



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Department of Social and Health Services, Aging and Long-Term Support Administration

Permanent Rule Only

Effective date of rule:

Permanent Rules

- 31 days after filing.
- Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

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

- Yes
 - No
- If Yes, explain:

Purpose:

The purpose of the proposed WAC is to add the Community First Choice (CFC) program to the array of programs and services offered by the department. New WAC sections 388-106-0270 through 388-106-0295 define CFC services, including the scope, limitations, qualified providers, and eligibility.

In addition, WAC 388-106-0047 clarifies the Department's ability to terminate services if the plan of care is not approved in writing and WAC 388-106-0050 amends and clarifies the department's assessment and home visit requirements.

Citation of existing rules affected by this order:

- Repealed: None
- Amended: WAC 388-106-0015, WAC 388-106-0020, WAC 388-106-0033, WAC 388-106-0045, WAC 388-106-0047, WAC 388-106-0050, WAC 388-106-0055, WAC 388-106-0070, and WAC 388-106-0120
- Suspended: None

Statutory authority for adoption: RCW 74.08.090, RCW 74.09.520, RCW 74.39A.400

Other authority: 42 CFR §441.500-590

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 15-23-052 on November 12, 2015.
Describe any changes other than editing from proposed to adopted version:

WAC 388-106-0047(3): Changed the language of "two months" to "sixty days".

WAC 388-106-0015(3): Added adult family homes.

WAC 388-106-0020(5): Language was changed to "Services to any person who has not been authorized by the department to receive them."

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: _____ phone () _____
 Address: _____ fax () _____
 e-mail _____

Date adopted:

January 20, 2016

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: January 22, 2016

TIME: 11:27 AM

WSR 16-04-020

**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>13</u>	Amended	<u>9</u>	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	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	<u>13</u>	Amended	<u>9</u>	Repealed	_____

WAC 388-106-0015 What long-term care services does the department provide? The department provides long-term care services through programs that are designed to help you remain in the community. These programs offer an alternative to nursing home care (which is described in WAC 388-106-0350 through 388-106-0360). You may receive services from any of the following:

(1) **Medicaid personal care (MPC)** is a medicaid state plan program authorized under RCW 74.09.520. Clients eligible for this program may receive personal care in their own home, adult family home, or in ((a)) adult residential care ((facility)) as defined in WAC 388-110-020.

(2) **Community options program entry system (COPES)** is a medicaid waiver program authorized under RCW 74.39A.030. Clients eligible for this program may receive personal care in their own home or in a residential facility.

(3) Community first choice (CFC) is a medicaid state plan program authorized under RCW 74.39A.400. Clients eligible for this program may receive services in their own home, in an adult family home, in adult residential care, enhanced adult residential care, or assisted living as defined in WAC 388-110-020.

(4) **Chore** is a state-only funded program authorized under RCW 74.39A.110. Grandfathered clients may receive assistance with personal care in their own home.

((4)) (5) **Volunteer chore** is a state-funded program that provides volunteer assistance with household tasks to eligible clients.

((5)) (6) **Program of all-inclusive care for the elderly (PACE)** is a medicaid/medicare managed care program authorized under 42 CFR 460.2. Clients eligible for this program may receive personal care and medical services in their own home, in residential facilities, and in adult day health centers.

((6)) (7) **Adult day health** is a supervised daytime program providing skilled nursing and rehabilitative therapy services in addition to core services outlined in WAC 388-106-0800.

((7)) (8) **Adult day care** is a supervised daytime program providing core services, as defined under WAC 388-106-0800.

((8)) (9) **Medical care services** is a state-funded program authorized under RCW 74.09.035. Clients eligible for this program may receive personal care services in an adult family home or an adult residential care facility.

((9)) (10) **Residential care discharge allowance** is a service that helps eligible clients to establish or resume living in their own home.

((10)) (11) **Private duty nursing** is a medicaid service that provides an alternative to institutionalization in a hospital or nursing facility setting. Clients eligible for this program may receive at least four continuous hours of skilled nursing care on a day to day basis in their own home.

((11)) (12) **Senior Citizens Services Act (SCSA)** is a program authorized under chapter 74.38 RCW. Clients eligible for this program may receive community-based services as defined in RCW 74.38.040.

((12)) (13) **Respite program** is a program authorized under RCW 74.41.040 and WAC 388-106-1200. This program provides relief care for

unpaid family or other caregivers of adults with a functional disability.

((+13+)) (14) Programs for persons with developmental disabilities are discussed in chapter 388-823 through 388-850 WAC.

((+14+)) (15) Nursing facility.

((+15+)) (16) New Freedom consumer directed services (NFCDS) is a medicaid waiver program authorized under RCW 74.39A.030.

((+16+)) (17) Residential support is a medicaid waiver program authorized under RCW 74.39A.030. Clients eligible for this program may receive personal care in a licensed and contracted enhanced services facility or in a licensed adult family home with a contract to provide specialized behavior services.

AMENDATORY SECTION (Amending WSR 12-16-026, filed 7/25/12, effective 8/25/12)

WAC 388-106-0020 Under the MPC, CFC, COPES, and chore programs, what services are not covered? The following types of services are not covered under MPC, CFC, COPES, and chore:

(1) Child care.

(2) Individual providers must not provide:

(a) Sterile procedures unless the provider is a family member or the client self directs the procedure;

(b) Administration of medications or other tasks requiring a licensed health professional unless these tasks are provided through nurse delegation, self-directed care, or the provider is a family member.

(3) Agency providers must not provide:

(a) Sterile procedures;

(b) Self-directed care;

(c) Administration of medications or other tasks requiring a licensed health care professional unless these tasks are provided through nurse delegation.

(4) Services provided over the telephone.

(5) Services to ~~((assist other household members not eligible for services.))~~ any person who has not been authorized by the department to receive them.

(6) Development of social, behavioral, recreational, communication, or other types of community living skills.

(7) Nursing care.

(8) Pet care.

(9) Assistance with managing finances.

(10) Respite.

(11) Yard care.

AMENDATORY SECTION (Amending WSR 14-15-071, filed 7/15/14, effective 8/15/14)

WAC 388-106-0033 When may I receive services in a facility contracted to provide specialized dementia care services? (1) You may be eligible to receive services in a licensed assisted living facility

that has a DSHS "enhanced adult residential care-specialized dementia care ("EARC-SDC")," which is defined in WAC 388-110-220. You may be eligible to receive EARC-SDC services in a licensed assisted living facility under the following circumstances:

(a) You are enrolled in ((COPEs)) CFC, as defined in WAC 388-106-0015;

(b) The department has received written or verbal confirmation from a health care practitioner that you have an irreversible dementia (such as Alzheimer's disease, multi-infarct or vascular dementia, Lewy body dementia, Pick's disease, alcohol-related dementia);

(c) You are receiving services in an assisted living facility that has a current EARC-SDC contract, and you are living in the part of the facility that is covered by the contract;

(d) The department has authorized you to receive EARC-SDC services in the assisted living facility; and

(e) You are assessed by the comprehensive assessment reporting evaluation tool ("CARE") as having a cognitive performance score of 3 or above; and any one or more of the following:

(i) An unmet need for assistance with supervision, limited, extensive or total dependence with eating/drinking;

(ii) Inappropriate toileting/menses activities;

(iii) Rummages/takes others belongings;

(iv) Up at night when others are sleeping and requires intervention(s);

(v) Wanders/exit seeking;

(vi) Wanders/not exit seeking;

(vii) Has left home and gotten lost;

(viii) Spitting;

(ix) Disrobes in public;

(x) Eats non-edible substances;

(xi) Sexual acting out;

(xii) Delusions;

(xiii) Hallucinations;

(xiv) Assaultive;

(xv) Breaks, throws items;

(xvi) Combative during personal care;

(xvii) Easily irritable/agitated;

(xviii) Obsessive regarding health/body functions;

(xix) Repetitive movement/pacing;

(xx) Unrealistic fears or suspicions;

(xxi) Repetitive complaints/questions;

(xxii) Resistive to care;

(xxiii) Verbally abusive;

(xxiv) Yelling/screaming;

(xxv) Inappropriate verbal noises; or

(xxvi) Accuses others of stealing.

AMENDATORY SECTION (Amending WSR 05-11-082, filed 5/17/05, effective 6/17/05)

WAC 388-106-0045 When will the department authorize my long-term care services? The department will authorize long-term care services when you:

(1) Are assessed using CARE;

(2) Are found financially and functionally eligible for services including, if applicable, the determination of the amount of participation toward the cost of your care and/or the amount of room and board that you must pay;

(3) Have given written consent for services and approved your plan of care; and

(4) Have chosen a provider(s), qualified for payment.

AMENDATORY SECTION (Amending WSR 15-03-038, filed 1/12/15, effective 2/12/15)

WAC 388-106-0047 When can the department terminate or deny long-term care services to me? (1) The department will deny or terminate long-term care services if you are not eligible for long-term care services pursuant to WAC 388-106-0210, 388-106-0310, or 388-106-0610.

(2) The department may deny or terminate long-term care services to you if, after exhaustion of standard case management activities and the approaches delineated in the department's challenging cases protocol, which must include an attempt to reasonably accommodate your disability or disabilities, any of the following conditions exist:

(a) After a department representative reviews with you your rights and responsibilities as a client of the department, per WAC 388-106-1300 and 388-106-1303, you refuse to accept those long-term care services identified in your plan of care that are vital to your health, welfare or safety;

(b) You choose to receive services in your own home and you or others in your home demonstrate behaviors that are substantially likely to cause serious harm to you or your care provider;

(c) You choose to receive services in your own home and hazardous conditions in or immediately around your home jeopardize the health, safety, or welfare of you or your provider. Hazardous conditions include but are not limited to the following:

(i) Threatening, uncontrolled animals (e.g., dogs);

(ii) The manufacture, sale, or use of illegal drugs;

(iii) The presence of hazardous materials (e.g., exposed sewage, evidence of a methamphetamine lab).

(3) The department will terminate long-term care services if you do not sign and return your service summary document within sixty days of your assessment completion date.

AMENDATORY SECTION (Amending WSR 13-18-039 and 13-17-125, filed 8/29/13 and 8/21/13, effective 10/1/13)

WAC 388-106-0050 What is an assessment? (1) An assessment is an in-person interview in your home, ~~((or your place of))~~ current residence, or another location that is convenient to you that is conducted by the department, to inventory and evaluate your ability to care for yourself. The department will assess you at least ~~((annually))~~ every twelve months, or more often when there are significant changes ~~((to your ability to care for yourself))~~ necessitating revisions to your CARE plan, or at your request. If your assessment did not take place

in the residence where you receive services, the department must visit that residence to evaluate your living situation and environment, for you to continue to receive services.

(2) Between assessments, the department may modify your current assessment without an in-person interview in your home or place of residence. The reasons that the department may modify your current assessment without conducting an in-person interview in your home or place of residence include but are not limited to the following:

(a) Errors made by department staff in coding the information from your in-person interview;

(b) New information requested by department staff at the time of your assessment and received after completion of the in-person interview (e.g. medical diagnosis);

(c) Changes in the level of informal support available to you; or

(d) Clarification of the coding selected.

(3) When the department modifies your current assessment, it will notify you using a Planned Action Notice of the modification regardless of whether the modification results in a change to your benefits. You will also receive a new service summary and assessment details, if requested.

AMENDATORY SECTION (Amending WSR 06-16-035, filed 7/25/06, effective 8/25/06)

WAC 388-106-0055 What is the purpose of an assessment? The purpose of an assessment is to:

(1) Determine eligibility for long-term care programs;

(2) Identify your strengths, limitations, goals, and preferences;

(3) Evaluate your living situation and environment;

(4) Evaluate your physical health, functional and cognitive abilities;

(5) Determine availability of informal supports, shared benefits, and other nondepartment paid resources;

(6) Determine need for intervention;

(7) Determine need for case management activities;

(8) Determine your classification group that will set your payment rate for residential care or number of hours of in-home care;

(9) Determine need for referrals; and

(10) Develop a plan of care, as defined in WAC 388-106-0010.

(11) In the case of New Freedom consumer directed services, the purpose of an assessment is to determine functional eligibility and for the participant to develop the New Freedom spending plan, as defined in WAC 388-106-0010.

AMENDATORY SECTION (Amending WSR 14-15-092, filed 7/18/14, effective 8/18/14)

WAC 388-106-0070 Will I be assessed in CARE? You will be assessed in CARE if you are applying for or receiving DDA services, CFC, COPEs, MPC, chore, respite, adult day health, medical care services, PACE, private duty nursing, residential support, and new freedom.

If you are under the age of eighteen and within thirty calendar days of your next birthday, CARE determines your assessment age to be that of your next birthday.

AMENDATORY SECTION (Amending WSR 15-01-085, filed 12/16/14, effective 1/16/15)

WAC 388-106-0120 What is the payment rate that the department will pay the provider if I receive personal care services in a residential facility? The department publishes rates and/or adopts rules to establish how much the department pays toward the cost of your care in a residential facility.

(1) For CFC, COPES, MPC, medical care services, RCL, and new freedom programs, the department assigns payment rates to the CARE classification group. Under these programs, payment for care in a residential facility corresponds to the payment rate assigned to the classification group in which the CARE tool has placed you.

(2) The enhanced services facility rate is determined by legislative action and appropriation.

(3) The rate for adult family homes with a specialized behavior support contract is based on the CARE classification group and an add-on amount, which is negotiated through the collective bargaining process.

Community First Choice

NEW SECTION

WAC 388-106-0270 What services are available under community first choice (CFC)? The services you may receive under the community first choice program include:

(1) Personal care services, as defined in WAC 388-106-0010.

(2) Relief care, which is personal care services by a second individual or agency provider as a back-up to your primary paid personal care provider.

(3) Skills acquisition training, which is training that allows you to acquire, maintain, and enhance skills necessary to accomplish ADLs, IADLs, or health related tasks more independently. Health related tasks are specific tasks related to the needs of an individual, which under state law licensed health professionals can delegate or assign to a qualified health care practitioner.

(4) Personal emergency response systems (PERS), which is a basic electronic device that enables you to secure help in an emergency when:

(a) You live alone in your own home; or

(b) You are alone in your own home for significant parts of the day and have no provider for extended periods of time; or

(c) No one in your home, including you, is able to secure help in an emergency.

(5) Assistive technology, which are items that increase your independence or substitute for human assistance specifically with ADL, IADL, or health related tasks, including but not limited to:

(a) Additions to the standard PERS unit, such as fall detection, GPS, or medication delivery with or without reminder systems. For cost allocation purposes, the cost of additions to the standard PERS unit will be considered assistive technology; or

(b) Department approved devices, which include but are not limited to: visual alert systems, voice activated systems, switches and eyegazes, and timers or electronic devices that monitor or sense movement and react in a prescribed manner such as turning on or off an appliance.

(6) Nurse delegation services, as defined in WAC 246-840-910 through 246-840-970.

(7) Nursing services, when you are not already receiving this type of service from another source. A registered nurse may visit you and perform any of the following activities:

(a) Nursing assessment/reassessment;

(b) Instruction to you and your providers;

(c) Care coordination and referral to other health care providers;

(d) Skilled treatment, which is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, including but not limited to, medication administration or wound care such as debridement. Nursing services will only provide skilled treatment in the event of an emergency. In nonemergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider, home health agency, or other appropriate resource.

(e) File review; and

(f) Evaluation of health-related care needs affecting service plan and delivery.

(8) Community transition services, which are non-recurring, set-up items or services to assist you with being discharged from a nursing facility, institution for mental diseases, or intermediate care facility for individuals with intellectual disabilities, when these items or services are necessary for you to set up your own home. Community transition services may include:

(a) Security deposits that are required to lease an apartment or home, including first month's rent;

(b) Essential household furnishings required to occupy and use a community domicile, including furniture, window coverings, food preparation items, and bath and linen supplies;

(c) Set-up fees or deposits for utilities, including telephone, electricity, heating, water, and garbage;

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

(e) Moving expenses; and

(f) Activities to assess need, arrange for, and procure necessary resources.

(9) Caregiver management training on how to select, manage and dismiss personal care providers. Training is provided in written, DVD, and web-based formats.

NEW SECTION

WAC 388-106-0271 Are there limits to the skills acquisition training I may receive? Skills acquisition training:

(1) Shall not replace any training or therapy otherwise provided under medicaid, medicare, or any private insurance;

(2) Does not include therapy or nursing services that must be performed by a licensed therapist or nurse, but may be used to complement therapy or nursing goals coordinated through the care plan;

(3) For children, must be related to the child's disability and will not be provided for tasks that are determined to be age appropriate as described in WAC 388-106-0130(7); and

(4) In combination with assistive technology purchases, is limited to a yearly amount determined by the department per fiscal year.

NEW SECTION

WAC 388-106-0272 Who are qualified providers for skills acquisition training?

(1) Long term care workers, who must only provide skills acquisition training on IADLs and the following ADL tasks: dressing, application of deodorant, washing hands and face, hair washing, hair combing and styling, application of make-up, menses care, shaving with an electric razor, tooth brushing or denture care, and bathing tasks excluding any transfers in or out of the bathing area; and

(2) Contracted home health agencies, which may provide skills acquisition training on ADLs, IADLs or health related tasks that are within the profession's scope of practice.

NEW SECTION

WAC 388-106-0273 May I receive additional personal emergency response services? Under the assistive technology benefit, you may be eligible to receive:

(1) A fall detection system, if:

(a) You are eligible for a standard PERS unit; and

(b) You have a recent documented history of falls.

(2) A global positioning system (GPS) tracking device with locator capabilities if:

(a) You have a recent documented history of short-term memory loss; and a recent documented history of wandering with exit seeking behavior; or

(b) A recent documented history of getting lost in a familiar surrounding and being unaware of the need or unable to ask for assistance; and

(c) In addition, if you are under the age of 12, there must be information presented at your assessment that due to your disability the support you are provided for memory or decision making is greater than is typical for a person of your age.

(3) A medication reminder if:

- (a) You are eligible for a standard PERS unit;
 - (b) You do not have a caregiver available to provide the service;
- and
- (c) You are able to use the reminder to take your medications.

NEW SECTION

WAC 388-106-0274 Are there limits to the assistive technology I may receive? (1) Assistive technology excludes:

- (a) Any purchase that is solely for recreational purposes;
- (b) Applications for devices that are sold separately from the device, subscriptions, and data plan charges, or items that require a monthly recurring fee;
- (c) Medical supplies and medical equipment;
- (d) Home modifications; and
- (e) Any item that would otherwise be covered under any other payment source, including but not limited to, medicare, medicaid, and private insurance.

(2) In combination with skills acquisition training, assistive technology purchases are limited to a yearly amount determined by the department per fiscal year.

(3) To help decide whether to authorize this service, the department may require a treating professional's written recommendation regarding the need for the assistive technology evaluation. The treating professional making this recommendation must:

- (a) Have personal knowledge of or experience with the requested assistive technology; and
- (b) Have examined you, reviewed your medical records, and have knowledge of your level of functioning, and ability to use the technology.

(4) Your choice of services is limited to the most cost effective option that meets your health and welfare needs.

NEW SECTION

WAC 388-106-0275 Are there limits to the community transition services I may receive? Community transition services:

- (1) Do not include recreational or diverting items, such as a television, cable or VCR;
- (2) Do not include room and board; and
- (3) May not exceed eight hundred fifty dollars per discharge.

NEW SECTION

WAC 388-106-0276 Where can I receive CFC services? You may receive CFC services;

- (1) In your own home; or

- (2) In a residential facility, which include licensed and contracted:
- (a) Adult family homes, as defined in RCW 70.128.010; or
 - (b) Assisted living facilities as defined in RCW 18.20.020.
- (3) As applicable, while you are out of the home accessing the community or working.

NEW SECTION

WAC 388-106-0277 Am I eligible for CFC services? You are eligible for CFC services if you meet the following criteria:

(1) Your CARE assessment shows you need the level of care provided in a hospital, nursing facility, intermediate care facility for the intellectually disabled (ICF/ID), institution providing psychiatric services for individuals under age twenty-one, or an institution for mental diseases for individuals age sixty-five or over (or will likely need the level of care within thirty days unless CFC services are provided); and

(2) You are eligible for a categorically needy (CN) or the alternative benefit plan (ABP) Washington apple health program. Financial eligibility rules for CFC are described in WAC 182-513-1210 through WAC 182-513-1220; or

(3) If you are not financially eligible for a non-institutional CN or ABP program, but are financially eligible for a home and community based waiver, you are eligible for CFC as long as you continue to receive at least one monthly waiver service.

NEW SECTION

WAC 388-106-0280 When do CFC services begin? Your services begin on the date the department authorizes services.

NEW SECTION

WAC 388-106-0283 How do I remain eligible for CFC services? (1) In order to remain eligible for CFC, you must remain financially eligible and be in need of services in accordance with WAC 388-106-0310 as determined through a CARE assessment. The assessment in CARE must be completed at least annually or more often when there are significant changes in your functional or financial circumstances; or

(2) If you receive services through DDA, you must remain financially eligible and eligible for ICF/ID or nursing facility level of care as described in WAC 388-828-4400, 388-828-3080 and 388-106-0355.

(3) When your eligibility is dependent on your eligibility for a home and community based waiver, you must receive at least one waiver service every month. If you do not receive a waiver service for more than thirty calendar days, you will no longer be eligible for CFC and the department will terminate your CFC services.

(4) If eligibility laws, regulations, or rules for CFC change, and if you do not meet the changed eligibility requirements, the department will terminate your CFC services, even if your functional or financial circumstances have not changed.

NEW SECTION

WAC 388-106-0285 What do I pay for if I receive CFC services?

(1) If you are receiving services through CFC only, you may be required to pay toward the cost of your care as outlined in WAC 182-513-1215. If you are receiving services in:

(a) Your own home, you will not have to pay toward the cost of your care.

(b) A residential facility, you must pay for your room and board. You are allowed to keep some of your income for personal needs allowance (PNA). Depending on your financial eligibility group and income, you may also be responsible to pay an additional amount towards the cost of your care.

(2) If you are receiving services through CFC and a home and community based waiver, you may be required to pay toward the cost of your care as outlined in WAC 182-515-1509. If you are receiving services in:

(a) Your own home, you are allowed to keep some of your income for a maintenance allowance.

(b) If you are living in a residential facility, you must pay for your room and board and may have to pay an additional amount towards the cost of services. You are allowed to keep some of your income for PNA.

NEW SECTION

WAC 388-106-0290 What does the department pay towards the cost of care when you are receiving CFC services and live in a residential facility? When you receive CFC services and live in a residential facility, the department pays the facility the difference between what you are required to pay the facility and the department-set rate for the facility. The department pays the residential facility from the first day of service through the:

(1) The day before your discharge date; or

(2) The last day of service if you die while living at the facility.

NEW SECTION

WAC 388-106-0295 May I be employed and receive CFC services?

You may be employed and continue to receive CFC services as long as you remain medicaid eligible under the categorically needy (CN) or alternative benefit plan (ABP) program.