



# RULE-MAKING ORDER PERMANENT RULE ONLY

## CR-103P (December 2017) (Implements RCW 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: February 07, 2019

TIME: 10:29 AM

WSR 19-05-008

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

**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 adding this new overpayment section for individual providers to chapter 388-71 WAC to define the circumstances in which an individual provider is subject to an overpayment, clarify the department's authority to collect an overpayment, clarify an individual provider's right to an administrative hearing when they receive an overpayment notice, and provide information about how an individual provider requests an administrative hearing related to an overpayment.

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

New: WAC 388-71-0548  
Repealed: None  
Amended: None  
Suspended: None

**Statutory authority for adoption:** RCW 43.20B.675, RCW 74.09.220, RCW 74.09.290, RCW 74.09.520

**Other authority:**

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

Adopted under notice filed as WSR 18-21-150 on October 19, 2018 (date).

Describe any changes other than editing from proposed to adopted version: The department added "erroneous or" to subsection (1)(k).

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

Name:

Address:

Phone:

Fax:

TTY:

Email:

Web site:

Other:

**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| Federal statute:                 | New | ___ | Amended | ___ | Repealed | ___ |
| Federal rules or standards:      | New | 1   | Amended | ___ | Repealed | ___ |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 | 1   | Amended | ___ | Repealed | ___ |

**Date Adopted:** February 6, 2019

**Name:** Katherine I. Vasquez

**Title:** DSHS Rules Coordinator

**Signature:**



NEW SECTION

**WAC 388-71-0548 When is an individual provider subject to an overpayment?** (1) Unless payment is otherwise required by state or federal law, it is an overpayment as defined in RCW 43.20B.010 and 41.05A.170 if an individual provider (IP) is paid by the department and:

- (a) Did not actually perform the work;
- (b) Payment is for dates of service after the death of the client;
- (c) Payment is for services provided when the client was admitted to a hospital, nursing home, or other institutional setting;
- (d) Payment is for dates of service when the client was outside of the United States;
- (e) Did not have a valid IP services contract at the time the services were provided and had been notified by the department to stop the provision of services;
- (f) Had not completed required training or obtained required certification at the time the services were provided and had been notified by the department to stop the provision of services;
- (g) Had a disqualifying crime or negative action at the time the services were provided and had been notified by the department to stop the provision of services;
- (h) Provided services after being notified by the department to stop the provision of services;
- (i) Provided services that are not included in the client's plan of care;
- (j) Provided services that exceeded the amount of the client's benefit in the client's plan of care where those services were not necessitated by an emergent and immediate need of the client and the IP is not a family member or household member of the client; or
- (k) Received erroneous or duplicate payment(s).

(2) If the department determines an IP was overpaid, even if it was due to department error, the department recovers any moneys that the IP received as a result of overpayments, as authorized under chapter 41.05A RCW or 43.20B RCW.

- (a) The department will send the IP notice of the overpayment.
- (b) The IP has a right to request an administrative hearing when notice of an overpayment is received from the department.
- (c) To request an administrative hearing, an IP must send a written request to the office of financial recovery within twenty-eight days of the IP's receipt of notice of the overpayment that:
  - (i) States the basis for contesting the overpayment notice;
  - (ii) Includes a copy of the department's notice with the request; and
  - (iii) Is sent by certified mail return receipt requested (CMRRR) or another trackable delivery service.
- (d) The appeal process will be governed by the Administrative Procedure Act (chapter 34.05 RCW).