



RULE-MAKING ORDER PERMANENT RULE ONLY

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

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STATE OF WASHINGTON
FILED

DATE: March 04, 2019

TIME: 3:16 PM

WSR 19-06-053

Agency: Department of Social and Health Services, Developmental Disabilities 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 amended WAC 388-828-9310 to replace “community access” with the service’s new name, “community inclusion,” which was approved through a waiver amendment by the Centers for Medicare and Medicaid Services (CMS). Amendments to WAC 388-828-9330 and WAC 388-828-9335 replace “In Training/Job Development” with “Working at subminimum wage or in job development” as requested by Disability Rights Washington. Amendments to WAC 388-828-9350 remove provider travel time as a reason to authorize additional employment support hours for a client; this change aligns with CMS-approved waiver amendments, which do not include provider travel time in the service definition or service limitations as justification for additional employment support hours. Amendments to WAC 388-845-2100 add language requested by the Seattle Commission for People with Disabilities.

Citation of rules affected by this order:

- New: None
- Repealed: None
- Amended: WAC 388-828-9310, WAC 388-828-9330, WAC 388-828-9335, WAC 388-828-9350, WAC 388-845-2100
- Suspended: None

Statutory authority for adoption: RCW 71A.12.030

Other authority: RCW 71A.12.040, RCW 71A.12.120, RCW 34.05.330

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 19-01-063 on December 14, 2018 (date).

Describe any changes other than editing from proposed to adopted version: Instead of striking WAC 388-828-9350(6) as proposed, DDA revised the language as follows:

The developmental disabilities administration (DDA) may authorize additional hours to your monthly employment service hours when your employment support plan identifies a need for additional service hours related to:

- (1) Your work schedule;
- (2) The number of jobs you have;
- (3) The appropriateness of your job match;
- (4) Natural supports available to you on the job;
- (5) Health limitations that affect your job;
- (6) ~~((Provider travel time and distance to))~~ The location of your job;

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

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 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	2	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	___	Repealed	___

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

New	___	Amended	3	Repealed	___
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The number of sections adopted on 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	___	Amended	<u>5</u>	Repealed	___

Date Adopted: March 1, 2019

Name: Cheryl Strange

Title: DSHS Secretary

Signature:



AMENDATORY SECTION (Amending WSR 18-03-174, filed 1/23/18, effective 2/23/18)

WAC 388-828-9310 How does DDA determine the number of community ((access)) inclusion services hours you may receive each month? (1) The number of hours of community ((access)) inclusion services you may receive each month is based on your community ((access)) inclusion service level.

(2) The developmental disabilities administration (DDA) determines your community ((access)) inclusion service level based on your support intensity scale (SIS) support needs index percentile ranking. DDA determines your SIS support needs index percentile ranking under WAC 388-828-4440 and as detailed in the following table:

SIS support needs index percentile	Community ((access)) <u>inclusion</u> service level	Maximum service hours per month
0 - 9th percentile	A	Up to 3 hours
10th - 19th percentile	B	Up to 6 hours
20th - 29th percentile	C	Up to 9 hours
30th - 44th percentile	D	Up to 12 hours
45th - 59th percentile	E	Up to 15 hours
60th - 74th percentile	F	Up to 18 hours
75th - 100th percentile	G	Up to 20 hours

AMENDATORY SECTION (Amending WSR 18-03-174, filed 1/23/18, effective 2/23/18)

WAC 388-828-9330 How does DDA determine your employment status? (1) The developmental disabilities administration (DDA) considers your employment status "working" if:

- (a) In the twelve months before your assessment:
 - (i) You have been employed for nine consecutive months; and
 - (ii) You have earned at least Washington state's minimum wage; or
- (b) You are currently self-employed and:
 - (i) The activities of your employment meet the Internal Revenue Service (IRS) rules for a business;
 - (ii) You have a business plan demonstrating feasibility as determined by the division of vocational rehabilitation or an impartial, agreed upon, third-party business expert; and
 - (iii) You are licensed, if required, and follow all local, state, and federal regulations and rules.

(2) DDA considers your employment status (~~("in training/job development")~~) "working at sub-minimum wage or in job development" if you do not meet the conditions in subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 13-01-076, filed 12/18/12, effective 1/18/13)

WAC 388-828-9335 How does ((DDD)) DDA determine your employment service level? ((DDD)) DDA determines your employment service level using the following table:

If your employment support level in WAC 388-828-9205 is:	And your employment status in WAC 388-828-9330 is:	Then your employment service level is:	And your employment service hours per month are:
None	Working	A	0
	((In Training/ Job Development)) Working at sub-minimum wage or in job development	B	0
Low	Working	C	4
	((In Training/ Job Development)) Working at sub-minimum wage or in job development	D	7
Medium	Working	E	7
	((In Training/ Job Development)) Working at sub-minimum wage or in job development	F	9
High	Working	G	11
	((In Training/ Job Development)) Working at sub-minimum wage or in job development	H	12

AMENDATORY SECTION (Amending WSR 18-03-174, filed 1/23/18, effective 2/23/18)

WAC 388-828-9350 Are there conditions when DDA will authorize additional hours to your monthly employment service hours? The developmental disabilities administration (DDA) may authorize additional hours to your monthly employment service hours when your employment support plan identifies a need for additional service hours related to:

- (1) Your work schedule;
- (2) The number of jobs you have;
- (3) The appropriateness of your job match;
- (4) Natural supports available to you on the job;
- (5) Health limitations that affect your job;
- (6) ~~((Provider travel time and distance to))~~ The location of your job;

(7) Behavioral or physical needs that may affect the safety of you and others while at work; or

(8) Other factors in your employment plan that indicate a need for additional hours for a short-term volunteer opportunity, job development, or for you to maintain a job.

AMENDATORY SECTION (Amending WSR 18-03-174, filed 1/23/18, effective 2/23/18)

WAC 388-845-2100 What are supported employment services? (1)

Supported employment services are for those interested in integrated gainful employment and should facilitate paid employment that is covered by the Washington State Minimum Wage Act under chapter 49.46 RCW and the Fair Labor Standards Act under 29 U.S.C. Section 201. These services provide you with intensive ongoing support if you need individualized assistance to gain employment, maintain employment, or both. These services are tailored to your individual needs, interests, abilities, and promote your career development. These services are provided in individual or group settings and are available in the basic plus, core, and community protection waivers.

(2) Individual supported employment services include activities needed to sustain Washington state's minimum wage pay or higher. These services are conducted in integrated business environments and include the following:

(a) Intake: An initial meeting to gather and share basic information and a general overview of employment supports, resources in the community, and the type of available supports that the individual may receive;

(b) Discovery: A person-centered approach to learn the individual's likes and dislikes, job preferences, and employment goals and skills;

(c) Job preparation: Includes activities of work readiness resume development, work experience, volunteer support transportation training;

(d) Marketing: A method to identify and negotiate jobs, build relationships with employers, and customize employment development;

(e) Job coaching: The supports needed to keep the job; and

(f) Job retention: The supports needed to keep the job, maintain a relationship with employer, identify opportunities, and negotiate a raise in pay, promotion, or increased benefits.

(3) Group supported employment services are a step on your pathway toward gainful employment in an integrated setting and include:

(a) Supports and paid training in an integrated business setting;

(b) Supervision by a qualified employment provider during working hours;

(c) Groupings of no more than eight workers with disabilities; and

(d) Individualized supports to obtain gainful employment.