



RULE-MAKING ORDER

CR-103E (July 2011)
(Implements RCW 34.05.350)

Agency: Department of Social and Health Services, Developmental Disabilities Administration

Emergency Rule Only

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes
 - No
- If Yes, explain:

Purpose:

Federal regulation 42 C.F.R. §431.232(d) does not allow Medicaid benefits to continue at their previous level following an evidentiary hearing decision to reduce or terminate those benefits. Therefore, this emergency rule is to ensure the administration has language in rule that conforms to the CFR regarding continuing benefits.

Citation of existing rules affected by this order:

Repealed: None
 Amended: WAC 388-825-145
 Suspended: None

Statutory authority for adoption:

RCW 71A.12.030, RCW 34.05.350(1)(b), RCW 74.08.080, 42 CFR §431.232, 42 CFR §431.230

Other authority:

RCW 71A.12.030, RCW 34.05.350(1)(b), RCW 74.08.080, 42 CFR §431.232, 42 CFR §431.230

EMERGENCY RULE

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.
- That in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012, or 2013, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this finding:

42 CFR §431.232(d) requires the state to discontinue Medicaid benefits following an initial administrative order that affirms the state's decision to reduce or terminate those benefits. WAC 388-825-0135(2) currently allows continued benefits (including Medicaid benefits) past the initial order. This emergency rule is necessary to conform DSHS rules with federal requirements.

Date adopted:

December 3, 2014

NAME (TYPE OR PRINT)

Katherine Vasquez

SIGNATURE

TITLE

DSHS Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: December 10, 2014

TIME: 10:12 AM

WSR 15-01-055

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	<u>1</u>	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	<u>1</u>	Repealed	_____

WAC 388-825-145 Will my benefits continue if I request an administrative hearing? (1) If you request an administrative hearing regarding the department's decision to transfer you from a residential habilitation center to the community under RCW 71A.20.080, the rules in WAC 388-825-155 apply.

(2) If you request an administrative hearing (~~((within the ten-day notice period, as described in chapter 388-458 WAC, unless one or more of the conditions in WAC 388-825-150 applies, the department will take no action until there is a final decision on your appeal of the department's decision to:~~

~~(a) Terminate your eligibility for services;~~

~~(b) Reduce or terminate your services;~~

~~(c) Reduce or terminate the payment of SSP set forth in chapter 388-827 WAC; or~~

~~(d) Disenroll you from a DDD home and community based services waiver under WAC 388-845-0060, including a disenrollment from a waiver and enrollment in a different waiver)) regarding the department's decision to reduce or terminate your services, and you request the hearing before the date specified on the notice of the action, and none of the conditions in WAC 388-825-150 applies, the department will not reduce or terminate those services unless and until an administrative law judge issues an initial order that reduces or terminates those services. This subsection also applies to the department's decision to disenroll you from a DDA home and community based services waiver under WAC 388-845-0060.~~

(3) The department will take no action until there is a final decision on your appeal of the department's decision to remove or transfer you to another residential service unless one or more of the conditions in WAC 388-825-150 applies.

(4) The department will take no action until there is a final decision on your appeal to terminate your provider of choice unless one or more of the circumstances described in WAC 388-825-150 applies.

(5) After the administrative hearing, you may have to pay back up to sixty days of the continued benefits you get(~~(, as described in chapter 388-410 WAC,))~~ if the administrative hearing decision (~~(is in favor of the department))~~ determines your benefits should be less than the continued benefits you have received.