers keep?

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
April 25, 2023	10:00 am	Office Building 2 DSHS Headquarters 1115 Washington Olympia, WA 98504	Public parking at 11th and Jefferson. A map is available at: https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2
		or Virtually	Hearings are currently held virtually, see the DSHS website https://www.dshs.wa.gov/office-of-the-secretary/filings-and-rules for the most current information

Date of intended adoption: Not earlier than April 26, 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

Fax: 360-664-6185

Other:

By (date) 5:00 pm on April 25, 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

Other:

By (date) 5:00 pm on April 14, 2023

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The purpose of these amendments is to allow companion home providers to access: respite through overnight planned respite services (OPRS) providers; and planned respite through residential habilitation centers. Other changes notification to a primary caregiver when a client receiving OPRS experiences an emergency.

Reasons supporting proposal: The proposed amendments will give companion home providers more options for accessing respite services.

Statutory authority for adoption: RCW 71A.12.030

Statute being implemented: RCW 71A.12.040

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: None

Type of proponent: Private Public Governmental
Name of proponent: (person or organization) DDA-Contracted Companion Home Providers

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:	Olga Lutsyk	P.O. Box 45310, Olympia, WA 98504-5310	360-764-6155
Enforcement:	Olga Lutsyk	P.O. Box 45310, Olympia, WA 98504-5310	360-764-6155

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: P.O. Box 45310, Olympia, WA 98504-5310
Phone: 360-790-4732
Fax:
TTY:
Email: 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:

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"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> RCW 34.05.310 (4)(g)
(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 has analyzed the proposed rule amendments and concludes that they will impose no costs on small businesses. While all of the companion home providers affected by chapter 388-829C WAC are small businesses, the providers should incur no costs in complying with these amendments. Although a provider's rate might be reduced if they access *additional* respite services, it is not compulsory for a provider to access additional respite services. "Additional respite services" means hours above the number of assessed annual hours in a client's DDA assessment.
- 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:

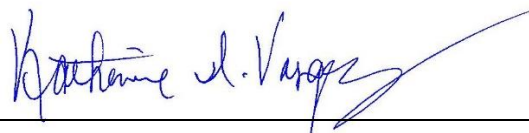
Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Date: March 14, 2023

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



AMENDATORY SECTION (Amending WSR 22-04-073, filed 1/31/22, effective 3/3/22)

WAC 388-829C-131 How does DDA determine the daily rate? (1) A companion home daily rate is based on the client's DDA assessment under chapter 388-828 WAC. The DDA assessment uses an algorithm to convert raw scores into support assessment scales.

(2) The following support assessment scales are used to calculate a companion home daily rate. Each support assessment scale is assigned an acuity level of "none," "low," "medium," or "high" by the DDA assessment algorithm and corresponds to the values below:

Support Assessment Scale	Acuity Levels			
	None	Low	Medium	High
Activities of daily living	0	1	2	3
Behavior	0	1	2	3
Interpersonal support	0	1	2	3
Medical	0	1	2	3
Mobility	0	1	2	3
Protective supervision	0	1	2	3

(3) DDA assigns a behavior score of four if:

(a) The client has an acuity level of "high" for behavior on the support assessment scale; and

(b) The client has a behavior support plan that meets requirements under WAC 388-829C-135.

(4) The sum of the assessment scale scores corresponds to an established daily rate. Rates are set prospectively in accordance with state legislative appropriations and will be adjusted accordingly.

(5) DSHS publishes companion home daily rates on the office of rates management's website.

(6) DDA may adjust a companion home daily rate if:

(a) The sum of the client's support assessment acuity levels changes; or

(b) DDA approves additional respite hours (~~under WAC 388-829C-234(3)~~).

AMENDATORY SECTION (Amending WSR 18-22-106, filed 11/6/18, effective 12/7/18)

WAC 388-829C-230 What is respite and where can a companion home client access respite? (1) Respite is (~~short-term, intermittent~~) a scheduled break in caregiving to provide relief for the companion home provider.

(2) (~~The DDA assessment determines a client's annual allocation of respite hours.~~

~~(3) Respite may be provided in:~~

~~(a) The companion home where the client lives;~~

~~(b) A community setting available to an adult, such as a camp, senior center, or adult day care center;~~

~~(c) An adult family home;~~

~~(d) An assisted living facility;~~

~~(e) A group home; or~~

~~(f) A group training home.~~

~~(4) To be a qualified respite provider, a person or agency must be contracted with DDA to provide respite services.)~~ A companion home client may receive:

(a) Waiver-funded respite under chapter 388-845 WAC;

~~((5) A companion home client must not receive e))~~ (b) Overnight planned respite services under chapter 388-829R WAC((-)) ; and

~~((6) A companion home client must not receive))~~ (c) Planned respite at a residential habilitation center.

AMENDATORY SECTION (Amending WSR 18-22-106, filed 11/6/18, effective 12/7/18)

WAC 388-829C-232 How does DDA determine the amount of waiver-funded respite a companion home ((client's annual respite allocation)) client may receive? For waiver-funded respite, DDA determines a companion home client's annual respite allocation by adding the client's companion home services support score under WAC 388-828-6010 to their adjusted companion home services support score under WAC 388-828-6011.

AMENDATORY SECTION (Amending WSR 18-22-106, filed 11/6/18, effective 12/7/18)

WAC 388-829C-233 May the client or companion home provider request additional waiver-funded respite hours? ~~((1))~~ A client may request waiver-funded respite hours in addition to their annual respite allocation, or the companion home provider may request additional respite on behalf of the client in consultation with the client's legal representative if the client has one.

~~((2) DDA may approve additional respite hours if a temporary and unexpected event occurs in the client or the companion home provider's life, such as an illness or injury.))~~

AMENDATORY SECTION (Amending WSR 18-22-106, filed 11/6/18, effective 12/7/18)

WAC 388-829C-234 Will DDA reduce the companion home daily rate if additional waiver-funded respite hours are approved? (1) ~~((If DDA approves additional respite hours under WAC 388-829C-233(2), the daily rate remains unchanged.~~

~~(2))~~ If DDA approves additional waiver-funded respite hours ~~((for any reason not under WAC 388-829C-233(2))~~, DDA may reduce the companion home daily rate.

~~((3))~~ (2) ((If DDA approves additional respite hours under subsection (2) of this section)) To reduce the companion home daily rate, DDA:

(a) Divides the cost of the additional respite hours by the number of days remaining in the client's plan year; and

(b) Subtracts that amount from the companion home daily rate for the remaining number of days in the plan year.

~~((4))~~ (3) The cost of the additional respite hours is based on the identified respite provider's hourly rate.

NEW SECTION

WAC 388-829C-235 Will DDA reduce the companion home daily rate if a client receives state-funded respite? DDA may reduce a companion home daily rate if the client receives overnight planned respite services or respite at a residential habilitation center.

AMENDATORY SECTION (Amending WSR 20-08-033, filed 3/24/20, effective 5/1/20)

WAC 388-829R-005 What definitions apply to this chapter? The following definitions apply to this chapter:

"Administrator" means the person responsible for daily management and operation of the overnight planned respite services site. The administrator may also be the owner.

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

"Client" means a person who has a developmental disability as defined in RCW 71A.10.020~~((5))~~ and who the DDA has determined eligible to receive services under chapter 71A.16 RCW. When used in this section, "you" is interchangeable with client.

"DDA" means the developmental disabilities administration, an administration of the department of social and health services and its employees and authorized agents.

"Direct support professional" means a person who interacts directly with a client during an overnight planned respite stay to provide services outlined in the client's overnight planned respite services individualized agreement.

"DSHS" or "the department" means the state of Washington department of social and health services and its employees and authorized agents.

"Family" means one or more of the following relatives: Spouse or registered domestic partner; natural; adoptive; or stepparent; grandparent; child; stepchild; sibling; stepsibling; uncle; aunt; first cousin; niece; or nephew.

"Legal representative" means a parent of a client if the client is under age 18, a court-appointed guardian if a decision is within the scope of the guardianship order, or any other person authorized by law to act for the client.

"Mandatory reporter" means any person working with vulnerable adults required to report suspected incidents of abandonment, abuse, neglect, financial exploitation under chapter 74.34 RCW.

"Nurse delegation" means the process by which a registered nurse transfers the performance of select nursing tasks to a nursing assistant-registered or nursing assistant-certified in select situations as

set forth in chapter 18.79 RCW and WAC 246-840-910 through 246-840-970.

"Overnight planned respite services" means services that are intended to provide short-term intermittent relief for a person who lives with and acts as a DDA client's primary caregiver.

"Overnight planned respite services provider" and "provider" means an agency that is contracted to provide overnight planned respite services.

"Owner" means the person who accepts or delegates responsibility for the management and operation of the overnight planned respite services site. The owner may also be the administrator.

"Primary caregiver" means the person who provides the client's care and supervision and lives with the client.

AMENDATORY SECTION (Amending WSR 20-08-033, filed 3/24/20, effective 5/1/20)

WAC 388-829R-011 Who is eligible to receive overnight planned respite services? To be eligible to receive overnight planned respite services, a client must:

- (1) Be eligible for DDA services under chapter 388-823 WAC;
- (2) Be ~~((eighteen))~~ 18 or older;
- (3) ~~((Be living))~~ Live at home with a primary caregiver and not currently ~~((receiving))~~ receive:
 - (a) Residential habilitation services, unless receiving services from a companion provider; or ((under the core waiver))
 - (b) Community first choice residential services; and
- (4) Identify a backup caregiver to respond in an emergency if the primary caregiver is unavailable.

AMENDATORY SECTION (Amending WSR 20-08-033, filed 3/24/20, effective 5/1/20)

WAC 388-829R-165 What must overnight planned respite services providers do to plan for and respond to emergencies? (1) The overnight planned respite services provider must develop an emergency response plan to address natural and other disasters.

- (2) In an emergency, the overnight planned respite services provider must:
 - (a) Immediately call 911 if it is a life-threatening emergency;
 - (b) Provide emergency services;
 - (c) Notify DDA;
 - (d) Notify the primary caregiver, client's legal representative, or backup caregiver; and
 - (e) Submit a written report to DDA.

WAC 388-829R-170 What records must overnight planned respite services providers keep? (1) For each client, the overnight planned respite services providers must keep the following information:

- (a) The client's name and address;
 - (b) The name, address, and telephone number of the client's primary ((guardian)) caregiver or legal representative;
 - (c) A copy of the client's most recent person-centered service plan;
 - (d) A copy of the client's overnight planned respite services individualized agreement;
 - (e) Nurse delegation records, if applicable;
 - (f) Progress notes;
 - (g) Incident reports, if applicable;
 - (h) Medication documentation, including a medication intake form and medication administration records, if applicable;
 - (i) A list of the client's personal property upon arrival and departure; and
 - (j) A record of money or gift cards managed by the respite provider on behalf of the client during the respite stay, if applicable.
- (2) An overnight planned respite services provider must also keep the following:
- (a) Water temperature monitoring records;
 - (b) Direct support professional training records;
 - (c) Direct support professional time sheets specific to locations worked;
 - (d) Payment records;
 - (e) A signed copy of DSHS form 10-403 for each direct support professional and administrator.