

WSR 21-04-037

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.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

Katherine I. Vasquez
Rules Coordinator

SHS-4842.2

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0515 What are the responsibilities of an individual provider when providing services to a client? An individual provider (IP) must:

- (1) Take direction from the client, who is the IP's employer, or when appropriate, from the client's legal representative;
- (2) Understand the client's plan of care that has been signed by the client or legal representative, which may be translated or interpreted, as necessary, and as requested by the client;
- (3) Provide the services as outlined on the client's plan of care, as described in WAC 388-106-0010, according to the client's direction, supervision, and prioritization of tasks within the number of hours authorized;
- (4) Accommodate the client's individual preferences and unique needs in providing care;
- (5) Contact the client, client's representative and case manager when there are changes that affect the personal care and other tasks listed on the plan of care;
- (6) Observe and consult with the client or client's representative, regarding change(s) in health, take appropriate action, and respond to emergencies;
- (7) Notify the case manager immediately when the client enters a hospital, or moves to another setting;
- (8) Notify the case manager immediately in the event of the client's death;
- (9) Notify the department or AAA immediately when unable to staff/serve the client;
- (10) Notify the department/AAA when the individual provider will no longer provide services. The individual provider must:
 - (a) Give at least two weeks' notice, and
 - (b) Notify the client or the client's representative in writing:
and
 - (c) Notify the client's case manager.
- (11) Complete and keep accurate time sheets of authorized/paid hours that are accessible to the social worker/case manager; under WAC 388-106-0130, the department does not pay for (~~shared benefit(s) or~~) informal support provided to the client by anyone, including the IP; and
- (12) Comply with all applicable laws, regulations, and the individual provider contract.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0515, filed 12/20/12, effective 1/20/13. Statutory Authority: RCW 74.08.090, 74.09.520, 2009 c 571, and Washington state 2009-11 budget, section 206(17). WSR 10-06-112, § 388-71-0515, filed 3/3/10, effective 4/3/10. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 05-11-082, § 388-71-0515, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520, and 74.39A.090. WSR 02-21-098, § 388-71-0515, filed 10/21/02, effective 11/21/02. Statutory Authority: RCW 74.08.090, 74.09.520, 43.20A.050, 43.43.842, 74.39A.090, 43.20A.710, 74.39.050, 43.43.830, 74.39.095. WSR 01-11-019, § 388-71-0515, filed 5/4/01, effective 6/4/01. Statutory Authority: RCW

74.08.090, 74.09.520, 43.20A.050, 43.43.842, 74.39A.090, 43.20A.710, 74.39.050, 43.43.830. WSR 00-03-043, § 388-71-0515, filed 1/13/00, effective 2/13/00.]

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0516 What are the responsibilities of home care agency when providing care to a client? In providing care to a client, a home care agency must:

- (1) Ensure that the assigned home care agency long-term care worker(s) understands the client's plan of care that is signed by the client or legal representative, and which may be translated or interpreted, as necessary for the client;
- (2) Provide tasks from services outlined in a client's plan of care, as described in WAC 388-106-0010;
- (3) Accommodate the client's individual preferences and unique needs in providing care;
- (4) Contact the client, client's representative and case manager when there are changes observed by the assigned home care agency long-term care worker that affect the personal care and other tasks listed on the plan of care;
- (5) Ensure that the assigned home care agency long-term care worker(s) observes the client for and consults with the client or representative, regarding change(s) in health, takes appropriate action, and responds to emergencies;
- (6) Notify the case manager immediately when the client enters a hospital, or moves to another setting;
- (7) Notify the case manager immediately in the event of the client's death;
- (8) Notify the department or AAA immediately when unable to staff/serve the client;
- (9) Notify the department or AAA when the home care agency will no longer provide services and the home care agency must:
 - (a) Give at least two weeks' notice; and
 - (b) Notify the client or the client's representative in writing;and
 - (c) Notify the case manager.
- (10) Comply with time keeping requirements, and keep accurate time sheets of authorized/paid hours that are accessible to the appropriate department or designee staff; under WAC 388-106-0130, the department does not pay for (~~shared benefit(s) or~~) voluntary informal support that may be provided to the client by anyone, including providers; and
- (11) Comply with all applicable laws and regulations.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0516, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 18-16-004, filed 7/19/18, effective 8/19/18)

WAC 388-106-0010 What definitions apply to this chapter? "Ability to make self understood" means how you made yourself understood to those closest to you in the last seven days before the assessment; expressed or communicated requests, needs, opinions, urgent problems and social conversations, whether in speech, writing, sign language, symbols, or a combination of these including use of an alternative communication method:

~~((a))~~ (1) Understood: You expressed ideas clearly;

~~((b))~~ (2) Usually understood: You had difficulty finding the right words or finishing thoughts, resulting in delayed responses, or you required some prompting to make self understood;

~~((c))~~ (3) Sometimes understood: You had limited ability, but were able to express concrete requests regarding at least basic needs (e.g. food, drink, sleep, toilet);

~~((d))~~ (4) Rarely/never understood: At best, understanding was limited to caregiver's interpretation of client specific sounds or body language (e.g. indicated presence of pain or need to toilet);

~~((e))~~ (5) Child under three: Proficiency is not expected of a child under three and a child under three would require assistance with communication with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130.

"Activities of daily living (ADL)" means the following:

~~((a))~~ (1) Bathing: How you took a full-body bath/shower, sponge bath, and transferred in/out of tub/shower.

~~((b))~~ (2) Bed mobility: How you moved to and from a lying position turned side to side, and positioned your body while in bed, in a recliner, or other type of furniture you slept in.

~~((c))~~ (3) Dressing: How you put on, fastened, and took off all items of clothing, including donning/removing prosthesis, splints, either braces or orthotics, or both.

~~((d))~~ (4) Eating: How you ate and drank, regardless of skill. Eating includes any method of receiving nutrition, e.g., by mouth, tube or through a vein. Eating does not include any set up help you received, e.g. bringing food to you or cutting it up in smaller pieces.

~~((e))~~ (5) Locomotion in room and immediate living environment: How you moved between locations in your room and immediate living environment. If you are in a wheelchair, locomotion includes how self-sufficient you were once in your wheelchair.

~~((f))~~ (6) Locomotion outside room: How you moved to and returned from your immediate living environment, outdoors, and more distant areas. If you are living in a contracted assisted living, enhanced services facility, adult residential care, enhanced adult residential care, enhanced adult residential care-specialized dementia care facility or nursing facility (NF), this includes areas set aside for dining, activities, etc. If you are living in your own home or in an adult family home, locomotion outside immediate living environment including outdoors, includes how you moved to and returned from a patio or porch, backyard, to the mailbox, to see the next-door neighbor, or when accessing your community.

~~((g))~~ (7) Walk in room, hallway and rest of immediate living environment: How you walked between locations in your room and immediate living environment.

~~((h))~~ (8) Medication management: Describes the amount of assistance, if any, required to receive prescription medications, over the counter medications, or herbal supplements.

~~((i))~~ (9) Toilet use: How you eliminated or toileted, used a commode, bedpan, or urinal, transferred on/off toilet, cleansed, changed pads, managed ostomy or catheter, and adjusted clothes. Toilet use does not include emptying a bedpan, commode, ostomy or catheter bag. This type of set up assistance is considered under the definition of support provided.

~~((j))~~ (10) Transfer: How you moved between surfaces, e.g., to/from bed, chair, wheelchair, standing position. Transfer does not include how you moved to/from the bath, toilet, or got in/out of a vehicle.

~~((k))~~ (11) Personal hygiene: How you maintain personal hygiene tasks, such as combing hair, brushing teeth, shaving, applying makeup, washing/drying face, hands (including nail care), and perineum, including menses care. Personal hygiene does not include hygiene in baths and showers.

"Age appropriate" proficiency in the identified task is not expected of a child that age and a child that age would require assistance with the task with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130 for the specific ages.

"Aged person" means a person sixty-five years of age or older.

"Agency provider" means a licensed home care agency or a licensed home health agency having a contract to provide long-term care personal care services to you in your own home.

"Alternative benefit plan" means the scope of services described in WAC 182-501-0060 available to persons eligible to receive health care coverage under the Washington apple health modified adjusted gross income (MAGI)-based adult coverage described in WAC 182-505-0250.

"Application" means a written request for medical assistance or long-term care services submitted to the department by the applicant, the applicant's authorized representative, or, if the applicant is incompetent or incapacitated, someone acting responsibly for the applicant. The applicant must submit the request on a form prescribed by the department.

"Assessment details" means a printed record of information that the department entered into the CARE assessment describing the assistance you may need.

"Assessment or reassessment" means an inventory and evaluation of strengths and limitations based on an in-person interview in your own home or another location that is convenient to you, using the department's comprehensive assessment reporting evaluation (CARE) tool.

"Assistance available" means the amount of assistance that will be available for a task if status is coded:

~~((a))~~ Partially met due to availability of other informal support ~~(; or~~

~~(b) Shared benefit~~). The department determines the amount of the assistance available using one of four categories:

~~((i))~~ (1) Less than one-fourth of the time;

~~((ii))~~ (2) One-fourth to one-half of the time;

~~((iii))~~ (3) Over one-half of the time to three-fourths of the time; or

~~((iv))~~ (4) Over three-fourths but not all of the time.

"Assistance with body care" means you received or need assistance with:

- ((a)) (1) Application of ointment or lotions;
- ((b)) (2) Trimming of toenails;
- ((c)) (3) Dry bandage changes; or
- ((d)) (4) Passive range of motion treatment.

"Authorization" means an official approval of a departmental action, for example, a determination of client eligibility for service or payment for a client's long-term care services.

"Blind person" means a person determined blind as described under WAC 182-500-0015 by the division of disability determination services of the medical assistance administration.

"Body care" means how you perform with passive range of motion, applications of dressings and ointments or lotions to the body, and pedicure to trim toenails and apply lotion to feet. In adult family homes, enhanced services facilities, contracted assisted living, enhanced adult residential care, and enhanced adult residential care-specialized dementia care facilities, dressing changes using clean technique and topical ointments must be performed by a licensed nurse or through nurse delegation in accordance with chapter 246-840 WAC. Body care excludes:

- ((a)) (1) Foot care if you are diabetic or have poor circulation; or
- ((b)) (2) Changing bandages or dressings when sterile procedures are required.

"Categorically needy" means the status of a person who is eligible for medical care under Title XIX of the Social Security Act. See WAC 182-512-0010 and chapter 182-513 WAC.

"Child" means an individual less than eighteen years of age.

"Health action plan" means an individual plan, which identifies health-related problems, interventions and goals.

"Client" means an applicant for service or a person currently receiving services from the department.

"Current" means a behavior occurred within seven days of the CARE assessment date, including the day of the assessment. Behaviors that the department designates as current must include information about:

- ((a)) (1) Whether the behavior is easily altered or not easily altered; and
- ((b)) (2) The frequency of the behavior.

"Decision making" means your ability (verbally or nonverbally) to make, and actual performance in making, everyday decisions about tasks of activities of daily living in the last seven days before the assessment. The department codes your ability to make decisions as one of the following:

- ((a)) (1) Independent: Decisions about your daily routine were consistent and organized; reflecting your lifestyle, choices, culture, and values.
- ((b)) (2) Difficulty in new situations: You had an organized daily routine, were able to make decisions in familiar situations, but experienced some difficulty in decision making when faced with new tasks or situations.
- ((c)) (3) Poor decisions; unaware of consequences: Your decisions were poor and you required reminders, cues and supervision in planning, organizing and correcting daily routines. You attempted to make decisions, although poorly.
- ((d)) (4) No or few decisions: Decision making was severely impaired; you never/rarely made decisions.

~~((e))~~ (5) Child under twelve: Proficiency in decision making is not expected of a child under twelve and a child under twelve would require assistance with decision making with or without a functional disability. Refer to the developmental milestones table in WAC 388-106-0130.

"Department" means the state department of social and health services, aging and long-term support administration, developmental disabilities administration, or its designee.

"Designee" means area agency on aging.

"Developmental milestones table" is a chart showing the age range for which proficiency in the identified task is not expected of a child and assistance with the task would be required whether or not the child has a functional disability.

"Difficulty" means how difficult it is or would be for you to perform an instrumental activity of daily living (IADL). This is assessed as:

~~((a))~~ (1) No difficulty in performing the IADL;

~~((b))~~ (2) Some difficulty in performing the IADL (e.g., you need some help, are very slow, or fatigue easily); or

~~((e))~~ (3) Great difficulty in performing the IADL (e.g., little or no involvement in the IADL is possible).

"Disability" is described under WAC 182-500-0025.

"Disabling condition" means you have a medical condition which prevents you from self performance of personal care tasks without assistance.

"Estate recovery" means the department's process of recouping the cost of medicaid and long-term care benefit payments from the estate of the deceased client. See chapter 182-527 WAC.

"Home health agency" means a licensed:

~~((a))~~ (1) Agency or organization certified under medicare to provide comprehensive health care on a part-time or intermittent basis to a patient in the patient's place of residence and reimbursed through the use of the client's medical identification card; or

~~((b))~~ (2) Home health agency, certified or not certified under medicare, contracted and authorized to provide:

~~((i))~~ (a) Private duty nursing; or

~~((ii))~~ (b) Skilled nursing services under an approved medicaid waiver program.

"Income" means income as defined under WAC 182-509-0001.

"Individual provider" under RCW 74.39A.240 means a person contracted with the department to provide personal care or respite services.

"Informal support" means:

~~((a))~~ (1) Assistance that will be provided with the client's agreement as expressed in the assessment process without home and community based services funding. The person providing the informal support must be age 18 or older. Sources of informal support include but are not limited to: family members, friends, housemates/roommates, neighbors, school, childcare, after school activities, church, and community programs.

(2) The department will not consider an individual provider to be a source of informal support unless:

(a) The individual provider is also a family member or a household member who had a relationship with the client that existed before the individual provider entered into a contract with the department; and

(b) The individual provider signs a written agreement that states:

(i) The individual provider understands that the provision of unpaid informal support is voluntary;

(ii) The individual provider understands that if they decline to provide unpaid informal support that the client's benefit could increase and that the client could choose to assign those increased hours to the individual provider;

(iii) If there is a collective bargaining representative that represents the individual provider for the purposes of collective bargaining, the individual provider is informed as to the collective bargaining representative's opinion, if any, about whether the individual provider should agree to provide unpaid informal supports;

(iv) The individual provider understands that the individual provider may stop providing unpaid informal support at any time by informing the case manager that the individual provider wishes to stop providing unpaid informal support; and

(v) The individual provider understands that if the individual provider is a family member or had a household relationship with the client prior to becoming the client's individual provider that they may provide unpaid care to a client above and beyond the individual provider authorization regardless of whether they are providing informal support.

~~((b))~~ (3) Adult day health is coded in the assessment as a source of informal support, regardless of funding source;

~~((e))~~ (4) Informal support does not include ~~((shared benefit or))~~ age appropriate functioning.

"Institution" means medical facilities, nursing facilities, and institutions for the intellectually disabled. It does not include correctional institutions. See medical institutions in WAC 182-500-0050.

"Instrumental activities of daily living (IADL)" means routine activities performed around the home or in the community in thirty days prior to the assessment and includes the following:

~~((a))~~ (1) Meal preparation: How meals were prepared (e.g., planning meals, cooking, assembling ingredients, setting out food, utensils, and cleaning up after meals). NOTE: The department will not authorize this IADL to only plan meals or clean up after meals. You must need assistance with other tasks of meal preparation.

~~((b))~~ (2) Ordinary housework: How ordinary work around the house was performed (e.g., doing dishes, dusting, making bed, cleaning the bathroom, tidying up, laundry).

~~((e))~~ (3) Essential shopping: How shopping was completed to meet your health and nutritional needs (e.g., selecting items). Shopping is limited to brief, occasional trips in the local area to shop for food, medical necessities and household items required specifically for your health, maintenance or well-being. This includes shopping with or for you.

~~((d))~~ (4) Wood supply: How wood or pellets were supplied (e.g., splitting, stacking, or carrying wood or pellets) when you use wood, pellets, or a combination of both, as the only source of fuel for heating and/or cooking.

~~((e))~~ (5) Travel to medical services: How you traveled by vehicle to a physician's office or clinic in the local area to obtain medical diagnosis or treatment. This travel includes driving vehicle yourself or traveling as a passenger in a car, bus, or taxi.

~~((f))~~ (6) Managing finances: How bills were paid, checkbook is balanced, household expenses are managed. The department cannot pay for any assistance with managing finances.

~~((g))~~ (7) Telephone use: How telephone calls were made or received on your behalf (with assistive devices such as large numbers on telephone, amplification as needed).

"Long-term care services" means the services administered directly or through contract by the department and identified in WAC 388-106-0015.

"MAGI" means modified adjusted gross income. It is a methodology used to determine eligibility for Washington apple health (medicaid), and is defined in WAC 182-500-0070.

"Medicaid" is defined under WAC 182-500-0070.

"Medically necessary" is defined under WAC 182-500-0070.

"Medically needy (MN)" means the status of a person who is eligible for a federally matched medical program under Title XIX of the Social Security Act, who, but for income above the categorically needy level, would be eligible as categorically needy. Effective January 1, 1996, an AFDC-related adult is not eligible for MN.

"New Freedom consumer directed services (NFCDS)" means a mix of services and supports to meet needs identified in your assessment and identified in a New Freedom spending plan, within the limits of the individual budget, that provide you with flexibility to plan, select, and direct the purchase of goods and services to meet identified needs. Participants have a meaningful leadership role in:

~~((a))~~ (1) The design, delivery and evaluation of services and supports;

~~((b))~~ (2) Exercising control of decisions and resources, and making their own decisions about health and well-being;

~~((c))~~ (3) Determining how to meet their own needs;

~~((d))~~ (4) Determining how and by whom these needs should be met; and

~~((e))~~ (5) Monitoring the quality of services received.

"New Freedom consumer directed services (NFCDS) participant" means a participant who is an applicant for or currently receiving services under the NFCDS waiver.

"New Freedom spending plan (NFSP)" means the plan developed by you, as a New Freedom participant, within the limits of an individual budget, that details your choices to purchase specific NFCDS and provides required federal medicaid documentation.

"Own home" means your present or intended place of residence:

~~((a))~~ (1) In a building that you rent and the rental is not contingent upon the purchase of personal care services as defined in this section;

~~((b))~~ (2) In a building that you own;

~~((c))~~ (3) In a relative's established residence; or

~~((d))~~ (4) In the home of another where rent is not charged and residence is not contingent upon the purchase of personal care services as defined in this section.

"Past" means the behavior occurred from eight days to five years of the assessment date. For behaviors indicated as past, the department determines whether the behavior is addressed with current interventions or whether no interventions are in place.

"Personal aide" is defined in RCW 74.39.007.

"Personal care services" means physical or verbal assistance with activities of daily living (ADL) and instrumental activities of daily

living (IADL) due to your functional limitations. Assistance is evaluated with the use of assistive devices.

"Physician" is defined under WAC 182-500-0085.

"Plan of care" means assessment details and service summary generated by CARE.

"Provider or provider of service" means an institution, agency, or person:

((a)) (1) Having a signed department contract to provide long-term care client services; and

((b)) (2) Qualified and eligible to receive department payment.

"Reasonable cost" means a cost for a service or item that is consistent with the market standards for comparable services or items.

"Representative" means a person who you have chosen, or has been appointed by a court, whose primary duty is to act on your behalf to direct your service budget to meet your identified health, safety, and welfare needs.

"Residential facility" means a licensed adult family home under department contract; a licensed enhanced services facility under department contract; or licensed assisted living facility under department contract to provide assisted living, adult residential care or enhanced adult residential care.

"Self-performance for ADLs" means what you actually did in the last seven days before your assessment, not what you might be capable of doing. Self-performance for ADLs is based on your level of performance that occurred three or more times in the seven-day period. Scoring of self-performance for ADLs does not include physical assistance that occurred less than three times in the seven day look back period, or set-up help. Your self performance level is scored as:

((a)) (1) Independent, if you received no help or oversight, or if you needed help or oversight only once or twice;

((b)) (2) Supervision, if you received oversight (monitoring or standby), encouragement, or cueing three or more times;

((c)) (3) Limited assistance, if you were highly involved in the ADL and received assistance that involved physical, nonweight bearing contact between you and your caregiver, or guided maneuvering of limbs on three or more occasions.

((d)) (4) Extensive assistance, if you performed part of the ADL, but on three or more occasions, you needed weight bearing support or you received full performance of a subtask of the ADL, but not all, of the ADL.

((e)) (5) Total dependence, if you received full caregiver performance every time the ADL and all subtasks are completed during the entire seven-day period from others. Total dependence means complete nonparticipation by you in all aspects of the ADL; or

((f)) (6) ADL did not occur, if you or others did not perform an ADL over the last seven days before your assessment. The ADL may not have occurred because:

((i)) (a) You were not able (e.g., walking, if paralyzed);

((ii)) (b) No provider was available to assist; or

((iii)) (c) You declined assistance with the task.

"Self-administration of medication" means your ability to manage your prescribed and over the counter medications. Your level of ability is coded for the highest level of need and scored as:

((a)) (1) Independent, if you remember to take medications as prescribed and manage your medications without assistance.

((b)) (2) Assistance required, if you need assistance from a nonlicensed provider to facilitate your self-administration of a pre-

scribed, over the counter, or herbal medication, as defined in chapter 246-888 WAC. Assistance required includes reminding or coaching you, handing you the medication container, opening the container, using an enabler to assist you in getting the medication into your mouth, alteration of a medication for self-administration, and placing the medication in your hand. This does not include assistance with intravenous or injectable medications. You must be aware that you are taking medications.

~~((e))~~ (3) Self-directed medication assistance/administration, if you are an adult with a functional disability who is capable of and who chooses to self-direct your medication assistance/administration as prescribed by your medical professional.

~~((d))~~ (4) Must be administered, if you must have prescription or over the counter medications placed in your mouth or applied or instilled to your skin or mucus membrane. Administration must either be performed by a licensed professional or delegated by a registered nurse to a qualified caregiver (per chapter 246-840 WAC). Administration may also be performed by a family member or unpaid caregiver in in-home settings or in residential settings if facility licensing regulations allow. Intravenous or injectable medications may never be delegated except for insulin injections.

"Self-performance for bathing" means what you actually did in the last seven days before your assessment, not what you might be capable of doing or how well you performed the ADL of bathing. Self-performance for bathing is based on your level of performance that occurred on at least one or more occasions in the seven-day period. Scoring of self-performance for bathing does not include physical assistance that did not occur in the seven day look back period, or set-up help. Your self performance level is scored as:

~~((a))~~ (1) Independent, if you received no help or oversight to complete the ADL of bathing.

~~((b))~~ (2) Supervision, if in order to bathe you received oversight (monitoring or standby), encouragement, or cueing.

~~((e))~~ (3) Physical help transfer only, if in order to bathe you had help to transfer only.

~~((d))~~ (4) Physical help, if in order to bathe you had hands on assistance with bathing, but you did not receive full caregiver performance of the ADL of bathing.

~~((e))~~ (5) Total dependence, if in order to bathe you received full caregiver performance of the ADL of bathing every time. Total dependence means complete physical nonparticipation by you in all aspects of bathing; or the ADL:

~~((f))~~ (6) Did not occur, if you or others did not perform the ADL of bathing over the last seven days before your assessment. The ADL of bathing may not have occurred because:

~~((i))~~ (a) You were not able (e.g., you may be paralyzed);

~~((ii))~~ (b) No provider was available to assist; or

~~((iii))~~ (c) You declined because you chose not to perform the ADL.

"Self-performance for IADLs" means what you actually did in the last thirty days before the assessment, not what you might be capable of doing or how well you performed the ADL. Scoring is based on the level of performance that occurred at least one time in the thirty-day period. Your self performance is scored as:

~~((a))~~ (1) Independent, if you received no help, set-up help, or supervision;

~~((b))~~ (2) Assistance, if you received any help with the task, including cueing or monitoring in the last thirty days;

~~((e))~~ (3) Total assistance, if you are a child and needed the ADL fully performed by others and you are functioning outside of typical developmental milestones; or

~~((d))~~ (4) ADL did not occur, if you or others did not perform the ADL in the last thirty days before the assessment.

"Service summary" is CARE information which includes: Contacts (e.g. emergency contact), services the client is eligible for, number of hours or residential rates, personal care tasks, the list of formal and informal providers and what tasks they will provide, a provider schedule, identified referrals/information, and dates and agreement to the outlined services.

~~("Shared benefit" means:~~

~~(a) A client and their paid caregiver both share in the benefit of an IADL task being performed; or~~

~~(b) Two or more clients in a multi-client household benefit from the same IADL task(s) being performed.)~~

"SSI-related" is defined under WAC 182-512-0050.

"Status" means the level of assistance:

~~((a))~~ (1) That will be provided by informal supports; or

~~((b) That will be provided by a care provider who may share in the benefit of an IADL task being performed for a client or for two or more clients in a multi-client household; or~~

~~(e))~~ (2) That will be provided to a child primarily due to his or her age.

(3) The department determines the status of each ADL or IADL and codes the status as follows:

(a) Met, which means the ADL or IADL will be fully provided by an informal support;

(b) Unmet, which means an informal support will not be available to provide assistance with the identified ADL or IADL;

(c) Partially met, which means an informal support will be available to provide some assistance, but not all, with the identified ADL or IADL;

~~(d) ((Shared benefit, which means:~~

~~(i) A client and their paid caregiver will both share in the benefit of an IADL task being performed; or~~

~~(ii) Two or more clients in a multi-client household will benefit from the same IADL task(s) being performed.~~

~~(e))~~ Age appropriate or child under (age), means proficiency in the identified task is not expected of a child that age and a child that age would require assistance with the task with or without a functional disability. The department presumes children have a responsible adult(s) in their life to provide assistance with personal care tasks. Refer to the developmental milestones table in WAC 388-106-0130; or

~~((f))~~ (e) Client declines, which means you will not want assistance with the task.

"Supplemental security income (SSI)" means the federal program as described under WAC 182-500-0100.

"Support provided" means the highest level of support provided (to you) by others in the last seven days before the assessment, even if that level of support occurred only once. The department determines support provided as follows:

~~((a))~~ (1) No set-up or physical help provided by others;

((b)) (2) Set-up help only provided, which is the type of help characterized by providing you with articles, devices, or preparation necessary for greater independence in performance of the ADL. (For example, set-up help includes but is not limited to giving or holding out an item or cutting up prepared food);

((e)) (3) One-person physical assist provided;

((d)) (4) Two- or more person physical assist provided; or

((e)) (5) ADL did not occur during entire seven-day period.

"Task" means a component of an activity of daily living. Several tasks may be associated to a single activity of daily living.

"You/your" means the client.

[Statutory Authority: RCW 74.08.090, WSR 18-16-004, § 388-106-0010, filed 7/19/18, effective 8/19/18. Statutory Authority: RCW 74.08.090 and 74.09.520, WSR 15-20-054, § 388-106-0010, filed 9/30/15, effective 10/31/15; WSR 14-13-060, § 388-106-0010, filed 6/12/14, effective 7/13/14; WSR 14-04-097, § 388-106-0010, filed 2/4/14, effective 3/7/14; WSR 11-22-043, § 388-106-0010, filed 10/27/11, effective 11/27/11; WSR 10-08-074, § 388-106-0010, filed 4/6/10, effective 5/7/10. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.030. WSR 06-16-035, § 388-106-0010, filed 7/25/06, effective 8/25/06. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.010 and 74.39A.020. WSR 06-05-022, § 388-106-0010, filed 2/6/06, effective 3/9/06. Statutory Authority: RCW 74.08.090, 74.09.520, WSR 05-11-082, § 388-106-0010, filed 5/17/05, effective 6/17/05.]

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

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

WAC 388-106-0055 What is the purpose of an assessment? The purpose of an assessment is to:

- (1) Determine eligibility for long-term care programs;
- (2) Identify your strengths, limitations, goals, and preferences;
- (3) Evaluate your living situation and environment;
- (4) Evaluate your physical health, functional, and cognitive abilities;
- (5) Determine availability of informal supports(~~(, shared benefits,)~~) and other nondepartment paid resources;
- (6) Determine need for intervention;
- (7) Determine need for case management activities;
- (8) Determine your classification group that will set your payment rate for residential care or number of hours of in-home care;
- (9) Determine need for referrals; and
- (10) Develop a plan of care, as defined in WAC 388-106-0010.
- (11) In the case of New Freedom consumer directed services, the purpose of an assessment is to determine functional eligibility and for the participant to develop the New Freedom spending plan, as defined in WAC 388-106-0010.

[Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.400 and 42 C.F.R. § 441.500-590. WSR 16-04-020, § 388-106-0055, filed 1/22/16, effective 2/22/16. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.030. WSR 06-16-035, § 388-106-0055, filed 7/25/06, effective

8/25/06. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 05-11-082, § 388-106-0055, filed 5/17/05, effective 6/17/05.]

AMENDATORY SECTION (Amending WSR 15-20-054, filed 9/30/15, effective 10/31/15)

WAC 388-106-0130 How does the department determine the number of hours I may receive for in-home care? (1) The department assigns a base number of hours to each classification group as described in WAC 388-106-0125.

(2) The department will adjust base hours to account for informal supports (~~(, shared benefit,)~~) and age appropriate functioning (as those terms are defined in WAC 388-106-0010), and other paid services that meet some of an individual's need for personal care services:

(a) The CARE tool determines the adjustment for informal supports (~~(, shared benefit,)~~) and age appropriate functioning. A numeric value is assigned to the status and/or assistance available coding for ADLs and IADLs based on the table below. The base hours assigned to each classification group are adjusted by the numeric value in subsection (b) below.

Meds	Status	Assistance Available	Numeric Value	
Medication Management The rules to the right apply for all Self Performance codes except independent which is not counted as a qualifying ADL	Unmet	N/A	1	
	Met	N/A	0	
	Decline	N/A	0	
	Age appropriate functioning	N/A	0	
	Partially met	<1/4 time		.9
		1/4 to 1/2 time		.7
		1/2 to 3/4 time		.5
>3/4 time			.3	
Unscheduled ADLs	Status	Assistance Available	Value	
Bed mobility, transfer, walk in room, eating, toilet use The rules to the right apply for all Self Performance codes except: Did not occur/client not able and Did not occur/no provider = 1; Did not occur/client declined and independent are not counted as qualifying ADLs	Unmet	N/A	1	
	Met	N/A	0	
	Decline	N/A	0	
	Age appropriate functioning	N/A	0	
	Partially met	<1/4 time		.9
		1/4 to 1/2 time		.7
		1/2 to 3/4 time		.5
>3/4 time			.3	

Scheduled ADLs	Status	Assistance Available	Value
Dressing, personal hygiene, bathing The rules to the right apply for all Self Performance codes except: Did not occur/client not able and Did not occur/no provider = 1; Did not occur/client declined and independent which are not counted as qualifying ADLs	Unmet	N/A	1
	Met	N/A	0
	Decline	N/A	0
	Age appropriate functioning	N/A	0
	Partially met	<1/4 time	.75
		1/4 to 1/2 time	.55
		1/2 to 3/4 time	.35
>3/4 time		.15	
IADLs	Status	Assistance Available	Value
Meal preparation, Ordinary housework, Essential shopping The rules to the right apply for all Self Performance codes except independent is not counted as a qualifying IADL	Unmet	N/A	1
	Met	N/A	0
	Decline	N/A	0
	Child under (age) (see subsection (7))	N/A	0
	Partially met ((or Shared benefit))	<1/4 time	.3
		1/4 to 1/2 time	.2
		1/2 to 3/4 time	.1
>3/4 time		.05	
IADLs	Status	Assistance Available	Value
Travel to medical The rules to the right apply for all Self Performance codes except independent which is not counted as a qualifying IADL	Unmet	N/A	1
	Met	N/A	0
	Decline	N/A	0
	Child under (age) (see subsection (7))	N/A	0
	Partially met	<1/4 time	.9
		1/4 to 1/2 time	.7
		1/2 to 3/4 time	.5
>3/4 time		.3	

Key: > means greater than; < means less than

(b) To determine the amount adjusted for informal support (~~(~~shared benefit and/or~~)~~ or age appropriate functioning, the numeric values are totaled and divided by the number of qualifying ADLs and IADLs needs. The result is value A. Value A is then subtracted from one. This is value B. Value B is divided by three. This is value C. Value A and Value C are summed. This is value D. Value D is multiplied by the "base hours" assigned to your classification group and the result is the number of adjusted in-home hours. Values are rounded to the nearest hundredths (e.g., .862 is rounded to .86).

(3) Effective July 1, 2012, after adjustments are made to your base hours, as described in subsection (2), the department may add on hours based on off-site laundry, living more than forty-five minutes from essential services, and wood supply, as follows:

Condition	Status	Assistance Available	Add On Hours	
Offsite laundry facilities, which means the client does not have facilities in own home and the caregiver is not available to perform any other personal or household tasks while laundry is done. The status used for the rules to the right is for housekeeping.	Unmet	N/A	8	
	Met	N/A	0	
	Declines	N/A	0	
	Child under (age) (see subsection (7))	N/A	0	
	Partially met ((or Shared benefit)):	<1/4 time		8
		between 1/4 to 1/2 time		6
		between 1/2 to 3/4 time		4
>3/4 time			2	
Client is >45 minutes from essential services (which means he/she lives more than 45 minutes one-way from a full-service market). The status used for the rules to the right is essential shopping.	Unmet	N/A	5	
	Met	N/A	0	
	Declines	N/A	0	
	Child under (age) (see subsection (7))	N/A	0	
	Partially met ((or Shared benefit))	<1/4 time		5
		between 1/4 to 1/2 time		4
		between 1/2 to 3/4 time		3
>3/4 time			2	
Wood supply used as sole source of heat.	Unmet	N/A	8	
	Met	N/A	0	
	Declines	N/A	0	
	Child under (age) (see subsection (7))	N/A	0	
	Partially met ((or Shared benefit))	<1/4 time		8
		between 1/4 to 1/2 time		6
		between 1/2 to 3/4 time		4
>3/4 time			2	

(4) In the case of New Freedom consumer directed services (NFCDS), the department determines the monthly budget available as described in WAC 388-106-1445.

(5) The result of adjustments under subsections (2) and (3) is the maximum number of hours that can be used to develop your plan of care. The department must take into account cost effectiveness, client health and safety, and program limits in determining how hours can be used to address your identified needs. In the case of New Freedom consumer directed services (NFCDS), a New Freedom spending plan (NFSP) is developed in place of a plan of care.

(6) If you are eligible, your hours may be used to authorize the following services:

(a) Personal care services from a home care agency provider and/or an individual provider.

(b) Home delivered meals (i.e. a half hour from the available hours for each meal authorized) per WAC 388-106-0805.

(c) Adult day care (i.e. a half hour from the available hours for each hour of day care authorized) per WAC 388-106-0805.

(d) A home health aide (i.e., one hour from the available hours for each hour of home health aide authorized) per WAC 388-106-0300.

(e) A private duty nurse (PDN) if you are eligible per WAC 388-106-1010 or 182-551-3000 (i.e. one hour from the available hours for each hour of PDN authorized).

(f) The purchase of New Freedom consumer directed services (NFCDS).

(7) If you are a child applying for personal care services:

(a) The department presumes that children have legally responsible parents or other responsible adults who provide informal support for the child's ADLs, IADLs and other needs. The department will not provide services or supports that are within the range of activities that a legally responsible parent or other responsible adult would ordinarily perform on behalf of a child of the same age who does not have a disability or chronic illness.

(b) The department will complete a CARE assessment and use the developmental milestones tables below when assessing your ability to perform personal care tasks.

(c) Your status will be coded as age appropriate for ADLs when your self performance is at a level expected for persons in your assessed age range, as indicated by the developmental milestones table in subpart (e), unless the circumstances in subpart (d) below apply.

(d) The department will code status as other than age appropriate for an ADL, despite your self performance falling within the developmental age range for the ADL on the developmental milestones table in subpart (e) below, if the department determines during your assessment that your level of functioning is related to your disability and not primarily due to your age and the frequency and/or the duration of assistance required for a personal care task is not typical for a person of your age.

(e)

Developmental Milestones for Activities of Daily Living (ADLs)		
ADL	Self-Performance	Developmental Age Range
Medication Management	Independent Self-Directed Assistance Required	Child under 18 years of age
	Must Be Administered	Child under 12 years of age
Locomotion in Room	Independent Supervision Limited Extensive	Child under 4 years of age
	Total	Child under 13 months of age
Locomotion Outside Room	Independent Supervision	Child under 6 years of age
	Limited Extensive	Child under 4 years of age
	Total	Child under 25 months of age
Walk in Room	Independent Supervision Limited Extensive	Child under 4 years of age
	Total	Child under 19 months of age
Bed Mobility	Independent Supervision Limited	Child under 37 months of age
	Extensive	Child under 25 months of age
	Total	Child under 19 months of age
Transfers	Independent Supervision Limited Extensive	Child under 3 years of age
	Total	Child under 19 months of age
Toilet Use	Independent Supervision Limited Extensive	Child under 7 years of age
	Total	Child under 37 months of age

Developmental Milestones for Activities of Daily Living (ADLs)		
ADL	Self-Performance	Developmental Age Range
Eating	Independent Supervision Limited Extensive	Child under 3 years of age
	Total	Child under 13 months of age
Bathing	Independent Supervision	Child under 12 years of age
	Physical help/ Transfer only	Child under 5 years of age
	Physical help/part of bathing	Child under 6 years of age
	Total	Child under 37 months of age
Dressing	Independent Supervision	Child under 12 years of age
	Limited	Child under 8 years of age
	Extensive	Child under 7 years of age
	Total	Child under 25 months of age
Personal Hygiene	Independent Supervision	Child under 12 years of age
	Limited Extensive	Child under 7 years of age
	Total	Child under 37 months of age

(f) For IADLs, the department presumes that children typically have legally responsible parents or other responsible adults to assist with IADLs. Status will be coded as "child under (age)" the age indicated by the developmental milestones table for IADLs in subpart (h) unless the circumstances in subpart (g) below apply. (For example, a sixteen year old child coded as supervision in self-performance for telephone would be coded "child under eighteen.")

(g) If the department determines during your assessment that the frequency and/or the duration of assistance required is not typical for a person of your age due to your disability or your level of functioning, the department will code status as other than described in subpart (h) for an IADL.

(h)

Developmental Milestones for Instrumental Activities of Daily Living			
IADL	Self-Performance	Developmental Age Range	
Finances Telephone Wood Supply	Independent Supervision Limited Extensive Total	Child under 18	
	Transportation	Independent Supervision Limited Extensive	Child under 18
		Total	Child under 16
		Essential Shopping Housework Meal Prep	Independent Supervision Limited Extensive
Total	Child under 12		

(i) The department presumes that children have legally responsible parents or other responsible adults who provide support for com-

prehension, decision-making, memory and continence issues. These items will be coded as indicated by the additional developmental milestones table in subpart (k) unless the circumstances in subpart (j) below apply.

(j) If the department determines during your assessment that due to your disability, the support you are provided for comprehension, decision making, memory and continence issues is substantially greater than is typical for a person of your age, the department will code status as other than described in subpart (k) below.

(k)

Additional Developmental Milestones coding within CARE			
Name of CARE panel	Question in CARE Panel	Developmental Milestone coding selection	Developmental Age Range
Speech/Hearing: Comprehension	"By others client is"	Child under 3	Child under 3
Psych Social: MMSE	"Can MMSE be administered?"	= No	Child under 18
Psych Social: Memory/ Short Term	"Recent memory"	Child under 12	Child under 12
Psych Social: Memory/ Long Term	"Long Term memory"	Child under 12	Child under 12
Psych Social: Depression	"Interview"	Unable to obtain	Child under 12
Psych Social: Decision Making	"Rate how client makes decision"	Child under 12	Child under 12
Bladder/Bowel:	"Bladder/Bowel Control" is which of the following:		
	Continent Usually Continent Occasionally Incontinent	Age appropriate	Child under 12
	Frequently Incontinent	Age appropriate	Child under 9
	Incontinent all or most of the time	Age appropriate	Child under 6
Bladder/Bowel:	"Appliance and programs"	Potty Training	Child under 4

(8) If you are a child applying for personal care services and your status for ADLs and IADLs is not coded per the developmental age range indicated on the milestones tables under subsection (7), the department will assess for any informal supports (~~(or shared benefit)~~) available to assist you with each ADL and IADL. The department will presume that children have legally responsible parents or other responsible adults who provide informal support to them.

(a) The department will code status for an ADL or IADL as met if your assessment shows that your need for assistance with a personal care task is fully met by informal supports.

(b) Informal supports for school-age children include supports actually available through a school district, regardless of whether you take advantage of those available supports.

(c) When you are living with your legally responsible parent(s), the department will presume that you have informal supports available to assist you with your ADL and IADLs over three-fourths but not all the time. Legally responsible parents include natural parents, step parents, and adoptive parents. Generally, a legally responsible parent will not be considered unavailable to meet your personal care needs simply due to other obligations such as work or additional children because such obligations do not decrease the parent's legal responsibility to care for you regardless of your disabilities. However, the department will consider factors that cannot reasonably be avoided and which prevent a legally responsible parent from providing for your

personal care needs when determining the amount of informal support available to you. You may rebut the department's presumption by providing specific information during your assessment to indicate why you do not have informal supports available at least three-fourths of time to assist you with a particular ADL or IADL.

[Statutory Authority: RCW 74.08.090 and 74.09.520. WSR 15-20-054, § 388-106-0130, filed 9/30/15, effective 10/31/15; WSR 14-04-097, § 388-106-0130, filed 2/4/14, effective 3/7/14. Statutory Authority: RCW 74.08.090, 74.09.520, and 2010 c 37. WSR 11-11-024, § 388-106-0130, filed 5/10/11, effective 6/10/11. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 08-23-011, § 388-106-0130, filed 11/6/08, effective 12/7/08; WSR 08-03-111, § 388-106-0130, filed 1/22/08, effective 2/22/08. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.030. WSR 06-16-035, § 388-106-0130, filed 7/25/06, effective 8/25/06. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.010 and 74.39A.020. WSR 06-05-022, § 388-106-0130, filed 2/6/06, effective 3/9/06. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 05-11-082, § 388-106-0130, filed 5/17/05, effective 6/17/05.]