

## WSR 21-04-037

## PERMANENT RULES

## DEPARTMENT OF

## SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed January 26, 2021, 3:47 p.m., effective March 1, 2021]

Effective Date of Rule: March 1, 2021.

Purpose: The department is amending the rules listed below to eliminate shared benefit as a status and as a basis to reduce a client's monthly benefit for in-home personal care, and to require a written agreement for a family or household individual provider to be assessed as a source of informal support. These rule changes eliminate adjustments to base hours, add-on hours, or any other in-home personal care services benefit that a client would otherwise receive because the paid provider shares in the benefit of an instrumental activity of daily living (IADL) provided to the client by the provider, and on the basis that two or more clients in a multi-client household benefit from the same IADL task(s) being performed. Any current rule that uses the phrase "shared benefit" or a similar phrase is being amended to remove the phrase and the definition of "informal support" is being amended.

This rule change is being effectuated as part of a settlement agreement with SEIU 775. SEIU 775 challenged department of social and health services rules that adjusted client benefits for shared benefits and informal supports under the Administrative Procedure Act. The department believes that assessing for shared benefit and informal support on an individualized basis is lawful, but such litigation is costly, and subjects the department to ongoing risks should the rules be held invalid by a court.

Additionally, assessment for shared benefit is often confusing for assessors and may result in inconsistent implementation state-wide. While adjudicative hearings are available to ensure that shared benefits are not assessed incorrectly to the detriment of clients, such hearings impose costs on the department and clients.

Citation of Rules Affected by this Order: Amending WAC 388-106-0010, 388-106-0130, 388-106-0055, 388-71-0515, and 388-71-0516.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Adopted under notice filed as WSR 20-23-069 on November 16, 2020.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 5, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 5, Repealed 0.

Date Adopted: January 26, 2021.

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**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 21-05 issue of the Register.