

WSR 21-23-010
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed November 4, 2021, 11:29 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-10-093.

Title of Rule and Other Identifying Information: WAC 388-829C-131 How does DDA determine the daily rate? and 388-829C-135 What requirements must a behavior support plan meet?

Hearing Location(s): On December 21, 2021, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504; or virtual. Due to the COVID-19 pandemic, hearings are being held virtually. Please see the DSHS website for the most recent information.

Date of Intended Adoption: Not earlier than December 22, 2021.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m. on December 21, 2021.

Assistance for Persons with Disabilities: Contact Shelley Tencza, phone 360-664-6198, fax 360-664-6185, TTY 711 relay service, email Shelley.Tencza@dshs.wa.gov, by 5:00 p.m. on December 7, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The developmental disabilities administration (DDA) is amending this rule to remove the daily rate multiplier from rule, to remove the DSHS 10-234 requirement, and to establish requirements for clients who require a positive behavior support plan and receive services from a companion home provider.

Reasons Supporting Proposal: DDA removed the multiplier because it changes too frequently for the permanent rule to remain accurate. Instead of codifying the multiplier in rule, DDA will publish companion home provider rates on the office of rates management's website under developmental disabilities rates.

Typically, DSHS 10-234 was only completed at the time of a client's referral to a companion home. Removing the requirement that a client have a challenging behavior documented on form DSHS 10-234 will allow providers supporting a client who develops a need for behavior support after referral to potentially become eligible for a higher rate.

DDA added behavior support plan requirements to align with those established in DDA policy.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 71A.12.040.

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

Name of Proponent: DSHS, DDA, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310; Implementation and Enforcement: Olga Lutsyk, P.O. Box 45310, Olympia, WA 98504-5310.

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, fax 360-407-0955, TTY 1-800-833-6388, 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 19.85.030, does not impose any new costs.

Explanation of exemptions: The proposed amendments impose no new or disproportionate costs on small businesses. No costs will be imposed because companion home providers are already required by policy and contract to meet the behavior support plan requirements in new WAC 388-829C-135. (Companion home providers are in the scope of DDA Policy 5.21, Functional Assessments and Positive Behavior Support Plans. Companion home provider contracts also require providers to follow DDA Policy 5.21.)

If a companion home provider finds that a client's behavior support plan does not meet requirements of WAC 388-829C-135, the provider can request assistance from DDA psychology associates. This technical assistance should mitigate any costs a provider might incur in order to update a client's behavior support plan.

November 3, 2021
Katherine I. Vasquez
Rules Coordinator

SHS-4891.2

AMENDATORY SECTION (Amending WSR 20-13-091, filed 6/16/20, effective 7/17/20)

WAC 388-829C-131 How does DDA determine the daily rate? (1) A companion home daily rate (~~(equals the sum of)~~) is based on the client's ((support)) DDA assessment ((scale scores multiplied by 14.2)) under chapter 388-828 WAC. The DDA assessment uses an algorithm to convert raw scores into support assessment scales.

(2) ~~((The residential algorithm under chapter 388-828 WAC determines the level of services and supports a companion home client may receive.~~

~~(3))~~ The ((CARE)) following support assessment ((assigns)) scales are used to calculate a companion home daily rate. Each support ((levels)) assessment scale is assigned an acuity level of "none," "low," "medium," or "high" ((to each support)) by the DDA assessment ((scale that correspond)) algorithm and corresponds to the values below:

((Category)) Support Assessment Scale	Acuity Levels			
	None	Low	Medium	High
Activities of daily living	0	1	2	3
Behavior	0	1	2	3
Interpersonal support	0	1	2	3
Medical	0	1	2	3
Mobility	0	1	2	3
Protective supervision	0	1	2	3

~~((4))~~ (3) DDA assigns a behavior score of four if ((the client has a)):

(a) The client has an acuity level of "high" for behavior ((score of three)) on the support assessment scale; and

~~(b) ((Challenging behavior documented on form DSHS 10-234; and (c) Current positive)) The client has a behavior support plan that meets requirements under WAC 388-829C-135.~~

~~(4) The sum of the assessment scale scores corresponds to an established daily rate. Rates are set prospectively in accordance with state legislative appropriations and will be adjusted accordingly.~~

~~(5) ((DDA reviews a)) DSHS publishes companion home daily rate ((annually and if a significant change assessment occurs during the plan year)) on the office of rates management's website.~~

~~(6) DDA may adjust a companion home daily rate if:~~

~~(a) ((Any of)) The sum of the client's support assessment ((scale)) acuity levels ((change)) changes; or~~

~~(b) ((The multiplier changes due to a vendor rate change; or~~

~~(c) The annual cost of respite services increased because)) DDA ((approved)) approves additional respite hours under WAC 388-829C-234(3) ((and the client's assessed support needs remain unchanged since the most recent CARE assessment)).~~

[Statutory Authority: RCW 71A.12.030 and 71A.12.040. WSR 20-13-091, § 388-829C-131, filed 6/16/20, effective 7/17/20. Statutory Authority: RCW 71A.12.030, 71A.10.020 and 71A.12.040. WSR 18-22-106, § 388-829C-131, filed 11/6/18, effective 12/7/18.]

NEW SECTION

WAC 388-829C-135 What requirements must a behavior support plan meet? (1) A client's behavior support plan must:

(a) Be based on a functional assessment; and

(b) Describe:

(i) The target behavior;

(ii) Actions that may be taken to prevent the target behavior;

(iii) Actions that may be taken in response to the target behavior;

(iv) Actions that may be taken if the target behavior increases in frequency, duration, intensity, or impact;

(v) The replacement behavior that matches the target behavior's function;

(vi) How to teach the replacement behavior;

(vii) How to respond to the replacement behavior; and

(viii) Benchmarks to evaluate the behavior support plan's effectiveness.

(2) If the client has a behavior support plan, the provider must collect data on:

(a) The target behavior's:

(i) Frequency;

(ii) Intensity;

(iii) Duration; and

(iv) Impact;

(b) The replacement behavior's:

(i) Frequency;

(ii) Intensity;

(iii) Duration; and

(iv) Impact.

(3) The provider must analyze the data collected under subsection (2) of this section at least every six months to determine the effectiveness of the behavior support plan.

(4) If the analysis under subsection (3) of this section indicates the target behavior is not decreasing in frequency, intensity, duration, or impact, the provider must:

(a) Revise the behavior support plan; or

(b) Document the reason revising the support plan is not indicated.

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