

WSR 23-07-080
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed March 14, 2023, 2:13 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-22-078.

Title of Rule and Other Identifying Information: WAC 388-829C-131
How does DDA determine the daily rate?, 388-829C-230 What is respite
and where can a companion home client access respite?, 388-829C-232
How does DDA determine the amount of waiver-funded respite a companion
home client may receive?, 388-829C-233 May the client or companion
home provider request additional waiver-funded respite hours?,
388-829C-234 Will DDA reduce the companion home daily rate if addi-
tional waiver-funded respite hours are approved?, 388-829C-235 Will
DDA reduce the companion home daily rate if a client receives state-
funded respite?, 388-829R-005 What definitions apply to this chapter?,
388-829R-011 Who is eligible to receive overnight planned respite
services?, 388-829R-165 What must overnight planned respite services
providers do to plan for and respond to emergencies?, and
388-829R-170 What records must overnight planned respite services pro-
viders keep?

Hearing Location(s): On April 25, 2023, at 10:00 a.m., at Office
Building 2, Department of Social and Health Services (DSHS) Headquar-
ters, 1115 Washington [Street S.E.], Olympia, WA 98504. 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](https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2); or virtual-
ly. Hearings are currently held virtually, see the DSHS website
<https://www.dshs.wa.gov/office-of-the-secretary/filings-and-rules> for
the most current information.

Date of Intended Adoption: Not earlier than April 26, 2023.

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. on April 25, 2023.

Assistance for Persons with Disabilities: Contact DSHS rules con-
sultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service,
email shelley.tencza@dshs.wa.gov, by 5:00 p.m. on April 14, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including
Any Changes in Existing Rules: The purpose of these amendments is to
allow companion home providers to access respite through overnight
planned respite services (OPRS) providers, and planned respite through
residential habilitation centers. Other changes notification to a pri-
mary caregiver when a client receiving OPRS experiences an emergency.

Reasons Supporting Proposal: The proposed amendments will give
companion home providers more options for accessing respite services.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 71A.12.040.

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

Agency Comments or Recommendations, if any, as to Statutory Lan-
guage, Implementation, Enforcement, and Fiscal Matters: Not applica-
ble.

Name of Proponent: Developmental disabilities administration
(DDA)-contracted companion home providers, private.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1500; Implementation and Enforcement: Olga Lutsyk, P.O. Box 45310, Olympia, WA 98504-5310, 360-764-6155.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, phone 360-790-4732, email chantelle.diaz@dshs.wa.gov.

Scope of exemption for rule proposal from Regulatory Fairness Act requirements:

Is not exempt.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. DDA has analyzed the proposed rule amendments and concludes that they will impose no costs on small businesses. While all of the companion home providers affected by chapter 388-829C WAC are small businesses, the providers should incur no costs in complying with these amendments. Although a provider's rate might be reduced if they access additional respite services, it is not compulsory for a provider to access additional respite services. "Additional respite services" means hours above the number of assessed annual hours in a client's DDA assessment.

March 14, 2023
Katherine I. Vasquez
Rules Coordinator

SHS-4969.4

AMENDATORY SECTION (Amending WSR 22-04-073, filed 1/31/22, effective 3/3/22)

WAC 388-829C-131 How does DDA determine the daily rate? (1) A companion home daily rate is based on the client's DDA assessment under chapter 388-828 WAC. The DDA assessment uses an algorithm to convert raw scores into support assessment scales.

(2) The following support assessment scales are used to calculate a companion home daily rate. Each support assessment scale is assigned an acuity level of "none," "low," "medium," or "high" by the DDA assessment algorithm and corresponds to the values below:

Support Assessment Scale	Acuity Levels			
	None	Low	Medium	High
Activities of daily living	0	1	2	3
Behavior	0	1	2	3
Interpersonal support	0	1	2	3
Medical	0	1	2	3
Mobility	0	1	2	3
Protective supervision	0	1	2	3

(3) DDA assigns a behavior score of four if:

- (a) The client has an acuity level of "high" for behavior on the support assessment scale; and
- (b) The client has a behavior support plan that meets requirements under WAC 388-829C-135.
- (4) The sum of the assessment scale scores corresponds to an established daily rate. Rates are set prospectively in accordance with state legislative appropriations and will be adjusted accordingly.
- (5) DSHS publishes companion home daily rates on the office of rates management's website.
- (6) DDA may adjust a companion home daily rate if:
- (a) The sum of the client's support assessment acuity levels changes; or
- (b) DDA approves additional respite hours (~~under WAC 388-829C-234(3)~~).

[Statutory Authority: RCW 71A.12.030 and 71A.12.040. WSR 22-04-073, § 388-829C-131, filed 1/31/22, effective 3/3/22; WSR 20-13-091, § 388-829C-131, filed 6/16/20, effective 7/17/20. Statutory Authority: RCW 71A.12.030, 71A.10.020 and 71A.12.040. WSR 18-22-106, § 388-829C-131, filed 11/6/18, effective 12/7/18.]

AMENDATORY SECTION (Amending WSR 18-22-106, filed 11/6/18, effective 12/7/18)

WAC 388-829C-230 What is respite and where can a companion home client access respite? (1) Respite is (~~short-term, intermittent~~) a scheduled break in caregiving to provide relief for the companion home provider.

(2) (~~The DDA assessment determines a client's annual allocation of respite hours.~~

(3) ~~Respite may be provided in:~~

(a) ~~The companion home where the client lives;~~

(b) ~~A community setting available to an adult, such as a camp, senior center, or adult day care center;~~

(c) ~~An adult family home;~~

(d) ~~An assisted living facility;~~

(e) ~~A group home; or~~

(f) ~~A group training home.~~

(4) ~~To be a qualified respite provider, a person or agency must be contracted with DDA to provide respite services.)~~ A companion home client may receive:

(a) Waiver-funded respite under chapter 388-845 WAC;

(~~(5) A companion home client must not receive~~) (b) Overnight planned respite services under chapter 388-829R WAC((-); and

(~~(6) A companion home client must not receive~~) (c) Planned respite at a residential habilitation center.

[Statutory Authority: RCW 71A.12.030, 71A.10.020 and 71A.12.040. WSR 18-22-106, § 388-829C-230, filed 11/6/18, effective 12/7/18. Statutory Authority: RCW 71A.12.010, 71A.12.030, and Title 71A RCW. WSR 09-20-004, § 388-829C-230, filed 9/24/09, effective 10/25/09. Statutory Authority: RCW 71A.12.30 [71A.12.030] and Title 71A RCW. WSR 07-16-102, § 388-829C-230, filed 7/31/07, effective 9/1/07.]

AMENDATORY SECTION (Amending WSR 18-22-106, filed 11/6/18, effective 12/7/18)

WAC 388-829C-232 How does DDA determine the amount of waiver-funded respite a companion home ((client's annual respite allocation)) client may receive? For waiver-funded respite, DDA determines a companion home client's annual respite allocation by adding the client's companion home services support score under WAC 388-828-6010 to their adjusted companion home services support score under WAC 388-828-6011.

[Statutory Authority: RCW 71A.12.030, 71A.10.020 and 71A.12.040. WSR 18-22-106, § 388-829C-232, filed 11/6/18, effective 12/7/18.]

AMENDATORY SECTION (Amending WSR 18-22-106, filed 11/6/18, effective 12/7/18)

WAC 388-829C-233 May the client or companion home provider request additional waiver-funded respite hours? ((+1)) A client may request waiver-funded respite hours in addition to their annual respite allocation, or the companion home provider may request additional respite on behalf of the client in consultation with the client's legal representative if the client has one.

~~((2) DDA may approve additional respite hours if a temporary and unexpected event occurs in the client or the companion home provider's life, such as an illness or injury.))~~

[Statutory Authority: RCW 71A.12.030, 71A.10.020 and 71A.12.040. WSR 18-22-106, § 388-829C-233, filed 11/6/18, effective 12/7/18.]

AMENDATORY SECTION (Amending WSR 18-22-106, filed 11/6/18, effective 12/7/18)

WAC 388-829C-234 Will DDA reduce the companion home daily rate if additional waiver-funded respite hours are approved? (1) ~~((If DDA approves additional respite hours under WAC 388-829C-233(2), the daily rate remains unchanged.~~

~~(2))~~ If DDA approves additional waiver-funded respite hours ~~((for any reason not under WAC 388-829C-233(2))),~~ DDA may reduce the companion home daily rate.

~~((3))~~ (2) ~~((If DDA approves additional respite hours under subsection (2) of this section))~~ To reduce the companion home daily rate, DDA:

(a) Divides the cost of the additional respite hours by the number of days remaining in the client's plan year; and

(b) Subtracts that amount from the companion home daily rate for the remaining number of days in the plan year.

~~((4))~~ (3) The cost of the additional respite hours is based on the identified respite provider's hourly rate.

[Statutory Authority: RCW 71A.12.030, 71A.10.020 and 71A.12.040. WSR 18-22-106, § 388-829C-234, filed 11/6/18, effective 12/7/18.]

NEW SECTION

WAC 388-829C-235 Will DDA reduce the companion home daily rate if a client receives state-funded respite? DDA may reduce a companion home daily rate if the client receives overnight planned respite services or respite at a residential habilitation center.

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AMENDATORY SECTION (Amending WSR 20-08-033, filed 3/24/20, effective 5/1/20)

WAC 388-829R-005 What definitions apply to this chapter? The following definitions apply to this chapter:

"Administrator" means the person responsible for daily management and operation of the overnight planned respite services site. The administrator may also be the owner.

"Authorization" means DDA approval of funding for a service as identified in the person-centered service plan or evidence of payment for a service.

"Client" means a person who has a developmental disability as defined in RCW 71A.10.020(~~(+5+)~~) and who the DDA has determined eligible to receive services under chapter 71A.16 RCW. When used in this section, "you" is interchangeable with client.

"DDA" means the developmental disabilities administration, an administration of the department of social and health services and its employees and authorized agents.

"Direct support professional" means a person who interacts directly with a client during an overnight planned respite stay to provide services outlined in the client's overnight planned respite services individualized agreement.

"DSHS" or "the department" means the state of Washington department of social and health services and its employees and authorized agents.

"Family" means one or more of the following relatives: Spouse or registered domestic partner; natural; adoptive; or stepparent; grandparent; child; stepchild; sibling; stepsibling; uncle; aunt; first cousin; niece; or nephew.

"Legal representative" means a parent of a client if the client is under age 18, a court-appointed guardian if a decision is within the scope of the guardianship order, or any other person authorized by law to act for the client.

"Mandatory reporter" means any person working with vulnerable adults required to report suspected incidents of abandonment, abuse, neglect, financial exploitation under chapter 74.34 RCW.

"Nurse delegation" means the process by which a registered nurse transfers the performance of select nursing tasks to a nursing assistant-registered or nursing assistant-certified in select situations as set forth in chapter 18.79 RCW and WAC 246-840-910 through 246-840-970.

"Overnight planned respite services" means services that are intended to provide short-term intermittent relief for a person who lives with and acts as a DDA client's primary caregiver.

"Overnight planned respite services provider" and "provider" means an agency that is contracted to provide overnight planned respite services.

"Owner" means the person who accepts or delegates responsibility for the management and operation of the overnight planned respite services site. The owner may also be the administrator.

"Primary caregiver" means the person who provides the client's care and supervision and lives with the client.

[Statutory Authority: RCW 71A.12.030 and 71A.12.040. WSR 20-08-033, § 388-829R-005, filed 3/24/20, effective 5/1/20. Statutory Authority: RCW 71A.12.030, 71A.12.120, and 2015 3rd sp.s. c 4. WSR 16-17-003, § 388-829R-005, filed 8/4/16, effective 9/4/16.]

AMENDATORY SECTION (Amending WSR 20-08-033, filed 3/24/20, effective 5/1/20)

WAC 388-829R-011 Who is eligible to receive overnight planned respite services? To be eligible to receive overnight planned respite services, a client must:

- (1) Be eligible for DDA services under chapter 388-823 WAC;
- (2) Be ~~((eighteen))~~ 18 or older;
- (3) ~~((Be-living))~~ Live at home with a primary caregiver and not currently ~~((receiving))~~ receive:
 - (a) Residential habilitation services, unless receiving services from a companion provider; or ((under the core waiver))
 - (b) Community first choice residential services; and
- (4) Identify a backup caregiver to respond in an emergency if the primary caregiver is unavailable.

[Statutory Authority: RCW 71A.12.030 and 71A.12.040. WSR 20-08-033, § 388-829R-011, filed 3/24/20, effective 5/1/20.]

AMENDATORY SECTION (Amending WSR 20-08-033, filed 3/24/20, effective 5/1/20)

WAC 388-829R-165 What must overnight planned respite services providers do to plan for and respond to emergencies? (1) The overnight planned respite services provider must develop an emergency response plan to address natural and other disasters.

- (2) In an emergency, the overnight planned respite services provider must:
- (a) Immediately call 911 if it is a life-threatening emergency;
 - (b) Provide emergency services;
 - (c) Notify DDA;
 - (d) Notify the primary caregiver, client's legal representative, or backup caregiver; and
 - (e) Submit a written report to DDA.

[Statutory Authority: RCW 71A.12.030 and 71A.12.040. WSR 20-08-033, § 388-829R-165, filed 3/24/20, effective 5/1/20. Statutory Authority: RCW 71A.12.030, 71A.12.120, and 2015 3rd sp.s. c 4. WSR 16-17-003, § 388-829R-165, filed 8/4/16, effective 9/4/16.]

AMENDATORY SECTION (Amending WSR 20-08-033, filed 3/24/20, effective 5/1/20)

WAC 388-829R-170 What records must overnight planned respite services providers keep? (1) For each client, the overnight planned respite services providers must keep the following information:

- (a) The client's name and address;
- (b) The name, address, and telephone number of the client's primary (~~guardian~~) caregiver or legal representative;
- (c) A copy of the client's most recent person-centered service plan;
- (d) A copy of the client's overnight planned respite services individualized agreement;
- (e) Nurse delegation records, if applicable;
- (f) Progress notes;
- (g) Incident reports, if applicable;
- (h) Medication documentation, including a medication intake form and medication administration records, if applicable;
- (i) A list of the client's personal property upon arrival and departure; and
- (j) A record of money or gift cards managed by the respite provider on behalf of the client during the respite stay, if applicable.

(2) An overnight planned respite services provider must also keep the following:

- (a) Water temperature monitoring records;
- (b) Direct support professional training records;
- (c) Direct support professional time sheets specific to locations worked;
- (d) Payment records;
- (e) A signed copy of DSHS form 10-403 for each direct support professional and administrator.

[Statutory Authority: RCW 71A.12.030 and 71A.12.040. WSR 20-08-033, § 388-829R-170, filed 3/24/20, effective 5/1/20. Statutory Authority: RCW 71A.12.030, 71A.12.120, and 2015 3rd sp.s. c 4. WSR 16-17-003, § 388-829R-170, filed 8/4/16, effective 9/4/16.]