

WSR 25-04-074
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed January 31, 2025, 9:54 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-20-054.

Title of Rule and Other Identifying Information: Chapter 388-841 WAC, Enhanced respite services program; and repealing WAC 388-825-201 What are enhanced respite services?, 388-825-206 Who is eligible to receive enhanced respite services?, and 388-825-211 How long am I eligible to receive enhanced respite services?

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 primary purpose of this project is to recodify enhanced respite services (ERS) rules in their own chapter (they were previously in chapter 388-825 WAC), and to establish a connection to the new certification rules under development at the developmental disabilities administration (DDA).

Reasons Supporting Proposal: Rules for the ERS program were previously codified under WAC 388-825-201, 388-825-206, and 388-825-211. These amendments are necessary to add more provider and service delivery requirements to rule for enhanced respite providers. The providers will be certified to the requirements established in this new chapter.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 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: Jaimee Scheffler, 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(5).

Explanation of exemptions: DDA has analyzed the proposed rules and there is no indication of costs for compliance. The rules do not require small businesses, ERS providers, to purchase any goods, services, licenses, etc.

Scope of exemption for rule proposal:

Is fully 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. DDA has analyzed the proposed rules and there is no indication of costs for compliance. The rules do not require small businesses, ERS providers, to purchase any goods, services, licenses, etc.

January 30, 2025
Katherine I. Vasquez
Rules Coordinator

SHS-5049.2

**Chapter 388-841 WAC
ENHANCED RESPITE SERVICES**

PURPOSE

NEW SECTION

WAC 388-841-0010 What is the purpose of the enhanced respite services program? The enhanced respite services (ERS) program enables DDA-enrolled clients to access short-term stabilization in a DDA-contracted and licensed staffed residential setting. ERS is intended to help the client stabilize in a community-based setting and work on rehabilitative goals while giving their primary caregiver a short-term break in caregiving.

DEFINITIONS

NEW SECTION

WAC 388-841-0020 Definitions. "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 has been determined DDA-eligible under chapter 388-823 WAC.

"DDA" means the developmental disabilities administration within the department of social and health services.

"Habilitative goals" means the identified goals intended to assist the client to acquire, retain, and improve upon self-help, socialization, and adaptive skills.

"Habilitation" means services that assist persons with developmental disabilities to acquire, retain, and improve upon the self-help, socialization, and adaptive skills necessary to reside successfully in home and community-based settings.

"Individualized team" means the group of people who work together to provide formal and informal supports to a client. A typical team includes the client, the client's primary caregiver and legal representative, ERS staff, the client's case resource manager, managed care organization care coordinators, and any other service providers working with the client and the client's primary caregiver.

"Legal representative" means a parent of a client if the client is under age 18 and parental rights have not been terminated or relinquished, 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.

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

"Provider" means the contracted provider of enhanced respite services.

ELIGIBILITYNEW SECTION

WAC 388-841-0030 Who may be eligible to receive stabilization services from an enhanced respite services provider? A person may be eligible to receive stabilization services from an enhanced respite services (ERS) provider if:

(1) The person is age eight to 17, or age 18 to 20 and enrolled in school or a vocational program;

(2) The person is DDA-eligible under chapter 388-823 WAC;

(3) The person is eligible for stabilization services under WAC 388-845-1100;

(4) The person has received medically necessary inpatient treatment for conditions related to behavioral health or autism, if recommended by the client's treating professional, and does not have a current treatment recommendation for a locked or secured facility;

(5) The provider determines under WAC 388-841-0040 that the provider can safely meet the client's needs and that the client does not pose a risk to the health or safety of themselves, ERS staff, or other clients supported by the provider;

(6) The person does not require an intervention prohibited in the setting or that cannot be provided based on staffing levels and credentials;

(7) The person lives at home with their primary caregiver and at the time of application has an identified discharge setting to return to, such as the primary caregiver's home or other residential setting; and

(8) The primary caregiver identifies a backup caregiver to respond in an emergency if the primary caregiver is unavailable.

NEW SECTION

WAC 388-841-0040 How does the provider determine if they can safely meet a client's needs? To determine whether they can safely meet a client's needs, the enhanced respite services provider reviews client information, such as:

(1) The client's referral packet and any additional requested information;

(2) Interviews with the client and primary caregiver, collateral contacts, or case manager; and

(3) Composition and needs of clients currently supported by the provider.

NEW SECTION

WAC 388-841-0050 Who may become an enhanced respite services provider? A staffed residential home may become an enhanced respite services (ERS) provider if licensed under chapter 110-145 WAC and contracted with and certified by DDA to provide services through the ERS program.

NEW SECTION

WAC 388-841-0060 Must the provider be certified? The enhanced respite services provider must be certified by DDA under chapter 388-825A WAC.

NEW SECTION

WAC 388-841-0070 Is a site visit required and what does DDA re-view during a site visit? (1) To be certified, the 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 meets applicable integrated setting requirements under WAC 388-823-1096.
- (p) The home has a backup power source (e.g., generator, battery pack) if the provider supports a child or youth who uses life sustaining medical equipment.

NEW SECTION

WAC 388-841-0080 What training must a direct support professional complete? (1) To provide services as a direct support professional (DSP), a person must complete:

- (a) Training required under chapter 110-145 WAC;
 - (b) Training and continuing education required under chapter 388-829 WAC; and
 - (c) Nurse delegation training if delegation is required under WAC 246-840-930 and the DSP will be performing tasks requiring delegation.
- (2) The provider must ensure that each direct support professional stays current on their CPR certification, food worker card, and first aid and bloodborne pathogens trainings.
- (3) The provider must ensure that a consultant under WAC 110-145-1460 observe and develop client-specific training for direct support professionals.

SERVICE DELIVERYNEW SECTION

WAC 388-841-0090 What must an enhanced respite services provider provide? (1) The enhanced respite services program includes:

- (a) Creation and implementation of a habilitation plan and a behavior intervention plan, which must be developed by a consultant under WAC 110-145-1460 in collaboration with the client and primary caregiver;
 - (b) Opportunities for the client's primary caregiver and individualized team to participate in scheduled intake, mid-stay, and discharge meetings facilitated by the provider;
 - (c) Discussion of effective environmental strategies, and collaboration on techniques for implementing the client's habilitation and behavior intervention plans; and
 - (d) Medication administration and medication assistance as needed.
- (2) The provider must provide the following to clients:
- (a) Three meals per day plus snacks;
 - (b) Basic 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;
 - (g) Transportation to emergency services, as needed;
 - (h) Transportation to local, scheduled appointments if agreed upon before admission between the provider and the primary caregiver; and
 - (i) Access to education as agreed upon before admission between the provider and the primary caregiver.

NEW SECTION

WAC 388-841-0100 How long may a client receive services through the enhanced respite services program? A client may receive services through the enhanced respite services program one time per calendar year for 30 consecutive days.

RIGHTS AND RESPONSIBILITIES

NEW SECTION

WAC 388-841-0110 What are the responsibilities of a parent, legal representative, and primary caregiver when their child is in the enhanced respite services program? (1) The enhanced respite services (ERS) program is voluntary and does not affect a parent, legal representative, or primary caregiver's rights and responsibilities for the child.

(2) Before the client receives services from the provider, the parent, legal representative, or primary caregiver must:

(a) Meet with the provider to plan for the client's stay;

(b) Arrange with the client's current school district to maintain their school enrollment and a plan for their educational progress while receiving this service; and

(c) Arrange transportation of the client to and from the facility.

(3) While a client is in the ERS program, the client's primary caregiver must:

(a) Maintain regular contact with their child or youth throughout the child or youth's stay;

(b) Participate in the client's individualized team meetings - including, intake, mid-stay, and discharge meetings - to discuss service planning and implementing strategies identified in the habilitation and behavior intervention plans; and

(c) Work with ERS staff to transition the client back home on the established discharge date.

NEW SECTION

WAC 388-841-0120 What are the financial responsibilities of a parent, legal representative, and primary caregiver when their child is in the enhanced respite services program? A parent, legal representative, or primary caregiver remains financially responsible for all expenses for their child that the enhanced respite services provider is not required to provide under this chapter.

SAFETYNEW SECTION

WAC 388-841-0130 Must a provider regulate the water temperature at the home? The provider must:

(1) Maintain the water temperature in the home no higher than 120 degrees Fahrenheit;

(2) Check the water temperature monthly; and

(3) Document compliance with this requirement.

TERMINATIONNEW SECTION

WAC 388-841-0140 May the provider decide to stop providing services and to whom must notice be sent? (1) The provider may decide to stop providing services to a client if the provider determines and documents that the client's behavior jeopardizes:

(a) The client's health or safety; or
(b) The health or safety of staff or other clients the provider supports.

(2) The notice of the provider's decision must include:

(a) The reason for the decision; and
(b) The effective date of the decision.

(3) Before the effective date of the decision, the provider must notify:

(a) The client, if appropriate;
(b) The client's primary caregiver and legal representative;
(c) The client's DDA case manager; and
(d) The ERS contract manager.

ADMINISTRATIVE HEARING RIGHTSNEW SECTION

WAC 388-841-0150 What are a client's appeal rights? (1) A client, the client's primary caregiver, or the client's legal representative may appeal decisions made by DDA in accordance with WAC 388-825-120 through 388-825-165.

(2) A client, the client's primary caregiver, or the client's legal representative does not have a right to appeal a provider's decision to no longer serve the client.

(3) Once the client has received services for the maximum of 30 consecutive days in a calendar year, the enhanced respite services program is complete. The client, the client's primary caregiver, or the client's legal representative does not have a right to appeal the service end date.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-825-201 What are enhanced respite services?
- WAC 388-825-206 Who is eligible to receive enhanced respite services?
- WAC 388-825-211 How long am I eligible to receive enhanced respite services?