



# 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: September 18, 2023

TIME: 2:45 PM

WSR 23-19-071

**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 22-17-115 ; 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 388-101D-0190, What must a provider do if a client experiences a change in support needs?, 388-101D-0195, What must a provider do when a client's support needs remain unmet?, 388-101D-0196, What is the client critical case protocol?, 388-101D-0197, Who may request a client critical case protocol and when is it initiated?, 388-101D-0198, Who must attend a critical case conference and when must the conference occur?, 388-101D-0200, When may a provider terminate a client's services?, and 388-101D-0201, When may the provider suspend a client's services?

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
October 24, 2023	10:00 a.m.	Virtually via Teams or Call in	Hearings are being held virtually. Please see the DSHS website for the most current information.

**Date of intended adoption:** \_\_\_\_\_ (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: 360-664-6085  
 Other:  
 By (date) 5:00 p.m. on October 24, 2023

**Assistance for persons with disabilities:**

Contact Shelley Tencza, Rules Consultant  
 Phone: 360-664-6036  
 Fax: 360-664-6085  
 TTY: 711 Relay Service  
 Email: [shelley.tencza@dshs.wa.gov](mailto:shelley.tencza@dshs.wa.gov)  
 Other:  
 By (date) 5:00 p.m. on October 10, 2023

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** DDA is amending rules from chapter 388-101D WAC, and creating new rules, in order to establish procedures for addressing a client's unmet support needs, and suspending or terminating a client's services, and to codify procedures for the client critical case protocol.

**Reasons supporting proposal:** See purpose.

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

**Statute being implemented:** RCW 71A.26.030

**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)

Name of agency personnel responsible for:			
	Name	Office Location	Phone
Drafting:	Chantelle Diaz	P.O. Box 45310, Olympia, WA 98504-5310	360-790-4732
Implementation:	Megan Kwak	P.O. Box 45310, Olympia, WA 98504-5310	360-764-9909
Enforcement:	Megan Kwak	P.O. Box 45310, Olympia, WA 98504-5310	360-764-9909

**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:

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) (Internal government operations)	<input checked="" type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(e) (Dictated by statute)
<input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(c) (Incorporation by reference)	<input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(f) (Set or adjust fees)
<input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(d) (Correct or clarify language)	<input type="checkbox"/> <a href="#">RCW 34.05.310</a> (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's analysis revealed that there may be costs associated with supporting a client between the date of a termination or suspension notice and the effective date of the termination or suspension. If the cost of supporting the client increases during this time, DDA will reimburse the provider based on the client's assessed needs. Whether the provider is a small business would not change this reimbursement, therefore complying with these rules should not result in disproportionate costs for small businesses.

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:** September 15, 2023

**Name:** Katherine I. Vasquez

**Title:** DSHS Rules Coordinator

**Signature:**



AMENDATORY SECTION (Amending WSR 16-14-058, filed 6/30/16, effective 8/1/16)

**WAC 388-101D-0190 ~~Changes in client service needs Nonemer-~~  
~~gent.)~~ What must a provider do if a client experiences a change in support needs? ((The service provider must notify the department:**

- ~~(1) When a client's service needs change and the individual support plan no longer addresses the client's needs; and~~
- ~~(2) May request in writing, assistance from the department's case manager in setting up an assessment meeting.)~~

If a client experiences a change in support needs, the provider must:

- (1) Coordinate with the client to the maximum extent possible to:
  - (a) Review the client's individual instruction and support plan to ensure the plan meets the client's needs and requirements under chapter 388-101D WAC, and update if needed;
  - (b) Review the client's positive behavior support plan, if the client has one, to ensure the plan meets the client's needs and requirements under chapter 388-101D WAC, and update if needed;
  - (c) Review the client's person-centered service plan and, if necessary, notify DDA that changes to the plan may be needed;
  - (d) Participate in a significant change assessment, if one occurs, unless requested by the client not to do so; and
  - (e) Implement the new person-centered service plan, if updated.
- (2) Contact the resource manager if the provider believes additional resources or a rate assessment are needed.

AMENDATORY SECTION (Amending WSR 16-14-058, filed 6/30/16, effective 8/1/16)

**WAC 388-101D-0195 ~~(Changes in client service needs Emergent.)~~**  
**What must a provider do when a client's support needs remain unmet?**

~~((1) The service provider must promptly notify the department to ask for emergency assistance when a client's needs change and the actions or continued presence of the client endangers the health, safety and/or personal property of other clients, the client, those working with the client, or other public citizens.~~

~~(2) If further assistance is needed following the department's initial response, the service provider must confirm in writing to the client's case manager on the first working day after initiating a verbal request for such assistance:~~

- ~~(a) The nature of the emergency;~~
- ~~(b) The need for immediate assistance and the specific type of assistance needed; and~~
- ~~(c) The specific type of assistance needed.~~

~~(3) When the emergency cannot be resolved and the service provider wants to terminate services to the client, the service provider must:~~

- ~~(a) Notify the department in writing;~~
- ~~(b) Specify the reasons for terminating services to the client;~~

and

~~(c) Ensure that the department receives the notice at least seventy-two hours before moving the client from the program.))~~

(1) If the client's support needs remain unmet after following the procedures in WAC 388-101D-0190, the provider must submit a written request to the client's case manager for assistance with addressing the unmet need.

(2) No more than five working days after receipt of the provider's request, DDA must respond to address the unmet need, which might include identification of a critical case.

#### NEW SECTION

##### **WAC 388-101D-0196 What is the client critical case protocol?**

(1) The client critical case protocol is a formal, person-centered process for addressing unmet residential support needs for a client receiving services from a contracted supported living provider, which, if unaddressed might result in a disruption in residential services.

(2) DDA must include in the client critical case protocol:

(a) The client, if they choose to participate;

(b) The client's legal representative, if the client has one, and if they choose to participate;

(c) A representative from the client's current supported living agency; and

(d) DDA.

(3) The steps of the client critical case protocol include DDA:

(a) Identifying the client's unmet need as a critical case;

(b) Notifying parties in subsection (2) of this section that a critical case has been identified;

(c) Conducting a critical case conference under WAC 388-101D-0198;

(d) Identifying action steps through a critical case conference; and

(e) Distributing an outcome summary to participants for review and correction.

#### NEW SECTION

**WAC 388-101D-0197 Who may request a client critical case protocol and when is it initiated?** (1) A client, the client's legal representative, or the provider may request a critical case protocol if:

(a) The client is at risk of losing their home;

(b) The client is at risk of losing their supported living provider;

(c) The client is medically cleared for discharge from a hospital but does not have a discharge plan;

(d) The client's person-centered service plan or positive behavior support plan cannot be implemented as written; or

(e) There is other indication of a critical case.

(2) DDA must respond to the request for a critical case protocol no more than five working days after receiving the request.

- (3) A client critical case protocol may be initiated by DDA when requested by:
- (a) The client or legal representative, if the client has one; or
  - (b) The supported living provider.
- (4) DDA must initiate a client critical case protocol if the provider suspends the client's services or DDA learns that the client is at risk of losing residential supports from the provider.

NEW SECTION

**WAC 388-101D-0198 Who must attend a critical case conference and when must the conference occur?** (1) The client's critical case conference must be attended by:

- (a) The client, if the client chooses to attend;
  - (b) The client's legal representative, if the client has one, and if the legal representative chooses to attend;
  - (c) A representative from the client's current supported living agency; and
  - (d) DDA.
- (2) If requested, DDA must invite other people identified by the client or the client's legal representative, if the client has one.
- (3) The client may identify people whom the client does not want to attend a critical case conference.
- (4) The critical case conference must occur no more than 10 business days after identification of a critical case.
- (5) If the client, or the client's legal representative, if the client has one, does not attend the first critical case conference within the 10-day timeframe:
- (a) The conference may occur as scheduled;
  - (b) A follow-up conference must be offered to the client and their legal representative, if the client has one; and
  - (c) The outcome summary must be shared with the client and their legal representative, if the client has one, for review and correction.

AMENDATORY SECTION (Amending WSR 16-14-058, filed 6/30/16, effective 8/1/16)

**WAC 388-101D-0200** ~~((Service provider refusal to serve a client.))~~ **When may a provider terminate a client's services?** (1) ~~((The service provider may refuse services to a client when the service provider has determined and documented))~~ **A provider may terminate a client's services if the provider determines and documents that:**

- (a) ~~((Why the provider))~~ **The provider cannot meet the client's needs; ((or))**
- (b) ~~((How the provider's refusal to serve the client would be in the best interest of the client or other clients.))~~ **The client's safety or the safety of other people in the residence is endangered;**
- (c) **The client's health or the health of other people in the residence would otherwise be endangered; or**
- (d) **The provider ceases to operate.**

~~(2) Before ((terminating)) a provider may terminate a client's services ((to the client)), the ((service)) provider must: ((notify the department, the client and the client's legal representative in writing ten working days before terminating services.))~~

~~(a) Engage in the client critical case protocol and attend a critical case conference if the client receives services from a contracted supported living provider; and~~

~~(b) At least 60 days before the termination date, send written notice to:~~

~~(i) The client and the client's legal representative or necessary supplemental accommodation; and~~

~~(ii) DDA.~~

~~(3) The notice to the client must state the:~~

~~(a) Reason for the termination;~~

~~(b) Circumstances that led to the termination;~~

~~(c) Steps taken to prevent the termination; and~~

~~(d) Effective date of the termination.~~

~~(4) The terminating provider must participate in transition meetings when requested by DDA, the client, or the new provider.~~

~~(5) Crisis diversion service providers are exempt from the requirements in this section.~~

#### NEW SECTION

**WAC 388-101D-0201 When may the provider suspend a client's services?** (1) A contracted supported living provider may immediately suspend a client's services if:

(a) The provider cannot safely meet the client's needs;

(b) The actions or continued presence of the client endangers the health or safety of the client, other clients, those working with the client, or member of the public; and

(c) The client is in a hospital, jail, health care facility, or other setting to address the client's needs.

(2) The provider must give written notice to the client, their legal representative, if they have one, and DDA before suspending the client's services.

(3) The notice must specify the provider's reasons for suspending the client's services.

(4) While the client's services are suspended, the provider must engage in the client critical case protocol to determine the client's support needs and if the client will choose to:

(a) Resume services with the provider and the provider agrees;

(b) Transition to a new provider; or

(c) Transition to another service.

(5) The suspension status must be addressed at a critical case conference. The provider must inform the client and DDA if the status of the suspension changes.

(6) Crisis diversion service providers are exempt from the requirements in this section.