



PROPOSED RULE MAKING

CR-102 (June 2024)
(Implements RCW 34.05.320)
Do **NOT** use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: June 17, 2025

TIME: 2:23 PM

WSR 25-13-096

Agency: Department of Social and Health Services, Home and Community Living Administration, WA Cares Fund

☒ **Original Notice**

☐ **Supplemental Notice to WSR**

☐ **Continuance of WSR** _____

☒ **Preproposal Statement of Inquiry was filed as WSR** 24-04-030, 24-04-031, 24-04-032, and 24-04-033 ; or

☐ **Expedited Rule Making--Proposed notice was filed as WSR** _____; or

☐ **Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or**

☐ **Proposal is exempt under RCW** _____.

Title of rule and other identifying information: (describe subject) This proposal would add a new chapter to Title 388 WAC, WA Cares Fund

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
August 5, 2025	10:00 a.m.	Virtually via Teams or Call in	Hearings are held virtually, see the DSHS website at https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings for the most current information.

Date of intended adoption: Not earlier than August 6, 2025 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name DSHS Rules Coordinator

Address PO Box 45850, Olympia WA 98504

Email DSHSRPAURulesCoordinator@dshs.wa.gov

Fax 360-664-6185

Other

Beginning (date and time) noon on June 18, 2025

By (date and time) 5:00 p.m. on August 5, 2025

Assistance for persons with disabilities:

Contact Shelley Tencza, Rules Consultant

Phone 360-664-6036

Fax 360-664-6185

TTY 711 Relay Service

Email shelley.tencza@dshs.wa.gov

Other

By (date) 5:00 p.m. July 22, 2025

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The new chapter of rule implements requirements under chapter 50B.04 RCW related to defining approved services, requirements for determining eligibility to receive approved services, and requirements to provide approved services. The rules govern beneficiaries of the long-term services and supports trust, and providers wanting to provide approved services to eligible beneficiaries.

Reasons supporting proposal: This rulemaking is necessary for the WA Cares Fund program to define approved services, eligibility requirements for beneficiaries to receive approved services, and requirements to provide approved services. These rules will support access and service delivery for WA Cares beneficiaries and long-term services and supports providers. .

Statutory authority for adoption: RCW 50B.04.020(3)(j)

Statute being implemented:

Is rule necessary because of a:

Federal Law?

☐ Yes ☒ No

Federal Court Decision?

☐ Yes ☒ No

State Court Decision?

☐ Yes ☒ No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Name of proponent: (person or organization) Department of Social and Health Services

Type of proponent: ☐ Private. ☐ Public. ☒ Governmental.

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting	Arielle Finney	PO Box 45600 Olympia, WA 98504-5600	360-764-0384
Implementation	Katie Kelnhofer (provider)	PO Box 45600 Olympia, WA 98504-5600	564-669-4440
Tracey Rollins (beneficiary)		PO Box 45600 Olympia, WA 98504-5600	360-688-6359
Enforcement	Katie Kelnhofer (provider)	PO Box 45600 Olympia, WA 98504-5600	564-669-4440
Tracey Rollins (beneficiary)		PO Box 45600 Olympia, WA 98504-5600	360-688-6359

Is a school district fiscal impact statement required under [RCW 28A.305.135](#)?☐ Yes ☒ No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name
Address
Phone
Fax
TTY
Email
Other

Is a cost-benefit analysis required under [RCW 34.05.328](#)?☒ Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name Arielle Finney
Address PO Box 45600, Olympia, WA 98504-5600
Phone 360-764-0384
Fax
TTY 711 Relay Service
Email Arielle.Finney2@dshs.wa.gov
Other

☐ No: Please explain:**Regulatory Fairness Act and Small Business Economic Impact Statement**Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.**(1) Identification of exemptions:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):

☐ This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.061](#) because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

☐ This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.

☐ This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570](#)(2) because it was adopted by a referendum.

☐ This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025](#)(3). Check all that apply:

- | | |
|---|--|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> RCW 34.05.310 (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

☐ This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025](#)(4). (Does not affect small businesses).

☐ This rule proposal, or portions of the proposal, is exempt under RCW _____.

Explanation of how the above exemption(s) applies to the proposed rule:

(2) Scope of exemptions: *Check one.*

- ☐ The rule proposal: Is fully exempt. (*Skip section 3.*) Exemptions identified above apply to all portions of the rule proposal.
- ☐ The rule proposal: Is partially exempt. (*Complete section 3.*) The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):
- ☒ The rule proposal: Is not exempt. (*Complete section 3.*) No exemptions were identified above.

(3) Small business economic impact statement: *Complete this section if any portion is not exempt.*

If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

☒ No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. The rules are the least burdensome route to achieving the goals and objectives of the program. The rules do not require an action that violates federal or state law. The rules do not impose more stringent requirements on private entities than on public entities. There are no applicable federal regulations related to the subject of these rules.

☐ Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name Arielle Finney

Address PO Box 45600, Olympia, WA 98504-5600

Phone 360-764-0384

Fax

TTY 711 relay service

Email Arielle.Finney2@dshs.wa.gov

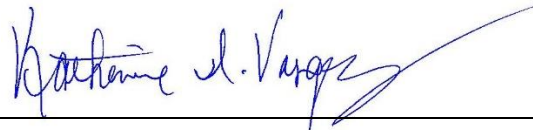
Other

Date: June 16, 2025

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



**Chapter 388-116 WAC
WA CARES FUND PROGRAM**

General Provisions

NEW SECTION

WAC 388-116-1000 Purpose and scope. (1) This chapter implements the long-term services and supports program identified under chapter 50B.04 RCW.

(2) This chapter applies to the long-term services and support program administered by the department of social and health services under RCW 50B.04.020.

(3) Additional rules for the long-term services and supports program administered by the employment security department can be found under Title 192 WAC as they relate to chapter 50B.04 RCW.

(4) Additional rules for the long-term services and supports program administered by the health care authority can be found under Title 182 WAC as they relate to chapter 50B.04 RCW.

NEW SECTION

WAC 388-116-1010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly indicates otherwise.

(1) **"Activities of daily living"** means bathing, bed mobility, continence, dressing, eating, medication management, mobility, personal hygiene, toileting, or transferring.

(a) **"Bathing"** means how a person washes their body including showers, baths, sponge baths, or bed baths, and how a person gets into and out of a shower or bathtub.

(b) **"Bed mobility"** means how a person moves to and from a lying position, turns side-to-side, and positions their body while in bed, in a recliner, or other furniture used for sleeping.

(c) **"Continence"** means the ability to control bladder and bowel functions, or, when unable to maintain control of bowel or bladder function, the ability to perform associated care and hygiene, including caring for a catheter or colostomy bag.

(d) **"Dressing"** means how a person puts on and takes off all items of clothing including prosthesis, splints, braces, and orthotics.

(e) **"Eating"** means how a person eats and drinks. Eating includes any method of receiving nutrition by mouth, tube, or through a vein. Eating does not include any set-up help received.

(f) **"Medication management"** means how a person organizes and takes prescription medications, over the counter medications, or supplements.

(g) **"Mobility"** means how a person gets from one place to another within their immediate environment and from outside their home to inside their home.

(h) **"Personal hygiene"** means how a person completes self-care activities such as combing hair, brushing teeth, shaving, applying make-up, washing face, drying face, washing hands, nail care, perineum care, and menses care. Personal hygiene does not include hygiene tasks completed during bathing.

(i) **"Toileting"** means how a person uses a toilet, commode, bedpan, or urinal to eliminate, and how they transfer on and off the toilet, perform associated hygiene, and adjust clothing.

(j) **"Transferring"** means how a person moves between surfaces such as to and from a bed, a chair, wheelchair, or standing position. Transferring does not include how a person moves to and from the bath, toilet, or vehicle.

(2) **"Approved services"** means long-term services and supports including:

(a) **"Adaptive equipment and technology"** means devices and services available in the categories listed in (2)(a)(i) through (v) of this subsection that maintain or improve the ability to perform activities of daily living; or maintain or improve functional capabilities; and increase independence, safety, and welfare including:

(i) Assistive technology items used to increase, maintain, or improve the functional capabilities of persons with physical or mental impairment;

(ii) Assistive technology services to evaluate, consult, train, and provide technical assistance regarding assistive or adaptive devices;

(iii) Medical equipment and supplies within one of the following categories:

(A) Incontinence supplies such as reusable or disposable briefs, pullups, wipes, and underpads;

(B) Personal protective equipment;

(C) Bathroom and toileting equipment such as urinals, bedside commodes, raised toilet seats, toilet and tub rails, bath and shower stools, chairs, and benches, including transfer benches and rolling shower chairs;

(D) Blood pressure monitoring devices;

(E) Over the counter non-custom surgical stockings;

(F) Grab bars for use anywhere in the home; and

(G) Lift chairs;

(iv) Specialized equipment and supplies, including non-medical goods and adaptive devices that provide remedial benefit, including weight utensils, waterproof mattress covers, long-handled brushes, and baskets for walkers; and

(v) Vehicle modifications that are necessary to accommodate a disability, including wheelchair ramps and lifts, adding hand controls, and modifying foot pedals, steering devices, or seating;

(vi) Excluded from allowable adaptive equipment and technology are:

(A) Any item purchased for recreational purposes;

(B) Software, game applications, or gift cards;

(C) Exercise equipment;

(D) Pressure reducing support surfaces;

(E) Hospital beds, including their accessories and other positioning devices;

(F) Patient lifts and transfer devices, not including lift chairs;

(G) Wound care supplies;

(H) Diabetic equipment and supplies;

(I) Nutrition equipment and supplies;

(J) Orthotic equipment and supplies;

(K) Ostomy supplies;

(L) Respiratory equipment and supplies;

(M) Transcutaneous electrical nerve stimulation (TENS) systems;

(N) Mobility aids, including but not limited to, crutches, canes, gait trainers, and walkers, as well as their accessories and replacement materials;

(O) Wheelchairs and their accessories and replacement materials;

(P) Eyeglasses, contact lenses, and hearing aids;

(Q) Therapy or service animals and their related expenses; and

(R) Experimental or investigational medical devices or drugs.

(b) **"Adult day services"** means adult day care or adult day health.

(i) **"Adult day care"** means a program that provides the services under WAC 388-71-0704.

(ii) **"Adult day health"** means a program that provides the services under WAC 388-71-0706.

(c) **"Adult family home services"** means services provided in a home-like residential setting where two to eight adults live and receive personal care, special care, and room and board under chapter 70.128 RCW and chapter 388-76 WAC.

(d) **"Assisted living services"** means services provided in a residential setting where seven or more adults live and receive basic services for their safety and well-being under chapter 18.20 RCW and chapter 388-78A WAC.

(e) **"Care transition coordination"** means services that provide comprehensive discharge planning and coordination of health care services for up to 60 days after being discharged from a hospital or nursing home with the goal of avoiding preventable poor outcomes as beneficiaries return home.

(f) **"Dementia and behavioral supports"** means an assessment by a mental health professional to determine causes, triggers, and purposes behind documented or identified behaviors such as wandering or aggression, and the development of a written strategy with recommendations for specific interactions designed to address identified behaviors.

(g) **"Education and consultation"** means non-medical skills training for eligible beneficiaries and their paid and unpaid caregivers related to an eligible beneficiary's diagnoses and chronic health issues to support managing their activities of daily living, behavior, health, and wellness.

(h) **"Environmental modification"** means alterations to a residence that accommodate an eligible beneficiary's disability and promote functional independence, health, welfare, and safety. Environmental modifications include, but are not limited to, installing grab bars, building ramps, widening doorways, and modification to bathrooms.

(i) **"Home delivered meals"** means nutritionally balanced meals prepared and delivered to an eligible beneficiary's home. Home delivered meals includes, but is not limited to, box meals, prepackaged meals, and hot meals, and must be from a provider that meets the requirements of chapter 246-215 WAC.

(j) **"Home safety evaluation"** means an assessment of a home to identify and reduce potential hazards, to minimize or prevent injury, and improve accessibility in the home.

(k) **"In-home personal care"** means assistance with activities of daily living and instrumental activities of daily living provided to a person in their own home.

(l) **"Long-term services and supports provided in nursing homes" or "nursing home services"** means long-term care or custodial services provided in one of the following settings:

(i) A setting that operates or maintains facilities providing convalescent or chronic care, or both, consistent with chapter 18.51 RCW and chapter 388-97 WAC, for a period in excess of 24 consecutive hours for three or more patients who are not related by blood or marriage to the operator, and who, by reason of illness or infirmity, are unable to properly care for themselves; or

(ii) A swing bed in a critical access hospital to provide post-acute nursing services, where "swing bed" is defined under WAC 246-310-410 and "critical access hospital" is defined under WAC 182-550-2598.

(iii) Excluded from nursing home services is medically necessary care provided in a skilled nursing facility that requires a licensed medical practitioner to perform, including, but not limited to:

(A) Rehabilitation services such as physical or occupational therapy; and

(B) Skilled nursing services such as wound care, intravenous injections, and catheter care.

(m) **"Memory care"** means a service provided in an assisted living facility that provides specialized, long-term care for individuals with memory loss under chapter 18.20 RCW and chapter 388-78A WAC.

(n) **"Personal emergency response system"** means a service to secure help in an emergency through an electronic device programmed to signal a response center that is staffed by trained professionals who immediately summon help. Systems must be approved by the Federal Communications Commission and meet the Underwriters Laboratories solutions or Intertek Electronic Testing Laboratories standards for home health care signaling equipment. Personal emergency response systems are limited to basic systems, global positioning systems, medication reminders, and fall detections.

(o) **"Professional nursing services"** means one or more of the following services:

(i) **"Skilled nursing"** means a short-term intermittent treatment of a chronic condition, or the treatment of chronic, stable, long-term conditions where the treatment cannot be delegated or self-directed. Excluded from skilled nursing services are treatments for acute care due to acute injury or illness.

(ii) **"Nurse delegation"** means specific nursing tasks assigned by a registered nurse to a nursing assistant certified pursuant to chapter 18.88A RCW or home care aide certified pursuant to chapter 18.88B RCW. Nurse delegation must be performed pursuant to RCW 18.79.260.

(iii) **"Private duty nursing"** means in-home skilled nursing care to a person who would otherwise be served in a medical institution. A person receiving private duty nursing is dependent on a technology modality, including mechanical ventilation, complex respiratory support, tracheostomy, intravenous or parenteral, administration of medication, or intravenous administration of nutritional substances.

(p) **"Respite for family caregivers"** means a short-term service that allows family caregivers a break from caregiving duties while the

eligible beneficiary is cared for by an in-home service provider, or in the community by an adult day service provider, adult family home, assisted living facility, or nursing home.

(q) **"Services that assist paid and unpaid family members caring for eligible individuals"** which means housework, errands, yardwork, and snow removal tasks that are typically done by family members.

(i) **"Housework"** and **"errands"** are services supporting beneficiaries to remain in their own home by assisting with instrumental activities of daily living related to their health and safety.

(ii) **"Yardwork"** and **"snow removal"** are services to allow safe egress and entry into the home, reduce potential fire danger, assist the beneficiary to comply with local city and county codes, or other local requirements, such as a Homeowner's Association, in order to remain in their choice of setting.

(r) **"Transportation"** which means services that support the ability to travel to therapeutic activities that support mental health, physical health, or wellbeing, the grocery store, medical appointments, and social services. Services include, but are not limited to, trip or mileage reimbursement, bus passes, taxi scripts, bridge tolls, and ferry tickets.

(3) **"Area agency on aging"** means an agency, other than a state agency, designated by the department to carry out certain programs or services in a defined geographical area of the state.

(4) **"Benefit unit"** has the same meaning as defined in RCW 50B.04.010.

(5) **"Care needs assessment"** means the department's or its designee's evaluation of a person's ability to complete activities of daily living.

(6) **"Custodial services"** means long-term, non-medical care for individuals who need assistance with activities of daily living due to aging, disability, or chronic medical condition.

(7) **"Department"** means the department of social and health services.

(8) **"Eligible beneficiary"** has the same meaning as defined in RCW 50B.04.010.

(9) **"Eligibility determination"** means the department's or its designee's determination of whether a person is an eligible beneficiary.

(10) **"Evidence-based program provider"** means an entity that provides the approved service of care transition coordination or education and consultation, and whose programs have been rigorously tested in controlled settings, proven effective, and translated into practical models. Programs include Enhance®Wellness, Enhance®Fitness, program to encourage active and rewarding lives for seniors (PEARLS), star-caregivers program (STAR-C), powerful tools for caregivers, and community aging in place—advancing better living for elders (CAPABLE).

(11) **"Health home"** means a set of services designed to support individuals with serious chronic conditions, a medical need, or a social service need with the goal of reducing visits to the emergency department and supporting the individual's health, well-being, and self-care.

(12) **"Health home care coordination organization"** means an organization that operationalizes the health home program through a contract with a lead entity.

(13) **"Health home lead entity"** means a managed care organization or qualified community-based organization contracted with the health

care authority to oversee the health home program in specific parts of the state.

(14) **"In-state applicant"** means an individual who resides in Washington state and is applying to become an eligible beneficiary to receive services in Washington state.

(15) **"Instrumental activities of daily living"** means essential shopping, meal preparation, ordinary housework, telephone use, travel to medical services, or wood supply.

(a) **"Essential shopping"** means how a person completes brief, occasional trips within their local area to shop for food, medical necessities, and household items required for their health, nutrition, daily maintenance, or well-being.

(b) **"Meal preparation"** means how a person completes meal planning, cooking, assembling ingredients, setting out food or utensils, and cleaning up after meals;

(c) **"Ordinary housework"** means how a person completes routine household chores;

(d) **"Telephone use"** means how a person makes and receives calls, including dialing, answering, and comprehending spoken information, on the telephone;

(e) **"Travel to medical services"** means how a person travels by vehicle to a physician's office or clinic within their local area to obtain medical diagnosis or treatment. This travel includes driving a vehicle or traveling as a passenger in a vehicle; and

(f) **"Wood supply"** means how a person prepares wood or pellets when using wood, pellets, or both, as the only source of fuel for heating or cooking.

(16) **"Level of assistance"** means the amount and type of care a person needs to perform activities of daily living.

(17) **"Licensed practical nurse"** means an individual licensed pursuant to chapter 18.79 RCW and meets the definition of licensed practical nurse pursuant to RCW 18.79.060.

(18) **"Long-term services and supports"** means services and goods purchased that support quality of life, and the ability to perform activities of daily living and instrumental activities of daily living at an eligible beneficiary's own home, in the community, in residential settings, and nursing homes; and

(a) Support the eligible beneficiary's welfare, independence, and wellbeing;

(b) Do not replace services and goods otherwise available under medical insurance; and

(c) Do not include paying for services and goods that are for general utility, meaning the goods and services are not specific to the person's needs based on their disabilities or health conditions.

(19) **"Long-term services and supports provider"** has the same meaning as defined in RCW 50B.04.010.

(20) **"Own home"** means an eligible beneficiary's domicile, their present or intended place of residence:

(a) In a building that is rented where the rental is not contingent upon the purchase of services for assistance with activities of daily living and instrumental activities of daily living;

(b) In a building that is owned by the eligible beneficiary;

(c) In an established residence of a relative of the eligible beneficiary; or

(d) In the home of another where rent is not charged and residence is not contingent upon the purchase of services for assistance

with activities of daily living and instrumental activities of daily living.

(21) **"Provider applicant"** means any individual, firm, partnership, corporation, company, association, joint stock association, or any other legal or commercial entity that is applying to become a long-term services and supports provider.

(22) **"Qualified individual"** has the same meaning as defined in RCW 50B.04.010.

(23) **"Registered nurse"** means an individual licensed pursuant to chapter 18.79 RCW and meets the definition of registered nursing practice pursuant to RCW 18.79.040.

Beneficiary Eligibility Determinations

NEW SECTION

WAC 388-116-2010 Application for benefits. (1) To apply for benefits, an in-state applicant must submit an application to the department or its designee to undergo a care needs assessment.

(2) When an in-state applicant applies for benefits, they must provide information sufficient for the department to determine the identity of the in-state applicant and to schedule a care needs assessment, including but not limited to:

- (a) Legal name;
- (b) Date of birth;
- (c) Residential city within Washington state;
- (d) Documentation of identity; and
- (e) Contact information.

NEW SECTION

WAC 388-116-2020 Eligibility determination for in-state applicants. (1) For the purposes of this section "activities of daily living" means bathing, bed mobility, eating, medication management, mobility, toileting, and transferring.

(2) In-state applicants are determined eligible to receive benefits when they:

- (a) Are age 18 or older;
- (b) Have not exhausted the lifetime limit of benefit units;
- (c) The employment security department has determined they are a qualified individual;
- (d) Complete a care needs assessment that indicates they need assistance with at least three activities of daily living, and their need for assistance with at least three activities of daily living is expected to last for at least 90 days.

(i) An applicant meets the minimum level of assistance required with bathing, bed mobility, eating, mobility, toileting, and transferring if their level of assistance is assessed as supervision, limited assistance, extensive assistance, total dependence, or the activity did not occur due to no provider.

(ii) An applicant meets the minimum level of assistance required with medication management if their level of assistance is assessed as assistance required or must be administered.

(3) A person's performance of bathing, bed mobility, eating, mobility, toileting, and transferring will be evaluated using a seven-day lookback period from the date of the care needs assessment.

(4) Each activity of daily living is evaluated based on functional or cognitive limitations using the following levels of assistance:

(a) Bathing, bed mobility, eating, mobility, toileting, and transferring:

(i) No assistance: The person required no assistance to complete the activity of daily living;

(ii) Supervision: The person completed the activity of daily living and required monitoring, cueing, or set-up assistance;

(iii) Limited assistance: The person completed the activity of daily living, was involved in the activity of daily living, and received guided (non-weight bearing) assistance from their provider;

(iv) Extensive assistance: The person completed the activity of daily living and performed only part of the activity and received physical assistance (weight bearing) from their provider to complete the activity;

(v) Total dependence: The person did not participate at all in the completion of the activity and relied on their provider to complete the activity;

(vi) Did not occur, no provider: The activity of daily living did not occur because no provider was available to assist, support, or cue the person, or the activity was completed with great difficulty without a provider;

(vii) Declined to answer: The person chose not to provide information about their activities of daily living; or

(viii) Unable to answer: The person was unable to provide information about their activities of daily living.

(b) For medication management:

(i) No assistance: The person required no assistance with medication management;

(ii) Assistance required: The person required reminding or prompting to take medication, opening the container, or placing the medication in the person's hand;

(iii) Must be administered: The person required the medication to be placed in their mouth, applied or instilled to the skin, or mucous membrane. Administration must be performed by a licensed professional or be delegated by a registered nurse to a qualified caregiver as specified in WAC 246-840-910. Administration may also be done by a family member or an unpaid caregiver;

(iv) Declined to answer: The person chose not to provide information about their medication management; or

(v) Unable to answer: The person was unable to provide information about their medication management.

(5) The assessor will consider the following factors to determine whether an individual's need for assistance is ongoing and expected to last at least 90 days:

- (a) Diagnosis of a chronic condition or prognosis of a condition impacting activities of daily living that is likely to last longer than 90 days;
- (b) Terminal illness, hospice, or palliative care;
- (c) Home-based assistance received from family, friends, or paid providers within the last month;
- (d) Care in a residential setting; or
- (e) Recent history of falls resulting in serious injury or hospitalization.
- (6) The in-state applicant or their legal representative is responsible for providing information required to determine eligibility.
- (7) The in-state applicant or their legal representative may request the department obtain medical records with written consent.

Requirements to Provide Approved Services

NEW SECTION

WAC 388-116-3010 Registration requirements and operational standards. (1) To be a long-term services and supports provider eligible to provide services paid for by the long-term services and supports program under chapter 50B.04 RCW, a provider applicant must:

- (a) Meet minimum qualification requirements under WAC 388-116-3020;
- (b) Meet contracting requirements under WAC 388-116-3040; and
- (c) Meet application requirements under WAC 388-116-3050.

(2) Prior to delivering approved services, a long-term services and supports provider must create a pre-authorization for services in a department-authorized payment system and the pre-authorization must be approved by the eligible beneficiary.

NEW SECTION

WAC 388-116-3020 Minimum qualifications. A person or entity seeking to provide long-term services and supports under this chapter must meet the following minimum qualifications:

- (1) Comply with chapter 50B.04 RCW, this chapter, and other applicable federal, state, and local laws and regulations, including, but not limited to, chapters 49.60, 70.129, and 74.34 RCW;
- (2) Comply with background check requirements under WAC 388-116-3030; and
- (3) Hold all current licenses, certifications, credentials, trainings, and authorizations identified for the type of approved service they are seeking to provide or are registered to provide, which are not suspended or revoked. Providers seeking to furnish mul-

multiple types of approved services must meet the requirements applicable to each approved service, as follows:

(a) Adaptive equipment and technology:

(i) Business license pursuant to chapter 19.02 RCW; and

(ii) Furnish, sell, or provide equipment or technology meeting the definition of adaptive equipment and technology equipment in WAC 388-116-1010.

(b) Adult day services:

(i) Adult day care providers: Requirements applicable to private pay providers as described under WAC 388-71-0702. The requirements include:

(A) WAC 388-71-0704, but the services do not need to meet the level of care needed by the client as assessed by the department case manager;

(B) WAC 388-71-0723;

(C) WACs 388-71-0736 through 388-71-0740;

(D) WAC 388-71-0744, but the individual client file does not need to include the department-authorized service plan and service authorization;

(E) WAC 388-71-0746, but the provider does not need to comply with documentation requirements under WAC 182-502-0020;

(F) WAC 388-71-0748 through 388-71-0752;

(G) WAC 388-71-0754, except subsections (6) and (7) of that section; and

(H) WACs 388-71-0760 through 388-71-0774.

(ii) Adult day health providers: Requirements applicable to private pay providers as described under WAC 388-71-0702. The requirements include:

(A) WAC 388-71-0704, but the services do not need to meet the level of care needed by the client as assessed by the department case manager;

(B) WAC 388-71-0706;

(C) WAC 388-71-0714;

(D) WAC 388-71-0723;

(E) WACs 388-71-0736 through 388-71-0740;

(F) WAC 388-71-0744, but the individual client file does not need to include the department-authorized service plan and service authorization;

(G) WAC 388-71-0746, but the provider does not need to comply with documentation requirements under WAC 182-502-0020;

(H) WAC 388-71-0748 through 388-71-0752;

(I) WAC 388-71-0754, except subsections (6) and (7) of that section; and

(J) WACs 388-71-0760 through 388-71-0774.

(c) Adult family home service providers:

(i) Business license pursuant to chapter 19.02 RCW; and

(ii) Adult family home license pursuant to chapter 70.128 RCW and chapter 388-76 WAC.

(d) Assisted living facility service providers:

(i) Business license pursuant to chapter 19.02 RCW; and

(ii) Assisted living facility license pursuant to chapter 18.20 RCW and chapter 388-78A WAC.

(e) Care transition coordination service providers:

(i) Must be a:

(A) Government agency;

(B) Organization approved as a non-profit 501(c)(3) by the Internal Revenue Service; or

- (C) Business license pursuant to chapter 19.02 RCW; and
- (ii) Be a:
 - (A) Health home care coordination organization contracted with a health home lead entity that employs nurses with the applicable license;
 - (B) Home health agency license pursuant to chapter 70.127 RCW; or
 - (C) Evidence-based program provider that meets the affiliated organization's requirements to provide care transition coordination including, but not limited to, Care Transitions Interventions®, transitional care model, and project RED (re-engineered discharge).
 - (f) Dementia and behavioral supports service providers:
 - (i) Business license pursuant to chapter 19.02 RCW; and
 - (ii) Have one of the following:
 - (A) Certified behavioral health agency certification or license pursuant to chapter 71.24 RCW;
 - (B) Agency affiliated counselor license pursuant to chapter 18.19 RCW;
 - (C) Certified adviser license pursuant to chapter 18.19 RCW;
 - (D) Certified counselor license pursuant to chapter 18.19 RCW;
 - (E) Hypnotherapist license pursuant to chapter 18.19 RCW;
 - (F) Licensed behavior analyst license pursuant to chapter 18.380 RCW;
 - (G) Licensed assistant behavior analyst license pursuant to chapter 18.380 RCW;
 - (H) Certified behavior technician license pursuant to chapter 18.380 RCW;
 - (I) Licensed marriage and family therapist license pursuant to chapter 18.225 RCW;
 - (J) Licensed marriage and family therapist associate license pursuant to chapter 18.225 RCW;
 - (K) Licensed mental health counselor license pursuant to chapter 18.225 RCW;
 - (L) Licensed mental health counselor associate license pursuant to chapter 18.225 RCW;
 - (M) Licensed social worker license pursuant to chapter 18.225 RCW;
 - (N) Licensed social worker associate license pursuant to chapter 18.225 RCW; or
 - (O) Licensed psychologist license pursuant to chapter 18.83 RCW.
 - (g) Education and consultation service providers:
 - (i) Business license pursuant to chapter 19.02 RCW; and
 - (ii) Have or be one of the following:
 - (A) Registered nurse license pursuant to chapter 18.79 RCW;
 - (B) Licensed practical nurse license pursuant to chapter 18.79 RCW;
 - (C) Certified dietitian license pursuant to chapter 18.138 RCW;
 - (D) Certified nutritionist license pursuant to chapter 18.138 RCW;
 - (E) Licensed physical therapist license pursuant to chapter 18.74 RCW;
 - (F) Licensed occupational therapist license pursuant to chapter 18.59 RCW;
 - (G) Licensed home health agency license pursuant to chapter 70.127 RCW;
 - (H) Licensed home care agency license pursuant to chapter 70.127 RCW;

(I) Community college programs license pursuant to chapter 28B.50 RCW;

(J) Behavioral health agency license pursuant to chapter 71.24 RCW;

(K) Licensed pharmacist license pursuant to chapter 18.64 RCW;

(L) Evidence-based program provider that meets the affiliated organization's requirements to provide education and consultation services including, but not limited to, chronic disease self-management programs, Enhance@Wellness, Enhance@Fitness, program to encourage active and rewarding lives for seniors (PEARLS), star-caregivers program (STAR-C), powerful tools for caregivers, and community aging in place—advancing better living for elders (CAPABLE);

(M) Recognized centers for independent living pursuant to 45 CFR Part 1329;

(N) Licensed music therapist license pursuant to chapter 18.233 RCW;

(O) Registered recreational therapist license pursuant to chapter 18.230 RCW;

(P) Health home care coordination organization contracted with a health home lead entity with the applicable license and is recognized pursuant to the Social Security Act §1945; or

(Q) Learning management systems and community instructors that meet department training and continuing education requirements pursuant to chapter 388-112A WAC.

(h) Environmental modification service providers:

(i) Must be a:

(A) Non-profit 501(c)(3) organization approved by the Internal Revenue Service and is bonded and insured; or

(B) Business licensed pursuant to chapter 19.02 RCW; and

(ii) Have a contractor registration pursuant to chapter 18.27 RCW.

(i) Home delivered meals service providers:

(i) Business license pursuant to chapter 19.02 RCW; and

(ii) Food establishment permit pursuant to chapter 43.20 RCW.

(j) Home safety evaluation service providers:

(i) Business license pursuant to chapter 19.02 RCW; and

(ii) Have one of the following:

(A) Home health agency license pursuant to chapter 70.127 RCW; and the staff completing evaluations must have one of the following:

(I) Physical therapist license pursuant to chapter 18.74 RCW; or

(II) Occupational therapist license pursuant to chapter 18.59 RCW;

(B) Occupational therapist license pursuant to chapter 18.59 RCW; or

(C) Physical therapist license pursuant to chapter 18.74 RCW.

(k) In-home personal care providers:

(i) Business license pursuant to chapter 19.02 RCW; and

(ii) Consumer directed employer contract pursuant to chapter 74.39A RCW; or

(iii) Home care agency license pursuant to chapter 70.127 RCW for a minimum of three consecutive years, providing long-term services and supports to in-home clients, and:

(A) Have no significant licensing deficiencies during the three-year period prior to registration. For the purposes of this requirement, significant means deficiencies related to standards of care, and

beneficiary or client health and safety that result in enforcement action by the department of health; and

(B) Use electronic visit verification to document in-home visits.

(l) Memory care service providers:

(i) Business license pursuant to chapter 19.02 RCW;

(ii) Assisted living facility license pursuant to chapter 18.20 RCW and chapter 388-78A WAC; and

(iii) Meet the requirements under chapter 18.20 RCW and chapter 388-78A WAC for memory care facility or memory care unit.

(m) Nursing home service providers:

(i) Business license pursuant to chapter 19.02 RCW; and

(ii) Have one of the following:

(A) Nursing home license pursuant to chapter 18.51 RCW and chapter 388-97 WAC; or

(B) Critical access hospital license pursuant to 42 U.S.C. 1895i-4 and chapter 70.38 RCW.

(n) Personal emergency response system providers:

(i) Business license pursuant to chapter 19.02 RCW; and

(ii) Personal emergency response systems must meet the following requirements:

(A) Systems must be approved by the Federal Communications Commission. Approval will be determined by the system's Federal Communications Commission identification label being documented in the Federal Communications Commission equipment authorization database; and

(B) Systems must meet the Underwriters Laboratories solutions or Intertek Electronic Testing Laboratories standards for home health care signaling equipment. The Underwriters Laboratories or Electronic Testing Laboratories listing mark on the equipment will be accepted as evidence of the equipment's compliance with Underwriters Laboratories or Electronic Testing Laboratories standards.

(o) Professional nursing service providers:

(i) Business license pursuant to chapter 19.02 RCW; and

(ii) Have one of the following:

(A) Registered nurse license pursuant to chapter 18.79 RCW;

(B) Licensed practical nurse license pursuant to chapter 18.79 RCW;

(C) Home health agency license pursuant to chapter 70.127 RCW; or

(D) Health home care coordination organization contract with a health home lead entity that employs nurses with the applicable license.

(p) Respite for family caregivers service providers:

(i) Business license pursuant to chapter 19.02 RCW; and

(ii) Have or be one of the following:

(A) Adult family home license pursuant to chapter 70.128 RCW;

(B) Assisted living facility license pursuant to chapter 18.20 RCW;

(C) Consumer directed employer contract pursuant to chapter 74.39A RCW;

(D) Home care agency license pursuant to chapter 70.127 RCW, and meet the additional requirements under subsection (3)(k)(iii);

(E) Nursing home license pursuant to chapter 18.51 RCW; or

(F) Adult day care provider under (3)(b)(1) of this section.

(q) Services that assist paid and unpaid family caregivers:

(i) Business license pursuant to chapter 19.02 RCW; and

(ii) One year legally operating as a business in the state of Washington.

(r) Transportation service providers:

- (i) Business license pursuant to chapter 19.02 RCW;
- (ii) Driver license pursuant to chapter 46.20 RCW; and
- (iii) Have one of the following:
 - (A) Auto transportation company certification pursuant to chapter 81.68 RCW; or
 - (B) Private, non-profit transportation provider certification pursuant to chapter 81.66 RCW.

NEW SECTION

WAC 388-116-3030 Background checks for provider applicants and long-term services and supports providers. (1) Subsection (2) of this section applies to the following provider applicants of these approved services:

- (a) Adaptive equipment and technology;
- (b) Adult day services (adult day care and adult day health);
- (c) Care transition coordination;
- (d) Dementia supports;
- (e) Education and consultation;
- (f) Environmental modifications;
- (g) Home delivered meals;
- (h) Home safety evaluation;
- (i) In-home personal care (home care agencies and the consumer directed employer);
- (j) Personal emergency response system;
- (k) Professional services;
- (l) Services that assist paid and unpaid family members caring for eligible individuals; and
- (m) Transportation.

(2) Entity owners and contract signatories for the approved services listed under subsection (1) of this section must pass a DSHS background check as required under:

- (a) RCW 43.20A.710 subsection (1)(b) or (1)(c) as applicable; and
- (b) Chapter 388-113 WAC. Notwithstanding any limitations to provider type or program, this chapter applies to provider applicants.

(3) Adult family home services provider applicants must pass a background check as required under chapter 70.128 RCW and chapter 388-76 WAC.

(4) Assisted living facility services provider applicants and memory care provider applicants must pass a background check as required under chapter 18.20 RCW and chapter 388-78A WAC.

(5) Nursing home services provider applicants must pass a background check as required under chapter 18.51 RCW and chapter 388-97 WAC.

(6) Respite for family caregiver provider applicants must pass a background check applicable to their provider type:

- (a) Home care agency - subsection (1)(i) of this section;
- (b) Individual provider - subsection (1)(i) of this section;
- (c) Adult family home - subsection (3) of this section;
- (d) Assisted living facility - subsection (4) of this section;
- (e) Nursing home - subsection (5) of this section; or
- (f) Adult day care - subsection (1)(b) of this section.

(7) If any individual required to complete a background check under this section provides verification that an equivalent background

check was completed within 90 days before the date of application and it is non-disqualifying, that individual is not required to complete another background check under this section.

NEW SECTION

WAC 388-116-3040 Contracting requirements. A long-term services and supports provider must be contracted by the department or an area agency on aging under chapter 39.26 RCW and must not have a DSHS contract terminated for default.

NEW SECTION

WAC 388-116-3050 Provider registration application. (1) A provider applicant must:

(a) Complete and submit a registration application as directed and required by the department;

(b) Submit any additional information requested by the department or its designee within 30 calendar days of the first request for information; and

(c) Complete the registration process within 90 calendar days of the initial application submission date or have made a good faith effort to complete the registration process within 90 days.

(2) Provider applicants must be responsive to the department or the area agency on aging assigned to process the application.

(3) Provider applicants will receive notice of a registration determination by the department in writing.

NEW SECTION

WAC 388-116-3060 Provider registration application denial. (1) The department may deny a registration application when the department determines the provider applicant does not:

(a) Meet the registration requirements and operational standards of WAC 388-116-3010; or

(b) Meet the application requirements in WAC 388-116-3050.

(2) The department will notify the provider applicant in writing when a denial decision has been made and include the following in the notification:

(a) Date of denial;

(b) Reason for denial;

(c) How to contact the department with questions; and

(d) Instructions on how to request an administrative hearing to contest the denial decision.

NEW SECTION

WAC 388-116-3070 Discontinuing provider registration. The department may discontinue a long-term services and supports provider's registration when:

(1) The long-term services and supports provider submits a written request to discontinue their registration; or

(2) The department determines the provider no longer meets registration requirements or operational standards as required under WAC 388-116-3010.