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: April 11, 2019
TIME: 11:33 AM

WSR 19-09-047

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

Effective date of rule:
Emergency Rules
☐ Immediately upon filing.
☒ Later (specify) April 30, 2019

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 388-101D-0025 and repealing WAC 388-101D-0120 to remove requirements for hourly staffing schedules.

Citation of rules affected by this order:
New: None
Repealed: WAC 388-101D-0120
Amended: WAC 388-101D-0025
Suspended: None

Statutory authority for adoption: RCW 71A.12.030, RCW 71A.12.120

Other authority:

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: ESSB 6032 (2018) directs the department to replace hourly payment methodology with a tiered rate methodology for residential services providers. Amended language in WAC 388-101D-0025 is necessary to implement the tiered rate methodology because providers will no longer need to staff within contracted hours, and will instead receive a daily rate. Repealing WAC 388-101D-0120 removes the requirement for providers to obtain approval for staffing schedules, which is no longer necessary under the tiered rate methodology. The Centers for Medicare and Medicaid Services (CMS) approved DDA's waiver amendments, which require implementation of the tiered rate system on January 1, 2019.

This is the second emergency rule filing on these rules. This subsequent filing is necessary to keep the emergency rules effective until the permanent rules filed as WSR 19-09-033 are effective on May 11, 2019.

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	1	Repealed	1

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	____	Amended	1	Repealed	1

Date Adopted: April 11, 2019	**Signature:**
Name: Katherine I. Vasquez	
Title: DSHS Rules Coordinator	

AMENDATORY SECTION (Amending WSR 16-14-058, filed 6/30/16, effective 8/1/16)

WAC 388-101D-0025 Service provider responsibilities. (1) Service providers must meet the requirements of:

(a) This chapter;

(b) Each contract and statement of work entered into with the department;

(c) Each client's individual support plan when the individual support plan identifies the service provider as responsible; and

(d) Each client's individual instruction and support plan.

(2) The service provider must:

(a) Have a designated administrator and notify the department when there is a change in administrator;

(b) Ensure that clients have immediate access to staff, or the means to contact staff, at all times;

(c) Provide adequate staff ((~~within contracted hours to administer the program and~~)) to meet the needs of clients as identified in their person-centered service plans;

(d) Not routinely involve clients in the unpaid instruction and support of other clients;

(e) Not involve clients receiving crisis diversion services in the instruction and support of other clients; and

(f) Retain all records and other material related to the residential services contract for six years after expiration of the contract.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-101D-0120 Approval of staff-coverage schedules.