



PROPOSED RULE MAKING

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

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OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: June 21, 2023

TIME: 2:18 PM

WSR 23-14-001

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 23-05-065 ; 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 388-845-0603, Who is eligible to receive community inclusion services?, 388-845-0610, Are there limits to community inclusion services you may receive? and 388-845-2110, Are there limits to the supported employment services you may receive?

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
August 8, 2023	10:00 a.m.	Virtual via Teams or Call in	Hearings are being held virtually. Please see the DSHS website for the most up to date information

Date of intended adoption: Not earlier than August 9, 2023 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: DSHS Rules Coordinator
Address: PO Box 45850, Olympia WA 98504-5850
Email: DSHSRPAURulesCoordinator@dshs.wa.gov
Fax: 360-664-6185
Other:
By (date) 5:00 p.m. on August 8, 2023

Assistance for persons with disabilities:

Contact Shelley Tencza – 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 p.m. on July 25, 2023

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

Reasons supporting proposal: These changes to chapter 388-845 WAC are necessary to implement amendments to DDA’s home and community-based services (HCBS) waivers as approved by the federal Centers for Medicare and Medicaid Services (CMS). Substantive changes remove the prohibition to receive employment services and community inclusion services concurrently and remove “consecutive” to align with RCW 71A.12.200.

Statutory authority for adoption: RCW 71A.12.030 and 71A.12.120

Statute being implemented: RCW 71A.12.290

Is rule necessary because of a:

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

If yes, CITATION: 42 CFR 441.301(c)(6)

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)

Name of agency personnel responsible for:			
	Name	Office Location	Phone
Drafting:	Chantelle Diaz	PO Box 45310, Olympia, WA 98504-5310	360-790-4732
Implementation:	Branda Matson	PO Box 45310, Olympia, WA 98504-5310	360-407-1522
Enforcement:	Branda Matson	PO Box 45310, Olympia, WA 98504-5310	360-407-1522

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
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 checked="" 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](#)): Removing the word "consecutive" aligns WAC 388-845-0603 with statute and is exempt. The other amendments clarify language and align with waiver amendments approved by the Centers for Medicare and Medicaid Services and are not exempt.
- 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. For businesses delivering services under chapter 388-845 WAC, common costs by rule amendments would be the result of changed provider qualifications, such as requiring a license or training. No new trainings or licenses are required. Providers, in other words, small businesses should incur no costs by complying with these amendments.
- 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:

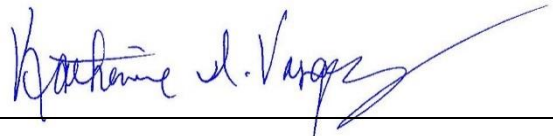
Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Date: June 21, 2023

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0603 Who is eligible to receive community inclusion services? You are eligible for community inclusion services if you are enrolled in the basic plus or core waivers and:

- (1) You are (~~sixty-two~~) 62 or older; or
- (2) You meet age requirements under WAC 388-845-2110(1) and:
 - (a) You have participated in developmental disabilities administration (DDA) supported employment services for at least nine (~~consecutive~~) months; or
 - (b) DDA has determined that you are exempt from the nine-month DDA supported employment service requirement because:
 - (i) Your medical or behavioral health records document a condition that prevents you from completing nine (~~consecutive~~) months of DDA supported employment services; or
 - (ii) You were referred to and were available for DDA supported employment services, but the service was not delivered within (~~nine-~~ty) 90 days of the referral.

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-0610 Are there limits to community inclusion services you may receive? (~~(1) You must not receive community inclusion services if you are receiving prevocational or supported employment services.~~

~~(2))~~ The maximum hours of community inclusion services you may receive are determined by the developmental disabilities administration (~~(DDA)~~) assessment under WAC 388-828-9310.

AMENDATORY SECTION (Amending WSR 22-01-216, filed 12/22/21, effective 1/22/22)

WAC 388-845-2110 Are there limits to the supported employment services you may receive? The following limits apply to your receipt of supported employment services:

- (1) To receive supported employment services, you must be age:
 - (a) (~~Twenty~~) 20 and graduating from high school before your July or August (~~twenty-first~~) 21st birthday(~~(+)~~);
 - (b) (~~Twenty-one~~) 21 and no longer eligible to enroll in high school; or
 - (c) (~~Twenty-two~~) 22 or older.
- (2) Payment for (~~individual~~) supported employment services excludes the supervisory activities rendered as a normal part of the business setting.
- (3) (~~You will not be authorized to receive supported employment services in addition to community inclusion services.~~
- ~~(4))~~ Your service hours are determined by the assistance you need to reach your employment outcomes as described in WAC

388-828-9325 and might not equal the number of hours you spend on the job or in job related activities.