



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: October 18, 2023
TIME: 2:52 PM

WSR 23-22-001

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 23-14-035 ; 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 388-845-0045, When there is capacity to add people to a waiver, how does DDA determine who will be enrolled?, 388-845-1105, Who is a qualified provider of stabilization services - crisis diversion bed?, 388-845-1505, Who are qualified providers of residential habilitation services for the core waiver?, and 388-845-3062, Who is required to sign the person-centered service plan and how can it be signed?

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
December 5, 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 December 6, 2023 (Note: This is **NOT** the **effective** date)

Submit written comments to:

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

Purpose of the proposal and its anticipated effects, including any changes in existing rules: DDA is amending these rules to align with amendments to home and community-based services waivers as approved by the Centers for Medicare and Medicaid Services. Major changes include: adding a priority group for waiver enrollment; adding a new provider type for stabilization services; and adding signature options for person-centered service plans.

Reasons supporting proposal: See purpose.

Statutory authority for adoption: RCW 71A.12.030

Statute being implemented: RCW 71A.12.120

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	PO Box 45310, Olympia WA 98504-5310	360-790-4732
Implementation:	Ann Vasilev	PO Box 45310, Olympia WA 98504-5310	360-407-1551
Enforcement:	Ann Vasilev	PO Box 45310, Olympia WA 98504-5310	360-407-1551

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: These rules are exempt as allowed under RCW 34.05.328(5)(b)(vii) which states in part, "this section does not apply to rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents" ...

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 checked="" 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 checked="" 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.
- 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:

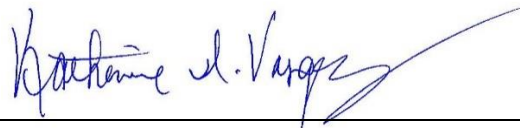
The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

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

Date: October 17, 2023

Signature:

Name: Katherine I. Vasquez



Title: DSHS Rules Coordinator

AMENDATORY SECTION (Amending WSR 23-18-035, filed 8/29/23, effective 9/29/23)

WAC 388-845-0045 When there is capacity to add people to a waiver, how does DDA determine who will be enrolled? When there is capacity on a waiver, DDA may enroll people from the statewide database in a waiver based on the following priority considerations:

(1) First priority will be given to current waiver participants assessed to require a different waiver because their identified health and welfare needs have increased and these needs cannot be met within the scope of their current waiver.

(2) DDA may also consider any of the following populations in any order:

(a) Priority populations as identified and funded by the legislature.

(b) Persons DDA has determined to be in immediate risk of ICF/IID admission due to unmet health and welfare needs.

(c) Persons identified as a risk to the safety of the community.

(d) Persons currently receiving services through state-only funds.

(e) Persons on an HCBS waiver that provides services in excess of what is needed to meet their identified health and welfare needs.

(f) Persons who were previously on an HCBS waiver since April 2004 and lost waiver eligibility per WAC 388-845-0060 (1)(k).

(g) Persons exiting the Washington department of children, youth, and families foster care or aging out of dependency.

(3) DDA may consider persons who need the waiver services available in the basic plus or IFS waivers to maintain them in their family's home or in their own home.

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-1105 Who is a qualified provider of stabilization services - crisis diversion bed? Providers of stabilization services - crisis diversion beds must be:

(1) (~~DDA~~) Department-certified residential agencies per chapter 388-101 WAC;

(2) (~~Other department licensed or certified agencies; or~~

~~(3)) State-operated agencies (-); or~~

(3) Other agencies licensed by the department of children, youth, and families under chapter 110-145 WAC and contracted with DDA to provide services under chapter 388-833 WAC.

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-1505 Who are qualified providers of residential habilitation services for the core waiver? Providers of residential ha-

ilitation services for participants in the core waiver must be one of the following:

(1) ~~((Individuals))~~ An individual contracted with DDA to provide ~~((residential support))~~ services as a ~~(())~~ companion home ~~(())~~ provider under chapter 388-829C WAC;

(2) ~~((Individuals))~~ An individual or agency contracted with DDA to provide ~~((training))~~ services as an ~~(())~~ alternative living provider ~~(())~~ under chapter 388-829A WAC;

(3) ~~((Agencies))~~ An agency contracted with DDA and certified per chapter 388-101 WAC;

(4) A state-operated living ~~((alternatives))~~ alternative (SOLA);
or

(5) A licensed and contracted:

(a) Group care ~~((facilities and))~~ facility or staffed residential ~~((homes))~~ home under chapter 110-145 WAC;

(b) Child foster ~~((homes))~~ home under chapter 110-148 WAC; or

(c) Child placing ~~((agencies))~~ agency under chapter 110-147 WAC.

AMENDATORY SECTION (Amending WSR 21-19-108, filed 9/20/21, effective 10/21/21)

WAC 388-845-3062 Who is required to sign the person-centered service plan and how can it be signed? (1) If you do not have a legal representative, you must sign the person-centered service plan.

(2) If you have a legal representative, your legal representative must sign the person-centered service plan.

(3) If you need assistance to understand your person-centered service plan, DDA will follow the steps outlined in WAC 388-845-3056 ~~((1) and (3))~~.

(4) You choose how to sign your person-centered service plan - such as, with a pen, or with an electronic or voice signature.