

WSR 25-04-059
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed January 30, 2025, 4:32 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-12-017.

Title of Rule and Other Identifying Information: WAC 388-829R-005
What definitions apply to this chapter?, 388-829R-011 Who is eligible to receive overnight planned respite services?, 388-829R-0019 What are the financial responsibilities of a primary caregiver or legal representative when the client is receiving overnight planned respite services?, 388-829R-025 What requirements must a provider meet to contract with DDA to provide overnight planned respite services?, 388-829R-026 Must a provider be certified?, 388-829R-027 Is a site visit required and what does DDA review during a site visit?, 388-829R-030 Who must have a background check?, 388-847-0050 What does SAIF provide?, 388-847-0260 Must SAIF be certified? and 388-847-0261 Is a site visit required and what does DDA review during a site visit?; and repealing WAC 388-829R-220 What is initial certification?, 388-829R-225 What is standard certification?, 388-829R-230 What is provisional certification?, 388-829R-235 What must an overnight planned respite services provider comply with to maintain certification?, 388-829R-240 When may DDA decertify an overnight planned respite services provider?, 388-829R-245 How does DDA monitor overnight planned respite services?, 388-829R-250 How must the overnight planned respite services provider participate in the certification evaluation process?, 388-829R-255 What if the overnight planned respite services provider disagrees with a certification evaluation or certification decision?, and 388-829R-260 What if the overnight planned respite services provider disagrees with a certification action or the outcome of an informal dispute resolution?

Hearing Location(s): On March 25, 2025, at 10:00 a.m., virtually via Teams or call in. See the department of social and health services (DSHS) website at <https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings> for the most current information.

Date of Intended Adoption: No earlier than March 26, 2025.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, beginning noon on February 5, 2025, by 5:00 p.m. on March 25, 2025.

Assistance for Persons with Disabilities: Contact Shelley Tencza, rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email shelley.tencza@dshs.wa.gov, by 5:00 p.m. on March 11, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The developmental disabilities administration (DDA) is amending these rules primarily to create a connection to the new certification rules under development by the administration, which will be adopted as new chapter 388-825A WAC. Other changes have been made to clarify language, correct background check requirements, and establish financial responsibility for clients receiving overnight planned respite services. Several sections are also being repealed.

Reasons Supporting Proposal: These amendments are necessary to support the creation of a standardized certification process for DDA-certified providers, which includes overnight planned respite services and stabilization, assessment, and intervention facility providers.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 71A.12.040 and 71A.12.120.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-790-4732; Implementation and Enforcement: Rae Graham, P.O. Box 45310, Olympia, WA 98504-5310, 360-280-3362.

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 98504-5310, phone 360-790-4732, TTY 711 relay service, 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.

January 30, 2025
Katherine I. Vasquez
Rules Coordinator

SHS-5064.1

AMENDATORY SECTION (Amending WSR 23-13-030, filed 6/12/23, effective 7/13/23)

WAC 388-829R-005 What definitions apply to this chapter? The following definitions apply to this chapter:

"Administrator" means the person responsible for daily management and operation of the overnight planned respite services site. The administrator may also be the owner.

"Authorization" means DDA approval of funding for a service as identified in the person-centered service plan or evidence of payment for a service.

"Backup caregiver" means an identified secondary person who will assume the role of providing direct care to and support of the client in instances of emergencies and in the absence of the primary caregiver who is unable to care for or respond to the client.

"Client" means a person who has a developmental disability as defined in RCW 71A.10.020 and who the DDA has determined eligible to receive services under chapter 71A.16 RCW. When used in this section, "you" is interchangeable with client.

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

"Direct support professional" means a person who interacts directly with a client during an overnight planned respite stay to provide services outlined in the client's overnight planned respite services individualized agreement.

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

"Family" means one or more of the following relatives: Spouse or registered domestic partner; natural; adoptive; or stepparent; grandparent; child; stepchild; sibling; stepsibling; uncle; aunt; first cousin; niece; or nephew.

"Legal representative" means a parent of a client if the client is under age 18 and parental rights have not been terminated or revoked, a court-appointed guardian if a decision is within the scope of the guardianship order, or any other person authorized by law to act for the client.

"Mandatory reporter" means any person working with vulnerable adults required to report suspected incidents of abandonment, abuse, neglect, financial exploitation under chapter 74.34 RCW.

"Nurse delegation" means the process by which a registered nurse transfers the performance of select nursing tasks to a nursing assistant-registered or nursing assistant-certified in select situations as set forth in chapter 18.79 RCW and WAC 246-840-910 through 246-840-970.

"Overnight planned respite services" means services that are intended to provide short-term intermittent relief for a person who lives with and acts as a DDA client's primary caregiver.

"Overnight planned respite services provider" and "provider" means an agency that is contracted to provide overnight planned respite services.

"Owner" means the person who accepts or delegates responsibility for the management and operation of the overnight planned respite services site. The owner may also be the administrator.

"Primary caregiver" means the person who provides the majority of the client's care and supervision and lives with the client.

AMENDATORY SECTION (Amending WSR 23-13-030, filed 6/12/23, effective 7/13/23)

WAC 388-829R-011 Who is eligible to receive overnight planned respite services? To be eligible to receive overnight planned respite services, a ~~((client))~~ person must:

(1) Be DDA-eligible ~~((for DDA services))~~ under chapter 388-823 WAC;

(2) Be 18 or older;

(3) Live at home with a primary caregiver and not currently receive:

(a) Community first choice residential services; or

(b) Residential habilitation services, unless receiving services from a companion home provider; ~~((or))~~ and

~~((b) Community first choice residential services; and))~~

(4) Identify a backup caregiver to respond in an emergency if the primary caregiver is unavailable.

NEW SECTION

WAC 388-829R-0019 What are the financial responsibilities of a primary caregiver or legal representative when the client is receiving overnight planned respite services? (1) A primary caregiver or legal representative remains financially responsible for all expenses for the client that the overnight planned respite services provider is not required to provide under this chapter.

(2) For a client subject to a dependency action who is court ordered in out-of-home placement, under federal regulations, the child welfare agency is responsible for paying the client's room, board, and supervision.

AMENDATORY SECTION (Amending WSR 20-08-033, filed 3/24/20, effective 5/1/20)

WAC 388-829R-025 What requirements must a provider meet to contract with DDA to provide overnight planned respite services? To be eligible to contract with DDA to provide overnight planned respite services, a provider must:

(1) Be approved as a contractor by the department; and

(2) ((Receive)) Obtain initial certification ((no more than ninety days after the first date of service delivery)) in accordance with WAC 388-825A-0040.

NEW SECTION

WAC 388-829R-026 Must a provider be certified? A provider of overnight planned respite services must be certified by DDA under chapter 388-825A WAC.

NEW SECTION

WAC 388-829R-027 Is a site visit required and what does DDA review during a site visit? (1) To be certified, a provider must participate in site visits as required under chapter 388-825A WAC.

(2) During a site visit, DDA reviews the provider's service site for the following safety requirements:

(a) The common areas of the home are unrestricted.

(b) All entrances and exits are unblocked.

(c) The home is in good repair and maintained in a sanitary manner.

(d) The home has a storage area for flammable and combustible materials.

(e) Every floor of the home has working smoke and carbon monoxide detectors.

(f) The home has a fire extinguisher that meets requirements for the residence type. There must be a fire extinguisher in the kitchen and at least one on every floor of the home.

(g) The home has a stocked first-aid kit.

(h) The home has a working and accessible telephone.

(i) The home has a working and accessible flashlight or alternative light source.

(j) Emergency contact information is available and accessible in the home (e.g., 911, poison control, nonemergency 911, adult protective services, child protective services).

(k) The contact information for the developmental disabilities ombuds is available and accessible in the home.

(l) The water temperature at the home is 120 degrees Fahrenheit or less.

(m) There is a safety plan for any body of water more than 24 inches deep at the home.

(n) The home has an evacuation plan and an emergency food and water supply.

(o) The home has a backup power source (e.g., generator, battery pack) if the provider supports a client who uses life sustaining medical equipment.

AMENDATORY SECTION (Amending WSR 20-08-033, filed 3/24/20, effective 5/1/20)

WAC 388-829R-030 Who must have a background check? (1) An overnight planned respite services provider employee, administrator, owner, 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 before having unsupervised access to a client and every ((two)) three years thereafter, or more frequently if required by ((DSHS)) DDA.

AMENDATORY SECTION (Amending WSR 22-11-056, filed 5/16/22, effective 6/16/22)

WAC 388-847-0050 What does SAIF provide? (1) The stabilization, assessment, and intervention facility (SAIF) provides the following:

(a) Stabilization services under WAC 388-845-1100;

(b) Functional assessment under WAC 388-847-0080;

(c) The creation and implementation of a behavior support plan under WAC 388-847-0090;

(d) ((Services)) Supports assigned to SAIF in the client's person-centered service plan;

(e) Opportunities for the client's residential provider to participate in individualized team meetings, discuss effective environmental strategies, collaborate on techniques for implementing the client's behavior support plan; and

(f) Medication administration and medication assistance as needed.

(2) SAIF must provide the following to clients:

(a) Three meals per day plus snacks;

(b) Toiletries and personal care items;

(c) Bedding and towels;

(d) Access to laundry facilities;

(e) Access to a telephone;

- (f) Opportunities for accessing the community; and
- (g) Transportation to necessary appointments or services.

AMENDATORY SECTION (Amending WSR 22-11-056, filed 5/16/22, effective 6/16/22)

WAC 388-847-0260 Must SAIF be certified? (~~((1) The stabilization, assessment, and intervention facility (SAIF) must be certified by DDA no more than 90 days after the first date of service delivery.~~
~~(2) DDA certifies SAIF through a certification evaluation.~~
~~(3) DDA contracted evaluators conduct the certification evaluations.~~
~~(4) SAIF must participate in a certification evaluation at least once every 12 months.)~~ SAIF must be certified by DDA under chapter 388-825A WAC.

NEW SECTION

WAC 388-847-0261 Is a site visit required and what does DDA review during a site visit? (1) To be certified, a provider must participate in site visits as required under chapter 388-825A WAC.
 (2) During a site visit, DDA reviews the provider's service site for the following safety requirements:
 (a) The common areas of the home are unrestricted.
 (b) All entrances and exits are unblocked.
 (c) The home is in good repair and maintained in a sanitary manner.
 (d) The home has a storage area for flammable and combustible materials.
 (e) Every floor of the home has working smoke detectors.
 (f) The home has a fire extinguisher that meets requirements for the residence type. There must be a fire extinguisher in the kitchen and one on at least every floor of the home.
 (g) The home has a stocked first-aid kit.
 (h) The home has a working and accessible telephone.
 (i) The home has a working and accessible flashlight or alternative light source.
 (j) Emergency contact information is available and accessible in the home (e.g., 911, poison control, nonemergency 911, adult protective services, child protective services).
 (k) The contact information for the developmental disabilities ombuds is available and accessible in the home.
 (l) The water temperature at the home is 120 degrees Fahrenheit or less.
 (m) There is a safety plan for any body of water more than 24 inches deep at the home.
 (n) The home has an evacuation plan and an emergency food and water supply.
 (o) The home has a backup power source (e.g., generator, battery pack) if the provider supports a client who uses life sustaining medical equipment.

REPEALER

The following sections of the Washington Administrative Code are repealed:

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| WAC 388-829R-220 | What is initial certification? |
| WAC 388-829R-225 | What is standard certification? |
| WAC 388-829R-230 | What is provisional certification? |
| WAC 388-829R-235 | What must an overnight planned respite services provider comply with to maintain certification? |
| WAC 388-829R-240 | When may DDA decertify an overnight planned respite services provider? |
| WAC 388-829R-245 | How does DDA monitor overnight planned respite services? |
| WAC 388-829R-250 | How must the overnight planned respite services provider participate in the certification evaluation process? |
| WAC 388-829R-255 | What if the overnight planned respite services provider disagrees with a certification evaluation or certification decision? |
| WAC 388-829R-260 | What if the overnight planned respite services provider disagrees with a certification action or the outcome of an informal dispute resolution? |