

**WSR 21-07-043
EMERGENCY RULES
DEPARTMENT OF**

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)
[Filed March 11, 2021, 8:29 a.m., effective March 12, 2021]

Effective Date of Rule: March 12, 2021.

Purpose: In light of the public health emergency, the Centers for Medicare and Medicaid Services waived rules requiring in-person assessments. In addition, this change clarifies instances in which in-person interviews are not required. Therefore, the department is amending WAC 388-106-0050 What is an assessment?

Citation of Rules Affected by this Order: Amending WAC 388-106-0050.

Statutory Authority for Adoption: RCW 74.09.520.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: 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. Immediate 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 the Centers for Medicaid and Medicare services. The amendment aligns the state rule with federal requirements. The amendment is remedial and curative and is intended to be applied retroactively.

The department filed a CR-102 Proposed rule making on February 1, 2021, as WSR 21-04-107 for a public hearing on March 9, 2021. This emergency filing allows the emergency rule to remain in effect while the department completes the permanent rule-making process.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.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 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: March 8, 2021.

Katherine I. Vasquez
Rules Coordinator

SHS-4839.1

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) An assessment interview does not need to be in-person under the following circumstances:

(a) 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.]