

WSR 23-16-076

AGENDA

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

[Filed July 28, 2023, 11:38 a.m.]

Following is the department of social and health services (DSHS) (department) semi-annual rule-making agenda for July 1 - December 31, 2023. This agenda will be published in the Washington State Register as required in RCW 34.05.314 and distributed to interested parties. It is also available online at <https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/dshs-semi-annual-rule-making-agenda>.

This report represents DSHS rules under development at this time. There may be additional rule-making activity as DSHS responds to legislative actions, to comply with federal mandates, or to meet unforeseen circumstances.

**Semi-Annual Rule-Making Agenda  
July 1 - December 31, 2023**

Administration/ Division	WAC Sections	Purpose for Rule Making	CR-101 Filings	CR-102 and CR-105 Filings	CR-103E Filings
<b>Aging and Long-Term Support Administration</b>					
<b>Home and Community Services Division</b>					
	388-71-0975	The department is amending Who is required to obtain certification as a home care aide, and when?, to clarify how to interpret the long-term care worker (LTCW) qualifications and requirements in statute and rule that have specific time periods for compliance when there has been a period of time in which the underlying requirements were suspended and waived in whole or part by emergency proclamation by the governor.	WSR 21-01-121 Filed 12/15/2020		WSR 21-01-018 Filed 12/3/2020
	Chapter 388-106 WAC	The department is planning to add a new section for long-term services and supports (LTSS) presumptive eligibility and may amend other related rules as may be required.	WSR 21-09-071 Filed 4/20/2021	WSR 23-10-058 Filed 5/1/2023	
	388-106-0010, 388-106-0130	The department is considering amending What definitions apply to this chapter?, How does the department determine the number of hours I may receive for in-home care?, and other related rules as required.	WSR 22-12-084 Filed 5/31/2022	WSR 23-08-041 Filed 3/29/2023	

Administration/ Division	WAC Sections	Purpose for Rule Making	CR-101 Filings	CR-102 and CR-105 Filings	CR-103E Filings
	388-71-0503, 388-106-0010, 388-106-0060, 388-115-0516	The department is planning to amend WAC to support the passage of SB 5866, an act relating to medicaid LTSS eligibility determinations being completed by federally recognized Indian tribes. Including the following WAC: What definitions apply to WAC 388-71-0500 through 388-71-05640?, What definitions apply to this chapter?, Who must perform the assessment?, What are the responsibilities of the consumer directed employer when providing care to a client?, and other related rules as required.	WSR 22-13-116 Filed 6/16/2022		
	388-112A-0081, 388-71-0876	When must LTCWs who were working or hired during the COVID-19 public health emergency complete training, including required specialty training? and When must LTCWs who were working or hired during the COVID-19 public health emergency complete training, including required specialty training? The department is requiring that LTCWs complete training and certification by certain dates in response to the COVID-19 public health emergency. The department divided the group of LTCWs into cohorts based on the employee's date of hire or rehire. The rule requires each cohort to complete the requirements by deadlines in rule with the "oldest" LTCWs having the first deadline and then working through the groups chronologically. The department is extending the deadline of the first cohort by folding them into the second cohort deadline.	WSR 23-11-075 Filed 5/17/2023		WSR 23-16-019 Filed 7/20/2023  WSR 23-09-052 Filed 4/17/2023  WSR 23-04-055 Filed 1/27/2023  WSR 22-22-043 Filed 10/26/2022
	388-106-0336	The intent is to amend to add a new service, community stability supports, under the residential support waiver. Minor language changes may also be made for consistency in service language.	WSR 23-05-081 Filed 2/14/2023		
	388-112A-0613, 388-71-0992	The department is providing an extended time for LTCWs to complete continuing education (CE) requirements in response to the COVID-19 public health emergency and will be granting 12 hours of on-the-job training CE. A set deadline of 120 days after the gubernatorial waivers to complete any other CE that may become due while the waivers were in place.			WSR 23-13-091 Filed 6/20/2023  WSR 23-06-023 Filed 2/22/2023

Administration/ Division	WAC Sections	Purpose for Rule Making	CR-101 Filings	CR-102 and CR-105 Filings	CR-103E Filings
	388-112A-0310, 388-112A-0320, 388-71-0906, 388-71-0911	Removing references to HIV/AIDS training from the basic training requirements in existing rules as they are no longer required.		CR-105 WSR 23-14-111 Filed 7/5/2023	
	Chapters 388-71, 388-112A, and 388-115 WAC	In response to E2SHB 1694 (chapter 424, Laws of 2023), dealing with date of hire reset, additional family relationships related to LTCW training and CE.	WSR 23-15-074 Filed 7/17/2023		WSR 23-16-033 Filed 7/21/2023
<b>Management Services Division</b>					
	388-96-918	The department intends to amend chapter 388-96 WAC regarding its nursing facility medicaid methodology to implement a low-wage worker wage equity funding and verification and other related rules as may be required.	WSR 22-13-097 Filed 6/14/2022	WSR 23-15-114 Filed 7/19/2023	
<b>Residential Care Services Division</b>					
	Chapter 388-78A WAC	The department is considering adding new sections and repealing and amending existing sections in "assisted living facility licensing rules" to consolidate the rules related to background checks, negative actions, and character, competence, and suitability determinations between home and community services, residential services, and developmental disabilities administration (DDA).	WSR 18-17-159 Filed 8/21/2018		
	Chapter 388-97 WAC	The department is considering adding new sections and repealing and amending existing sections in "nursing homes," including WAC 388-97-1790, 388-97-1800, 388-97-1820, and other related rules as may be required.	WSR 18-17-175 Filed 8/22/2018		
	Chapter 388-76 WAC	The department is considering adding new sections and repealing and amending existing sections in "adult family home minimum licensing requirements."	WSR 18-17-177 Filed 8/22/2018		
	Chapter 388-97 WAC	The department is proposing to add new sections, repeal existing sections, and amend sections in "nursing homes" related to tuberculosis (TB) screening.	WSR 19-18-051 Filed 8/30/2019		
	Chapter 388-107 WAC	The department is planning to add new sections, repeal existing sections, and amend sections in "licensing requirements for enhanced services facilities" related to TB screening.	WSR 19-18-059 Filed 9/3/2019		
	Chapter 388-76 WAC	The department is planning to add new sections, repeal existing sections, and amend sections in "adult family home minimum licensing requirements" related to TB screening.	WSR 19-18-061 Filed 9/3/2019		

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	Chapter 388-78A WAC	The department is planning to add new sections, repeal existing sections, and amend sections in "assisted living facility licensing rules" related to TB screening.	WSR 19-18-062 Filed 9/3/2019		
	388-107-0460, 388-76-10265, 388-76-10285, 388-76-10290, 388-78A-2480, 388-78A-2484, 388-78A-2485	The department is temporarily repealing or amending to assure [ensure] long-term care programs are not significantly impeded during the hiring process due to inability to access the TB testing required as a part of the hiring process (COVID-19).	WSR 20-16-069 Filed 7/29/2020		WSR 22-07-004 Filed 3/3/2022  WSR 21-23-015 Filed 11/5/2021  WSR 21-15-113 Filed 7/21/2021  WSR 21-07-109 Filed 3/23/2021  WSR 20-24-060 Filed 11/24/2020  WSR 20-16-102 Filed 7/31/2020  WSR 20-09-009 Filed 4/2/2020
	Chapter 388-107 WAC	The department is considering adding a new section in licensing requirements for enhanced services facilities, and amending other related rules as may be necessary to implement ESHB 1120 (chapter 203, Laws of 2021).	WSR 21-17-121 Filed 8/17/2021		
	Chapter 388-78A WAC	The department is considering adding a new section in assisted living facility licensing rules, and amending other related rules as may be necessary to implement ESHB 1120 (chapter 203, Laws of 2021).	WSR 21-17-123 Filed 8/17/2021		
	Chapter 388-76 WAC	The department is considering adding a new section in adult family home minimum licensing requirements, and amending other related rules as may be necessary to implement ESHB 1120 (chapter 203, Laws of 2021).	WSR 21-18-001 Filed 8/18/2021		

Administration/ Division	WAC Sections	Purpose for Rule Making	CR-101 Filings	CR-102 and CR-105 Filings	CR-103E Filings
	388-97-0140	The department is amending to waive and suspend the requirement for nursing homes to suspend transfers and discharges pending the outcome of a resident appeal of the nursing home transfer or discharge decision. The COVID-19 pandemic continues to require more rapid transfers and discharges than the rule permits. This emergency rule waives the requirement for nursing homes to suspend transfers and discharges pending the outcome of a resident appeal hearing and improves resident safety by allowing faster grouping of COVID-19 positive residents in one facility or grouping asymptomatic residents together. This helps expedite infection control processes and maximizes the availability of nursing home beds. Also, WAC 388-97-0120 and 388-97-0130.	WSR 22-08-060 Filed 4/4/2022		WSR 23-07-108 Filed 3/20/2023  WSR 22-23-155 Filed 11/22/2022  WSR 22-16-063 Filed 7/29/2022  WSR 22-08-062 Filed 4/4/2022  WSR 22-01-072 Filed 12/10/2021  WSR 21-24-069 Filed 11/30/2021
	Chapters 388-76, 388-78A, 388-97, and 388-107 WAC	The department is considering amending [rules] to implement specific sections to SHB 1218. The department may amend other related rules as necessary. The department is considering amending the rules to adopt requirements for providers to publicly post stop placement orders, adopt requirements for providers to create and maintain resident rosters as well as responding to requests from ombuds for roster information, incorporate new definition of resident representative, and replace the phrase "his or her" with appropriate gender-neutral terms.	WSR 22-04-046 Filed 1/26/2022		
	Chapters 388-76, 388-78A, 388-97, and 388-107 WAC	The department is considering amending [rules] to implement specific sections to SHB 1218. The department may amend other related rules as necessary to meet the legislative intent of SHB 1218. The department is considering amending the rules to add requirements related to [the] facility communication system, resident access to communications, and facility responsiveness to outside communications. Comprehensive disaster preparedness plans and related policies and procedures and equipment for a range of potential hazards, emergencies, and disasters. Visitation of essential support persons. Resident's rights to a safe and healthy environment.	WSR 22-04-047 Filed 1/26/2022		

Administration/ Division	WAC Sections	Purpose for Rule Making	CR-101 Filings	CR-102 and CR-105 Filings	CR-103E Filings
	Chapter 388-76 WAC	The department is considering amending adult family home minimum licensing requirements, to address a process gap that occurs when residents transfer or discharge from adult family homes and prescription medications for those residents [to] continue to be filled by pharmacies. These filled prescriptions may not be returned to the pharmacy and are subject to diversion and misuse by others. The department may amend other related rules as appropriate.	WSR 22-23-041 Filed 11/8/2022		
	Chapter 388-76 WAC	The department is considering amending the following section in adult family home minimum licensing requirements: WAC 388-76-10750 Safety and maintenance. The intent is to provide clarity about access to hand sanitizer in compliance with infection control, safety, and maintenance regulations in adult family homes. Homes must meet infection control requirements while also ensuring resident safety. The department may amend other related rules as appropriate.	WSR 22-24-012 Filed 11/29/2022		
	388-97-1081, 388-97-1082, 388-97-1091	The department is amending the rules to ensure nursing homes are not significantly impeded from admitting and caring for residents during the COVID-19 outbreak, to implement section 6 of ESHB 1120 (chapter 203, Laws of 2021). Exceptions to requirements in RCW 74.42.360 (2) through (4) retroactively to October 27, 2022.	WSR 21-14-049 Filed 7/1/2021		WSR 23-12-069 Filed 6/6/2023  WSR 23-05-041 Filed 2/9/2023
	Chapter 388-97 WAC	Combining former WSR 20-17-005, 20-17-133, 20-19-009, 20-21-034 and 21-11-061. Nursing homes, post pandemic: WAC 388-97-0300, 388-97-0920, 388-97-1000, 388-97-1020, 388-97-1260, 388-97-1380, 388-97-1580, 388-97-1740, 388-97-1760, 388-97-2400, and new sections to show what was in place during the COVID-19 pandemic.		WSR 23-06-063 Filed 2/28/2023	
	Chapters 388-76, 388-78A, 388-97, and 388-107 WAC	The department is considering amending, adding new and amending [repealing] other sections as needed. Regarding Death with Dignity (DWD) (Act), including labeling, documentation, and storage of resident medications, specifically related to the DWD Act.	WSR 23-08-038 Filed 3/29/2023		

Administration/ Division	WAC Sections	Purpose for Rule Making	CR-101 Filings	CR-102 and CR-105 Filings	CR-103E Filings
	388-76-10315	The department is considering amending Resident record—Required. The intent is to help the regulated community comply with the rule by providing clear language about long-term care ombuds access to resident records. The department may amend other related rules as appropriate.	WSR 23-09-049 Filed 4/17/2023		
	388-101-3020	The department is considering amending Compliance, and adding a new section to chapter 388-101 WAC as necessary to make clear compliance and reporting requirements in the event of an outbreak of a communicable disease or suspected food poisoning, and other related rules as may be required.	WSR 23-13-042 Filed 6/13/2023		
<b>Behavioral Health Administration</b>					
	Chapter 388-878 WAC	The department is planning to develop rules for a leave of absence, amend the procedures for program removal and program end, and update definitions. The department may add new rules or amend other related rules as may be required.	WSR 22-21-057 Filed 10/12/2022		
	Chapter 388-880 WAC, and other related sections as may be necessary.	WAC hasn't been updated since 2013 and the department has decided to change the name of the treatment program from "sexual predator program" to "sex offense treatment program."	WSR 23-15-035 Filed 7/11/2023		
<b>DDA</b>					
	388-101D-0190, 388-101D-0195, 388-101D-0200	Regarding suspending and terminating a client's residential services and to clarify and update policy and other related rules as may be required.	WSR 22-17-115 Filed 8/22/2022		
	Chapter 388-845 WAC	These changes are necessary to implement amendments to DDA's home and community-based services (HCBS) waivers as approved by the federal Centers for Medicare and Medicaid Services (CMS). Major changes to the chapter adjust the yearly limits applicable to certain waivers, add assistive technology to multiple waivers, remove the positive behavior support and consultation services from all waivers except the community protection waiver, amend the definition of the specialized evaluation and consultation services, and make other changes necessary to implement amendments to DDA's HCBS waivers as approved by CMS.	WSR 22-18-073 Filed 9/2/2022	WSR 23-12-078 Filed 6/6/2023	WSR 23-14-037 Filed 6/26/2023  WSR 23-06-057 Filed 2/27/2023  WSR 23-02-022 Filed 12/27/2022  WSR 22-18-046 Filed 8/30/2022
	Chapter 388-833 WAC	And other related rules as may be required.	WSR 23-05-048 Filed 2/9/2023		

Administration/ Division	WAC Sections	Purpose for Rule Making	CR-101 Filings	CR-102 and CR-105 Filings	CR-103E Filings
	388-845-0603, 388-845-0610, 388-845-2110	Changes are necessary to amend HCBS waivers by CMS. Amendments remove the prohibition to receive employment services and community inclusion services concurrently.	WSR 23-05-065 Filed 2/13/2023	WSR 23-14-001 Filed 6/21/2023	WSR 23-13-001 Filed 6/7/2023  WSR 23-05-063 Filed 2/13/2023
	388-823-1095, 388-823-1096	DDA is planning to amend these rules to distinguish more clearly between client rights guaranteed by Washington state statute and federal medicaid requirements for delivering services in integrated settings. There may be additional changes that are necessary to improve clarity or update policy.	WSR 23-08-057 Filed 4/3/2023		
	388-845-1105, 388-845-1505, 388-845-3062	DDA is enacting these changes on an emergency basis in order to align with amendments to HCBS waivers as approved by CMS.	WSR 23-14-035 Filed 6/26/2023		WSR 23-14-033 Filed 6/26/2023
	388-825-335, 388-825-615, 388-825-620	DDA is enacting these amendments on an emergency basis to align with SB 5252 (2023) and FBI background check requirements.	WSR 23-14-038 Filed 6/26/2023		WSR 23-14-032 Filed 6/26/2023
	388-823-0600, 388-823-0610, 388-823-1005, 388-823-1010	DDA is enacting these changes on an emergency basis to prepare for implementation of HB 1407 (2023) which stipulates that DDA's rules must not "terminate or require redetermination of eligibility for a child under the age of 18 based solely on the child's age if the child has been determined to be eligible for services on or after the child's third birthday."	WSR 23-14-040 Filed 6/26/2023		WSR 23-14-039 Filed 6/26/2023
<b>Economic Services Administration</b>					
<b>Community Services Division</b>					
	388-439-0005, 388-439-0015, 388-439-0020, 388-439-0025	The department is adopting What is the pandemic EBT program?, Eligibility of pandemic EBT benefits for the 2020-21 school year, and General information about pandemic EBT benefits. As of July 14, 2023, WAC 388-439-0010 is no longer part of this.	WSR 21-23-108 Filed 11/17/2021	WSR 23-15-080 Filed 7/17/2023  WSR 23-03-096 Filed 1/17/2023	WSR 23-14-093 Filed 6/30/2023  WSR 23-08-017 Filed 3/24/2023  WSR 22-24-057 Filed 12/1/2022  WSR 22-16-097 Filed 8/2/2022  WSR 22-07-068 Filed 3/18/2022  WSR 21-23-112 Filed 11/17/2021  WSR 21-16-017 Filed 7/23/2021  WSR 21-08-010 Filed 3/26/2021



Administration/ Division	WAC Sections	Purpose for Rule Making	CR-101 Filings	CR-102 and CR-105 Filings	CR-103E Filings
	388-446-0015, 388-410-0020, 388-410-0030	The department is planning to amend What happens if I receive more basic food, FAP, or WASHCAP benefits than I am supposed to receive?, How does the department calculate and set up my basic food, FAP, or WASHCAP overpayment?, What is an intentional program violation (IPV) and administrative disqualification hearing (ADH) for basic food?, and other related rules as required.	WSR 22-13-019 Filed 6/3/2022	WSR 23-07-082 Filed 3/15/2023	
	388-412-0040	Can I get my benefits replaced? to issue replacement benefits to households whose cash benefits were either cloned or skimmed between March 1, 2022, and December 31, 2022. Loss in benefits must be reported to and verified by the department no later than March 31, 2023, and the department will provide a one-time replacement of no more than \$300.	WSR 23-10-018 Filed 4/25/2023		
	388-458-0040, 388-494-0010	The department plans to adopt new section(s) in Title 388 WAC, Diaper related payment, and adopt or amend other related rules as may be required.	WSR 23-06-055 Filed 2/27/2023	WSR 23-13-118 Filed 6/21/2023	
	388-414-0001	These amendments replace an obsolete link with a newer Health and Human Services Poverty Guideline website and do not change the effect of the rule. WAC 388-414-0001 Do I have to meet all eligibility requirements for basic food?		CR-105 WSR 23-07-098 Filed 3/17/2023	
	388-400-0005	The department is planning to amend Who is eligible for temporary assistance for needy families? and other rules as may be required.	WSR 23-10-032 Filed 4/27/2023		
	388-408-0035, 388-450-0140, 388-489-0005, 388-489-0010	The department is planning to amend these rules related to basic food and transitional food assistance benefits for five months for families that have stopped receiving temporary assistance for needy families (TANF) and are not in a full family sanction.	WSR 23-10-057 Filed 5/1/2023		
	388-450-0185	The department is proposing amendments to What income deductions does the department allow when determining if I am eligible for food benefits and the amount of my monthly benefits? These amendments correct a typographical error within WAC.		CR-105 WSR 23-11-159 Filed 5/24/2023	

Administration/ Division	WAC Sections	Purpose for Rule Making	CR-101 Filings	CR-102 and CR-105 Filings	CR-103E Filings
	388-436-0050, 388-478-0020, 388-478-0027, 388-478-0033, 388-478-0035, and other related rules as may be required	The department is planning to amend WAC to implement an eight percent payment standard increase.	WSR 23-12-062 Filed 6/2/2023		
	388-310-1600	The department is planning to amend WorkFirst sanctions, and other related rules as appropriate. Amendments will support implementation of 2SHB 1447 (chapter 418, Laws of 2023), which adds good cause reason for failure to participate in WorkFirst activities when the recipient is experiencing a hardship as defined by the department rule.	WSR 23-13-025 Filed 6/9/2023		WSR 23-16-012 Filed 7/19/2023
	388-447-0120, 388-449-0220	The department is planning to amend these and other rules as may be required due to the passage of ESHB 1260 (chapter 289, Laws of 2023). Planned amendments will expand good cause reasons for not participating in substance use disorder assessment or treatment as a condition of eligibility for the ABD, housing and essential needs referral, and PWA programs effective July 23, 2023.	WSR 23-13-026 Filed 6/9/2023		WSR 23-16-002 Filed 7/19/2023
	388-484-0005, 388-484-0006	Five-year time limit extension for TANF, SFA, general assistance for pregnant women cash assistance, and TANF/SFA time limit extensions. Planned amendments will remove 60-month time limit for child-only TANF and SFA households w/an eligible parent.	WSR 23-13-093 Filed 6/20/2023		WSR 23-14-070 Filed 6/28/2023
	388-474-0012, 388-478-0055	Washington state supplemental payment; amendments will update the SSP standard rate for individuals who are receiving care in a medical institution or residential setting. Based on Washington state personal needs allowance which will increase due to HB 1128 (chapter 201, Laws of 2023), effective July 1, 2023.	WSR 23-14-068 Filed 6/28/2023		WSR 23-14-065 Filed 6/28/2023
<b>Division of Child Support (DCS)</b>					

Administration/ Division	WAC Sections	Purpose for Rule Making	CR-101 Filings	CR-102 and CR-105 Filings	CR-103E Filings
	Chapter 388-14A WAC	DCS proposes to amend, adopt, or repeal as needed, various sections in the chapter to make the administrative support establishment process more efficient and user-friendly as we: (1) Implement ESSB 6037 (chapter 6, Laws of 2018, which adopted the 2017 version of the Uniform Parentage Act), and the technical corrections made to that bill by SSB 5333 (chapter 46, Laws of 2019); as well as (2) update terminology and to clarify and streamline the rules and procedures regarding parentage to conform with current state and federal laws.	WSR 22-15-050 Filed 7/15/2022		
<b>Executive</b>					
<b>Division of Vocational Rehabilitation (DVR)</b>					
	388-891A-0610, 388-891-0890	Amending to remove references in WAC to post-employment services provided by DVR as being available to the customer post exit.	WSR 22-12-030 Filed 5/24/2022		WSR 23-10-044 Filed 4/27/2023  WSR 23-02-044 Filed 12/30/2022  WSR 22-18-090 Filed 9/7/2022  WSR 22-11-034 Filed 5/11/2022
<b>Office of the Secretary</b>					
	Chapter 388-01 WAC	OIG; organization/ disclosure of public records and other related rules as appropriate.	WSR 22-14-033 Filed 6/27/2022	WSR 23-10-046 Filed 4/27/2023	

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