

WSR 21-04-107

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed February 1, 2021, 11:40 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-24-087.

Title of Rule and Other Identifying Information: The department is planning to amend WAC 388-106-0050 What is an assessment?

Hearing Location(s): On March 9, 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 98501. 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>; or by Skype. Due to the COVID-19 pandemic, hearing may be held via Skype, see DSHS website for most up-to-date information.

Date of Intended Adoption: Not earlier than March 10, 2021.

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., March 9, 2021.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by February 23, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In light of the public health emergency, the Centers for Medicare and Medicaid Services (CMS) waived rules requiring in-person assessments. In addition, this change clarifies instances in which the in-person interviews are not required. Therefore, the department is amending WAC 388-106-0050 What is an assessment?

Reasons Supporting Proposal: The department wants to continue providing personal care services to vulnerable people during the pandemic. To do that, federal medicaid law requires an assessment of the person's functional eligibility. Because of the COVID-19 pandemic, in-person assessments increase the risk of transmission and the beneficiaries are often in high risk groups. Amendment of this rule is necessary for the preservation of the public health and safety because without it the department may not be able to safely assess vulnerable adults so that they can receive needed medicaid services. Without the amendment it may be difficult for the department to comply with medicaid regulations and receive federal financial participation. Existing federal law allows for the assessment to be performed remotely if the person agrees. The requirement that the beneficiary agrees to a remote assessment has been temporarily waived by CMS. The amendment aligns the state rule with federal requirements.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520.

Statute Being Implemented: RCW 74.08.090, 74.09.520.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Kellie Nelson, P.O. Box 45600, Olympia, WA 98504-5600, 360-725-2512; Implementation and Enforcement: Rachelle Ames, P.O. Box 45600, Olympia, WA 98504-5600, 360-725-2353.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This rule is not a significant legislative rule pursuant to RCW 34.05.328 (5) (b) (vii).

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(4) because the proposed amendments impose no new or disproportionate costs on small businesses so a small business economic impact statement is not required.

January 28, 2021
Katherine I. Vasquez
Rules Coordinator

SHS-4839.3

AMENDATORY SECTION (Amending WSR 16-04-020, filed 1/22/16, effective 2/22/16)

WAC 388-106-0050 What is an assessment? (1) An assessment is an in-person interview in your home, current residence, or another location that is convenient to you that is conducted by the department, to inventory and evaluate your ability to care for yourself. The department will assess you at least every twelve months, or more often when there are significant changes necessitating revisions to your CARE plan, or at your request. If your assessment did not take place in the residence where you receive services, the department must visit that residence to evaluate your living situation and environment, for you to continue to receive services.

(2) Between assessments, the department may modify your current assessment without an in-person interview in your home or place of residence. The reasons that the department may modify your current assessment without conducting an in-person interview in your home or place of residence include but are not limited to the following:

(a) Errors made by department staff in coding the information from your in-person interview;

(b) New information requested by department staff at the time of your assessment and received after completion of the in-person interview (e.g. medical diagnosis);

(c) Changes in the level of informal support available to you; or

(d) Clarification of the coding selected.

(3) When the department modifies your current assessment, it will notify you using a Planned Action Notice of the modification regardless of whether the modification results in a change to your benefits. You will also receive a new service summary and assessment details, if requested.

(4) The assessment interview referenced in subsection (1) of this section does not need to be in-person under the following circumstances:

(a) The department requests and you agree to the interview being conducted remotely, and have adequate support to participate in the assessment if you need it; or

(b) An in-person interview is not required by the applicable federal regulation or the requirement is waived by the centers for medicare and medicaid services.

[Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.400 and 42 C.F.R. § 441.500-590. WSR 16-04-020, § 388-106-0050, filed 1/22/16, effective 2/22/16. Statutory Authority: RCW 74.08.090 and 74.09.520. WSR 13-18-039 and 13-17-125, § 388-106-0050, filed 8/29/13 and 8/21/13, effective 10/1/13. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.010 and 74.39A.020. WSR 06-05-022, § 388-106-0050, filed 2/6/06, effective 3/9/06. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 05-11-082, § 388-106-0050, filed 5/17/05, effective 6/17/05.]