



PROPOSED RULE MAKING

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

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STATE OF WASHINGTON
FILED

DATE: May 30, 2025

TIME: 1:27 PM

WSR 25-12-076

Agency: Department of Social and Health Services, Home and Community Living Administration, HCS

☒ **Original Notice**

☐ **Supplemental Notice to WSR** _____

☐ **Continuance of WSR** _____

☒ **Preproposal Statement of Inquiry was filed as WSR 25-07-002 ; 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 388-106-0336 What services may I receive under the residential support waiver? and 388-106-0338 Am I eligible for services funded by the residential support waiver?

Hearing location(s):

| Date: | Time: | Location: (be specific) | Comment: |
|--------------|------------|--------------------------------|--|
| July 8, 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: No earlier than July 9, 2025 (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

Beginning (date and time) noon on June 4, 2025

By (date and time) 5:00 p.m. on July 8, 2025

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 June 24, 2025

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The purpose of this proposal is to amend WAC 388-106-0336 and 388-106-0338 to reflect updates to Residential Support Waiver (RSW) eligibility when individuals are eligible for 1915i Medicaid State Plan Option. Individuals must access the Medicaid State Plan service 1915i when assessed as needing 1:1 enhanced staffing. To avoid duplication of state plan and waiver services, the proposed rule will align with 1915i Medicaid State Plan eligibility and access to services for enhanced staffing. For care plans resulting from an eligibility assessment on or after July 1, 2025, to be eligible to receive RSW services, clients must first be found to be not eligible to receive services through the Community Behavioral Health Supports 1915(i) State Plan Option under chapter 182-561 WAC.

Reasons supporting proposal: The reasons for supporting the proposal are to avoid duplication of services and establish requirements for utilization of 1915i, State Medicaid State Plan Funding, when eligible, prior to utilization of RSW funding.

Statutory authority for adoption: RCWs 74.08.090, 74.09.520, 74.39A.030 and 74.39A.400

Statute being implemented: RCW 74.39A.030 and 74.39A.400

Is rule necessary because of a:

Federal Law?

☒ Yes ☐ No

Federal Court Decision?

☐ Yes ☒ No

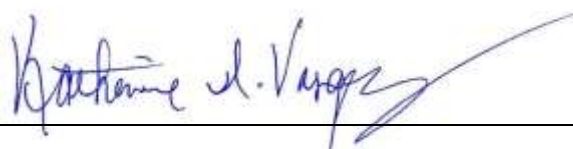
State Court Decision?

☐ Yes ☒ No

If yes, CITATION: 42 CFR 430.25, 42 CFR 440.180, and 42 CFR 441.300

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

| | | | |
|--|--------------|---|---|
| Name of proponent: (person or organization) Department of Social and Health Services Type of proponent: <input type="checkbox"/> Private. <input type="checkbox"/> Public. <input checked="" type="checkbox"/> Governmental. | | | |
| Name of agency personnel responsible for: | | | |
| | Name | Office Location | Phone |
| Drafting | JD Selby | 4500 10 th Avenue SE, Lacey WA 98503 | 360-890-2640 |
| Implementation | Laah Wallace | 4500 10 th Avenue SE, Lacey WA 98503 | 360-725-3434 |
| Enforcement | JD Selby | 4500 10 th Avenue SE, Lacey WA 98503 | 360-890-2640 |
| Is a school district fiscal impact statement required under RCW 28A.305.135? | | | <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |
| If yes, insert statement here: | | | |
| The public may obtain a copy of the school district fiscal impact statement by contacting: <div style="margin-left: 20px;"> Name Address Phone Fax TTY Email Other </div> | | | |
| Is a cost-benefit analysis required under RCW 34.05.328? | | | |
| <input type="checkbox"/> Yes: A preliminary cost-benefit analysis may be obtained by contacting: <div style="margin-left: 20px;"> Name Address Phone Fax TTY Email Other </div> | | | |
| <input checked="" type="checkbox"/> No: Please explain: A preliminary cost benefit analysis is not required because this rule meets the requirements of 34.05.328(5)(b)(vii). These rules relate only to Department of Social and Health Services 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): | | | |
| <input checked="" type="checkbox"/> 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: 42 CFR 430.25, 42 CFR 440.180, and 42 CFR 441.300 | | | |
| <input type="checkbox"/> 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. | | | |
| <input type="checkbox"/> 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. | | | |

| | |
|--|--|
| <input type="checkbox"/> 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) |
| <input checked="" type="checkbox"/> This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(4) . (Does not affect small businesses). | |
| <input type="checkbox"/> This rule proposal, or portions of the proposal, is exempt under RCW _____. | |
| Explanation of how the above exemption(s) applies to the proposed rule: The rule does not impose any costs on businesses because the rule only addresses eligibility requirements for beneficiaries of public benefits. | |
| (2) Scope of exemptions: Check one. | |
| <input checked="" type="checkbox"/> The rule proposal: Is fully exempt. (<i>Skip section 3.</i>) Exemptions identified above apply to all portions of the rule proposal. | |
| <input type="checkbox"/> The rule proposal: Is partially exempt. (<i>Complete section 3.</i>) 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): | |
| <input type="checkbox"/> The rule proposal: Is not exempt. (<i>Complete section 3.</i>) 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? | |
| <input type="checkbox"/> No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. _____ | |
| <input type="checkbox"/> 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: <div style="margin-left: 20px;"> Name Address Phone Fax TTY Email Other </div> | |
| Date: May 23, 2025 | Signature: |
| Name: Katherine I. Vasquez |  |
| Title: DSHS Rules Coordinator | |

WAC 388-106-0336 What services may I receive under the residential support waiver? You may receive the following services under the residential support waiver:

(1) Adult family homes and assisted living facilities with an expanded community services contract that will provide:

- (a) Personal care;
- (b) 24-hour on-site support and response staff;
- (c) The development and implementation of an individualized behavior support plan to prevent and respond to crises;
- (d) Medication management; and
- (e) Coordination and collaboration with a contracted behavior support provider;

(2) Adult family homes with a specialized behavior support contract that will provide:

- (a) Personal care;
- (b) 24-hour on-site support and response staff;
- (c) The development and implementation of an individualized behavior support plan to prevent and respond to crises;
- (d) Medication management;
- (e) Coordination and collaboration with a contracted behavior support provider; and

(f) Specialized behavior support that provides you with six to eight hours a day of individualized staff time;

(3) Assisted living facilities with a community stability support contract that will provide:

- (a) Personal care;
- (b) 24-hour on-site support and response staff;
- (c) The development and implementation of an individualized behavior support plan to prevent and respond to crises;
- (d) Medication management; and
- (e) On-site staffing ratios and professional staffing as described in the contract;

(4) Enhanced services facilities that will provide:

- (a) Personal care;
- (b) 24-hour on-site support and response staff;
- (c) The development and implementation of an individualized behavior support plan to prevent and respond to crises;
- (d) Medication management; and
- (e) On-site staffing ratios and professional staffing as described in WAC 388-107-0230 through 388-107-0270;

(5) Specialized durable and nondurable medical equipment and supplies under WAC 182-543-1000 when:

- (a) Medically necessary under WAC 182-500-0005;
- (b) Necessary:
 - (i) For life support;
 - (ii) To increase your ability to perform activities of daily living; or
 - (iii) To perceive, control, or communicate with the environment in which you live;
- (c) Directly medically or remedially beneficial to you;
- (d) They are additional and do not replace any medical equipment or supplies otherwise provided under either medicaid, (~~((or))~~) medicare, or both; and

(e) In addition to and do not replace the services required by the department's contract with a residential facility;

(6) Client support training to address your needs identified in your CARE assessment or other professional evaluation that are additional and do not replace the services required by the department's contract with the residential facility and meet a therapeutic goal, such as:

- (a) Adjusting to a serious impairment;
 - (b) Managing personal care needs; or
 - (c) Developing necessary skills to deal with care providers;
- (7) Nurse delegation under RCW 18.79.260 when:

(a) You receive personal care from a registered or certified nursing assistant who has completed nurse delegation core training;

(b) The delegating nurse considers your medical condition stable and predictable;

(c) The services comply with WAC 246-840-930; and

(d) The services are additional and do not replace the services required by the department's contract with the residential facility;

(8) Skilled nursing when:

(a) Provided by a registered nurse or licensed practical nurse under a registered nurse's supervision;

(b) Beyond the amount, duration, or scope of medicaid-reimbursed home health services as provided under WAC 182-551-2100; and

(c) Additional and do not replace the services required by the department's contract with the residential facility;

(9) Nursing services not already received from another resource, based on your individual need as determined by your CARE assessment and any additional collateral contact information obtained by your case manager, including any one or more of the following activities performed by a registered nurse:

(a) Nursing assessment/reassessment;

(b) Instruction to you, your providers, and your caregivers;

(c) Care coordination and referral to other health care providers;

(d) Skilled treatment, only in the event of an emergency as in nonemergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider or other appropriate resource;

(e) File review; or

(f) Evaluation of health-related care needs affecting service plan and delivery;

(10) Adult day health services as described in WAC 388-71-0706 when:

(a) Your CARE assessment shows an unmet need for personal care or other core services, whether or not those needs are otherwise met; and

(b) Your CARE assessment shows an unmet need for skilled nursing under WAC 388-71-0712 or skilled rehabilitative therapy under 388-71-0714 and:

(i) There is a reasonable expectation that the services will improve, restore, or maintain your health status, or in the case of a progressive disabling condition, will either restore or slow the decline of your health and functional status or ease related pain and suffering;

(ii) You are at risk for deteriorating health, deteriorating functional ability, or institutionalization; or

(iii) You have a chronic acute health condition that you are not able to safely manage due to a cognitive, physical, or other functional impairment.

(11) For care plans resulting from an eligibility assessment on or after July 1, 2025, to be eligible to receive the following waiver services you must first be found to not be eligible to receive services through the community behavioral health supports 1915(i) state plan option under chapter 182-561 WAC:

(a) Services provided under a specialized behavior support contract in an adult family home as described in subsection (2) of this section; or

(b) On-site staffing ratios as described in subsections (3)(e) and (4)(e) of this section.

AMENDATORY SECTION (Amending WSR 16-19-055, filed 9/16/16, effective 10/17/16)

WAC 388-106-0338 Am I eligible for services funded by the residential support waiver? (1) You are eligible for services funded by the residential support waiver if the department, based on its assessment of your needs in CARE, determines you meet all of the following criteria:

(a) You are at least ~~((eighteen))~~ 18 years old and blind or have a disability as defined in WAC 182-512-0050, or are age ~~((sixty-five))~~ 65 or older;

(b) Your income and resources fall within the limits set in WAC 182-515-1505 and meet the income and resource criteria for home and community based waiver programs and hospice clients;

(c) Your CARE assessment shows you need the level of care provided in a nursing facility or that you will likely need this level of care within ~~((thirty))~~ 30 days unless you receive residential support waiver services as defined in WAC 388-106-0355(1);

(d) You have been assessed as medically and psychiatrically stable and one ~~((one))~~ or more of the following applies:

(i) You currently reside at a state mental hospital or the psychiatric unit of a hospital and the hospital has found you are ready for discharge to the community;

(ii) You have a history of frequent or protracted psychiatric hospitalizations; or

(iii) You have a history of an inability to remain medically or behaviorally stable for more than six months and you;

(A) Have exhibited serious challenging behaviors within the last year; or

(B) Have had problems managing your medication which has affected your ability to live in the community;

(e) Because of the protracted nature of your behavior and clinical complexity, you have no other placement options and have found no community placement with a qualified community provider;

(f) You have behavioral or clinical complexity that requires staffing supports available only in the qualified community settings provided through the residential support waiver; and

(g) You require caregiving staff with specific training in providing personal care, supervision, and behavioral supports to adults with challenging behaviors.

(2) You are not eligible to receive a service under the waiver that is similar in scope and nature and available to you through the Washington medicaid state plan, including, but not limited to, services and supports offered under the community behavioral health supports 1915(i) state plan option under chapter 182-561 WAC.

((+2)) (3) Under this section, "challenging behaviors" means a persistent pattern of behaviors or uncontrolled symptoms of a cognitive or mental condition that inhibit the individual's functioning in public places, the facility, or integration within the community that have been present for long periods of time or have manifested as an acute onset.

(4) Subsection (2) of this section applies to eligibility assessments for care plans starting on or after July 1, 2025.