

WSR 23-18-034

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed August 29, 2023, 12:42 p.m., effective September 29, 2023]

Effective Date of Rule: Thirty-one days after filing.

Purpose: These changes to chapter 388-845 WAC are necessary to implement amendments to the developmental disabilities administration's (DDA) home and community-based services waivers as approved by the federal Centers for Medicare and Medicaid Services. Substantive changes remove the prohibition to receive employment services and community inclusion services concurrently and remove "consecutive" to align with RCW 71A.12.290. These permanent rules supersede emergency rules currently enacted on these sections.

Citation of Rules Affected by this Order: Amending WAC 388-845-0603, 388-845-0610, and 388-845-2110.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 71A.12.120 and 71A.12.290.

Adopted under notice filed as WSR 23-14-001 on June 21, 2023.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-845-0603 (2) (a) was revised to remove the requirement that the employment support services were received from DDA. This change aligns with RCW 71A.12.290 and would allow for greater variety in supported employment experience (e.g., out-of-state employment support services).

A final cost-benefit analysis is available by contacting Chantelle Diaz, P.O Box 45310, Olympia, WA 98504-5310, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 3, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: August 29, 2023.

Lisa N. H. Yanagida
Chief of Staff

SHS-4958.4

AMENDATORY SECTION (Amending WSR 18-14-001, filed 6/20/18, effective 7/21/18)

WAC 388-845-0603 Who is eligible to receive community inclusion services? You are eligible for community inclusion services if you are enrolled in the basic plus or core waivers and:

- (1) You are (~~sixty-two~~) 62 or older; or
- (2) You meet age requirements under WAC 388-845-2110(1) and:
 - (a) You have participated in (~~developmental disabilities administration (DDA)~~) supported employment services for at least nine (~~consecutive~~) months; or
 - (b) DDA has determined that you are exempt from the nine-month (~~DDA~~) supported employment service requirement because:
 - (i) Your medical or behavioral health records document a condition that prevents you from completing nine (~~consecutive~~) months of (~~DDA~~) supported employment services; or
 - (ii) You were referred to and were available for (~~DDA~~) supported employment services, but the service was not delivered within (~~ninety~~) 90 days of the referral.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-0603, filed 6/20/18, effective 7/21/18. Statutory Authority: RCW 71A.12.030. WSR 17-12-002, § 388-845-0603, filed 5/24/17, effective 6/24/17. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0603, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 74.08.090, 74.09.520, and 2012 c 49. WSR 12-16-095, § 388-845-0603, filed 8/1/12, effective 9/1/12.]

AMENDATORY SECTION (Amending WSR 20-05-080, filed 2/18/20, effective 3/20/20)

WAC 388-845-0610 Are there limits to community inclusion services you may receive? (~~(1) You must not receive community inclusion services if you are receiving prevocational or supported employment services.~~

~~(2))~~ The maximum hours of community inclusion services you may receive are determined by the developmental disabilities administration (~~DDA~~) assessment under WAC 388-828-9310.

[Statutory Authority: RCW 71A.12.030 and 71A.12.120. WSR 20-05-080, § 388-845-0610, filed 2/18/20, effective 3/20/20. Statutory Authority: RCW 71A.12.030, 71A.12.040, 2015 3rd sp.s. c 4, and 42 C.F.R. § 441.301 (c) (4)-(5). WSR 18-03-174, § 388-845-0610, filed 1/23/18, effective 2/23/18. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-0610, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 74.08.090, 74.09.520, and 2012 c 49. WSR 12-16-095, § 388-845-0610, filed 8/1/12, effective 9/1/12. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 08-20-033, § 388-845-0610, filed 9/22/08, effective 10/23/08. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-0610, filed 12/13/05, effective 1/13/06.]

AMENDATORY SECTION (Amending WSR 22-01-216, filed 12/22/21, effective 1/22/22)

WAC 388-845-2110 Are there limits to the supported employment services you may receive? The following limits apply to your receipt of supported employment services:

- (1) To receive supported employment services, you must be age:
 - (a) ~~((Twenty))~~ 20 and graduating from high school before your July or August ~~((twenty-first))~~ 21st birthday~~((+))~~;
 - (b) ~~((Twenty-one))~~ 21 and no longer eligible to enroll in high school; or
 - (c) ~~((Twenty-two))~~ 22 or older.
- (2) Payment for ~~((individual))~~ supported employment services excludes the supervisory activities rendered as a normal part of the business setting.
- (3) ~~((You will not be authorized to receive supported employment services in addition to community inclusion services.~~
- ~~(4))~~ Your service hours are determined by the assistance you need to reach your employment outcomes as described in WAC 388-828-9325 and might not equal the number of hours you spend on the job or in job related activities.

[Statutory Authority: RCW 71A.12.030 and 71A.12.040. WSR 22-01-216, § 388-845-2110, filed 12/22/21, effective 1/22/22. Statutory Authority: RCW 71A.12.030, 71A.12.040, 2015 3rd sp.s. c 4, and 42 C.F.R. § 441.301 (c) (4)-(5). WSR 18-03-174, § 388-845-2110, filed 1/23/18, effective 2/23/18. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-2110, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 08-20-033, § 388-845-2110, filed 9/22/08, effective 10/23/08. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-2110, filed 12/13/05, effective 1/13/06.]