



# 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 department is amending WAC 388-105-0045, WAC 388-106-0336, and WAC 388-106-0338, and creating a new section WAC 388-106-0337 as a result of the 2013-2015 biennium budget to develop Enhanced Services Facilities. The DSHS Home and Community Services Division developed the 1915(c) Residential Support Waiver (RSW) to provide Medicaid funding for supports and services in certain residential settings. These rules are amended to add retainer payments to the RSW and to add two new waiver services, Adult Day Health and Expanded Community Services.

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

Repealed: None  
 Amended: WAC 388-105-0045, WAC 388-106-0336, WAC 388-106-0338  
 Suspended: None

**Statutory authority for adoption:** RCW 74.08.090, RCW 74.09.520

**Other authority:** N/A

**PERMANENT RULE (Including Expedited Rule Making)**

Adopted under notice filed as WSR 16-15-062 on July 18, 2016 (date).  
Describe any changes other than editing from proposed to adopted version:

The department corrected an error in the Adult Family Home (AFH) rate.

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:**

September 14, 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: September 16, 2016**  
**TIME: 11:06 AM**  
**WSR 16-19-055**

**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:**

<b>Federal statute:</b>	New	_____	Amended	_____	Repealed	_____
<b>Federal rules or standards:</b>	New	_____	Amended	_____	Repealed	_____
<b>Recently enacted state statutes:</b>	New	<u>1</u>	Amended	<u>3</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:**

<b>Negotiated rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Pilot rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Other alternative rule making:</b>	New	<u>1</u>	Amended	<u>3</u>	Repealed	_____

~~WAC 388-105-0045 Bed or unit hold—medicaid ((resident discharged for a hospital or nursing home stay from an adult family home (AFH) or a boarding home contracted to provide adult residential care (ARC), enhanced adult residential care (EARC), or assisted living services (AL))) residents at an ESF, AFH, ARC, EARC, or AL who need short-term care at a nursing home or hospital.~~ (1) ((When an AFH, ARC, EARC, or AL contracts to provide services under chapter 74.39A RCW, the AFH, ARC, EARC, and AL contractor must hold a medicaid eligible resident's bed or unit when)) An enhanced services facility (ESF) that contracts to provide services under chapter 70.97 RCW and an adult family home (AFH) or assisted living facilities contracted to provide adult residential care (ARC), enhanced adult residential care (EARC), or assisted living services (AL) under chapter 74.39A RCW, must hold a medicaid eligible resident's bed or unit if:

(a) The medicaid resident needs short-term care ((is needed)) in a nursing home or hospital;

(b) The medicaid resident is likely to return to the ESF, AFH, ARC, EARC, or AL; and

(c) ((Payment is made)) The department pays the ESF, AFH, ARC, EARC, or AL as set forth under subsection (3), (4), or (5) of this section.

~~(2) ((a) When the department pays the contractor to hold the medicaid resident's bed or unit during the resident's short-term nursing home or hospital stay, the contractor must hold the bed or unit for up to twenty days. If during the twenty day bed hold period, a department case manager determines that the medicaid resident's hospital or nursing home stay is not short term and the medicaid resident is unlikely to return to the AFH, ARC, EARC or AL facility, the department will cease paying for the bed hold the day the case manager notifies the contractor of his/her decision.~~

~~(b) A medicaid resident's discharge from an AFH, ARC, EARC, or an AL facility for a short term stay in a nursing home or hospital must be longer than twenty four hours before subsection (3) of WAC 388-105-0045 applies.~~

~~(c) When a medicaid resident on bed hold leave returns to an AFH, ARC, EARC, or an AL facility but remains less than twenty four hours, the bed hold leave on which the resident returned applies after the resident's discharge. A new bed hold leave will begin only when the returned resident has resided in the facility for more than twenty four hours before the resident's next discharge.~~

~~(d) When an AFH, ARC, EARC, or AL facility discharges a resident to a nursing home or hospital and the resident is out of the facility for more than twenty four hours, then by using e-mail, fax or telephone, the facility must notify the department of the resident's discharge within twenty four hours after the initial twenty four hours has passed. When the end of the initial twenty four hours falls on a weekend or state holiday, then the facility must notify the department of the discharge within twenty four hours after the weekend or holiday)) The ESF, AFH, ARC, EARC, or AL must hold a medicaid resident's bed or unit for up to twenty days when the department pays the ESF, AFH, ARC, EARC, or AL under subsections (3), (4), or (5) of this section.~~

(3) ~~The department will ((compensate the contractor for holding the bed or unit for the:~~

~~(a) First through seventh day at seventy percent of the medicaid daily rate paid for care of the resident before the hospital or nursing home stay; and~~

~~(b) Eighth through the twentieth day, at eleven dollars a day))~~ pay an ESF seventy percent of the resident's medicaid daily rate set at the time he or she left the ESF for the first through twentieth day of the resident's hospital or nursing home stay.

~~(4) The ((AFH,)) department will pay an ARC, EARC, or AL ((fa-~~  
~~cility may seek third party payment to hold a bed or unit for twenty-~~  
~~one days or longer. The third party payment shall not exceed the med-~~  
~~icaid daily rate paid to the facility for the resident. If third party~~  
~~payment is not available and the returning medicaid resident continues~~  
~~to meet the admission criteria under chapter 388 71 and/or 388 106~~  
~~WAC, then the medicaid resident may return to the first available and~~  
~~appropriate bed or unit))~~ seventy percent of the resident's medicaid daily rate set at the time he or she left the ARC, EARC, or AL for the first through seventh day of the resident's hospital or nursing home stay and eleven dollars a day for the eighth through twentieth day.

~~(5) The ((department's social worker or case manager determines whether the:~~

~~(a) Stay in a nursing home or hospital will be short term; and~~

~~(b) Resident is likely to return to the AFH, ARC, EARC, or AL fa-~~  
~~cility))~~ department will pay an AFH seventy percent of the resident's medicaid daily rate set at the time he or she left the AFH for the first through seventh day of the resident's hospital or nursing home stay and fifteen dollars per day for the eighth through twentieth day.

~~(6) A medicaid resident's short-term stay in a nursing home or~~  
~~hospital must be longer than twenty-four hours for subsection (3) or~~  
~~(4) of this section to apply.~~

~~(7) If a medicaid resident stays at a hospital or nursing home~~  
~~for more than twenty-four hours, the ESF, AFH, ARC, EARC, or AL must~~  
~~notify the department by e-mail, fax, or telephone within twenty-four~~  
~~hours after the initial twenty-four hour period. If the end of the~~  
~~initial twenty-four hour period falls on a weekend or state holiday,~~  
~~the ESF, AFH, ARC, EARC, or AL must notify the department within twenty-~~  
~~four hours after the weekend or holiday.~~

~~(8) If a medicaid resident returns to the ESF, AFH, ARC, EARC, or~~  
~~AL from the hospital or nursing home and stays there for less than~~  
~~twenty-four hours before returning to the hospital or nursing home,~~  
~~the existing bed hold period continues to run. If the medicaid resi-~~  
~~dent stays at the ESF, AFH, ARC, EARC, or AL for more than twenty-four~~  
~~hours before returning to the hospital or nursing home, a new bed hold~~  
~~period begins.~~

~~(9) The department's social service worker or case manager may~~  
~~determine that the medicaid resident's hospital or nursing home stay~~  
~~is not short term and he or she is unlikely to return to the ESF, AFH,~~  
~~ARC, EARC, or AL. If the social service worker or case manager makes~~  
~~such a determination, the department may cease payment the day it no-~~  
~~tifies the contractor of its decision.~~

~~(10) An ESF, AFH, ARC, EARC, or AL may seek third-party payment~~  
~~for a bed or unit hold that lasts for twenty-one days or longer or if~~  
~~the department determines that the medicaid resident's hospital or~~  
~~nursing home stay is not short-term and he or she is unlikely to re-~~  
~~turn. The third-party payment must not exceed the resident's medicaid~~  
~~daily rate paid to the ESF, AFH, ARC, EARC, or AL.~~

(11) If third-party payment is not available for a bed or unit hold that lasts for twenty-one days or longer, the medicaid resident may return to the first available and appropriate bed or unit at the ESF, AFH, ARC, EARC, or AL if he or she continues to meet the admission criteria under chapter 388-106 WAC.

(12) When the medicaid resident's stay in the hospital or nursing home exceeds twenty days or the department's social service worker or case manager determines that the medicaid resident's stay in the nursing home or hospital is not short-term and ~~((the resident))~~ he or she is unlikely to return to the ESF, AFH, ARC, EARC, or AL, ~~((facility, then))~~ only subsection ~~((+4))~~ (10) and (11) of this section ~~((applies to any))~~ apply to a private ~~((contractual arrangements that))~~ contract between the contractor ~~((may make with))~~ and a third party ~~((in regard to the discharged))~~ regarding the medicaid resident's unit or bed.

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

**WAC 388-106-0336 What services may I receive under the residential support waiver?** You may receive the following services under the residential support waiver:

(1) Adult family homes and assisted living facilities with an expanded community services contract that will provide:

- (a) Personal care;
- (b) Supportive services;
- (c) Supervision in the home and community;
- (d) Twenty-four hour on-site response staff;
- (e) The development and implementation of an individualized behavior support plan to prevent and respond to crises;
- (f) Medication management; and
- (g) Coordination and collaboration with a contracted behavior support provider;

(2) Adult family homes with a specialized behavior support contract that will provide:

- (a) Personal care~~((7))~~;
- (b) Supportive services~~((7))~~;
- (c) Supervision in the home and community~~((7 and 24))~~;
- (d) Twenty-four-hour on-site response staff;
- (e) The development and implementation of an individualized behavior support plan to prevent and respond to crises;
- (f) Medication management;
- (g) Coordination and collaboration with a contracted behavior support provider; and

(h) Specialized behavior support that provides you with six to eight hours a day of individualized staff time;

~~((+2))~~ (3) Enhanced services facilities that will provide:

- (a) Personal care~~((7))~~;
- (b) Supportive services~~((7))~~;
- (c) Supervision in the home and community~~((7 and))~~;
- (d) Twenty-four hour on-site response staff;
- (e) The development and implementation of an individualized behavior support plan to prevent and respond to crises;
- (f) Medication management; and

(g) On-site staffing ratios and professional staffing as described in WAC 388-107-0230 through WAC 388-107-0270;

~~((3))~~ (4) Specialized durable and nondurable medical equipment and supplies under WAC 182-543-1000~~((, when the items are))~~ when:

(a) Medically necessary under WAC 182-500-0005; ~~((and))~~

(b) Necessary:

(i) For life support;

(ii) To increase your ability to perform activities of daily living; or

(iii) To perceive, control, or communicate with the environment in which you live; ((and))

(c) Directly medically or remedially beneficial to you; ~~((and))~~

(d) ~~((In addition to))~~ They are additional and do not replace any medical equipment ~~((and/))~~ or supplies otherwise provided under medic-aid~~((and/or))~~, or medicare, or both; and

(e) In addition to and do not replace the services required by the department's contract with a residential facility~~((-))~~;

~~((4))~~ (5) Client support training to address your needs identified in your CARE assessment or ((in a)) other professional evaluation((-)) that are ((in addition to)) additional and do not replace the services required by the department's contract with the residential facility and ~~((that))~~ meet a therapeutic goal, such as:

(a) Adjusting to a serious impairment;

(b) Managing personal care needs; or

(c) Developing necessary skills to deal with care providers~~((-))~~;

~~((5))~~ (6) Nurse delegation((, as allowed in)) under RCW 18.79.260~~((-))~~ when:

(a) You ~~((are receiving))~~ receive personal care from a registered or certified nursing assistant who has completed nurse delegation core training;

(b) The delegating nurse considers your medical condition ((is considered)) stable and predictable ((by the delegating nurse));

(c) The services ((are provided in compliance)) comply with WAC 246-840-930; and

(d) ~~((It is in addition to, and does))~~ The services are additional and do not replace((-)) the services required by the department's contract with the residential facility((-));

~~((6))~~ (7) Skilled nursing((-)) when((the service is)):

(a) Provided by a registered nurse or licensed practical nurse under ~~((the supervision of))~~ a registered nurse's supervision;

(b) Beyond the amount, duration, or scope of medicaid-reimbursed home health services as provided under WAC 182-551-2100; and

(c) ~~((In addition to))~~ Additional and ~~((does))~~ do not replace the services required by the department's contract with the residential facility~~((-))~~;

~~((7))~~ (8) Nursing services((, when you are)) not already ((receiving this type of service)) received from another resource~~((- A registered nurse may perform any of the following activities. The frequency and scope of the nursing services is)),~~ based on your individual need as determined by your CARE assessment and any additional collateral contact information obtained by your case manager~~((-))~~, including any one or more of the following activities performed by a registered nurse:

(a) Nursing assessment/reassessment;

(b) Instruction to you, your providers, and your caregivers;

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

(d) Skilled treatment, only in the event of an emergency(~~(.—A skilled treatment is care that would require authorization, prescription, and supervision by an authorized practitioner prior to its provision by a nurse, for example, medication administration or wound care such as debridement.)~~) as in nonemergency situations, the nurse will refer the need for any skilled medical or nursing treatments to a health care provider or other appropriate resource((-));

(e) File review; (~~and/~~)or

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

(9) Adult day health services as described in WAC 388-71-0706 when:

(a) Your CARE assessment shows an unmet need for personal care or other core services, whether or not those needs are otherwise met; and

(b) Your CARE assessment shows an unmet need for skilled nursing under WAC 388-71-0712 or skilled rehabilitative therapy under WAC 388-71-0714 and:

(i) There is a reasonable expectation that the services will improve, restore, or maintain your health status, or in the case of a progressive disabling condition, will either restore or slow the decline of your health and functional status or ease related pain and suffering;

(ii) You are at risk for deteriorating health, deteriorating functional ability, or institutionalization; or

(iii) You have a chronic acute health condition that you are not able to safely manage due to a cognitive, physical, or other functional impairment.

#### NEW SECTION

**WAC 388-106-0337 When are you not eligible for adult day health services?** You are not eligible for adult day health if you:

(1) Can independently perform or obtain the services provided in an adult day health center; or

(2) Have referred care needs that:

(a) Exceed the scope of authorized services that the adult day health center is able to provide;

(b) Do not need to be provided or supervised by a licensed nurse or therapist;

(c) Can be met in a less structured care setting;

(d) In the case of skilled care needs, are being met by paid or unpaid providers;

(e) Live in a nursing home or other institutional facility; or

(f) Are not capable of participating safely in a group care setting.

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

**WAC 388-106-0338 Am I eligible for services funded by the residential support waiver?** (1) You are eligible for services funded by

the residential support waiver if ~~((you meet all of the following criteria. The department must assess))~~ the department, based on its assessment of your needs in CARE((and determine that)), determines you meet all of the following criteria:

~~((1))~~ (a) You are at least eighteen years ((or older)) old and blind or have a disability((r)) as defined in WAC 182-512-0050, or are age sixty-five or older;

~~((2) You meet financial eligibility requirements. This means the department will assess your finances and determine if))~~ (b) Your income and resources fall within the limits set in WAC 182-515-1505((r)) and meet the income and resource criteria for home and community based waiver programs and hospice clients((-));

~~((3))~~ (c) Your CARE assessment shows you need the level of care provided in a nursing facility ((+))or that you will likely need ((the)) this level of care within thirty days unless you receive residential support waiver services ((are provided) which is)) as defined in WAC 388-106-0355(1)((-));

(d) You have been assessed as medically and psychiatrically stable and one or more of the following applies:

~~((4))~~ (i) You currently reside at a state mental hospital or the psychiatric unit of a hospital ((past the time you)) and the hospital has found you are ready for discharge to the community; ((and

~~(5) You have been assessed as stable and ready for discharge by the hospital; and~~

~~(6))~~ (ii) You have a history of frequent or protracted psychiatric hospitalizations; ((and)) or

(iii) You have a history of an inability to remain medically or behaviorally stable for more than six months and you;

(A) Have exhibited serious challenging behaviors within the last year; or

(B) Have had problems managing your medication which has affected your ability to live in the community;

~~((7) Due to))~~ (e) Because of the protracted nature of your behavior and clinical complexity, you have no other placement options ((as evidenced by you being unsuccessful in finding)) and have found no community placement with ((otherwise)) a qualified community ((pro-viders; and)) provider;

~~((8))~~ (f) You have behavioral or clinical complexity that requires ((the level of supplementary)) staffing supports available only in the qualified community settings provided through the residential support waiver; and

~~((9))~~ (g) You require caregiving staff with specific training in providing personal care, supervision, and behavioral supports to adults with challenging behaviors.

(2) Under this section, "challenging behaviors" means a persistent pattern of behaviors or uncontrolled symptoms of a cognitive or mental condition that inhibit the individual's functioning in public places, ((in)) the facility, or integration within the community((- These behaviors)) that have been present for long periods of time or have manifested as an acute onset.