

WSR 24-22-004

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed October 23, 2024, 3:25 p.m., effective October 26, 2024]

Effective Date of Rule: October 26, 2024.

Purpose: The department of social and health services (department) is amending WAC 388-71-0523, 388-71-0880, 388-71-0888, 388-71-0890, 388-71-0977, and 388-115-0523. The purpose of these changes is to bring rules into compliance with SB 5811 (chapter 322, Laws of 2024). This rule making expands the definition of individual provider.

Permanent rules are in process. The proposed rule hearing is scheduled for November 5, 2024. Permanent rules will supersede the emergency rule when adopted.

Citation of Rules Affected by this Order: Amending WAC 388-71-0523, 388-71-0880, 388-71-0888, 388-71-0890, 388-71-0977, and 388-115-0523.

Statutory Authority for Adoption: RCW 18.88B.010, 18.88B.041, 74.08.090, 74.39A.076, 74.39A.341.

Other Authority: Chapter 18.80 RCW.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Permanent rules are in process, but will not be adopted before the current emergency rule filed as WSR 24-14-083 expires on October 26, 2024. This emergency rule will replace the emergency rule.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 6, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 6, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 6, Repealed 0.

Date Adopted: October 23, 2024.

Katherine I. Vasquez
Rules Coordinator

SHS-5041.1

AMENDATORY SECTION (Amending WSR 24-05-003, filed 2/8/24, effective 3/10/24)

WAC 388-71-0523 What are the training and certification requirements for individual providers and home care agency long-term care workers? The following chart provides a summary of the training and certification requirements for individual providers and home care agency long-term care workers. This includes criteria for those providers working limited hours for one person, caring only for one's child, parent, sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild including when related by marriage or domestic partnership, providing respite services, or providing approved services only for a spouse or registered domestic partner and funded through the United States department of veterans' affairs home and community-based programs:

Who	Status	Orientation training	Safety training	Basic training	Continuing education	Required credential
(1) An individual provider or home care agency long-term care worker who is a licensed, certified health care professional in good standing through the Washington state department of health, or an individual provider or home care agency long-term care worker with special education training who meets the criteria in RCW 18.88B.041 (1)(a)(i)(A).	ARNP, RN, LPN, HCA, CN-A, or other professionals listed in WAC 388-71-0839.	Not required.	Not required.	Not required.	Not required of ARNPs, RNs, or LPNs in chapter 388-71 WAC. Required 12 hours under WAC 388-71-0990 and 388-71-0991 of NA-Cs, HCAs, and other professionals listed in WAC 388-71-0839, such as an individual with special education training with an endorsement granted by the superintendent of public instruction under RCW 28A.300.010. For NA-C and those with special education training 12 hours is required for each year worked in long-term care.	Required under chapter 246-980 WAC.
(2) An individual provider or home care agency long-term care worker with specific employment history.	A long-term care worker employed at some point between January 1, 2011, and January 6, 2012, and has completed the basic training requirements in effect on the date of hire. WAC 388-71-0839.	Not required.	Not required.	Not required.	12 hours is required for each year worked in long-term care under WAC 388-71-0990 and 388-71-0991.	Not required.

Who	Status	Orientation training	Safety training	Basic training	Continuing education	Required credential
(3) An individual provider or home care agency long-term care worker.	Hired by a licensed home care agency or the consumer directed employer to provide personal care service as defined in WAC 388-71-0836 and is not exempt under subsection (1) or (2) of this section.	Required. Two hours under WAC 388-71-0860.	Required. Three hours under WAC 388-71-0860.	Required. 70 hours under WAC 388-71-0870 and 388-71-0875.	Required. 12 hours under WAC 388-71-0990 and 388-71-0991.	Required under chapter 246-980 WAC.
(4) An individual provider who works limited hours for one person.	An individual provider employed by the consumer directed employer providing 20 hours or less of nonrespite care for one person per calendar month and does not meet the criteria in subsection (1) or (2) of this section.	Required. Two hours under WAC 388-71-0860.	Required. Three hours under WAC 388-71-0860.	Required. 30 hours under WAC 388-71-0880.	Not required.	Not required.
[[(5)]] (5) An individual who provides respite services and works 300 hours or less in any calendar year.	(a) An individual providing respite care who works no more than 300 hours in the calendar year, is not exempt in subsection (1) or (2) of this section, and does not meet criteria in subsection (6) of this section. (b) Individual providing respite services for individuals with developmental disabilities that receive services under Title 71A RCW and for individuals that receive services under chapter 74.39A, that is working 300 hours or less in any calendar year, and that is not exempt in subsection (1) or (2) of this section.	Required. Two hours under WAC 388-71-0860.	Required. Three hours under WAC 388-71-0860.	Required. Nine hours under WAC 388-71-0890.	Not required.	Not required.

Who	Status	Orientation training	Safety training	Basic training	Continuing education	Required credential
(6) An individual provider caring only for the provider's ((biological, step, or adoptive)) adult child.	An individual providing care only for the provider's adult child that receives services through the developmental disabilities administration and not exempt under subsection (1) or (2) of this section.	Required. Two hours ((per)) under WAC 388-71-0895.	Required. Three hours under WAC 388-71-0895.	Required. Seven hours under WAC 388-71-0890.	Not required.	Not required.
((7)) An individual provider caring only for the provider's biological, step, or adoptive child, or parent.	An individual providing care only to the individual's child or parent, who is not exempt in subsection (1) or (2) of this section, and does not meet criteria in subsection (6) of this section.	Required. Two hours under WAC 388-71-0860.	Required. Three hours under WAC 388-71-0860.	Required. 30 hours under WAC 388-71-0880.	12 hours is required for each year worked in long-term care for an individual provider caring only for the provider's biological, step, or adoptive parent under WAC 388-71-0990 and 388-71-0991. Not required for an individual provider caring only for the provider's biological, step, or adoptive child under WAC 388-71-1001.	Not required.))
((8)) (7) An individual provider caring only for the provider's <u>parent, child, sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild, including when related by marriage or domestic partnership.</u>	An individual providing care only for the individual provider's <u>parent, child, sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild, including when related by marriage or domestic partnership,</u> who is not exempt in subsection (1) or (2) of this section, and does not meet the criteria in subsection (6) of this section.	Required. Two hours under WAC 388-71-0860.	Required. Three hours under WAC 388-71-0860.	Required. 30 hours under WAC 388-71-0880.	Not required.	Not required.

Who	Status	Orientation training	Safety training	Basic training	Continuing education	Required credential
((9)) (8) A long-term care worker providing approved services only for a spouse or registered domestic partner and funded through the United States department of veterans' affairs home and community-based programs.	A long-term care worker providing approved services only for a spouse or registered domestic partner and funded through the United States department of veterans' affairs home and community-based programs who is not exempt in subsection (1) or (2) of this section.	Required. Two hours under WAC 388-71-0860.	Required. Three hours under WAC 388-71-0860.	Required. 30 hours under WAC 388-71-0880.	12 hours is required for each year worked in long-term care under WAC 388-71-0990 and 388-71-0991.	Not required.

AMENDATORY SECTION (Amending WSR 24-05-003, filed 2/8/24, effective 3/10/24)

WAC 388-71-0880 Who must complete the 30-hour basic training and by when must it be completed? Unless exempt from the basic training requirements under WAC 388-71-0839 (1) through (7), the following individuals must complete the 30-hour basic training under WAC 388-71-0885 within 120 days of the date of hire as described in WAC 388-71-0837:

- (1) An individual provider who only cares for that provider's ~~((:))~~
 - ~~((a) biological, step, or adoptive))~~ child, or parent ~~((; or))~~, ~~((b))~~ sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild, including when related by marriage or domestic partnership; or
- (2) A long-term care worker providing approved services only for a spouse or registered domestic partner and funded through the United States department of veterans' affairs home and community-based programs; or
- (3) A long-term care worker who provides no more than 20 hours of nonrespite care for one person who is not the individual provider's ~~((:))~~
 - ~~((a) biological, step, or adoptive))~~ child, ~~((or))~~ parent ~~((; or))~~, ~~((b))~~ sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild, including when related by marriage or domestic partnership.

AMENDATORY SECTION (Amending WSR 24-05-003, filed 2/8/24, effective 3/10/24)

WAC 388-71-0888 When do the 70-hour basic training and certification requirements apply to an individual whose required basic training was previously less than 70 hours? (1) The following individual

providers must complete 70 hours of basic training and become a certified home care aide under WAC 388-71-0523:

(a) Individual providers who previously provided no more than 20 hours of nonrespite care in any calendar month for one person who is not the provider's:

(i) ~~((biological, step, or adoptive))~~ child, ~~((~~⊗~~))~~ parent(~~(~~+~~))~~, ~~((~~+~~))~~ sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild, including when related by marriage or domestic partnership; or

~~((~~+~~))~~ (ii) spouse or registered domestic partner and funded through the United States department of veterans' affairs home and community-based programs;

(A) who continue to work for one unrelated client whose authorized monthly hours fluctuate above 20 hours per month; or

(B) who begin to work for a second client.

(b) Individual providers who provide respite services and worked more than 300 respite hours in any calendar year;

(c) Individual providers who begin working for an unrelated client who previously only provided personal care to the provider's:

(i) ~~((biological, step, or adoptive))~~ child, ~~((~~⊗~~))~~ parent(~~(~~+~~⊗~~)),

~~((~~+~~))~~ sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild, including when related by marriage or domestic partnership; or

~~((~~+~~))~~ (ii) spouse or registered domestic partner and funded through the United States department of veterans' affairs home and community-based programs.

(2) When an IP described in subsection (1) of this section is required to complete the 70-hour basic training and become a certified home care aide, the IP will:

(a) Have 120 days from the date of the change to complete the 70-hour basic training and 200 days from the date of the change to become certified; and

(b) Be required to complete continuing education under WAC 388-71-0990.

(3) For the purpose of this section, the date of the change means the date on which the IP:

(a) Began working for a client that is not the individual's:

(i) ~~((biological, step, or adoptive))~~ child, ~~((~~⊗~~))~~ parent(~~(~~+~~⊗~~)),

~~((~~+~~))~~ sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild, including when related by marriage or domestic partnership; or

~~((~~+~~))~~ (ii) spouse or registered domestic partner receiving approved services funded through the United States department of veterans' affairs home and community-based programs.

(b) Exceeded 20 hours of work in one month; or

(c) Exceeded 300 respite hours in one calendar year.

(4) If an IP is required to or chooses to become a certified home care aide and completes the 70-hour training requirements under this section, the individual will be required to continue to comply with these requirements to maintain the credential and complete continuing education requirements even if:

(a) The monthly authorized hours are later reduced to 20 or fewer hours;

(b) The individual no longer works for more than one unrelated client; or

(c) The individual works 300 or fewer respite hours in a calendar year.

(5) The training and certification requirements for an individual that met the criteria in subsection (4) of this section does not apply if the individual returns to work only for the individual's:

(a) ~~((biological, step, or adoptive))~~ parent, ~~((or))~~ adult child, ~~((b))~~ sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild, including when related by marriage or domestic partnership; or

~~((e))~~ (b) spouse or registered domestic partner receiving approved services funded through the United States department of veterans' affairs home and community-based programs.

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

WAC 388-71-0890 What are the training requirements for parent providers who are individual providers for their adult children through DDA? Unless exempt from the basic training requirements as defined in WAC 388-71-0839 (1) through (7), a ~~((biological, step, or adoptive))~~ parent, including when related by marriage or domestic partnership, who is the individual provider for his or her adult child receiving services through the DSHS developmental disabilities administration must complete the ~~((twelve))~~ 12-hour parent provider training, as described in WAC 388-71-0895, within ~~((one hundred twenty))~~ 120 days from the begin date of the authorization to provide department paid, in-home services.

AMENDATORY SECTION (Amending WSR 24-05-003, filed 2/8/24, effective 3/10/24)

WAC 388-71-0977 Once an individual is required to obtain certification as a home care aide, may that individual revert to exempt status? (1) If an individual is required to or chooses to become a certified home care aide and completes the 70-hour training requirements under this section, the individual will be required to continue to comply with these requirements to maintain the credential and complete continuing education requirements even if:

(a) The monthly authorized hours are later reduced to 20 or fewer hours;

(b) The individual no longer works for a second unrelated client; or

(c) The individual works 300 respite hours or less in a calendar year.

(2) The training and certification requirements for an individual that met the criteria in subsection (1) of this section does not apply when the individual returns to work only for the individual's:

(a) ~~((biological, step, or adoptive))~~ parent, ~~((or))~~ adult child~~((or))~~,

~~((b))~~ sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild, including when related by marriage or domestic partnership; or

((e)) (b) spouse or registered domestic partner receiving approved services funded through the United States department of veterans' affairs home and community-based programs.

AMENDATORY SECTION (Amending WSR 24-05-003, filed 2/8/24, effective 3/10/24)

WAC 388-115-0523 What are the training and certification requirements for individual providers? The following chart provides a summary of the training and certification requirements for individual providers. This includes criteria for those providers working limited hours for one person, caring only for one's child, parent, sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild including when related by marriage or domestic partnership, providing respite services, or providing approved services only for a spouse or registered domestic partner and funded through the United States department of veterans' affairs home and community-based programs:

Who	Status	Orientation training	Safety training	Basic training	Continuing education	Required credential
(1) An individual provider who is a licensed, certified health care professional in good standing through the Washington state department of health, or an individual provider or home care agency long-term care worker with special education training who meets the criteria in RCW 18.88B.041 (1)(a)(i)(A).	ARNP, RN, LPN, HCA, NA-C, or other professionals listed in WAC 388-71-0839.	Not required.	Not required.	Not required.	Not required of ARNPs, RNs, or LPNs in chapter 388-71 WAC. Required 12 hours under WAC 388-71-0990 and 388-71-0991 of NA-Cs, HCAs, and other professionals listed in WAC 388-71-0839, such as an individual with special education training with an endorsement granted by the superintendent of public instruction under RCW 28A.300.010. For NA-C and those with special education training, 12 hours is required for each year worked in long-term care.	Required under chapter 246-980 WAC.

Who	Status	Orientation training	Safety training	Basic training	Continuing education	Required credential
(2) An individual provider with specific employment history.	A long-term care worker employed at some point between January 1, 2011, and January 6, 2012, and has completed the basic training requirements in effect on the worker's date of hire. WAC 388-71-0839.	Not required.	Not required.	Not required.	12 hours is required for each year worked in long-term care under WAC 388-71-0990 and 388-71-0991.	Not required.
(3) An individual provider.	Hired by the consumer directed employer to provide personal care service as defined in WAC 388-71-0836 and is not exempt under subsection (1) or (2) of this section.	Required. Two hours under WAC 388-71-0860.	Required. Three hours under WAC 388-71-0860.	Required. 70 hours under WAC 388-71-0870 and 388-71-0875.	Required. 12 hours under WAC 388-71-0990 and 388-71-0991.	Required under chapter 246-980 WAC.
(4) An individual provider who works limited hours for one person.	An individual provider employed by the consumer directed employer providing 20 hours or less of nonrespite care for one person per calendar month and does not meet the criteria in subsection (1) or (2) of this section.	Required. Two hours under WAC 388-71-0860.	Required. Three hours under WAC 388-71-0860.	Required. 30 hours under WAC 388-71-0880.	Not required.	Not required.

Who	Status	Orientation training	Safety training	Basic training	Continuing education	Required credential
<p>(5) An individual who provides respite services and works 300 hours or less in any calendar year.</p>	<p>(a) An individual providing respite care and works no more than 300 hours in the calendar year, is not exempt in subsection (1) or (2) of this section, and does not meet criteria in subsection (7) of this section. (b) An individual providing respite services for individuals with developmental disabilities that receive services under Title 71A RCW and for individuals that receive services under chapter 74.39A, that is working 300 hours or less in any calendar year, and that is not exempt in subsection (1) or (2) of this section.</p>	<p>Required. Two hours under WAC 388-71-0860.</p>	<p>Required. Three hours under WAC 388-71-0860.</p>	<p>Required. Nine hours under WAC 388-71-0890.</p>	<p>Not required.</p>	<p>Not required.</p>
<p>(6) An individual provider caring only for the provider's ((biological, step, or adoptive)) adult child.</p>	<p>An individual providing care only for the provider's adult child that receives services through the developmental disabilities administration and not exempt under subsection (1) or (2) of this section.</p>	<p>Required. Two hours (per) under WAC 388-71-0895.</p>	<p>Required. Three hours under WAC 388-71-0895.</p>	<p>Required. Seven hours under WAC 388-71-0890.</p>	<p>Not required.</p>	<p>Not required.</p>

Who	Status	Orientation training	Safety training	Basic training	Continuing education	Required credential
<p>((7)) An individual provider caring only for the provider's biological, step, or adoptive child, or parent.</p>	<p>An individual providing care only to the provider's child or parent, who is not exempt in subsection (1) or (2) of this section, and does not meet criteria in subsection (6) of this section.</p>	<p>Required. Two hours under WAC 388-71-0860.</p>	<p>Required. Three hours under WAC 388-71-0860.</p>	<p>Required. 30 hours under WAC 388-71-0880.</p>	<p>12 hours is required for each year worked in long-term care for an individual provider caring only for the individual's biological, step, or adoptive parent under WAC 388-71-0990 and 388-71-0991. Not required for an individual provider caring only for the individual's biological, step, or adoptive child under WAC 388-71-1001.</p>	<p>Not required.))</p>
<p>((8)) (7) An individual provider caring only for the individual provider's <u>parent, child, sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild</u>, including when related by marriage or domestic partnership.</p>	<p>An individual providing care only for the individual provider's <u>parent, child, sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild</u>, including when related by marriage or domestic partnership, who is not exempt in subsection (1) or (2) of this section, and does not meet criteria in subsection (6) of this section.</p>	<p>Required. Two hours under WAC 388-71-0860.</p>	<p>Required. Three hours under WAC 388-71-0860.</p>	<p>Required. 30 hours under WAC 388-71-0880.</p>	<p>Not required.</p>	<p>Not required.</p>
<p>((9)) (8) A long-term care worker providing approved services only for a spouse or registered domestic partner and funded through the United States department of veterans' affairs home and community-based programs.</p>	<p>A long-term care worker providing approved services only for a spouse or registered domestic partner and funded through the United States department of veterans' affairs home and community-based programs who is not exempt in subsection (1) or (2) of this section.</p>	<p>Required. Two hours under WAC 388-71-0860.</p>	<p>Required. Three hours under WAC 388-71-0860.</p>	<p>Required. 30 hours under WAC 388-71-0880.</p>	<p>12 hours is required for each year worked in long-term care under WAC 388-71-0990 and 388-71-0991.</p>	<p>Not required.</p>