



PROPOSED RULE MAKING

CR-102 (June 2024) (Implements RCW 34.05.320) Do NOT use for expedited rule making

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FILED

DATE: December 02, 2024
TIME: 10:34 AM

WSR 24-24-078

Agency: Department of Social and Health Services - Aging and Long-Term Support, HCS

- Original Notice**
- Supplemental Notice to WSR** _____
- Continuance of WSR** _____

- Preproposal Statement of Inquiry was filed as WSR 22-13-116 ; 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) The Department of Social and Health Services (department) is proposing to amend the following WAC 388-71-0503 - What definitions apply to WAC 388-71-0500 through 388-71-05640, 388-106-0010 - What definitions apply to this chapter?, 388-106-0060 - Who must perform the assessment?, and 388-115-0516 - What are the responsibilities of the consumer directed employer when providing care to a client?. WAC 388-106-0010 was filed as a part of a CR-101 on 6/17/24 with WSR 24-13-075. That rule making will be placed on hold for this rule making to proceed. The department may amend other related rules as required. The department is allowed to contract with a federally recognized Indian tribe to determine eligibility including assessments and reassessments, authorize and reauthorize services, and perform case management functions for Medicaid long-term services and supports clients within the tribe's authority.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
January 22, 2025	10:00 a.m.	Virtually via Teams or Call in	Hearings are held virtually, see the DSHS website at https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings for the most current information.

Date of intended adoption: Not earlier than January 23, 2025 (Note: This is **NOT** the **effective** date)

<p>Submit written comments to:</p> <p>Name DSHS Rules Coordinator</p> <p>Address PO Box 45850, Olympia WA 98504</p> <p>Email DSHSRPAURulesCoordinator@dshs.wa.gov</p> <p>Fax 360-664-6185</p> <p>Other</p> <p>Beginning (date and time) <u>noon on December 4, 2024</u></p> <p>By (date and time) <u>5:00 p.m. on January 22, 2025</u></p>	<p>Assistance for persons with disabilities:</p> <p>Contact Shelley Tencza, Rules Consultant</p> <p>Phone 360-664-6036</p> <p>Fax 360-664-6185</p> <p>TTY 711 Relay Service</p> <p>Email shelley.tencza@dshs.wa.gov</p> <p>Other</p> <p>By (date) <u>5:00 p.m. on January 8, 2025</u></p>
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Purpose of the proposal and its anticipated effects, including any changes in existing rules: The purpose of this proposal is to amend WACs to implement Senate Bill 5866, an act relating to Medicaid long-term services and supports eligibility determinations being completed by federally recognized Indian tribes. Senate Bill 5866 amended RCWs 74.09.520, 74.39A.009, 74.39A.090, 74.39A.095, and 74.39A.515.

Reasons supporting proposal: The passage of Senate Bill 5866, (chapter 255, Laws of 2022)

Statutory authority for adoption: RCW 74.08.090, 74.09.520, 74.39A.009, 74.39A.090, 74.39A.095, and 74.39A.515.

Statute being implemented: RCWs 74.09.520, 74.39A.009, 74.39A.090, 74.39A.095, and 74.39A.515

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

Name of proponent: (person or organization) Tribal Governments and Department of Social and Health Services

Type of proponent: Private. Public. Governmental.

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting	Dru Aubert	PO Box 45600, Olympia, WA 98504-5600	360-725-2524
Implementation	Dru Aubert	PO Box 45600, Olympia, WA 98504-5600	360-725-2524
Enforcement	Dru Aubert	PO Box 45600, Olympia, WA 98504-5600	360-725-2524

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 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 [34.05.328\(5\)\(b\)\(vii\)](#).

Explanation of how the above exemption(s) applies to the proposed rule: These amendments do not impact small businesses. They only impact DSHS customers and federally recognized Indian tribes.

(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:

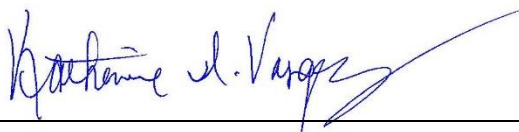
- Name
- Address
- Phone
- Fax
- TTY
- Email
- Other

Date: November 26, 2024

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



WAC 388-71-0503 ~~What definitions apply to ((WAC 388-71-0500 through WAC 388-71-05640))~~ this chapter? "Agency provider" means a long-term care worker who works for a home care agency.

"Area agencies on aging (AAA)" means a contracted entity that aging and long-term support administration (AL TSA) grants funds to in order to carry out the functions of the Older Americans Act, general-fund state programs, and to provide case management services and supports to individuals 18 and older who receive medicaid-funded (~~LTC~~) long-term care (LTC) in their own homes.

"Applicant" means a person who is in the process of becoming an in-home long-term care worker.

"Background check" means a name and date of birth check, or a fingerprint-based background check, or both.

"Background check result" is defined in WAC 388-113-0010.

"Background check central unit (BCCU)" means the DSHS entity responsible for conducting background checks for the department.

"Character, competence, and suitability determination (CC&S)" is defined in WAC 388-113-0050.

"Client" means an individual receiving medicaid-funded in-home long-term services from the department.

"Conflict of interest" means under 42 CFR 431(c)(1)(vi), case management must be separate from service delivery functions. A contracted entity that aging and long-term support administration (AL TSA) grants funds to in order to carry out the functions of the Older Americans Act, general-fund state programs, and to provide case management services and supports to individuals 18 and older who receive medicaid-funded LTC in their own homes must comply with conflict-free case management.

"Department" means the department of social and health services or its designees.

"Family member" includes, but is not limited to a parent, child, sibling, aunt, uncle, niece, nephew, cousin, grandparent, grandchild, grandniece, grandnephew, or such relatives when related by marriage.

"Federally recognized Indian tribe" means self-governing American Indian/Alaskan Native (AI/AN) governments recognized under applicable federal and common law. Because of their sovereignty, federally recognized tribes have the inherent power to make and enforce laws on their lands, and to create governmental entities. A federally recognized tribe is an AI/AN tribal entity that is recognized as having a government-to-government relationship with the United States, with the responsibilities, powers, limitations, and obligations attached to that designation, and is eligible for funding and services from the Bureau of Indian Affairs. In addition, for the purpose of this rule, federally recognized Indian tribes are contracted entities that the aging and long-term support administration (AL TSA) may grant funds to carry out functions and to provide case management services and supports to individuals 18 and older who receive medicaid-funded long-term care in their own homes and general fund state programs.

"Fingerprint-based background check" means a search of in-state criminal history records through the Washington state patrol and national criminal history records through the Federal Bureau of Investigation.

"**Home care agency (HCA)**" means an entity that is licensed by the department of health to provide home care services through a contract arrangement with the department to clients in places of permanent or temporary residence.

"**Home care agency long-term care worker**" means a long-term care worker who works for a home care agency.

"**Long-term care worker**" means a direct care ((workers)) worker employed by a home care ((agencies)) agency.

"**Name and date of birth check**" is a search conducted by the background check central unit (BCCU) of Washington state criminal history and negative action records using the applicant's name and date of birth.

"**Negative actions**" are listed in WAC 388-113-0030.

AMENDATORY SECTION (Amending WSR 23-16-085, filed 7/28/23, effective 8/28/23)

WAC 388-106-0010 What definitions apply to this chapter? "Ability to make self understood" means how you made yourself understood to those closest to you in the last seven days before the assessment; expressed or communicated requests, needs, opinions, urgent problems and social conversations, whether in speech, writing, sign language, symbols, or a combination of these including use of an alternative communication method:

- (1) Understood: You expressed ideas clearly;
- (2) Usually understood: You had difficulty finding the right words or finishing thoughts, resulting in delayed responses, or you required some prompting to make self understood;
- (3) Sometimes understood: You had limited ability, but were able to express concrete requests regarding at least basic needs (such as food, drink, sleep, toilet);
- (4) Rarely/never understood: At best, understanding was limited to caregiver's interpretation of client specific sounds or body language (such as indicated presence of pain or need to toilet);
- (5) Child under three: Proficiency is not expected of a child under three and a child under three would require assistance with communication with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130.

(({"~~Active range of motion~~" means})) "Active range of motion" means exercises performed by the client to maintain their joint function to the joint's optimal range. Exercises may be performed with the assistance of cueing or reminders by caregivers. A formal, active range of motion program needs to be first established by a qualified registered nurse or therapist. Range of motion may be self-directed based upon an occupational or physical therapist assessment and continued without occupational or physical therapist supervision.

"**Activities of daily living (ADL)**" means the following:

- (1) Bathing: How you took a full-body bath/shower, sponge bath, and transferred in/out of tub/shower.
- (2) Bed mobility: How you moved to and from a lying position, turned side to side, and positioned your body while in bed, in a recliner, or other type of furniture you slept in.

(3) Dressing: How you put on, fastened, and took off all items of clothing, including donning/removing prosthesis, splints, either braces or orthotics, or both.

(4) Eating: How you ate and drank, regardless of skill. Eating includes any method of receiving nutrition, such as, by mouth, tube, or through a vein. Eating does not include any set up help you received, such as bringing food to you or cutting it up in smaller pieces.

(5) Locomotion in room and immediate living environment: How you moved between locations in your room and immediate living environment. If you are in a wheelchair, locomotion includes how self-sufficient you were once in your wheelchair.

(6) Locomotion outside room: How you moved to and returned from your immediate living environment, outdoors, and more distant areas. If you are living in a contracted assisted living, enhanced services facility, adult residential care, enhanced adult residential care, enhanced adult residential care-specialized dementia care facility, or nursing facility (NF), this includes areas set aside for dining, activities, etc. If you are living in your own home or in an adult family home, locomotion outside immediate living environment including outdoors, includes how you moved to and returned from a patio or porch, backyard, to the mailbox, to see the next-door neighbor, or when accessing your community.

(7) Walk in room, hallway and rest of immediate living environment: How you walked between locations in your room and immediate living environment.

(8) Medication management: Describes the amount of assistance, if any, required to receive prescription medications, over the counter medications, or herbal supplements.

(9) Toilet use: How you eliminated or toileted, used a commode, bedpan, or urinal, transferred on/off toilet, cleansed, changed pads, managed ostomy or catheter, and adjusted clothes. Toilet use does not include emptying a bedpan, commode, ostomy, or catheter bag. This type of set up assistance is considered under the definition of support provided.

(10) Transfer: How you moved between surfaces, such as, to/from bed, chair, wheelchair, standing position. Transfer does not include how you moved to/from the bath, toilet, or got in/out of a vehicle.

(11) Personal hygiene: How you maintained personal hygiene tasks, such as combing hair, brushing teeth, shaving, applying makeup, washing/drying face, hands (including nail care), and perineum, including menses care. Personal hygiene does not include hygiene tasks completed in baths and showers.

"Age appropriate" proficiency in the identified task is not expected of a child that age and a child that age would require assistance with the task with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130 for the specific ages.

"Aged person" means a person 65 years of age or older.

"Agency provider" means a licensed home care agency or a licensed home health agency having a contract to provide long-term care personal care services to you in your own home.

"Alternative benefit plan" means the scope of services described in WAC 182-501-0060 available to persons eligible to receive health care coverage under the Washington apple health modified adjusted gross income (MAGI)-based adult coverage described in WAC 182-505-0250.

"Application" means a written request for medical assistance or long-term care services submitted to the department by the applicant, the applicant's authorized representative, or, if the applicant is incompetent or incapacitated, someone acting responsibly for the applicant. The applicant must submit the request on a form prescribed by the department.

"Assessment details" means a printed record of information that the department entered into the CARE assessment describing the assistance you may need.

"Assessment or reassessment" means an inventory and evaluation of strengths and limitations based on an in-person interview in your own home or another location that is convenient to you, using the department's comprehensive assessment reporting evaluation (CARE) tool.

"Assistance available" means the amount of assistance that will be available for a task if status is coded:

Partially met due to availability of other informal support. The department determines the amount of the assistance available using one of four categories:

- (1) Less than one-fourth of the time;
- (2) One-fourth to one-half of the time;
- (3) Over one-half of the time to three-fourths of the time; or
- (4) Over three-fourths but not all of the time.

"Assistance with body care" means you received or need assistance with:

- (1) Application of ointment or lotions;
- (2) Trimming of toenails;
- (3) Dry bandage changes; or
- (4) Passive range of motion treatment.

"Authorization" means an official approval of a departmental action, for example, a determination of client eligibility for service or payment for a client's long-term care services.

"Blind person" means a person determined blind as described under WAC 182-500-0015 by the division of disability determination services of the health care authority.

"Body care" means how you perform with passive range of motion, applications of dressings and ointments or lotions to the body, and pedicure to trim toenails and apply lotion to feet. In adult family homes, enhanced services facilities, contracted assisted living, enhanced adult residential care, and enhanced adult residential care-specialized dementia care facilities, dressing changes using clean technique and topical ointments must be performed by a licensed nurse or through nurse delegation in accordance with chapter 246-840 WAC. Body care excludes:

- (1) Foot care if you are diabetic or have poor circulation; or
- (2) Changing bandages or dressings when sterile procedures are required.

"Bowel program" means a regular, ongoing program, other than oral medications, that must include interventions such as rectal stimulation using the finger, over the counter suppositories, or enemas to facilitate evacuation of your bowels. Regimens only promoting bowel regularity, including oral medications or supplements, nutrition, hydration, or positioning are not considered in this definition.

"Categorically needy" means the status of a person who is eligible for medical care under Title XIX of the Social Security Act. See WAC 182-512-0010 and chapter 182-513 WAC.

"Child" means an individual less than 18 years of age.

"Client" means an applicant for service or a person currently receiving services from the department.

"Current behavior" means a behavior occurred within seven days of the CARE assessment date, including the day of the assessment. Behaviors that the department designates as current must include information about:

- (1) Whether the behavior is easily altered or not easily altered; and
- (2) The frequency of the behavior.

"Decisions" means your ability (verbally or nonverbally) to make, and actual performance in making, everyday decisions about tasks of daily living in the last seven days before the assessment. The department codes your ability to make decisions as one of the following:

(1) Independent: Decisions about your daily routine were consistent and organized; reflecting your lifestyle, choices, culture, and values;

(2) Difficulty in new situations: You had an organized daily routine, were able to make decisions in familiar situations, but experienced some difficulty in decision making when faced with new tasks or situations;

(3) Poor decisions; unaware of consequences: Your decisions were poor and you required reminders, cues, and supervision in planning, organizing, and correcting daily routines. You attempted to make decisions, although poorly;

(4) No or few decisions: Decision making was severely impaired; you never/rarely made decisions;

(5) Child under 12: Proficiency in decision making is not expected of a child under 12 and a child under 12 would require assistance with decision making with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130.

"Department" means the state department of social and health services, aging and long-term support administration, developmental disabilities administration, or its designee.

"Designee" means area agency on aging or federally recognized Indian tribe.

"Developmental milestones table" is a chart showing the age range for which proficiency in the identified task is not expected of a child and assistance with the task would be required whether or not the child has a functional disability.

"Disability" is described under WAC 182-500-0025.

"Disabling condition" means you have a medical condition which prevents you from self-performance of personal care tasks without assistance.

"Estate recovery" means the department's process of recouping the cost of medicaid and long-term care benefit payments from the estate of the deceased client. See chapter 182-527 WAC.

"Health action plan" means an individual plan, which identifies health-related problems, interventions, and goals.

"Home health agency" means a licensed:

(1) Agency or organization certified under medicare to provide comprehensive health care on a part-time or intermittent basis to a patient in the patient's place of residence and reimbursed through the use of the client's medical identification card; or

(2) Home health agency, certified or not certified under medicare, contracted and authorized to provide:

- (a) Private duty nursing; or

(b) Skilled nursing services under an approved medicaid waiver program.

"Income" means income as defined under WAC 182-509-0001.

"Individual provider" under RCW 74.39A.240 means a person, including a personal aide, who, under an individual provider contract with the department, or as an employee of a consumer directed employer, provides personal care or respite care services to persons who are functionally disabled or otherwise eligible under programs authorized and funded by the medicaid state plan, medicaid waiver programs, or similar state-funded in-home care programs.

"Informal support" means:

(1) Assistance that will be provided with the client's agreement as expressed in the assessment process without home and community-based services funding, except as allowed in subsection (3) of this definition. The person providing the informal support must be age 18 or older. Sources of informal support include but are not limited to: Family members, friends, housemates/roommates, neighbors, school, childcare, after school activities, church, and community programs.

(2) The department will not consider an individual provider to be a source of informal support unless:

(a) The individual provider is also a family member or a household member who had a relationship with the client that existed before the individual provider entered into a contract with the department; and

(b) The individual provider signs a written agreement that states:

(i) The individual provider understands that the provision of unpaid informal support is voluntary;

(ii) The individual provider understands that if they decline to provide unpaid informal support that the client's benefit could increase and that the client could choose to assign those increased hours to the individual provider;

(iii) If there is a collective bargaining representative that represents the individual provider for the purposes of collective bargaining, the individual provider is informed as to the collective bargaining representative's opinion, if any, about whether the individual provider should agree to provide unpaid informal supports;

(iv) The individual provider understands that the individual provider may stop providing unpaid informal support at any time by informing the case manager that the individual provider wishes to stop providing unpaid informal support; and

(v) The individual provider understands that if the individual provider is a family member or had a household relationship with the client prior to becoming the client's individual provider that they may provide unpaid care to a client above and beyond the individual provider authorization regardless of whether they are providing informal support.

(3) Adult day health and adult day care is coded in the assessment as a source of informal support, regardless of funding source;

(4) Informal support does not include age appropriate functioning.

"Institution" means medical facilities, nursing facilities, and institutions for the intellectually disabled. It does not include correctional institutions. See medical institutions in WAC 182-500-0050.

"Instrumental activities of daily living (IADL)" means routine activities performed around the home or in the community in 30 days prior to the assessment and includes the following:

(1) Meal preparation: How meals were prepared (such as, planning meals, cooking, assembling ingredients, setting out food, utensils, and cleaning up after meals). NOTE: The department will not authorize this IADL to only plan meals or clean up after meals. You must need assistance with other tasks of meal preparation.

(2) Ordinary housework: How ordinary work around the house was performed (such as, doing dishes, dusting, making bed, cleaning the bathroom, tidying up, laundry).

(3) Essential shopping: How shopping was completed to meet your health and nutritional needs (such as, selecting items). Shopping is limited to brief, occasional trips in the local area to shop for food, medical necessities, and household items required specifically for your health, maintenance, or well-being. This includes shopping with or for you.

(4) Wood supply: How wood or pellets were supplied (such as, splitting, stacking, or carrying wood or pellets) when you use wood, pellets, or a combination of both, as the only source of fuel for heating or cooking.

(5) Travel to medical services: How you traveled by vehicle to a physician's office or clinic in the local area to obtain medical diagnosis or treatment. This travel includes driving a vehicle yourself or traveling as a passenger in a car, bus, or taxi.

"Long-term care services" means the services administered directly or through contract by the department and identified in WAC 388-106-0015.

"MAGI" means modified adjusted gross income. It is a methodology used to determine eligibility for Washington apple health (medicaid), and is defined in WAC 182-500-0070.

"Medicaid" is defined under WAC 182-500-0070.

"Medically necessary" is defined under WAC 182-500-0070.

"Medically needy (MN)" or **"medically needy program (MNP)"** means the state and federally funded health care program available to specific groups of people who would be eligible as categorically needy (CN), except their monthly income is above the CN standard. Some long-term care clients with income or resources above the CN standard may also qualify for MN.

"New Freedom consumer directed services (NFCDS)" means a mix of services and supports to meet needs identified in your assessment and identified in a New Freedom spending plan, within the limits of the individual budget, that provide you with flexibility to plan, select, and direct the purchase of goods and services to meet identified needs. Participants have a meaningful leadership role in:

(1) The design, delivery, and evaluation of services and supports;

(2) Exercising control of decisions and resources, and making their own decisions about health and well-being;

(3) Determining how to meet their own needs;

(4) Determining how and by whom these needs should be met; and

(5) Monitoring the quality of services received.

"New Freedom consumer directed services (NFCDS) participant" means a participant who is an applicant for or currently receiving services under the NFCDS waiver.

"New Freedom spending plan (NFSP)" means the plan developed by you, as a New Freedom participant, within the limits of an individual budget, that details your choices to purchase specific NFCDS and provides required federal medicaid documentation.

"Own home" means your present or intended place of residence:

(1) In a building that you rent and the rental is not contingent upon the purchase of personal care services as defined in this section;

(2) In a building that you own;

(3) In a relative's established residence; or

(4) In the home of another where rent is not charged and residence is not contingent upon the purchase of personal care services as defined in this section.

"Passive range of motion" means a maintenance movement exercise of each joint only to the extent the joint can move. Passive range of motion is performed by a caregiver because the client is unable to move the joint without assistance. A formal passive range of motion program needs to be first established by a qualified registered nurse or therapist. Passive range of motion may be self-directed based upon an occupational or physical therapist assessment and continue without occupational or physical therapist supervision.

"Past behavior" means the behavior did not occur in the last seven days, but did occur more than seven days from the assessment date. For behaviors indicated as past behaviors, the department documents the month and year the behavior last occurred and whether the behavior is addressed with current interventions or whether no interventions are in place.

"Personal aide" is defined in RCW 74.39.007.

"Personal care services" means physical or verbal assistance with activities of daily living (ADL) and instrumental activities of daily living (IADL) due to your functional limitations. Assistance is evaluated with the use of assistive devices.

"Physician" is defined under WAC 182-500-0085.

"Plan of care" means assessment details and service summary generated by CARE.

"Provider or provider of service" means an institution, agency, or person:

(1) Having a signed department contract to provide long-term care client services; and

(2) Qualified and eligible to receive department payment.

"Reasonable cost" means a cost for a service or item that is consistent with the market standards for comparable services or items.

"Representative" means a person who you have chosen, or has been appointed by a court, whose primary duty is to act on your behalf to direct your service budget to meet your identified health, safety, and welfare needs.

"Residential facility" means a licensed adult family home under department contract; a licensed enhanced services facility under department contract; or licensed assisted living facility under department contract to provide assisted living, adult residential care, or enhanced adult residential care.

"Self-performance for ADLs" means a code based on what you actually did for yourself and how much help you received with ADLs, with the exception of bathing, in the last seven days before your assessment, not what you might be capable of doing. For codes of supervision, limited assistance, and extensive assistance, self-performance for ADLs is based on your level of performance that occurred three or more times in the seven-day period. Scoring of self-performance for ADL codes of supervision, limited assistance, and extensive assistance, does not include physical assistance that occurred less than three times in the seven-day look back period, or set-up help for any self-performance ADL code.

(1) Based on information provided during your assessment, the CARE tool assigns a self-performance code to each ADL. When you received the same type of help (such as oversight, nonweight bearing, or weight bearing help) with an ADL at least three times, CARE assigns the self-performance code associated with the most dependent type of help you received at least three times. Your self-performance level code is:

(a) Independent, if you received:

(i) ~~((no))~~ No help, including oversight, encouragement, or cueing, or;

(ii) ~~((help))~~ Help including oversight, encouragement, or cueing only once or twice in the seven-day period;

(b) Supervision, if you received oversight (monitoring or stand-by), encouragement, or cueing three or more times;

(c) Limited assistance, if you were highly involved in the ADL and received assistance that involved physical, nonweight bearing contact between you and your caregiver, or guided maneuvering of limbs three or more times;

(d) Extensive assistance, if you performed part of the ADL, but on three or more occasions, you needed weight bearing help or you did not participate in a subtask of the ADL, but did participate in other subtasks of the ADL;

(e) Total dependence, if you did not participate at all in the completion of the ADL. Every time the ADL was completed during the entire seven-day period, you received complete assistance of all subtasks completed during the entire seven-day period by others; or

(f) Did not occur, if you or others did not perform the ADL over the last seven days before your assessment. This means the activity did not happen. For example, for "walk in room" to have a code of "did not occur" it means in the last seven days before your assessment, you did not walk even one time. The ADL may not have occurred because:

(i) You were not able (such as, you were not able to walk because you are paralyzed);

(ii) No provider was available to assist; or

(iii) You declined help with the task.

(2) When your self-performance code is not independent, extensive assistance, total dependence, or did not occur, and you received help with the ADL at least three times, but not three times of the same type of help, the CARE tool determines a self-performance code by:

(a) Selecting the three times where you received the most help; and

(b) Assigning a self-performance code based on the least dependent type of help of those three times.

(3) CARE assigns a self-performance code of:

(a) Supervision, if oversight, encouragement, or cueing was the least dependent type of help you received of the three times; or

(b) Limited assistance, if nonweight bearing help or guided maneuvering of your limbs was the least dependent type of help you received out of the three times.

(c) For example, if you received oversight help twice, nonweight bearing help twice, and weight bearing help twice, CARE:

(i) Selects two times of weight bearing help and one time of nonweight bearing help because these were the three times where you received the most help; and

(ii) Assigns a self-performance code of limited assistance because nonweight bearing help was the least dependent type of help you received out of the three times where you received the most help.

"Self-administration of medication" means your ability to manage your prescribed and over the counter medications. Your level of ability is coded for the highest level of need and scored as:

(1) Independent, if you remember to take medications as prescribed and manage your medications without assistance.

(2) Assistance required, if you need assistance from a nonlicensed provider to facilitate your self-administration of a prescribed, over the counter, or herbal medication, as defined in chapter ((246-888)) 246-980 WAC. Assistance required includes reminding or coaching you, handing you the medication container, opening the container, using an enabler to assist you in getting the medication into your mouth, alteration of a medication for self-administration, and placing the medication in your hand. This does not include assistance with intravenous or injectable medications. You must be aware that you are taking medications.

(3) Self-directed medication assistance/administration, if you are an adult with a functional disability who is capable of and who chooses to self-direct your medication assistance/administration as prescribed by your medical professional.

(4) Must be administered, if you must have prescription or over the counter medications placed in your mouth or applied or instilled to your skin or mucus membrane. Administration must either be performed by a licensed professional or delegated by a registered nurse to a qualified caregiver (per chapter 246-840 WAC). Administration may also be performed by a family member or unpaid caregiver in in-home settings or in residential settings if facility licensing regulations allow. Intravenous or injectable medications may never be delegated except for insulin injections.

"Self-performance for bathing" means what you actually did in the last seven days before your assessment, not what you might be capable of doing or how well you performed the ADL of bathing. Self-performance for bathing is based on your level of performance that occurred on at least one or more occasions in the seven-day period. Scoring of self-performance for bathing does not include physical assistance that did not occur in the seven-day look back period, or set-up help. Your self-performance level is scored as:

(1) Independent, if you received no help or oversight to complete the ADL of bathing.

(2) Supervision, if in order to bathe you received oversight (monitoring or standby), encouragement, or cueing.

(3) Physical help transfer only, if in order to bathe you had help to transfer only.

(4) Physical help, if in order to bathe you had hands on assistance with bathing, but you did not receive full caregiver performance of the ADL of bathing.

(5) Total dependence, if in order to bathe you received full caregiver performance of the ADL of bathing every time. Total dependence means complete physical nonparticipation by you in all aspects of bathing; or the ADL:

(6) Did not occur, if you or others did not perform the ADL of bathing over the last seven days before your assessment. The ADL of bathing may not have occurred because:

(a) You were not able (for example, you may be paralyzed);

(b) No provider was available to assist; or

(c) You declined because you chose not to perform the ADL.

"Self-performance for IADLs" means what you actually did in the last 30 days before the assessment, not what you might be capable of

doing or how well you performed the IADL. Scoring is based on the level of performance that occurred at least one time in the 30-day period. Your self-performance is scored as:

(1) Independent, if you received no help, set-up help, or supervision;

(2) Assistance, if you received any type of help with the activity, including setup, cueing, or monitoring, or the activity was fully performed by others in the last 30 days;

(3) Total assistance, if you are a child and needed the IADL fully performed by others and you are functioning outside of typical developmental milestones; or

(4) IADL did not occur, if you or others did not perform the IADL in the last 30 days before the assessment.

"Service summary" is CARE information which includes: Contacts (such as, emergency contacts), services the client is eligible for, number of hours or residential rates, personal care tasks, the list of formal and informal providers and what tasks they will provide, a preferred schedule if identified by the client, identified referrals, and dates and agreement to the outlined services.

"SSI-related" is defined under WAC 182-512-0050.

"Status" means the level of assistance:

(1) That will be provided by informal supports; or

(2) That will be provided to a child primarily due to his or her age.

(3) The department determines the status of each ADL or IADL and codes the status as follows:

(a) Met, which means the ADL or IADL will be fully provided by an informal support;

(b) Unmet, which means an informal support will not be available to provide assistance with the identified ADL or IADL;

(c) Partially met, which means an informal support will be available to provide some assistance, but not all, with the identified ADL or IADL;

(d) Age appropriate or child under (age), means proficiency in the identified task is not expected of a child that age and a child that age would require assistance with the task with or without a functional disability. The department presumes children have a responsible adult(s) in their life to provide assistance with personal care tasks. Refer to the developmental milestones table in WAC 388-106-0130; or

(e) Client declines, which means you will not want assistance with the task.

"Supplemental security income (SSI)" means the federal program as described under WAC 182-500-0100.

"Support provided" means the highest level of support provided (to you) by others in the last seven days before the assessment, even if that level of support occurred only once. The department determines support provided as follows:

(1) No set-up or physical help provided by others;

(2) Set-up help only provided, which is the type of help characterized by providing you with articles, devices, or preparation necessary for greater independence in performance of the ADL. (For example, set-up help includes but is not limited to giving or holding out an item or cutting up prepared food);

(3) One-person physical assist provided;

(4) Two- or more person physical assist provided; or

(5) ADL did not occur during entire seven-day period.

"Task" means a component of an activity of daily living. Several tasks may be associated to a single activity of daily living.

"Turning and repositioning program" is a consistent and organized method in which your caregiver must position and realign your body to prevent or treat skin breakdown. This program is needed because you are physically unable to reposition yourself while sitting or lying down.

"You/your" means the client.

AMENDATORY SECTION (Amending WSR 07-24-026, filed 11/28/07, effective 1/1/08)

WAC 388-106-0060 Who must perform the assessment? The assessment must be performed by the department, an area agency on aging, or a federally recognized Indian tribe contracted with the department, as described in chapters 388-106 and 388-828 WAC. ((Beginning January 1, 2008, individuals requesting personal care services will be assessed as described in the following chart:))

((Age of person requesting an assessment for personal care services	Has the person been determined to meet DDD eligibility requirements?	Who will perform the assessment for personal care services?	What assessment will be used?
Under eighteen years of age	Yes	DDD	CARE/DDD Assessment per chapter 388-828 WAC
Under eighteen years of age	No	DDD	CARE/LTC Assessment per chapter 388-106 WAC
Eighteen years of age and older	Yes	DDD	CARE/DDD Assessment per chapter 388-828 WAC
Eighteen years of age and older	No	HCS	CARE/LTC Assessment per chapter 388-106 WAC))

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

WAC 388-115-0516 What are the responsibilities of the consumer directed employer when providing care to a client? In providing care to a client, the consumer directed employer must:

- (1) Be responsible that the client assigned individual provider(s) understands the approved plan of care;
- (2) Assign client approved tasks from services outlined in a client's plan of care, as described in WAC 388-106-0010;
- (3) Accommodate the client's individual preferences and unique needs in providing care;

(4) Contact the client, client's representative, and case manager when there are changes observed by the individual provider that affect the personal care and other tasks listed on the plan of care;

(5) Be responsible that the individual provider(s) observes the client for and consults with the client or representative, regarding change(s) in health, takes appropriate action, and responds to emergencies;

(6) Notify the case manager immediately when the client enters a hospital or moves to another setting;

(7) Notify the case manager immediately in the event of the client's death;

(8) Notify the department (~~or AAA~~) , area agency on aging, or federally recognized Indian tribe responsible for the client's case management, immediately when unable to staff/serve the client;

(9) Comply with time keeping requirements, and keep accurate records of time of authorized/paid hours that are accessible to the appropriate department or designee staff; and

(10) Comply with all applicable laws and regulations.