

WSR 23-15-114

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Care Administration)

[Filed July 19, 2023, 9:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-13-097.

Title of Rule and Other Identifying Information: Wage equity funding; rules establishing department procedures for reviewing the spending of wage equity funding for nursing facilities.

Hearing Location(s): On August 22, 2023, at 10:00 a.m., virtual via Microsoft Teams or call in. Please see the department of social and health services (DSHS) website for the most up-to-date information.

Date of Intended Adoption: Not earlier than August 23, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m. on August 22, 2023.

Assistance for Persons with Disabilities: Contact DSHS rules consultant, phone 460-664-6036 [360-664-6036], fax 360-664-6185, TTY 711 relay service, email Shelley.Tencza@dshs.wa.gov, by 5:00 p.m. on August 8, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: New rule. Legislature directed DSHS to implement rules outlining the procedure to review the spending of wage equity funding by nursing facilities and recoup funding as necessary.

Reasons Supporting Proposal: See purpose above.

Statutory Authority for Adoption: RCW 74.46.800; biennial budget 2021-2023 ESSB 5693 (204) (53).

Statute Being Implemented: Biennial budget 2021-2023, ESSB 5693 (204) (53).

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Elizabeth Pashley, P.O. Box 45600, Olympia, WA 98504-5600, 360-995-2807; Implementation and Enforcement: Peter Graham, P.O. Box 45600, Olympia, WA 98504-5600, 360-725-2499.

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 Elizabeth Pashley, P.O. Box 45600, Olympia, WA 98504-5600, phone 360-995-2807, fax 1-877-905-0454, TTY 711 relay service, email Elizabeth.Pashley@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 19.85.030 (1) (a).

Explanation of exemptions: Rule requires a small business economic impact statement if it imposes more-than-minor costs. This proposed rule does not.

Scope of exemption for rule proposal:

Is fully exempt.

July 14, 2023

Katherine I. Vasquez
Rules Coordinator

SHS-4992.1NEW SECTION

WAC 388-96-918 Wage equity funding. (1) The contractor must submit a report of wage equity funding costs in a standardized manner and in accordance with this chapter and chapter 74.46 RCW on the dates specified in this section.

(2) The department will review the contractor's costs of the wage equity funding in accordance with the methodology effective at the time the services were rendered as described in this chapter and session laws of Washington state 2022 c297 §204(53).

(3) No later than September 1, 2023, each contractor must submit to the department a wage equity worksheet for the period of July 1, 2022, through June 30, 2023.

(4) Wage equity worksheets for new contractors must be submitted for the period covering their date of contract through June 30, 2023.

(5) A terminating or assigning contractor must submit to the department a wage equity worksheet for the period from July 1, 2022, through the date the contract was terminated or assigned.

(6) To properly complete the wage equity worksheet, the contractor must submit the wage equity worksheet, including the completed certification page to the document electronically.

(7) If the contractor does not properly complete the wage equity worksheet or the department does not receive it by the due date established in this section, the department may recoup any wage equity funding received by the contractor.

(8) The department may impose civil fines or take adverse rate action against contractors and former contractors who do not submit properly completed wage equity worksheets by the applicable due date established in this section.

(9) The department will review the wage equity worksheet to ensure the contractor has used its wage equity funding to increase wages for low-wage workers by up to four dollars per hour.

(10) The department will recover any funding difference between each contractor's wage equity funding and the amount of wage equity funding that the provider utilizes to increase low-wage worker wages.

(11) The department will separate the settlement amount into the funds attributable to direct care employees and funds attributable to indirect care employees. The direct care portion will be divided into two. One half may be used to offset any direct care final settlement monies owed for the 2022 cost report year. One half may be used to offset any direct care preliminary settlement monies owed for the 2023 cost report year. For partial worksheets due to new contractors, or terminating or assigning contractors, the direct care portion may be offset against the applicable cost report's direct care settlement to the appropriate proportionality.

(12) The verification process must use wages paid as of December 31, 2021, as the base wage to compare contractors' wage spending in the designated job categories to the facility-specific amounts of wage

equity funding provided, excluding any amounts adjusted by settlement. If a facility did not have a particular category of staff on December 31, 2021, to set a baseline wage, wages from comparable facilities may be used.

(13) The verification and recovery process in this section is a distinct and separate process from the settlement process described in RCW 74.46.022 and elsewhere described in this chapter.

(14) The provisions of 388-96-901 and 388-96-904 apply to this section.

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