

WSR 23-14-001
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed June 21, 2023, 2:18 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-05-065.

Title of Rule and Other Identifying Information: WAC 388-845-0603 Who is eligible to receive community inclusion services?, 388-845-0610 Are there limits to community inclusion services you may receive?, and 388-845-2110 Are there limits to the supported employment services you may receive?

Hearing Location(s): On August 8, 2023, at 10:00 a.m., virtual via [Microsoft] Teams or call in. Hearings are being held virtually. Please see the department of social and health (DSHS) website for the most up-to-date information.

Date of Intended Adoption: Not earlier than August 9, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m. on August 8, 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 July 25, 2023.

Reasons Supporting Proposal: These changes to chapter 388-845 WAC are necessary to implement amendments to the developmental disabilities administration's home and community-based services waivers as approved by the federal Centers for Medicare and Medicaid Services (CMS). Substantive changes remove the prohibition to receive employment services and community inclusion services concurrently and remove "consecutive" to align with RCW 71A.12.200.

Statutory Authority for Adoption: RCW 71A.12.030 and 71A.12.120.

Statute Being Implemented: RCW 71A.12.290.

Rule is necessary because of federal law, 42 C.F.R. 441.301

(c) (6) .

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-790-4732; Implementation and Enforcement: Branda Matson, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1522.

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: Removing the word "consecutive" aligns WAC 388-845-0603 with statute and is exempt. The other amendments clarify language and

align with waiver amendments approved by CMS and are not 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. For businesses delivering services under chapter 388-845 WAC, common costs by rule amendments would be the result of changed provider qualifications, such as requiring a license or training. No new trainings or licenses are required. Providers, in other words small businesses, should incur no costs by complying with these amendments.

June 21, 2023
Katherine I. Vasquez
Rules Coordinator

SHS-4958.3

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0603 Who is eligible to receive community inclusion services? You are eligible for community inclusion services if you are enrolled in the basic plus or core waivers and:

- (1) You are (~~sixty-two~~) 62 or older; or
- (2) You meet age requirements under WAC 388-845-2110(1) and:
 - (a) You have participated in developmental disabilities administration (DDA) supported employment services for at least nine (~~consecutive~~) months; or
 - (b) DDA has determined that you are exempt from the nine-month DDA supported employment service requirement because:
 - (i) Your medical or behavioral health records document a condition that prevents you from completing nine (~~consecutive~~) months of DDA supported employment services; or
 - (ii) You were referred to and were available for DDA supported employment services, but the service was not delivered within (~~nine~~) 90 days of the referral.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0603, filed 6/20/18, effective 7/21/18. Statutory Authority: RCW 71A.12.030. WSR 17-12-002, § 388-845-0603, filed 5/24/17, effective 6/24/17. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0603, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 74.08.090, 74.09.520, and 2012 c 49. WSR 12-16-095, § 388-845-0603, filed 8/1/12, effective 9/1/12.]

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-0610 Are there limits to community inclusion services you may receive? (~~((1) You must not receive community inclusion~~

~~services if you are receiving prevocational or supported employment services.~~

~~(2))~~ The maximum hours of community inclusion services you may receive are determined by the developmental disabilities administration (~~(DDA)~~) assessment under WAC 388-828-9310.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 20-05-080, § 388-845-0610, filed 2/18/20, effective 3/20/20. Statutory Authority: RCW 71A.12.030, 71A.12.040, 2015 3rd sp.s. c 4, and 42 C.F.R. § 441.301 (c) (4)-(5). WSR 18-03-174, § 388-845-0610, filed 1/23/18, effective 2/23/18. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0610, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 74.08.090, 74.09.520, and 2012 c 49. WSR 12-16-095, § 388-845-0610, filed 8/1/12, effective 9/1/12. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 08-20-033, § 388-845-0610, filed 9/22/08, effective 10/23/08. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0610, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 22-01-216, filed 12/22/21, effective 1/22/22)

WAC 388-845-2110 Are there limits to the supported employment services you may receive? The following limits apply to your receipt of supported employment services:

- (1) To receive supported employment services, you must be age:
 - (a) (~~(Twenty)~~) 20 and graduating from high school before your July or August (~~(twenty-first)~~) 21st birthday(~~(+)~~);
 - (b) (~~(Twenty-one)~~) 21 and no longer eligible to enroll in high school; or
 - (c) (~~(Twenty-two)~~) 22 or older.
- (2) Payment for (~~(individual)~~) supported employment services excludes the supervisory activities rendered as a normal part of the business setting.
- (3) (~~(You will not be authorized to receive supported employment services in addition to community inclusion services.~~)
- ~~(4))~~ Your service hours are determined by the assistance you need to reach your employment outcomes as described in WAC 388-828-9325 and might not equal the number of hours you spend on the job or in job related activities.

[Statutory Authority: RCW 71A.12.030 and 71A.12.040. WSR 22-01-216, § 388-845-2110, filed 12/22/21, effective 1/22/22. Statutory Authority: RCW 71A.12.030, 71A.12.040, 2015 3rd sp.s. c 4, and 42 C.F.R. § 441.301 (c) (4)-(5). WSR 18-03-174, § 388-845-2110, filed 1/23/18, effective 2/23/18. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-2110, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 08-20-033, § 388-845-2110, filed 9/22/08, effective 10/23/08. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-2110, filed 12/13/05, effective 1/13/06.]