

WSR 26-03-085

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Home and Community Living Administration)

[Filed January 20, 2026, 12:13 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 25-20-008.

Title of Rule and Other Identifying Information: The following proposed amendments in WAC 388-106-1800 What definitions apply to LTSS PE? Modifications to add definitions of "abbreviated care plan" and "PE assessment" and clarify the definitions of "care plan" and "PE screening"; 388-106-1805 Am I eligible for LTSS NFLOC PE services? Modifications to remove "(3) Will be discharging from an acute care hospital or diverting from a community psychiatric hospital; or" AND "(4) Have discharged or diverted from an acute care hospital or community psychiatric hospital in the last 30 days; and" to expand who is eligible for long-term services and supports (LTSS) presumptive eligibility (PE) nursing facility level of care (NFLOC); 388-106-1810 What services may I receive under LTSS NFLOC PE? Modifications to add (1) five tier classifications for the personal care service, (2) the number of hours of personal care services for each tier classification as well as the criteria for each tier classification, and (3) two steps of services; and 388-106-1815 Am I eligible for LTSS MPC PE services? Modifications to remove "(3) Will be discharging from an acute care hospital or diverting from a community psychiatric hospital; or" AND "(4) Have discharged or diverted from an acute care hospital or community psychiatric hospital in the last 30 days; and" to expand who is eligible for LTSS PE medicaid personal care (MPC).

Hearing Location(s): On February 24, 2026, 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 February 25, 2026.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, beginning noon on January 21, 2026, by 5:00 p.m. on February 24, 2026.

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 5:00 p.m. on February 10, 2026.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this proposal is to add and clarify definitions, add two steps of service categories, add five-tier classifications of personal care services, and expand the eligibility criteria. By adding two service category steps, this will allow clients to access the services they need more quickly. By clarifying "up to a maximum of 103 personal care hours" and adopting a five-tiered personal care hour methodology for individuals meeting NFLOC criteria, the LTSS PE assessment will offer more accuracy when comparing personal care hours at full determination, home care agencies and individual providers through consumer direct of Washington can offer more consistent and accurate schedules for their caregivers, and it would reduce costs of the personal care service as it will better match the actual care needs of clients. These amendments establish a standardized process that will better align with the comprehensive

assessment reporting and evaluation assessment at full LTSS determination and the individual's needs.

By changing the eligibility criteria for LTSS PE, this will allow individuals who live in their own home who meet the functional and financial eligibility to apply for LTSS PE and become eligible if the other criteria is met. This will allow DSHS to implement Phase 2 of LTSS PE of the 1115 MTP 2.0 waiver.

Reasons Supporting Proposal: Update language and restructure benefits for further clarification to our community partners and Washingtonians. Also, see above.

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

Statute Being Implemented: RCW 74.08.090 and 74.39A.030.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Anne Moua, P.O. Box 45600, Olympia, WA 98504-5600, 509-590-3909.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. Although this rule meets the definition of a significant legislative rule under RCW 34.05.328(5), the requirement for a cost-benefit analysis does not apply because these rules are exempt as allowed under RCW 34.05.328 (5)(b)(vii), which states in part, "this section does not apply to rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents ...["]

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).

Is exempt under RCW 34.05.328 (5)(b)(vii).

Explanation of exemptions: RCW 34.05.328 (5)(b)(vii) states in part "Rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents." These amendments do not impact small businesses. They only impact DSHS customers.

Scope of exemption for rule proposal:

Is fully exempt.

January 15, 2026
Katherine I. Vasquez
Rules Coordinator

SHS-5122.2

AMENDATORY SECTION (Amending WSR 23-21-012, filed 10/5/23, effective 11/6/23)

WAC 388-106-1800 What definitions apply to LTSS PE? "Abbreviated care plan" means the document generated using the presumptive eligibility screening tool in CARE that identifies the long-term serv-

ices and supports you are eligible to receive during the presumptive eligibility period under step 1.

"Acute care hospital" as defined in chapter 182-550 WAC, may offer inpatient services, outpatient services, continuous nursing services, pharmacy services, food services, and necessary ancillary services. These hospitals may offer specialized patient care services including alcoholism and chemical dependency units or services.

"Comprehensive assessment reporting evaluation tool" or "CARE" means the department prescribed assessment tool.

"Care plan" means the document generated using the presumptive eligibility assessment (~~(screening)~~) tool in CARE that identifies the long-term services and supports you are eligible to receive during the presumptive eligibility period under step 2.

"Community psychiatric hospital" means a specialized psychiatric hospital or psychiatric unit within a community hospital that is certified to provide involuntary evaluation and treatment services.

"Diversion" means you have discharged from a local community psychiatric facility onto HCS LTSS and have a 90- or 180-day commitment order for further involuntary treatment; or you are detained through the Involuntary Treatment Act and are stabilized and discharged onto LTSS prior to the need to petition for a 90- or 180- day commitment order.

"Home and community services" or "HCS" means a division within the DSHS home and community living administration (HCLA).

"LTSS" means (~~(Long)~~) long-term (~~(Services)~~) services and (~~(Sup-~~
~~ports)~~) supports as defined in WAC 182-513-1100.

"MPC" means (~~(Medicaid Personal Care)~~) medicaid personal care which is defined as personal care services in WAC 388-106-0010.

"NFLOC" means nursing facility level of care as defined in WAC 388-106-0355.

"PE assessment" means the questions asked, using the presumptive eligibility assessment tool within CARE, to determine the level of care that is needed and opens step 1 and 2 services.

"PE screening" means the minimum functional and financial (~~(as-~~
~~essment)~~) abbreviated questionnaire to obtain the minimum information necessary, completed using the presumptive eligibility screening tool within CARE, to determine presumptive eligibility for LTSS NFLOC PE services or LTSS MPC PE services.

"Presumptive eligibility" means a determination made using a screening process completed by the department to gather preliminary information to determine if you meet the eligibility criteria described in WAC 388-106-1805 and 388-106-1815 of this section to receive services while the final eligibility determination is being completed. This is also known as PE.

AMENDATORY SECTION (Amending WSR 23-21-012, filed 10/5/23, effective 11/6/23)

WAC 388-106-1805 Am I eligible for LTSS NFLOC PE services? You are eligible to receive LTSS NFLOC PE services if you meet the following criteria based upon the attested information in your PE screening:

(1) Meet functional eligibility requirements as defined in WAC 388-106-0355 (1) (a), (b), (c), or (d); and

(2) Meet financial eligibility requirements as defined in WAC 182-513-1315; and

(3) ~~((Will be discharging from an acute care hospital or diverting from a community psychiatric hospital; or~~
~~(4) Have discharged or diverted from an acute care hospital or community psychiatric hospital in the last 30 days; and~~
~~(5)) Live in your own home as defined in WAC 388-106-0010; and~~
~~((6)) (4) Are not receiving any other medicaid funded long-term services and supports.~~

AMENDATORY SECTION (Amending WSR 23-21-012, filed 10/5/23, effective 11/6/23)

WAC 388-106-1810 What services may I receive under LTSS NFLOC

PE? You may receive ~~((the following services under))~~ LTSS NFLOC PE~~((+))~~ services under either of the two steps depending on your needs and requests identified in the LTSS PE screening for step 1 or the LTSS PE assessment for step 2. Steps do not need to be used in order. For example, you may begin services at step 1 or 2. In general, step 1 services are used by clients requesting lesser supports than those using step 2 services.

(1) Step 1: After completing an LTSS PE screening and abbreviated care plan, you may receive any of the following services:

(a) Personal emergency response system (PERS), as defined in WAC 388-106-0270;

(b) Home delivered meals, as defined in WAC 388-106-0300;

(c) Assistive/adaptive technology and equipment, as defined in WAC 388-106-0270;

(2) Step 2: After completing an LTSS PE assessment and care plan, you may receive any of the services under step 1 or one or more of the following services:

~~((1) Up to a maximum of 103 hours a month of personal care services as defined in WAC 388-106-0010;~~

~~(2)) (a) Nurse delegation, as defined in WAC 388-106-0270;~~

~~((3) Personal Emergency Response System (PERS), as defined in WAC 388-106-0270;~~

~~(4) Home delivered meals, as defined in WAC 388-106-0300;~~

~~(5)) (b) Specialized medical equipment and supplies, as defined in WAC 388-106-0300;~~

~~((6) Assistive/Adaptive technology and equipment, as defined in WAC 388-106-0270;~~

~~(7)) (c) Community transition or sustainability services as defined in WAC 388-106-0270, which are nonrecurring set-up items and services to assist with expenses to move from an acute care hospital or diversion from a psychiatric hospital stay to an in-home setting and may include:~~

~~((a)) (i) Security deposits that are required to lease an apartment or home;~~

~~((b)) (ii) Activities to assess need, arrange for, and obtain needed resources, including essential household furnishings;~~

~~((c)) (iii) Set-up fees or deposits for utility or services access, including telephone, electricity, heating, water, and garbage;~~

~~((d)) (iv) Services necessary for your health and safety such as pest eradication and one-time cleaning prior to occupancy;~~

~~((e)) (v) Moving expenses; and~~

~~((f)) (vi) Minor home accessibility modifications necessary for hospital discharge.~~

~~((8))~~ (d) Community choice guide: ~~((specialty))~~ Specialty services providing assistance and support to ensure an individual's successful transition to the community, or maintenance of independent living, as defined in WAC 388-106-0300; and

~~((9))~~ (e) Supportive ~~((Housing))~~ housing as defined in ~~((WAC))~~ chapter 388-106 WAC.

(f) Up to a maximum of 103 hours a month of personal care services, as defined in WAC 388-106-0010;

(i) The number of hours of personal care services you can receive in your own home is determined by five-tier classifications using the CARE tool to assess your characteristics.

(ii) The number of hours of personal care services you may receive for the five tier classifications are:

(A) Tier 1 is a maximum of 34 hours.

(B) Tier 2 is a maximum of 47 hours.

(C) Tier 3 is a maximum of 59 hours.

(D) Tier 4 is a maximum of 69 hours.

(E) Tier 5 is a maximum of 103 hours.

(iii) The CARE tool uses the following criteria to place you in a tier classification group:

(A) To be eligible for tier 1 classification, you have:

(I) An unmet or partially met need with at least three of the following activities of daily living, as defined in WAC 388-106-0010:
or

For each activity of daily living, the minimum level of assistance required in each of the following categories:		
	<u>Self-performance is:</u>	<u>Support provided is:</u>
<u>Eating</u>	n/a	<u>Setup</u>
<u>Toileting</u>	<u>Supervision</u>	<u>n/a</u>
<u>Bathing</u>	<u>Supervision</u>	<u>n/a</u>
<u>Transfer</u>	<u>Supervision</u>	<u>Setup</u>
<u>Bed mobility</u>	<u>Supervision</u>	<u>Setup</u>
<u>Walk in room, or locomotion in room, or locomotion outside immediate living environment</u>	<u>Supervision</u>	<u>Setup</u>
<u>Medication management</u>	<u>Assistance required</u>	<u>n/a</u>
<u>Your need for assistance in any activities listed in this chart did not occur because you were unable or no provider was available to assist you will be counted for the purpose of determining your functional eligibility.</u>		

(II) A cognitive impairment and require supervision due to one or more of the following: disorientation, memory impairment, impaired decision making, or wandering; and

(III) An unmet or partially met need with at least one or more of the following:

For each activity of daily living, the minimum level of assistance required in each of the following categories:		
	<u>Self-performance is:</u>	<u>Support provided is:</u>
<u>Eating</u>	<u>Supervision</u>	<u>One-person physical assist</u>
<u>Toileting</u>	<u>Extensive assistance</u>	<u>One-person physical assist</u>
<u>Bathing</u>	<u>Physical help with bathing</u>	<u>One-person physical assist</u>
<u>Transfer</u>	<u>Extensive assistance</u>	<u>One-person physical assist</u>
<u>Bed mobility and turning and repositioning</u>	<u>Limited assistance and need</u>	<u>One-person physical assist</u>
<u>Walk in room, or locomotion in room, or locomotion outside immediate living environment</u>	<u>Extensive assistance</u>	<u>One-person physical assist</u>

<u>For each activity of daily living, the minimum level of assistance required in each of the following categories:</u>		
	<u>Self-performance is:</u>	<u>Support provided is:</u>
<u>Medication management</u>	<u>Assistance required daily</u>	<u>n/a</u>
<u>Your need for assistance in any activities listed in this chart did not occur because you were unable or no provider was available to assist you will be counted for the purpose of determining your functional eligibility.</u>		

(B) To be eligible for tier 2 classification, you:

(I) Require care provided by or under the supervision of a registered nurse or a licensed practical nurse on a daily basis; or

(II) Have an unmet or partially met need with at least two of the following activities of daily living, as defined in WAC 388-106-0010:

<u>For each activity of daily living, the minimum level of assistance required in each of the following categories:</u>		
	<u>Self-performance is:</u>	<u>Support provided is:</u>
<u>Eating</u>	<u>Supervision</u>	<u>One-person physical assist</u>
<u>Toileting</u>	<u>Extensive assistance</u>	<u>One-person physical assist</u>
<u>Bathing</u>	<u>Physical help with bathing</u>	<u>One-person physical assist</u>
<u>Transfer</u>	<u>Extensive assistance</u>	<u>One-person physical assist</u>
<u>Bed mobility and turning and repositioning</u>	<u>Limited assistance and need</u>	<u>One-person physical assist</u>
<u>Walk in room, or locomotion in room, or locomotion outside immediate living environment</u>	<u>Extensive assistance</u>	<u>One-person physical assist</u>
<u>Medication management</u>	<u>Assistance required daily</u>	<u>n/a</u>
<u>Your need for assistance in any activities listed in this chart did not occur because you were unable or no provider was available to assist you will be counted for the purpose of determining your functional eligibility.</u>		

(C) To be eligible for tier 3 classification, you have an unmet or partially met need with at least three of the following activities of daily living, as defined in WAC 388-106-0010:

<u>For each activity of daily living, the minimum level of assistance required in each of the following categories:</u>		
	<u>Self-performance is:</u>	<u>Support provided is:</u>
<u>Eating</u>	<u>Supervision</u>	<u>One-person physical assist</u>
<u>Toileting</u>	<u>Extensive assistance</u>	<u>One-person physical assist</u>
<u>Bathing</u>	<u>Physical help with bathing</u>	<u>One-person physical assist</u>
<u>Transfer</u>	<u>Extensive assistance</u>	<u>One-person physical assist</u>
<u>Bed mobility and turning and repositioning</u>	<u>Limited assistance and need</u>	<u>One-person physical assist</u>
<u>Walk in room, or locomotion in room, or locomotion outside immediate living environment</u>	<u>Extensive assistance</u>	<u>One-person physical assist</u>
<u>Medication management</u>	<u>Assistance required daily</u>	<u>n/a</u>
<u>Your need for assistance in any activities listed in this chart did not occur because you were unable or no provider was available to assist you will be counted for the purpose of determining your functional eligibility.</u>		

(D) To be eligible for tier 4 classification, you:

(I) Require care provided by or under the supervision of a registered nurse or a licensed practical nurse on a daily basis; and

(II) Have an unmet or partially met need with at least three of the following activities of daily living, as defined in WAC 388-106-0010:

<u>For each activity of daily living, the minimum level of assistance required in each of the following categories:</u>		
	<u>Self-performance is:</u>	<u>Support provided is:</u>
<u>Eating</u>	<u>Supervision</u>	<u>One-person physical assist</u>

<u>For each activity of daily living, the minimum level of assistance required in each of the following categories:</u>		
	<u>Self-performance is:</u>	<u>Support provided is:</u>
<u>Toileting</u>	<u>Extensive assistance</u>	<u>One-person physical assist</u>
<u>Bathing</u>	<u>Physical help with bathing</u>	<u>One-person physical assist</u>
<u>Transfer</u>	<u>Extensive assistance</u>	<u>One-person physical assist</u>
<u>Bed mobility and turning and repositioning</u>	<u>Limited assistance and need</u>	<u>One-person physical assist</u>
<u>Walk in room, or locomotion in room, or locomotion outside immediate living environment</u>	<u>Extensive assistance</u>	<u>One-person physical assist</u>
<u>Medication management</u>	<u>Assistance required daily</u>	<u>n/a</u>
<u>Your need for assistance in any activities listed in this chart did not occur because you were unable or no provider was available to assist you will be counted for the purpose of determining your functional eligibility.</u>		

(E) To be eligible for tier 5 classification, you:

(I) Are bedfast/chairfast, as defined by you are confined primarily to a bed or recliner, or if you are wheelchair dependent when not in a bed or recliner; and

(II) Require care provided by or under the supervision of a registered nurse or a licensed practical nurse on a daily basis; and

(III) Have an unmet or partially met need with at least three of the following activities of daily living, as defined in WAC 388-106-0010:

<u>For each activity of daily living, the minimum level of assistance required in each of the following categories:</u>		
	<u>Self-performance is:</u>	<u>Support provided is:</u>
<u>Eating</u>	<u>Supervision</u>	<u>One-person physical assist</u>
<u>Toileting</u>	<u>Extensive assistance</u>	<u>One-person physical assist</u>
<u>Bathing</u>	<u>Physical help with bathing</u>	<u>One-person physical assist</u>
<u>Transfer</u>	<u>Extensive assistance</u>	<u>One-person physical assist</u>
<u>Bed mobility and turning and repositioning</u>	<u>Limited assistance and need</u>	<u>One-person physical assist</u>
<u>Walk in room, or locomotion in room, or locomotion outside immediate living environment</u>	<u>Extensive assistance</u>	<u>One-person physical assist</u>
<u>Medication management</u>	<u>Assistance required daily</u>	<u>n/a</u>
<u>Your need for assistance in any activities listed in this chart did not occur because you were unable or no provider was available to assist you will be counted for the purpose of determining your functional eligibility.</u>		

AMENDATORY SECTION (Amending WSR 23-21-012, filed 10/5/23, effective 11/6/23)

WAC 388-106-1815 Am I eligible for LTSS MPC PE services? You are eligible to receive LTSS MPC PE services if you meet the following criteria based upon the attested information in your PE screening:

(1) Meet functional eligibility requirements as defined in WAC 388-106-0210; and

(2) Meet financial eligibility requirements as defined in WAC 182-513-1225; and

(3) ~~((Will be discharging from an acute care hospital or diverting from a community psychiatric hospital; or~~

~~(4) Have discharged or diverted from an acute care hospital or community psychiatric hospital in the last 30 days; and~~

~~(5)~~) Live in your own home as defined in WAC 388-106-0010; and
~~((6))~~ (4) Are not receiving any other medicaid funded long-term services and supports.