

WSR 25-04-082
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed February 3, 2025, 10:11 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-23-133.

Title of Rule and Other Identifying Information: Chapter 388-825A WAC, DDA-certified providers.

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: Not 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 1, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this new chapter is to establish requirements for the certification, evaluation process, corrective action plan, informal dispute resolution, and more.

Reasons Supporting Proposal: Establishing these requirements in a new chapter standardizes processes, requirements, and expectations for both the developmental disabilities administration and the providers it will certify.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 71A.12.080.

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: Lori Gianetto Bare, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1565.

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 360-630-1684, TTY 711 relay service, email chantelle.diaz@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. The proposed new certification rules do not require regulated entities to purchase new licenses or equipment, attend trainings, or engage in other activities with associated fees and costs. These rules impose no new costs on those impacted by the rules.

January 30, 2025

SHS-5070.1

**Chapter 388-825A WAC
DDA-CERTIFIED PROVIDERS**NEW SECTION

WAC 388-825A-0010 What is the purpose of this chapter? This chapter establishes certification requirements for the following programs:

- (1) Alternative living under chapter 388-829A WAC;
- (2) Companion homes under chapter 388-829C WAC;
- (3) Enhanced respite services under chapter 388-830 WAC;
- (4) Intensive habilitation services for children under chapter 388-833 WAC;
- (5) Children's residential habilitation services under chapter 388-826 and 388-842 WAC;
- (6) Overnight planned respite services under chapter 388-829R WAC;
- (7) Stabilization, assessment, and intervention facility under chapter 388-847 WAC; and
- (8) Other provider type regulated by rules that incorporate this chapter by reference.

NEW SECTION

WAC 388-825A-0020 What definitions apply to this chapter? "**Applicant**" means an individual or entity applying for certification from DDA under this chapter.

"**Certification evaluation**" means a process used by DDA to determine if an applicant or provider complies with applicable WAC, policy, and contract requirements.

"**Certification decision**" means a length of certification, a certification approval or denial, a citation, or an enforcement action.

"**Certified**" or "**certification**" means a status that indicates a provider is approved under this chapter to provide services to clients.

"**Citation**" means a standard or regulation with which a provider is out of compliance.

"**Client**" means a person who has a developmental disability as defined in RCW 71A.10.020 and who has been determined eligible to receive services by DDA under chapter 388-823 WAC.

"**Corrective action**" means action taken to remedy a citation.

"**Corrective action plan**" means a plan developed by DDA and the provider to address a citation or citations.

"Decertification" means revocation of a provider's certification.

"Enforcement action" means an action DDA may apply to a provider's certification if the provider is issued a citation or fails to comply with a corrective action.

"Evaluator" means an individual or entity contracted with DDA to conduct certification evaluations and other follow-up compliance reviews as requested by DDA.

"Initial certification" means a temporary certification. Initial certification is a prerequisite for the provider to begin delivering services to clients.

"Provider" means an individual or entity who is certified by DDA under this chapter.

"Site" means the private residence or facility where a client receives services from a provider certified under this chapter.

"Site visit" means a mandatory survey of a provider's service site to assess compliance with program-specific site requirements.

NEW SECTION

WAC 388-825A-0030 How must a provider obtain and maintain their certification? (1) To become a certified provider, an applicant must obtain initial certification under WAC 388-825A-0040.

(2) To maintain certification, within 120 days of obtaining certification, and at least every 24 months thereafter, a certified provider must:

- (a) Deliver client services;
- (b) Maintain provider qualifications under program-specific rules; and
- (c) Pass a certification evaluation under WAC 388-825A-0060.

NEW SECTION

WAC 388-825A-0040 How does an applicant obtain initial certification? (1) To obtain initial certification and begin serving clients an applicant must:

- (a) Complete the DDA-provided application;
 - (b) Complete an interview with DDA if requested;
 - (c) Complete training according to program-specific rules;
 - (d) Have policies as required by program-specific rules;
 - (e) Meet contract requirements, if applicable; and
 - (f) Pass a site visit under program-specific rules.
- (2) DDA must notify the applicant in writing that the initial certification is:

- (a) Approved; or
 - (b) Denied, and state the reason for the denial.
- (3) An initial certification is valid for no more than 120 days without a certification evaluation unless an extension is granted under subsection (4) of this section.

(4) DDA may extend a provider's initial certification beyond 120 days only if:

- (a) The provider is not yet supporting a client or the provider has delivered services for less than 60 days; and

(b) DDA verifies the provider meets program-specific WAC and contract requirements.

(5) An applicant denied an initial certification may reapply.

(6) DDA may close out an application if the applicant is nonresponsive for 10 business days.

(7) If a provider no longer meets initial certification requirements, DDA may revoke the provider's initial certification. If DDA revokes an initial certification, DDA must notify the provider in writing of the reason for the revocation.

NEW SECTION

WAC 388-825A-0050 How does an existing children's residential habilitation services, intensive habilitation services, or enhanced respite services provider obtain initial certification? (1) For an existing children's residential habilitation services, intensive habilitation services, or enhanced respite services provider who delivered services before [enter effective date of chapter], DDA will issue the provider an initial certification.

(2) For the existing children's residential habilitation services, intensive habilitation services, and enhanced respite services providers only:

(a) The initial certification is valid until the date the provider completes a certification evaluation under WAC 388-825A-0060 and receives certification, which must occur no more than 365 days after the initial certification is issued.

(b) A site visit is not required before DDA issues the initial certification.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

NEW SECTION

WAC 388-825A-0060 What occurs during a certification evaluation?

During a certification evaluation, an evaluator must:

(1) Review compliance with:

(a) Program-specific rules;

(b) Policies; and

(c) Setting requirements under 42 C.F.R. 441.301 (c)(4), unless the provider is delivering overnight planned respite services under chapter 388-829R WAC;

(2) Review provider and client records per program-specific rules and policies;

(3) Review satisfaction survey results, if any;

(4) Conduct a program-specific site visit;

(5) Complete an interview with the provider;

(6) Complete an interview with a client if the client agrees;

(7) Complete an interview with the client's legal representative if the legal representative agrees;

(8) Conduct an exit meeting with the provider and DDA under WAC 388-825A-0090; and

(9) Provide a summary of each finding, record corrective actions, and provide completion dates if any.

NEW SECTION

WAC 388-825A-0070 When do site visits occur? (1) DDA must complete a site visit before issuing an initial certification.

(2) An evaluator must complete a site visit during a certification evaluation.

(3) DDA may conduct unannounced and routine site visits at any time.

(4) Alternative living providers are exempt from site visits.

NEW SECTION

WAC 388-825A-0080 How must a provider participate in the certification evaluation process? The provider must participate in the certification evaluation process with DDA employees and DDA-contracted evaluators by completing actions such as:

(1) Participating in scheduled and unscheduled visits;

(2) Cooperating in scheduling visits;

(3) Providing information and documentation as requested;

(4) Responding to questions or issues identified;

(5) Participating in an exit meeting; and

(6) Implementing a corrective action plan.

NEW SECTION

WAC 388-825A-0090 What happens during a certification evaluation exit meeting? (1) During a certification evaluation exit meeting:

(a) The evaluator must present a summary of each finding;

(b) DDA and the provider must work together to determine a corrective action plan and due dates in accordance with WAC 388-825A-0180; and

(c) A DDA program representative must recommend a length for the provider's certification not to exceed 24 months and may recommend an enforcement action under WAC 388-825A-0200.

(2) If recommending an enforcement action, the DDA program representative must invite the DDA quality assurance representative to the exit meeting.

(3) The evaluator must record the corrective action plan, due date, and certification length in a draft certification evaluation and submit to a DDA quality assurance representative for final review.

NEW SECTION

WAC 388-825A-0100 What action does DDA take after a certification evaluation? (1) Based on the draft certification evaluation, a DDA quality assurance representative may:

(a) Certify the provider for the recommended certification length or revise the certification length; or

(b) Apply an enforcement action to the provider's certification under WAC 388-825A-0200.

(2) A DDA quality assurance representative must send the provider a copy of the completed certification evaluation and notify the provider in writing of the length of the provider's certification.

NEW SECTION

WAC 388-825A-0110 How does DDA determine the length of a provider's certification? When determining the length of a provider's certification, DDA considers the following:

- (1) Number of citations;
- (2) Category of citations issued; and
- (3) Whether a repeat citation is issued.

NEW SECTION

WAC 388-825A-0120 What if a certified provider transfers services to a new site? (1) Before a certified provider transfers services to a new site and continues supporting the same client or clients, the site must meet program-specific site requirements and pass a site visit to maintain current certification.

(2) If a provider temporarily relocates services due to an emergency, as soon as client safety can be assured, the provider must notify DDA with the new address, phone number, and anticipated duration of the change in location.

(3) For alternative living, the provider holds one certification regardless of where services are delivered.

NEW SECTION

WAC 388-825A-0130 What if a certified provider opens an additional site? Before a certified provider opens an additional site, the provider must request and obtain a new certification in accordance with this chapter. Each additional service site must be separately certified.

NEW SECTION

WAC 388-825A-0140 How must a provider maintain their certification? Within 120 days of obtaining certification, and at least every 24 months thereafter, a certified provider must:

- (1) Maintain provider qualifications under program-specific rules; and
- (2) Pass a certification evaluation under WAC 388-825A-0060.

NEW SECTION

WAC 388-825A-0150 Can a provider's certification period be extended? (1) DDA may extend a provider's certification period if an evaluation cannot be completed timely. DDA must notify the provider of their new certification due date.

(2) The provider's performance during the extension period is reviewed as part of the provider's evaluation.

(3) The provider's new certification period begins at the end of the extension period.

NEW SECTION

WAC 388-825A-0160 Must a provider complete a certification evaluation if the provider is not currently providing services to a client? If a provider delivered services during a certification period but is temporarily not delivering services when their certification evaluation is due:

(1) The certification evaluation must be conducted; and

(2) An evaluator must attempt to interview a client (or the client's legal representative, if appropriate) who received services from the provider during the certification period.

NEW SECTION

WAC 388-825A-0170 When may DDA issue a citation? DDA may issue a citation based on information discovered during a certification evaluation or other DDA review.

NEW SECTION

WAC 388-825A-0180 How are corrective actions determined and what are the timelines for correction? (1) DDA and the provider work together to develop a corrective action plan in response to a citation.

(2) DDA determines the timeline for correction based on the nature of the citation, according to the following degrees of severity.

(a) A minor citation is an infrequent or isolated incident that does not:

(i) Impact client well-being; or

(ii) Jeopardize client funding.

(b) A major citation is an isolated incident or systemic problem that results in:

(i) Inadequate treatment of a client; or

(ii) Jeopardized client well-being (i.e., no imminent danger).

(c) A significant citation is an isolated incident or systemic problem that results in an imminent health and safety risk impacting client well-being.

(3) A repeat citation may be elevated to a higher degree of severity. A repeat citation occurs when a provider is cited for the same incident or systemic problem two or more times.

(4) Providers must complete corrective actions as follows.

(a) **Minor.** No more than 30 calendar days after a minor citation is issued, the provider must:

(i) Apply the correction across the site and to all clients and employees in the sample. The provider must submit to DDA evidence that the citation has been corrected.

(ii) Inform DDA of the provider's plan to ensure the correction is applied to all other clients, employees, and sites under the certification, as appropriate.

(b) **Major.** No more than 10 calendar days after a major citation is identified, the provider must correct the citation for all clients, employees, and sites under the certification, as appropriate. The provider must submit to DDA evidence that the citation has been corrected.

(c) **Significant.** No more than 24 hours after a significant citation is identified, the provider must correct the citation for all clients, employees, and sites under the certification, as appropriate. The provider must submit to DDA evidence that the citation has been corrected.

(5) DDA headquarters may approve modified timelines in subsection (4) of this section.

NEW SECTION

WAC 388-825A-0190 What if a provider fails to complete a corrective action plan? If a provider fails to complete a corrective action plan, DDA may apply an enforcement action to a provider's certification under WAC 388-825A-0200.

NEW SECTION

WAC 388-825A-0200 What enforcement actions may DDA take? (1) If a provider is issued a citation, DDA may apply one or more of the following enforcement actions to a provider's certification:

(a) Conditions, which requires the provider to complete an action determined by DDA by a specific date;

(b) Referral suspension, which temporarily prohibits the provider from delivering services to new clients until approved by DDA;

(c) Provisional certification, which sets a provider's certification to expire on a specific date unless the provider corrects identified areas of noncompliance; and

(d) Decertification.

(2) DDA must decertify a provider who is no longer qualified according to program-specific rules.

(3) To issue an enforcement action, DDA must send the provider a written notification. The notification must:

(a) State the enforcement action;

(b) State the effective date and length of the enforcement action;

(c) List a specific regulation for which the provider is issued a citation;

(d) State the conditions, if any, and list the date by which each condition must be met;

- (e) Include additional supporting documentation, if available;
and
- (f) Explain the informal dispute resolution process and the provider's appeal rights.
- (4) If a provider receives an enforcement action, DDA sends each client supported by the provider and their legal representative or necessary supplemental accommodation a notice of that action as described in chapter 71A.26 RCW.
- (5) A DDA representative or the evaluator must ensure citations listed in the notice from DDA have been corrected before lifting an enforcement action. DDA must issue a letter notifying the provider when the enforcement action is lifted.
- (6) DDA may issue a new citation if a DSHS representative or evaluator discovers a new finding.

NEW SECTION

WAC 388-825A-0210 When may DDA apply an enforcement action? DDA may apply an enforcement action to a provider's certification if:

- (1) DDA issues the provider a citation in the major or significant category under WAC 388-825A-0180;
- (2) The provider fails to cooperate, prevents, or interferes with a certification evaluation, or review by the department or applicable licensing agency;
- (3) There is an immediate issue affecting client health and safety potentially involving provider action or inaction;
- (4) The provider is non-compliant with certification requirements;
- (5) The provider failed to comply with any applicable requirements regarding vulnerable adults under chapter 74.34 RCW or children under chapter 26.44 RCW;
- (6) The provider failed to submit a plan of correction; or
- (7) The provider failed to implement a plan of correction.

NEW SECTION

WAC 388-825A-0220 What if a contracted provider disagrees with a citation, certification decision, or enforcement action? If a contracted provider disagrees with a citation, certification decision, or enforcement action, the provider may request one or both of the following:

- (1) Informal dispute resolution under WAC 388-825A-0230.
- (2) Administrative hearing under WAC 388-825A-0240.

NEW SECTION

WAC 388-825A-0230 What is an informal dispute resolution and how does a provider request one? (1) A provider who disagrees with a citation, certification decision, or enforcement action may request an informal dispute resolution with DDA where DDA will review evidence from the provider.

- (2) To request an informal dispute resolution, the provider must:
 - (a) Submit a written request to DDA no more than 15 calendar days after the date of the certification letter or written notice of an enforcement action; and
 - (b) Include a written statement that identifies:
 - (i) Each disputed citation, certification decision, or enforcement action;
 - (ii) The grounds for disagreement with DDA's finding; and
 - (iii) The provider's preferred method for evidence presentation (i.e., face-to-face, video conference, teleconference, or document review).
- (3) No more than 10 business days after receiving an informal dispute resolution request, DDA must notify the provider the request was received.
- (4) No more than 30 calendar days after DDA receives the provider's request, DDA must:
 - (a) Review the evidence and argument presented;
 - (b) Notify the provider in writing which action DDA is taking under subsection (5) of this section; and
 - (c) Issue an amended notice if a citation, certification decision, or enforcement action is rescinded or changed.
- (5) DDA may take the following action:
 - (a) Rescind a citation, certification decision, or enforcement action;
 - (b) Change a citation, certification decision, or enforcement action;
 - (c) Make editorial changes to a citation, certification decision, or enforcement action; and
 - (d) Take no action.
- (6) The DDA assistant secretary or designee makes the final decision following an informal dispute resolution.
- (7) The effective date of an enforcement action must not be delayed or suspended pending an informal dispute resolution process.
- (8) A corrective action due date must not be delayed or suspended pending an informal dispute resolution process.

NEW SECTION

- WAC 388-825A-0240 Does a provider have a right to appeal decisions under this chapter?** (1) If a contracted provider, or provider whose contract has been terminated, disagrees with an enforcement action or the outcome of an informal dispute resolution, the provider may request an administrative hearing under chapter 388-02 WAC.
- (2) To request an administrative hearing the provider must submit a written request to the office of administrative hearings no more than 28 days after receiving a written notice of enforcement action or written notice of the outcome of the informal dispute resolution, which must include:
 - (a) A copy of the contested citation, certification decision, or enforcement action; and
 - (b) The reason the provider is contesting the citation, certification decision, or enforcement action.