

WSR 24-03-086

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed January 17, 2024, 9:21 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-05-081.

Title of Rule and Other Identifying Information: Amending WAC 388-106-0336 What services may I receive under the residential support waiver?

Hearing Location(s): On February 27, 2024, at 10:00 a.m., virtually 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 February 28, 2024.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5600, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by February 27, 2024, by 5:00 p.m.

Assistance for Persons with Disabilities: Contact DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email shelley.tencza@dshs.wa.gov, by February 13, 2024, by 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DSHS added a new service, community stability supports, under the residential support waiver amendment WA.1086.R01.10. Minor language changes are made to this WAC for consistency in service language.

Reasons Supporting Proposal: 42 C.F.R. § 441.300-310.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520, 74.39A.400, 74.39A.030; 42 C.F.R. § 441.500-590, 42 C.F.R. § 441.300-310.

Statute Being Implemented: RCW 74.08.090, 74.09.520, 74.39A.400; 42 C.F.R. § 441.300-310.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Allison KF Garza, DSHS Home and Community Services (HCS), 1200 Alder Street, Union Gap, WA 98902, 360-239-6906; Implementation: James Selby, Aging and Long-Term Support Administration (AL TSA), Headquarters 4450 10th Avenue S.E., Lacey, WA 98504-5600, 360-890-2640; and Enforcement: Residential Care Services, AL TSA, Headquarters 4450 10th Avenue S.E., Lacey, WA 98504-5600, 360-724-2400.

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 Allison KF Garza, DSHS, HCS, 1200 Alder Street, Union Gap, WA 98902, phone 360-239-6906, email allison.garza@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. This rule doesn't impose any cost and is just a description of the program requirements.

January 16, 2024
Katherine I. Vasquez
Rules Coordinator

SHS-5006.1

AMENDATORY SECTION (Amending WSR 16-19-055, filed 9/16/16, effective 10/17/16)

WAC 388-106-0336 What services may I receive under the residential support waiver? You may receive the following services under the residential support waiver:

(1) Adult family homes and assisted living facilities with an expanded community services contract that will provide:

- (a) Personal care;
- (b) ~~((Supportive services;~~
- ~~(c) Supervision in the home and community;~~
- ~~(d) Twenty-four)) 24-hour on-site support and response staff;~~
- ~~((e))~~ (c) The development and implementation of an individualized behavior support plan to prevent and respond to crises;
- ~~((f))~~ (d) Medication management; and
- ~~((g))~~ (e) Coordination and collaboration with a contracted behavior support provider;

(2) Adult family homes with a specialized behavior support contract that will provide:

- (a) Personal care;
- (b) ~~((Supportive services;~~
- ~~(c) Supervision in the home and community;~~
- ~~(d) Twenty-four)) 24-hour on-site support and response staff;~~
- ~~((e))~~ (c) The development and implementation of an individualized behavior support plan to prevent and respond to crises;
- ~~((f))~~ (d) Medication management;
- ~~((g))~~ (e) Coordination and collaboration with a contracted behavior support provider; and

~~((h))~~ (f) Specialized behavior support that provides you with six to eight hours a day of individualized staff time;

(3) Assisted living facilities with a community stability supports contract that will provide:

- (a) Personal care;
- (b) 24-hour on-site support and response staff;
- (c) The development and implementation of an individualized behavior support plan to prevent and respond to crises;
- (d) Medication management; and
- (e) On-site staffing ratios and professional staffing as described in the contract;

~~((3))~~ (4) Enhanced services facilities that will provide:

- (a) Personal care;
- (b) ~~((Supportive services;~~
- ~~(c) Supervision in the home and community;~~
- ~~(d) Twenty-four)) 24-hour on-site support and response staff;~~

- ~~((e))~~ (c) The development and implementation of an individualized behavior support plan to prevent and respond to crises;
- ~~((f))~~ (d) Medication management; and
- ~~((g))~~ (e) On-site staffing ratios and professional staffing as described in WAC 388-107-0230 through ~~((WAC))~~ 388-107-0270;
- ~~((4))~~ (5) Specialized durable and nondurable medical equipment and supplies under WAC 182-543-1000 when:
- (a) Medically necessary under WAC 182-500-0005;
 - (b) Necessary:
 - (i) For life support;
 - (ii) To increase your ability to perform activities of daily living; or
 - (iii) To perceive, control, or communicate with the environment in which you live;
 - (c) Directly medically or remedially beneficial to you;
 - (d) They are additional and do not replace any medical equipment or supplies otherwise provided under medicaid, or medicare, or both; and
 - (e) In addition to and do not replace the services required by the department's contract with a residential facility;
- ~~((5))~~ (6) Client support training to address your needs identified in your CARE assessment or other professional evaluation that are additional and do not replace the services required by the department's contract with the residential facility and meet a therapeutic goal, such as:
- (a) Adjusting to a serious impairment;
 - (b) Managing personal care needs; or
 - (c) Developing necessary skills to deal with care providers;
- ~~((6))~~ (7) Nurse delegation under RCW 18.79.260 when:
- (a) You receive personal care from a registered or certified nursing assistant who has completed nurse delegation core training;
 - (b) The delegating nurse considers your medical condition stable and predictable;
 - (c) The services comply with WAC 246-840-930; and
 - (d) The services are additional and do not replace the services required by the department's contract with the residential facility;
- ~~((7))~~ (8) Skilled nursing when:
- (a) Provided by a registered nurse or licensed practical nurse under a registered nurse's supervision;
 - (b) Beyond the amount, duration, or scope of medicaid-reimbursed home health services as provided under WAC 182-551-2100; and
 - (c) Additional and do not replace the services required by the department's contract with the residential facility;
- ~~((8))~~ (9) Nursing services not already received from another resource, based on your individual need as determined by your CARE assessment and any additional collateral contact information obtained by your case manager, including any one or more of the following activities performed by a registered nurse:
- (a) Nursing assessment/reassessment;
 - (b) Instruction to you, your providers, and your caregivers;
 - (c) Care coordination and referral to other health care providers;
 - (d) Skilled treatment, only in the event of an emergency as in nonemergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider or other appropriate resource;
 - (e) File review; or

(f) Evaluation of health-related care needs affecting service plan and delivery;

~~((9))~~ (10) Adult day health services as described in WAC 388-71-0706 when:

(a) Your CARE assessment shows an unmet need for personal care or other core services, whether or not those needs are otherwise met; and

(b) Your CARE assessment shows an unmet need for skilled nursing under WAC 388-71-0712 or skilled rehabilitative therapy under ~~((WAC))~~ 388-71-0714 and:

(i) There is a reasonable expectation that the services will improve, restore, or maintain your health status, or in the case of a progressive disabling condition, will either restore or slow the decline of your health and functional status or ease related pain and suffering;

(ii) You are at risk for deteriorating health, deteriorating functional ability, or institutionalization; or

(iii) You have a chronic acute health condition that you are not able to safely manage due to a cognitive, physical, or other functional impairment.