



# RULE-MAKING ORDER EMERGENCY RULE ONLY

## CR-103E (December 2017) (Implements RCW 34.05.350 and 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: August 15, 2018

TIME: 4:06 PM

WSR 18-17-105

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

**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:** The department is amending WAC 388-825-091 "Am I eligible for residential habilitation center (RHC) services?" and creating WAC 388-837-9010 "Must a client in an ICF/IID be able to benefit from active treatment?" to correctly reflect federal ICF/IID eligibility requirements.

**Citation of rules affected by this order:**

New: WAC 388-837-9010  
 Repealed: None  
 Amended: WAC 388-825-091  
 Suspended: None

**Statutory authority for adoption:** RCW 71A.12.030

**Other authority:** 42 C.F.R. 483.440

**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.

**Reasons for this finding:** These rules are necessary to comply with federal Medicaid law. Failure to enact these rules immediately jeopardizes the receipt of federal funds.

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Federal statute:	New	_____	Amended	_____	Repealed	_____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	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

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

New \_\_\_\_ Amended \_\_\_\_ Repealed \_\_\_\_

**The number of sections adopted on the agency's own initiative:**

New \_\_\_\_ Amended \_\_\_\_ Repealed \_\_\_\_

**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New \_\_\_\_ Amended \_\_\_\_ Repealed \_\_\_\_

**The number of sections adopted using:**

Negotiated rule making:	New	____	Amended	____	Repealed	____
Pilot rule making:	New	____	Amended	____	Repealed	____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	Repealed	____

<b>Date Adopted:</b> August 15, 2018	<b>Signature:</b> 
<b>Name:</b> Katherine I. Vasquez	
<b>Title:</b> DSHS Rules Coordinator	

AMENDATORY SECTION (Amending WSR 15-17-094, filed 8/18/15, effective 9/18/15)

**WAC 388-825-091 Am I eligible for residential habilitation center (RHC) services?** (1) If you are twenty-one years of age or over, you are eligible to receive residential habilitation center (RHC) services if:

- (a) You have been determined to meet DDA eligibility criteria;
- (b) You choose to receive services in the RHC;
- (c) ~~((You need the level of care provided at the RHC; and~~  
~~(d))~~) DDA has determined that you can be supported safely in an RHC environment and will not pose a danger to other residents of the RHC; ~~((or))~~ and

(d) You need the level of care provided at the RHC, which is either:

(i) Nursing facility level of care under WAC 388-106-0355 for a client admitted to a state-operated nursing facility; or

(ii) Intermediate care facility for individuals with intellectual disabilities (ICF/IID) level of care under WAC 388-837-9010, WAC 388-828-1020, and 42 C.F.R. 483.440 for a client admitted to a state-operated ICF/IID.

(2) If you are sixteen through twenty years of age, and meet (1)(a) through (d) above you may not be admitted to receive services at a residential habilitation center unless there are no service options available in the community to appropriately meet your needs. Such admission is limited to the provision of short-term respite or crisis stabilization services.

(3) If you are under age sixteen you are not eligible to receive services at a residential habilitation center.

(4) Admission to a nursing facility at a RHC also requires completion of preadmission screening and resident review (PASRR) requirements as described in chapter 388-97 WAC.

NEW SECTION

**WAC 388-837-9010 Must a client in an ICF/IID be able to benefit from active treatment?** An individual admitted to a residential habilitation center's intermediate care facility for individuals with intellectual disabilities must be in need of and able to benefit from continuous and aggressive active treatment.