

WSR 25-15-100
PERMANENT RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Home and Community Living Administration)

(Home and Community Services)

[Filed July 16, 2025, 3:01 p.m., effective August 16, 2025]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To adopt amendments in WAC 388-106-0336 and 388-106-0338 to reflect updates to residential support waiver (RSW) eligibility when individuals are eligible for 1915(i) medicaid state plan option. Individuals must access the medicaid state plan service 1915(i) when assessed as needing 1:1 enhanced staffing. To avoid duplication of state plan and waiver services, the proposed rule will align with 1915(i) medicaid state plan eligibility and access to services for enhanced staffing. For care plans resulting from an eligibility assessment on or after July 1, 2025, to be eligible to receive RSW services, clients must first be found to be not eligible to receive services through the community behavioral health supports 1915(i) state plan option under chapter 182-561 WAC.

Citation of Rules Affected by this Order: Amending WAC 388-106-0338 and 388-106-0336.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520, 74.39A.030, and 74.39A.400.

Adopted under notice filed as WSR 25-12-076 on May 30, 2025.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 2, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 2, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 16, 2025.

Katherine I. Vasquez
Rules Coordinator

SHS-5086.1

AMENDATORY SECTION (Amending WSR 24-09-037, filed 4/11/24, effective 5/12/24)

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) 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) 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) 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;
 - (e) Coordination and collaboration with a contracted behavior support provider; and
 - (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 support 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;
- (4) Enhanced services facilities 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 WAC 388-107-0230 through 388-107-0270;
- (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 either 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;
- (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;
- (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;
- (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;
 - (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;
 - (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 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.
 - (11) For care plans resulting from an eligibility assessment on or after July 1, 2025, to be eligible to receive the following waiver services you must first be found to not be eligible to receive services through the community behavioral health supports 1915(i) state plan option under chapter 182-561 WAC:
 - (a) Services provided under a specialized behavior support contract in an adult family home as described in subsection (2) of this section; or

(b) On-site staffing ratios as described in subsections (3)(e) and (4)(e) of this section.

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

WAC 388-106-0338 Am I eligible for services funded by the residential support waiver? (1) You are eligible for services funded by the residential support waiver if the department, based on its assessment of your needs in CARE, determines you meet all of the following criteria:

(a) You are at least (~~eighteen~~) 18 years old and blind or have a disability as defined in WAC 182-512-0050, or are age (~~sixty-five~~) 65 or older;

(b) Your income and resources fall within the limits set in WAC 182-515-1505 and meet the income and resource criteria for home and community based waiver programs and hospice clients;

(c) Your CARE assessment shows you need the level of care provided in a nursing facility or that you will likely need this level of care within (~~thirty~~) 30 days unless you receive residential support waiver services as defined in WAC 388-106-0355(1);

(d) You have been assessed as medically and psychiatrically stable and one (~~ore~~) or more of the following applies:

(i) You currently reside at a state mental hospital or the psychiatric unit of a hospital and the hospital has found you are ready for discharge to the community;

(ii) You have a history of frequent or protracted psychiatric hospitalizations; or

(iii) You have a history of an inability to remain medically or behaviorally stable for more than six months and you;

(A) Have exhibited serious challenging behaviors within the last year; or

(B) Have had problems managing your medication which has affected your ability to live in the community;

(e) Because of the protracted nature of your behavior and clinical complexity, you have no other placement options and have found no community placement with a qualified community provider;

(f) You have behavioral or clinical complexity that requires staffing supports available only in the qualified community settings provided through the residential support waiver; and

(g) You require caregiving staff with specific training in providing personal care, supervision, and behavioral supports to adults with challenging behaviors.

(2) You are not eligible to receive a service under the waiver that is similar in scope and nature and available to you through the Washington medicaid state plan, including, but not limited to, services and supports offered under the community behavioral health supports 1915(i) state plan option under chapter 182-561 WAC.

(~~(+2)~~) (3) Under this section, "challenging behaviors" means a persistent pattern of behaviors or uncontrolled symptoms of a cognitive or mental condition that inhibit the individual's functioning in public places, the facility, or integration within the community that have been present for long periods of time or have manifested as an acute onset.

(4) Subsection (2) of this section applies to eligibility assessments for care plans starting on or after July 1, 2025.