

WSR 23-19-071
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed September 18, 2023, 2:45 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-17-115.

Title of Rule and Other Identifying Information: WAC

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

Hearing Location(s): On October 24, 2023, at 10:00 a.m., virtually via [Microsoft] Teams or call in. Please see the department of social and health services (DSHS) website for the most current information.

Date of Intended Adoption: Not earlier than October 25, 2023.

Submit Written Comments to: Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m. on October 24, 2023.

Assistance for Persons with Disabilities: Contact Shelley Tencza, rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email shelley.tencza@dshs.wa.gov, by 5:00 p.m. on October 10, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The developmental disabilities administration (DDA) is amending rules from chapter 388-101D WAC and creating new rules in order to establish procedures for addressing a client's unmet support needs, suspending or terminating a client's services, and codifying procedures for the client critical case protocol.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 71A.26.030.

Rule is not necessitated by federal law, federal or state court decision.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-790-4732; Implementation and Enforcement: Megan Kwak, P.O. Box 45310, Olympia, WA 98504-5310, 360-764-9909.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-790-4732, email chantelle.diaz@dshs.wa.gov.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: [No information supplied by agency.]

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. DDA's analysis revealed that there may be costs associated with supporting a client between the date of a termination or suspension notice and the effective date of the termination or suspension. If the cost of supporting the client increases during this time, DDA will reimburse the provider based on the client's assessed needs. Whether the provider is a small business would not change this reimbursement; therefore, complying with these rules should not result in disproportionate costs for small businesses.

September 15, 2023
Katherine I. Vasquez
Rules Coordinator

SHS-4945.6

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

**WAC 388-101D-0190 ~~Changes in client service needs Nonemer-~~
~~gent.)~~ What must a provider do if a client experiences a change in support needs? ((The service provider must notify the department:
(1) ~~When a client's service needs change and the individual support plan no longer addresses the client's needs; and~~
(2) ~~May request in writing, assistance from the department's case manager in setting up an assessment meeting.~~))
If a client experiences a change in support needs, the provider must:**

(1) Coordinate with the client to the maximum extent possible to:

(a) Review the client's individual instruction and support plan to ensure the plan meets the client's needs and requirements under chapter 388-101D WAC, and update if needed;

(b) Review the client's positive behavior support plan, if the client has one, to ensure the plan meets the client's needs and requirements under chapter 388-101D WAC, and update if needed;

(c) Review the client's person-centered service plan and, if necessary, notify DDA that changes to the plan may be needed;

(d) Participate in a significant change assessment, if one occurs, unless requested by the client not to do so; and

(e) Implement the new person-centered service plan, if updated.

(2) Contact the resource manager if the provider believes additional resources or a rate assessment are needed.

[WSR 16-14-058, recodified as § 388-101D-0190, filed 6/30/16, effective 8/1/16. Statutory Authority: Chapter 71A.12 RCW. WSR 08-02-022, § 388-101-3430, filed 12/21/07, effective 2/1/08.]

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

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

WAC 388-101D-0195 (~~(Changes in client service needs Emergent.)~~)

What must a provider do when a client's support needs remain unmet?

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

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

~~(a) The nature of the emergency;~~

~~(b) The need for immediate assistance and the specific type of assistance needed; and~~

~~(c) The specific type of assistance needed.~~

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

~~(a) Notify the department in writing;~~

~~(b) Specify the reasons for terminating services to the client; and~~

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

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

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

[WSR 16-14-058, recodified as § 388-101D-0195, filed 6/30/16, effective 8/1/16. Statutory Authority: Chapter 71A.12 RCW. WSR 08-02-022, § 388-101-3440, filed 12/21/07, effective 2/1/08.]

NEW SECTION

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

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

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

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

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

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

(d) DDA.

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

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

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

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

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

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

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NEW SECTION

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

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

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

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

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

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

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

(3) A client critical case protocol may be initiated by DDA when requested by:

(a) The client or legal representative, if the client has one; or

(b) The supported living provider.

(4) DDA must initiate a client critical case protocol if the provider suspends the client's services or DDA learns that the client is at risk of losing residential supports from the provider.

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NEW SECTION

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

(a) The client, if the client chooses to attend;

(b) The client's legal representative, if the client has one, and if the legal representative chooses to attend;

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

(d) DDA.

(2) If requested, DDA must invite other people identified by the client or the client's legal representative, if the client has one.

(3) The client may identify people whom the client does not want to attend a critical case conference.

(4) The critical case conference must occur no more than 10 business days after identification of a critical case.

(5) If the client, or the client's legal representative, if the client has one, does not attend the first critical case conference within the 10-day timeframe:

- (a) The conference may occur as scheduled;
- (b) A follow-up conference must be offered to the client and their legal representative, if the client has one; and
- (c) The outcome summary must be shared with the client and their legal representative, if the client has one, for review and correction.

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

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

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

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

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

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

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

(ii) DDA.

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

- (a) Reason for the termination;
- (b) Circumstances that led to the termination;
- (c) Steps taken to prevent the termination; and
- (d) Effective date of the termination.

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

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

[WSR 16-14-058, recodified as § 388-101D-0200, filed 6/30/16, effective 8/1/16. Statutory Authority: Chapter 71A.12 RCW. WSR 08-02-022, § 388-101-3450, filed 12/21/07, effective 2/1/08.]

NEW SECTION

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

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

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

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

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

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

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

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

(b) Transition to a new provider; or

(c) Transition to another service.

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

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

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