



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: April 11, 2024
TIME: 9:29 AM

WSR 24-09-034

Agency: Department of Social and Health Services' Developmental Disabilities Administration

- Original Notice
- Supplemental Notice to WSR 24-03-051
- Continuance of WSR _____

- Preproposal Statement of Inquiry was filed as WSR 23-20-065 ; or
- Expedited Rule Making--Proposed notice was filed as WSR _____; or
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or
- Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) WAC 388-850-020, *Plan development and submission*, 388-850-025, *Program operation—General provisions*, 388-850-035, *Services—Developmental disabilities*, and 388-850-045, *What is the formula for distribution of funding to the counties?*

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
May 21, 2024	10:00 a.m.	Virtual 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 May 22, 2024 (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:
By (date) 5:00 p.m. on May 21, 2024

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 May 7, 2024

Purpose of the proposal and its anticipated effects, including any changes in existing rules: DDA amended these rules to increase the percentage of a county's allocated funds for county administrative expenses, to remove text that duplicates requirements dictated by statute, and to update the distribution formula and other outdated service names and processes.

Reasons supporting proposal: These amendments are intended to increase the percentage of allocated funds for county administrative expenses and to simplify the process for county plan development. The first time these rules went to hearing there was a typo in a contact person's email address. DDA would like to have another public hearing and public comment period to ensure stakeholders have another opportunity to provide comment.

Statutory authority for adoption: RCW 71A.12.030

Statute being implemented: RCW 71A.12.120 and 71A.14.050

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:	Sherry Richards	P.O. Box 45310, Olympia, WA 98504-5310	360-628-3044
Enforcement:	Sherry Richards	P.O. Box 45310, Olympia, WA 98504-5310	360-628-3044

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: 360-407-0955

TTY: 1-800-833-6388

Email: chantelle.diaz@dshs.wa.gov

Other:

No: Please explain:

Regulatory Fairness Act and Small Business Economic Impact Statement

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

(1) Identification of exemptions:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.061](#) because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570\(2\)](#) because it was adopted by a referendum.

- This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(3\)](#). Check all that apply:
- | | |
|---|---|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> RCW 34.05.310 (4)(g)
(i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |
- This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(4\)](#) (does not affect small businesses).
- This rule proposal, or portions of the proposal, is exempt under RCW _____.
- Explanation of how the above exemption(s) applies to the proposed rule:

(2) Scope of exemptions: *Check one.*

- The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.
- The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):
- 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:

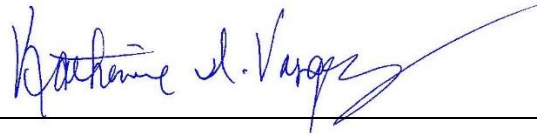
Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Date: April 10, 2024

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



AMENDATORY SECTION (Amending WSR 99-19-104, filed 9/20/99, effective 9/20/99)

WAC 388-850-020 Plan development and submission. ~~((1) All dates in this section refer to the twenty-four month period prior to the start of the state fiscal biennium.~~

~~(2) Before July 1, in the odd year of each biennium, the department shall negotiate with and submit to counties the biennial plan guidelines.~~

~~(3) Before July 1, the department shall submit to counties needs assessment data, and before December 31, updated needs assessment data in the odd year of each biennium.~~

~~(4) Before April 1, of the even year of each biennium, each county shall submit to the department a written plan for developmental disabilities services for the subsequent state fiscal biennium. The county's written plan shall be in the form and manner prescribed by the department in the written guidelines.~~

~~(5) Within sixty days of receipt of the county's written plan, the department shall acknowledge receipt, review the plan, and notify the county of errors and omissions in meeting minimum plan requirements.~~

~~(6) Within thirty days after receipt, each county shall submit a response to the department's review when errors and omissions have been identified within the review.~~

~~(7) Before December 15 of the even year of each biennium, the department shall announce the amount of funds included in the department's biennial budget request to each county. The department shall announce the actual amount of funds appropriated and available to each county as soon as possible after final passage of the Biennial Appropriations Act.~~

~~(8)) (1) Each county ((shall)) must submit to the department a ((contract proposal within sixty)) written plan each biennium no more than 60 days ((of the announcement by the department of the actual amount of funds appropriated and available)) after the initial biennial contract.~~

~~((9)) (2) The department may modify deadlines for submission of county plans ((and responses to reviews or contract proposals)) when, in the department's judgment, the modification enables the county to improve the program ((or)) planning process.~~

~~((10)) (3) The department may authorize the county to continue providing services in accordance with the previous plan and contract((r)) and reimburse at the average level of the previous contract, in order to continue services until the new contract is executed.~~

AMENDATORY SECTION (Amending WSR 02-16-014, filed 7/25/02, effective 8/25/02)

WAC 388-850-025 Program operation—General provisions. (1) The provisions of this section shall apply to all programs operated under authority of the ((acts)) act.

(2) The county and all contractors and subcontractors must comply with all applicable law or rule governing the department's approval of payment of funds for the programs. Verification may be in the manner and to the extent requested by the assistant secretary.

(3) State funds (~~(shall)~~) must not be paid to a county for costs of services provided by the county or other person or organization who or which was not licensed, certified, (~~(and)~~) or approved as required by law or by rule whether or not the assistant secretary approved the plan(~~(was approved by the secretary)~~).

(4) The assistant secretary may impose such reasonable fiscal and program reporting requirements as the assistant secretary deems necessary for effective program management.

(5) **Funding.**

(a) The department and county (~~(shall)~~) must negotiate and execute a contract before the department provides reimbursement for services under contract, except as provided under WAC 388-850-020(~~(+10)~~) (3).

(b) Payments to counties (~~(shall)~~) must be made on the basis of (~~(vouchers)~~) information submitted to the department for costs incurred under the contract. The department (~~(shall)~~) must specify the form and content of the (~~(vouchers)~~) information.

(c) The assistant secretary may make advance payments to counties, where such payments would facilitate sound program management. (~~(The secretary shall withhold advance payments from counties failing to meet the requirements of WAC 388-850-020 until such requirements are met. Any county failing to meet the requirements of WAC 388-850-020 after advance payments have been made shall repay said advance payment within thirty days of notice by the department that the county is not in compliance.)~~)

(d) The assistant secretary may withhold all or part of a subsequent monthly disbursement to a county if (~~(if)~~) the department receives evidence a county or subcontractor performing under the contract is:

(i) Not in compliance with applicable state law or rule; (~~(or)~~)

(ii) Not in substantial compliance with the contract; or

(iii) Unable or unwilling to provide such records or data as the assistant secretary may require(~~(, then the secretary may withhold all or part of subsequent monthly disbursement to the county until such time as satisfactory evidence of corrective action is forthcoming)~~).

(e) The department may withhold funds until satisfactory evidence of corrective action is received. Such withholding (~~(or denial)~~) of funds (~~(shall be)~~) is subject to appeal under the Administrative Procedure Act (chapter 34.05 RCW).

(6) **Subcontracting.** A county may subcontract for the performance of any of the services specified in the contract. (~~(The)~~) A county's (~~(subcontracts shall)~~) subcontract must include:

(a) A precise and definitive work statement, including a description of the services provided;

(b) The subcontractor's specific agreement to abide by the (~~(acts)~~) act and the rules;

(c) Specific authority for the assistant secretary and the state auditor to inspect all records and other material the assistant secretary deems pertinent to the subcontract(~~(+)~~) and (~~(agreements)~~) agreement by the subcontractor that such records will be made available for inspection;

(d) Specific authority for the assistant secretary to make periodic inspection of (~~(the subcontractor's program or)~~) premises in the

community where services are provided in order to evaluate performance under the contract between the department and the county; and

(e) Specific agreement by the subcontractor to provide such program and fiscal data as the assistant secretary may require.

~~((7) **Records: Maintenance.** Client records shall be maintained for every client for whom services are provided and shall document:~~

~~(a) Client demographic data;~~

~~(b) Diagnosis or problem statement;~~

~~(c) Treatment or service plan; and~~

~~(d) Treatment or services provided including medications prescribed.~~

~~(8) **Liability.**~~

~~(a) The promulgation of these rules or anything contained in these rules shall not be construed as affecting the relative status or civil rights or liabilities between:~~

~~(i) The county and community agency; or~~

~~(ii) Any other person, partnership, corporation, association, or other organization performing services under a contract or required herein and their employees, persons receiving services, or the public.~~

~~(b) The use or implied use herein of the word "duty" or "responsibility" or both shall not import or imply liability other than provided for by the statutes or general laws of the state of Washington, to any person for injuries due to negligence predicated upon failure to perform on the part of an applicant, or a board established under the acts, or an agency, or said agency's employees, or persons performing services on said agency's behalf.~~

~~(c) Failure to comply with any compulsory rules shall be cause for the department to refuse to provide the county and community agency funds under the contract.)~~

AMENDATORY SECTION (Amending WSR 05-11-015, filed 5/9/05, effective 6/9/05)

WAC 388-850-035 Services—Developmental disabilities. (1) ~~((A county may purchase and provide services listed under chapter 71A.14 RCW.~~

~~(2))~~ The department ~~((shall pay))~~ pays a county for department-authorized services provided to ~~((an))~~ eligible ~~((developmentally disabled person))~~ people with developmental disabilities.

~~((3))~~ (2) A county may purchase or provide authorized services. Authorized services ~~((may))~~ include ~~((, but are not limited to))~~:

(a) ~~((Early childhood intervention))~~ Childhood development services;

(b) Supported employment services;

(c) Community ~~((access))~~ inclusion services;

~~((d) Residential services;))~~

~~((e))~~ (d) Individual ~~((evaluation))~~ technical assistance; and

~~((f) Program evaluation;~~

~~(g) County planning and administration; and~~

~~(h) Consultation and staff development))~~

(e) Residential Services.

(3) The county must provide indirect services. Indirect services include:

- (a) Community information and education;
- (b) Training and other activities;
- (c) County planning and administration; and
- (d) Program evaluation.

AMENDATORY SECTION (Amending WSR 10-13-164, filed 6/23/10, effective 7/24/10)

WAC 388-850-045 What is the formula for distribution of funding to the counties? (1) For the ~~((purposes))~~ purpose of this section, "county" ~~((shall mean))~~ means the legal subdivision of the state, regardless of any agreement with another county to provide developmental disabilities services jointly.

(2) The allocation of funds to counties ~~((shall be))~~ is based on the following criteria:

(a) The distribution of funds provided by the legislature or other sources ~~((shall be))~~ is based on a distribution formula which best meets the needs of the population to be served.

(b) The distribution formula takes into consideration ~~((requirements of clients residing in an ICF/MR or clients on one of the division's Title XIX home and community-based waivers, the number of children eligible for birth to three services, special education enrollment,))~~ the number of ~~((individuals))~~ clients receiving county-funded services ~~((, the number of individuals enrolled with the division and the general population of the county))~~ or child development services funded through maintenance of effort, and the number of DDA-eligible clients entering long-term services.

~~((c) The ability of the community to provide funds for the developmental disability program provided in chapter 71A.14 RCW may be considered with any or all of the above.))~~

(3) A county may ~~((utilize seven))~~ use 10% or less ~~((percent))~~ of the county's allocated funds for county administrative expenses. A county may ~~((utilize))~~ use more than ~~((seven percent))~~ 10% for county administration with approval ~~((of the division director))~~ from the DDA assistant secretary.