

WSR 23-05-064

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed February 13, 2023, 10:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-22-013.

Title of Rule and Other Identifying Information: WAC 388-828-1020
What definitions apply to this chapter?, and 388-828-1520 Where is the
DDA assessment administered and when do home visits occur?

Hearing Location(s): On March 21, 2023, at 10:00 a.m., at Office
Building 2, Department of Social and Health Services (DSHS) Headquar-
ters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking
at 11th and Jefferson. A map is available at [https://www.dshs.wa.gov/
office-of-the-secretary/driving-directions-office-bldg-2](https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2); or virtual-
ly. Due to the COVID-19 pandemic, hearings are held virtually. See the
DSHS website [https://www.dshs.wa.gov/office-of-the-secretary/filings-
and-rules](https://www.dshs.wa.gov/office-of-the-secretary/filings-and-rules) for the most current information.

Date of Intended Adoption: Not earlier than March 22, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box
45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov,
fax 360-664-6185, by 5:00 p.m. on March 21, 2023.

Assistance for Persons with Disabilities: Contact DSHS rules con-
sultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service,
email shelley.tencza@dshs.wa.gov, by 5:00 p.m. on March 7, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including
Any Changes in Existing Rules: The developmental disabilities adminis-
tration (DDA) is amending these rules to add and revise definitions
for the chapter; add options for how an assessment is completed; clar-
ify when and where home visits occur; and require home visits for all
clients receiving a paid service.

Reasons Supporting Proposal: Requiring DDA to conduct a home vis-
it for all clients receiving a paid service will give clients the op-
portunity to see their case manager in person when completing an as-
sessment or home visit. Expanding these visits to more clients could
result in increased health and safety oversight.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 71A.12.310 and 71A.16.050.

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

Name of Proponent: Public proponents, specifically self-advo-
cates, have requested to see DDA staff in their homes. The governmen-
tal proponent, DDA, has an opportunity to assess a person's health and
safety while conducting a home visit and viewing their living quar-
ters, public and governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Di-
az, P.O. Box 45310, Olympia, WA 98504-5310, 360-790-4732; Implementa-
tion and Enforcement: Melissa Randles, P.O. Box 45310, Olympia, WA
98504-5310, 360-407-1515.

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 pre-
liminary 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 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: RCW 71A.12.310 requires case managers to meet with clients in an in-person setting. The case manager must request to view the client's living quarters and note observations if the client receives personal care services or services from a supported living provider.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

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 clients have a right to choose how their assessment is conducted. These amendments spell out the options for completing an assessment in person, remotely, or some combination of the two. These methods do not impose costs on small businesses. Benefits include supporting client choice and autonomy.

February 10, 2023
Katherine I. Vasquez
Rules Coordinator

SHS-4970.2

AMENDATORY SECTION (Amending WSR 21-19-093, filed 9/17/21, effective 10/18/21)

WAC 388-828-1020 What definitions apply to this chapter? The following definitions apply to this chapter:

"AAIDD" means the American Association on Intellectual and Developmental Disabilities.

"Acuity Scale" refers to an assessment tool that is intended to provide a framework for documenting important assessment elements and for standardizing the key questions that should be asked as part of a professional assessment. The design helps provide consistency from client to client by minimizing subjective bias and assists in promoting objective assessment of a person's support needs.

"Administration" means the developmental disabilities administration of the department of social and health services.

"Adult family home" or "AFH" means a residential home in which a person or ~~((persons))~~ entity is licensed to provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood, adoption, or marriage to ((the person or persons providing the services per chapter 388-76 WAC)) a provider, entity representative, resident manager, or caregiver who resides in the home. An adult family home may be licensed to provide care to up to eight adults if the home receives approval under chapter 388-76 WAC.

"Agency provider" means a business that is licensed, certified, or both, and that is contracted with the department or a county to provide DDA services.

"Algorithm" means a numerical formula used by the DDA assessment for one or more of the following:

- (1) Calculation of assessed information to identify a client's relative level of need; and
- (2) Assignment of a service level to support a client's assessed need.

"Authorization" means DDA approval of funding for a service as identified in the person-centered service plan or evidence of payment for a service.

"CARE" refers to the comprehensive assessment reporting evaluation assessment per chapter 388-106 WAC.

"Client" means a person who has a developmental disability as defined in RCW 71A.10.020(~~(+3)~~) who also has been determined eligible to receive services by the administration under chapter 71A.16 RCW.

"Collateral contact" means a person or agency that is involved in the client's life such as legal guardian, family member, care provider, or friend.

"Companion home" is a DDA contracted residential service that provides (~~twenty-four~~) 24 hour training, support, and supervision, to one adult living with a paid provider.

"Contracted provider" means an individual provider contracted with the department, individual provider employed by the consumer directed employer, or an individual or agency who is one or more of the following: Licensed, certified, or contracted by the department to provide services to DDA clients.

"DDA" means the developmental disabilities administration of the department of social and health services.

"Department" means the department of social and health services (DSHS).

"Group home" or "GH" means a licensed adult family home or assisted living facility contracted and certified to provide residential services and support to adults with developmental disabilities.

"Home visit" means viewing a client's living quarters with the client present.

"ICF/IID" means a (~~facility~~) medicaid-certified (as an intermediate care) facility (for individuals with intellectual disabilities) operating under Title XIX of the Social Security Act in 42 C.F.R. 440-150 to (provide) furnish health or rehabilitation services (to DDA clients).

"ICF/IID level of care" is a standardized assessment of a client's need for ICF/IID level of care per 42 C.F.R. Sec. 440 and 42 C.F.R. Sec. 483. In addition, ICF/IID level of care refers to one of the standards used by DDA to determine whether a client meets minimum eligibility criteria for one of the DDA HCBS waivers or the community first choice program.

"Legal guardian" means a person/agency, appointed by a court, who is authorized to make some or all decisions for a person determined by the court to be incapacitated. In the absence of court intervention, parents remain the legal guardians for their child until the child reaches the age of (~~eighteen~~) 18.

"Living quarters" means the client's bedroom and main living area(s).

"LOC score" means a level of care score for answers to questions in the support needs assessment for children that are used in deter-

mining if a client meets eligibility requirements for ICF/IID level of care.

"Panel" refers to the visual user-interface in the DDA assessment computer application where assessment questions are typically organized by topic and you and your respondents' answers are recorded.

"Person-centered service plan (PCSP)" is a document that identifies your goals and assessed health and welfare needs. Your person-centered service plan also indicates the paid services and natural supports that will assist you to achieve your goals and address your assessed needs.

"Raw score" means the numerical value when adding a person's "frequency of support," "daily support time," and "type of support" scores for each activity in the support needs and supplemental protection and advocacy scales of the supports intensity scale (SIS) assessment.

"Residential habilitation center" or "RHC" is a state-operated facility (~~certified to provide ICF/IID or nursing facility level of care for persons with developmental disabilities per chapter 71A.20 RCW~~) under RCW 71A.20.020.

"Respondent" means the adult client or another person familiar with the client who participates in the client's DDA assessment by answering questions and providing information. Respondents may include DDA contracted providers.

~~(("SIS" means the supports intensity scale developed by the American Association of Intellectual and Developmental Disabilities (AAIDD).))~~

"Service provider" refers to a department contracted agency or person who provides services to DDA clients. Also refers to state operated living alternative programs (SOLA).

"Significant change assessment" means a DDA assessment completed any time a change is reported in a client's support needs, such as an increased need for medical or behavioral supports.

"SIS" means the supports intensity scale developed by the American Association of Intellectual and Developmental Disabilities (AAIDD).

"SOLA" means a state operated living alternative program for adults that is operated by DDA.

"State supplementary payment" or "SSP" is the state paid cash assistance program for certain DDA eligible Social Security income clients per chapter 388-827 WAC.

"Supported living" or "SL" refers to residential services provided by DDA certified residential agencies to clients living in homes that are owned, rented, or leased by the clients or their legal representatives.

"Waiver respite care" means short-term intermittent relief for persons normally providing care to individuals who are authorized to receive services available in the individual and family services (IFS), children's intensive in-home behavioral support (CIIBS), basic plus, and core waivers per chapter 388-845 WAC.

"You" and "your" means the client.

[Statutory Authority: RCW 71A.12.030 and 71A.16.050. WSR 21-19-093, § 388-828-1020, filed 9/17/21, effective 10/18/21. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-828-1020, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and Title 71A RCW. WSR 07-10-029, § 388-828-1020, filed 4/23/07, effective 6/1/07.]

AMENDATORY SECTION (Amending WSR 17-12-012, filed 5/26/17, effective 6/26/17)

WAC 388-828-1520 Where is the DDA assessment (~~(and reassessment)~~) administered and when do home visits occur? (1) (~~(DDA)~~) Initial, annual, and significant change assessments (~~(and reassessments)~~) are administered at a location and in a way that is convenient to you, such as:

- (a) In-person at your home (~~(or place of residence.)~~);
- (b) In-person in another setting;
- (c) Remotely using approved technology; or
- (d) A combination of in-person and remote.

~~((2) If you receive or plan to receive a DDA-paid service in your home or place of residence and the DDA assessment is not administered in your home or place of residence, DDA will conduct a follow-up home visit to ensure your person-centered service plan/individual support plan can be implemented in your living environment.))~~

~~((3))~~ (2) If your initial, annual, or significant change assessment is not completed face-to-face in your home, DDA must still see you in person. ((receive or plan to receive a DDA-paid service in your home or place of residence,)) DDA must ((ask permission to)) conduct a home visit and while in your home must ask to view your living quarters ((during the DDA assessment or follow-up home visit)).

(3) DDA may conduct the home visit:

- (a) During your assessment;
- (b) Up to 30 days before or after your assessment;

(c) Up to 30 days after you move from an institutional setting to a community-based setting.

[Statutory Authority: RCW 71A.12.030 and 71A.12.310. WSR 17-12-012, § 388-828-1520, filed 5/26/17, effective 6/26/17. Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-828-1520, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and Title 71A RCW. WSR 07-10-029, § 388-828-1520, filed 4/23/07, effective 6/1/07.]