

WSR 25-16-096

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Home and Community Living Administration)

[Filed August 5, 2025, 3:53 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 25-04-062, 25-04-063, 25-04-064, 25-04-065, 25-04-066, and 25-04-068.

Title of Rule and Other Identifying Information: This proposal would add new language to the currently proposed new chapter 388-116 WAC. Proposed rules include payment and reimbursement for approved services, notice of department determinations, and administrative hearings.

Hearing Location(s): On September 9, 2025, 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 September 10, 2025.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, beginning noon on August 6, 2025, by September 9, 2025, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, rules consultant, phone 360-664-6036, TTY 711 relay service, email shelley.tencza@dshs.wa.gov, by August 26, 2025, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules implement requirements under chapter 50B.04 RCW, including payment and reimbursement for approved services, notices of department determinations, and administrative hearings. The rules govern beneficiaries of the long-term services and supports trust and long-term services and supports providers providing approved services to beneficiaries.

Reasons Supporting Proposal: This rule making is necessary for the WA Cares fund program to set maximum rates, payment requirements, requirements for notices of department determinations, and administrative hearings.

Statutory Authority for Adoption: RCW 50B.04.020(k) [(3)(j)].

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Arielle Finney, P.O. Box 45600, Olympia, WA 98504-5600, 360-764-0384; Implementation and Enforcement: Katie Kelnofer (provider) and Tracey Rollins (beneficiary), P.O. Box 45600, Olympia, WA 98504-5600, 564-669-4440 and 360-688-6359.

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 Arielle Finney, P.O. Box 45600, Olympia, WA 98504-5600, phone 360-764-0384, email Arielle.finney2@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 rules are the least burdensome route to achieving the goals and objectives of the program. The rules do not require an action that violates federal or state law. The rules do not impose more stringent requirements on private entities than on public entities. There are no applicable federal regulations related to the subject of these rules. WA Cares program launches in July 2026. At the time of this filing, no long-term services and supports providers are registered for the WA Cares program and therefore would not incur cost associated with the material of the proposed rules.

A copy of the detailed cost calculations may be obtained by contacting Arielle Finney, P.O. Box 45600, Olympia, WA 98504-5600, phone 360-764-0384, email Arielle.finney2@dshs.wa.gov.

August 1, 2025
Katherine I. Vasquez
Rules Coordinator

SHS-5100.2

NEW SECTION

WAC 388-116-3080 Exception to an approved services rule. (1) A long-term services and supports provider may request an exception to an approved services rule.

(2) To request an exception to an approved services rule, a long-term services and supports provider must submit a written request, including justification, to the department.

(3) Decisions about exception requests are not appealable.

PAYMENT AND REIMBURSEMENT FOR APPROVED SERVICES

NEW SECTION

WAC 388-116-4010 Payment for approved services. (1) To receive payment for services rendered, a long-term services and supports provider must:

(a) Enroll in a department-authorized payment system; and

(b) Adhere to billing standards and guides established by the department.

(2) A long-term services and supports provider may claim up to the maximum rate for an approved service.

(a) Unless excluded under subsection (3) of this section, the rate charged for an approved service is determined and agreed upon by the eligible beneficiary and the long-term services and supports provider.

(b) A long-term services and supports provider must not charge an eligible beneficiary more than the maximum rate unless approved to do so under WAC 388-116-3080.

(3) The consumer-directed employer must claim at a set rate as established in its contract.

(4) For the purposes of this section, "claim" means to formally request payment from the department for approved services provided to an eligible beneficiary.

NEW SECTION

WAC 388-116-4020 Maximum rates. (1) The department will pay long-term services and supports providers for approved services rendered up to the following maximum rates:

- (a) Adaptive equipment and technology: \$15,450.00 each;
 - (b) Adult day services: \$338.00 daily or \$11 per 15-minute unit;
 - (c) Adult family home services: \$473.00 daily;
 - (d) Assisted living services: \$562.00 daily;
 - (e) Care transition coordination: \$374.00 per month for up to two consecutive months;
 - (f) Dementia and behavioral supports: \$42.00 per 15-minute unit;
 - (g) Education and consultation: \$83.00 per 15-minute unit;
 - (h) Environmental modifications: Up to the fund's maximum benefit amount;
 - (i) Home delivered meals: \$16.00 each;
 - (j) Home safety evaluation: \$47.00 per 15-minute unit, not to exceed \$300.00;
 - (k) In-home personal care: \$47.00 hourly or \$12.00 per 15-minute unit;
 - (l) Memory care: \$624.00 daily;
 - (m) Nursing home services: \$556.00 daily;
 - (n) Personal emergency response system: \$103.00 per installation and \$85.00 monthly;
 - (o) Professional nursing services: \$68.00 per 15-minute unit;
 - (p) Respite for family caregivers:
 - (i) In-home respite: \$47.00 hourly or \$12.00 per 15-minute unit;
 - (ii) Adult day service: \$338.00 daily or \$11.00 per 15-minute unit;
 - (iii) Adult family home: \$473.00 daily;
 - (iv) Assisted living services: \$562.00 daily; and
 - (v) Nursing homes: \$556.00 daily;
 - (q) Services that assist paid and unpaid family members caring for eligible beneficiaries:
 - (i) Housework and errands: Not to exceed \$412.00 monthly;
 - (ii) Yardwork and snow removal: \$36.00 per 15-minute unit, not to exceed \$412.00 monthly; and
 - (r) Transportation. Up to \$412 for the total of:
 - (i) 260 miles per month, paid at the standard federal mileage rate as set by the internal revenue service; and
 - (ii) Monthly transportation expenses, such as public transit passes, ferry tickets, parking, and other transportation-related expenses.
- (2) For the purposes of this section, the following definitions apply.

(a) "Maximum rate" means the highest amount the department will pay for an approved service.

(b) "Unit" means the smallest amount in which an approved service is authorized, provided, and billed.

NEW SECTION

WAC 388-116-4030 Eligible beneficiary reimbursement. (1) An eligible beneficiary may pay privately, and request reimbursement up to the maximum rate, for the following approved services:

(a) Adaptive equipment and technology; and

(b) Transportation.

(2) To request reimbursement, the eligible beneficiary must submit a reimbursement request and a receipt for the purchased item to a financial management services vendor.

(3) The receipt must include the:

(a) Name of the seller;

(b) Date of the transaction;

(c) Name of the approved service;

(d) Method of payment; and

(e) Total amount paid for the approved service, which includes additional required fees or costs, such as tax, shipping, or transaction fees.

(4) A request for reimbursement must be submitted to the financial management services vendor no more than 60 days after the date of the transaction.

(5) For the purposes of this section, the following definitions apply.

(a) "Financial management services vendor" means an entity contracted with the department to administer reimbursements to eligible beneficiaries, acquire adaptive equipment and technology on behalf of an eligible beneficiary, and process claims for provider payment.

(b) "Reimbursement" means payment to an eligible beneficiary from their benefit, by the financial management services vendor, for costs incurred in the purchase of an approved service.

NOTICE OF DEPARTMENT DETERMINATIONS AND ADMINISTRATIVE HEARINGS

NEW SECTION

WAC 388-116-5000 Notice of department determinations. (1) The department will provide written notice when a determination is made by the department.

(2) Written notice will include:

(a) The name of the beneficiary;

(b) The date of the notice;

(c) The effective date of the determination;

- (d) The determination that has been made by the department;
 - (e) The reason(s) for the determination;
 - (f) The specific regulation(s) on which the determination is based;
 - (g) Contact information for a department representative;
 - (h) Administrative hearing rights, if applicable; and
 - (i) Other information required by state or federal law.
- (3) Except as described in subsection (4) of this section, the department will send notice of a determination that terminates benefits or discontinues provider registration at least 10 calendar days before the effective date of the determination. The 10-day notice period starts on the day after the date of the notice.
- (4) The department may send notice to a long-term services and supports provider fewer than 10 days before the effective date if:
- (a) The provider requests the determination;
 - (b) The provider violates registration requirements or operational standards; or
 - (c) The provider dies.
- (5) The department will electronically notify long-term services and supports providers and provider applicants of department determinations.
- (6) The department will electronically notify applicants and eligible beneficiaries of department determinations. If the determination denies a beneficiary application or terminates beneficiary benefits, the department will also send a copy of the notice via US Mail.

NEW SECTION

WAC 388-116-5010 Eligible beneficiary administrative hearing rights. (1) A person applying to be an eligible beneficiary may request an administrative hearing to dispute a department determination under RCW 50B.04.120.

(2) An eligible beneficiary may request an administrative hearing to dispute a denial of reimbursement or termination of their benefits under RCW 50B.04.120.

NEW SECTION

WAC 388-116-5020 Long-term services and supports provider administrative hearing rights. (1) A provider applicant applying to be registered as a long-term services and supports provider may request an administrative hearing to dispute a department determination under RCW 50B.04.120.

(2) A long-term services and supports provider may request an administrative hearing to dispute a discontinuation of their registration under RCW 50B.04.120.

NEW SECTION

WAC 388-116-5030 Administrative hearing requests. (1) A request for an administrative hearing must be received by the department no

later than 5:00 p.m. on the 30th day from the date the notice was sent. Days are counted as described under WAC 388-02-0035.

(2) An administrative hearing request may be made by:

(a) Submitting an electronic request to the department as directed by the department;

(b) Calling 844-CARE4WA (844-227-3492);

(c) Mailing a request to the department at P.O. BOX 45612, Olympia WA 98504-5612;

(d) Notifying a program employee in-person at any of the department's regional office locations, or at an area agency on aging office; or

(e) Submitting an online request to the office of administrative hearings or contacting the office of administrative hearings in writing, in person, or by telephone at a location specified in WAC 388-02-0025.

(3) To ask for assistance in requesting an administrative hearing, contact:

(a) One of the department's regional offices;

(b) An area agency on aging; or

(c) The department at 844-CARE4WA (844-227-3492).

(4) To be complete, an administrative hearing request must contain:

(a) Enough information to identify the person filing the request;

(b) The department determination being disputed; and

(c) The contact information of the requester.

(5) If a party disagrees with an initial order and wants it changed, the party must timely request review by a review judge as provided in WAC 388-02-0560 through 388-02-0595. If a party requests review of the initial order by a review judge, the initial order will not be effected.

(6) Appeals will be resolved through adjudicative proceedings governed by this chapter and:

(a) Chapter 34.05 RCW;

(b) Chapter 50B.04 RCW;

(c) Chapter 10-08 WAC; and

(d) Chapter 388-02 WAC.

(7) If there is a conflict between this chapter and chapters 10-08 and 388-02 WAC, this chapter prevails; and if there is a conflict between chapters 10-08 and 388-02 WAC, chapter 388-02 WAC prevails.