

WSR 23-09-041
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed April 14, 2023, 12:45 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-23-032.

Title of Rule and Other Identifying Information: Chapter 388-829Z WAC, Emergency transitional support services.

Hearing Location(s): On May 23, 2023, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 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>; or virtually. Due to the COVID-19 pandemic, hearings are being held virtually. Please see the DSHS website for the most current information.

Date of Intended Adoption: Not earlier than May 24, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6085, by May 23, 2023, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact DSHS rules consultant, phone 360-664-6036, fax 360-664-6036, TTY 711 relay service, email shelley.tencza@dshs.wa.gov, by May 9, 2023, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The developmental disabilities administration (DDA) is proposing new rules to regulate the emergency transitional support services provided at Rainier, a Washington state residential habilitation center.

Reasons Supporting Proposal: Emergency transitional support services were created in direct response to the COVID-19 public health emergency. With the declared state of emergency over, these rules are intended to inform clients about the service they are receiving and the future of that service.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: Chapter 71A.20 RCW.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: None.

Name of Proponent: DSHS, DDA, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-790-4732; Implementation and Enforcement: Brian Woods, P.O. Box 45310, Olympia, WA 98504-5310, 360-688-0626.

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, phone 360-790-4732, fax 360-407-0955, TTY 1-800-833-6388, email chantelle.diaz@dshs.wa.gov.

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).

Scope of exemption for rule proposal:

Is fully exempt.

April 12, 2023
Katherine I. Vasquez
Rules Coordinator

SHS-4953.7

Chapter 388-829Z WAC
EMERGENCY TRANSITIONAL SUPPORT SERVICES

NEW SECTION

WAC 388-829Z-005 What definitions apply to this chapter? The following definitions apply to this chapter.

"Client" means a person who has a developmental disability as defined in RCW 71A.10.020(5) and who DDA has determined eligible to receive services under chapter 71A.16 RCW. For purposes of notification, informed consent, and decision-making requirements, the term "client" includes the client's legal representative to the extent of the representative's legal authority.

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

"Direct support professional" means a person who interacts directly with a client while the client receives emergency transitional support services.

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

"Legal representative" means a person's legal guardian, limited guardian when the subject matter is within the scope of the limited guardianship, attorney-at-law, attorney-in-fact, or any other person who is authorized by law to act for another person.

"Provider" means the state-operated entity on the Rainier School campus providing emergency transitional support services.

"State of emergency" means an emergency proclaimed as such by the governor pursuant to RCW 43.06.010.

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NEW SECTION

WAC 388-829Z-010 What is the purpose of this chapter? This chapter establishes rules for emergency transitional support services. These state-funded services, administered by DDA at Rainier School, were created in direct response to a state of emergency declared by the governor.

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ELIGIBILITYNEW SECTION

WAC 388-829Z-015 Who may receive emergency transitional support services? (1) To receive emergency transitional support services, a person must:

(a) Have been admitted to Rainier School to receive emergency transitional support services on or before March 31, 2023; or

(b) Meet the following criteria:

(i) The person is eligible for DDA services under chapter 388-823 WAC;

(ii) The person is age 18 or older; and

(iii) The person is:

(A) At risk of being hospitalized without medical need; or

(B) Hospitalized without medical need and there are no safe discharge options immediately available to the person.

(2) Emergency transitional support services are limited to specific legislative appropriations and program capacity.

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PROVIDER QUALIFICATIONSNEW SECTION

WAC 388-829Z-020 What are the minimum requirements for direct support professionals providing emergency transitional support services? To provide emergency transitional support services, a direct support professional must:

(1) Have a high school diploma or GED equivalent, unless hired before September 1, 1991;

(2) Be age 18 older;

(3) Have a current background check as required by WAC 388-829Z-025; and

(4) Successfully complete residential habilitation center new employee training, which includes at a minimum:

(a) Client rights;

- (b) Mandatory reporting;
- (c) Blood-borne pathogens;
- (d) First aid and CPR;
- (e) Crisis prevention and deescalation;
- (f) Skills training for activities of daily living; and
- (g) Person-centered thinking.

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NEW SECTION

WAC 388-829Z-025 Who must have a background check? (1) A direct support professional, volunteer, and any other employee who may have unsupervised access to a DDA client must have a background check.

(2) Any person required to have a background check under this section must have a nondisqualifying background check result as required by DSHS.

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NEW SECTION

WAC 388-829Z-030 What will disqualify a direct support professional or a volunteer from working in a capacity that may involve access to DDA clients? (1) Criminal convictions and pending charges that disqualify a direct support professional or a volunteer from working with DDA clients are listed in chapter 388-113 WAC.

(2) A volunteer or person employed by an emergency transitional support services provider who receives a DSHS background check with a disqualifying result is prohibited from any unsupervised access to DDA clients.

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SERVICE DELIVERY

NEW SECTION

WAC 388-829Z-035 What services and activities must be a part of emergency transitional support services? The provider must provide the following services and activities at no cost to the client:

- (1) A furnished home environment, including a private bedroom;
- (2) Access to a safe outdoor area for recreation and leisure;
- (3) Support accessing social and recreational opportunities in the community;

- (4) Access to physical and behavioral health services prescribed by the client's treating professional;
- (5) Three nutritious meals and two snacks per day;
- (6) Bedding and towels;
- (7) Access to laundry facilities; and
- (8) Access to a telephone and a place to make private calls.

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NEW SECTION

WAC 388-829Z-040 What policies and procedures must the provider have? (1) The provider must implement policies and procedures that address:

- (a) Client rights, including a client's right to file a complaint or suggestion without interference;
 - (b) Reporting requirements for suspected abuse, neglect, financial exploitation, and abandonment;
 - (c) Client protections when there have been allegations of abuse, neglect, financial exploitation, or abandonment;
 - (d) Emergent situations that may pose a danger or risk to the client or others;
 - (e) Response to a missing person and other client emergencies;
 - (f) Emergency response plans for natural and other disasters;
 - (g) Client access to medical, mental health, and law enforcement resources;
 - (h) Notifications to client's primary caregiver, legal representative, or relatives in case of emergency;
 - (i) Client grievances, including timelines, possible remedies, and information about how to submit unresolved grievances to the department; and
 - (j) Aspects of medication management, including:
 - (i) Supervision of medication; and
 - (ii) Client refusal.
- (2) The provider must train employees on its policies and procedures, maintain current written policies and procedures, and make them available upon request to all employees, clients, client legal representatives, and DDA.

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NEW SECTION

WAC 388-829Z-045 What requirements must be met before a provider transports a client? Before transporting a client, a provider or direct support professional must have:

- (1) Automobile insurance coverage under chapter 46.30 RCW; and
- (2) A valid driver's license under chapter 46.20 RCW.

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NEW SECTION

WAC 388-829Z-050 How must the provider regulate the water temperature at Rainier School? (1) The provider must regulate the water temperature at Rainier School as follows:

- (a) Maintain the water temperature in the household between 105 degrees and 120 degrees Fahrenheit; and
 - (b) Check the water temperature at least once every six months.
- (2) The provider must document compliance with these requirements.

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NEW SECTION

WAC 388-829Z-055 What records must the provider keep? (1) For each client, the provider 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 or legal representative;
 - (c) A copy of the client's most recent person-centered service plan;
 - (d) Nurse delegation records, if applicable;
 - (e) Progress notes;
 - (f) Incident reports, if applicable;
 - (g) Medication documentation, including a medication intake form and medication administration records, if applicable;
 - (h) A list of the client's personal property upon arrival, acquisition of new property - other than consumables, and property at departure; and
 - (i) A record of money or gift cards managed by the provider on behalf of the client, if applicable.
- (2) An emergency transitional support services provider must also keep the following:
- (a) Water temperature monitoring records;
 - (b) Direct support professional training records; and
 - (c) Direct support professional time sheets specific to locations worked.

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NEW SECTION

WAC 388-829Z-060 How must a provider report suspected abuse and neglect? A provider must immediately report suspected abandonment, abuse, financial exploitation, or neglect of vulnerable adults to:

- (1) Adult protective services using the DSHS online reporting tool or by calling 1-877-734-6277 (TTY: 1-800-977-5456); and
- (2) Law enforcement agencies as required under chapter 74.34 RCW, including when there is reason to suspect sexual or physical abuse.

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TERMINATIONNEW SECTION

WAC 388-829Z-065 When may DDA terminate a client's emergency transitional support services? (1) DDA must terminate a client's emergency transitional support services if requested by the client.

(2) DDA may terminate a client's emergency transitional support services if:

(a) DDA determines and documents that the client cannot be supported safely in the program's environment or poses a danger to other clients in the program; or

(b) The service is not funded by the legislature.

(3) DDA must provide 30 days' advance notice for termination of emergency transitional support services.

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NEW SECTION

WAC 388-829Z-070 What are a client's notice and appeal rights?

(1) A client has a right to appeal a termination under WAC 388-829Z-065 (2) (b).

(2) A client does not have a right to appeal termination of emergency transitional support services if the basis for termination is a lack of funding.

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CERTIFICATIONNEW SECTION

WAC 388-829Z-075 Must the provider of emergency transitional support services be certified? (1) The provider of emergency transitional support services must be certified by DDA no more than 90 days after the first date of service delivery.

(2) DDA certifies the provider through a certification evaluation to monitor compliance with this chapter and other relevant DDA policies.

(3) DSHS-contracted evaluators conduct the certification evaluations.

(4) The provider must participate in a certification evaluation at least once every 12 months.

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NEW SECTION

WAC 388-829Z-080 What if the emergency transitional support services provider disagrees with a certification evaluation or certification decision? If an emergency transitional support services provider disagrees with a certification evaluation or certification decision under this chapter, the provider may request an informal dispute resolution meeting with DDA by:

(1) Submitting a written request to DDA no more than 10 days after receiving the final certification letter and report; and

(2) Including a written statement that identifies the challenged action, describes the provider's concerns, and lists regulations and contract standards cited.

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NEW SECTION

WAC 388-829Z-085 What happens if the provider is found to be out of compliance? (1) If DDA finds in its evaluation that the emergency transitional support services provider is out of compliance with any part of this chapter, the provider and DDA must develop a plan of correction.

(2) The plan of correction must:

(a) Outline methods for the provider to comply with the required corrections; and

(b) Provide a time frame for the provider to complete the corrective actions.

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NEW SECTION

WAC 388-829Z-090 When may DDA stop admission authorization for emergency transitional support services? DDA may stop admission authorization for emergency transitional support services if:

(1) The provider demonstrates inadequate performance or inability to deliver quality care that jeopardizes the client's health, safety, or well-being;

(2) The provider does not complete the corrective actions within the agreed upon time frame;

(3) The provider fails to comply with the requirements of this chapter; or

(4) DDA has substantial evidence that a client's health, safety, or well-being is at risk.

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