



# 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: August 26, 2024  
TIME: 3:56 PM

WSR 24-18-038

**Agency:** Department of Social and Health Services, Economic Services Administration

- Original Notice**
- Supplemental Notice to WSR** \_\_\_\_\_
- Continuance of WSR** \_\_\_\_\_

- Preproposal Statement of Inquiry was filed as WSR 24-13-124\_ ; 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) The department is proposing to amend WAC 388-449-0080, "Sequential evaluation process step IV—How does the department evaluate if I am able to perform relevant past work?"

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
October 8, 2024	10:00 am	Virtually via Teams or Call in	Hearings are held virtually, see the DSHS website <a href="https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings">https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings</a> for the most current information

**Date of intended adoption:** Not earlier than October 9, 2024. (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](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov)  
 Fax 360-664-6185  
 Other  
 Beginning (date and time) noon on September 4, 2024.  
 By (date and time) 5:00 p.m. on October 8, 2024

**Assistance for persons with disabilities:**

Contact Shelley Tencza, DSHS Rules Consultant  
 Phone 360-664-6036  
 Fax 360-664-6185  
 TTY 711 Relay Service  
 Email [shelley.tencza@dshs.wa.gov](mailto:shelley.tencza@dshs.wa.gov)  
 Other  
 By (date) 5:00 p.m. on September 24, 2024

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** These amendments are necessary to align Aged, Blind, or Disabled (ABD) program rules with Social Security Administration’s revision of the definition of “past relevant work,” by reducing the relevant work period from 15 to five years. Related emergency rules are currently in place under WSR 24-13-110.

**Reasons supporting proposal:** See above

**Statutory authority for adoption:** RCW 41.05.021, 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.04.770, 74.08.090, 74.08A.100, 74.09.035, 74.09.530, 74.62.030

**Statute being implemented:** N/A

**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	Lorri Burns	PO Box 45470, Olympia, WA 98504-5470	509-385-9020
Implementation	Lorri Burns	PO Box 45470, Olympia, WA 98504-5470	509-385-9020
Enforcement	Lorri Burns	PO Box 45470, Olympia, WA 98504-5470	509-385-9020

**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
- Address
- Phone
- Fax
- TTY
- Email
- Other

No: Please explain: These rules are exempt as allowed under RCW 34.05.328(5)(b)(vii) which states in part, "this section does not apply to rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

**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"/> <a href="#">RCW 34.05.310</a> (4)(b)<br>(Internal government operations) | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(e)<br>(Dictated by statute)  |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(c)<br>(Incorporation by reference)     | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(f)<br>(Set or adjust fees)   |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(d)<br>(Correct or clarify language)    | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(g)<br>(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 34.05.328(5)(b)(vii).

Explanation of how the above exemption(s) applies to the proposed rule: These amendments do not impact small businesses. They only impact DSHS customers.

**(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. \_\_\_\_\_

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:

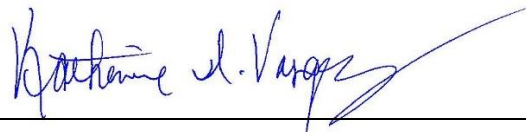
The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name  
Address  
Phone  
Fax  
TTY  
Email  
Other

**Date:** August 26, 2024

**Signature:**

**Name:** Katherine I. Vasquez



**Title:** DSHS Rules Coordinator

**WAC 388-449-0080 Sequential evaluation process step IV—How does the department evaluate if I am able to perform relevant past work?**

(1) If we neither deny disability at Step 1 or 2 nor approve it at Step 3, we consider our assessment of your physical and/or mental functional capacity, per WAC 388-449-0020 and 388-449-0030, to determine if you can do work you have done in the past.

(2) We evaluate your work experience to determine if you have relevant past work and transferable skills. "Relevant past work" means work:

(a) Defined as substantial gainful activity per WAC 388-449-0005;

(b) You have performed in the past (~~fifteen~~) five years; and

(c) You performed long enough to acquire the knowledge and skills necessary to continue performing the job. You must meet the specific vocational preparation level as defined in Appendix C of the Dictionary of Occupational Titles.

(3) For each relevant past work situation, we compare:

(a) The exertional, nonexertional, and skill requirements of the job based on the Appendix C of the Dictionary of Occupational Titles; and

(b) Current cognitive, social, exertional, and nonexertional factors that significantly limit your ability to perform past work.

(4) We deny disability when we determine that you are able to perform any of your relevant past work.

(5) We approve disability when you are fifty-five years of age or older and don't have the physical, cognitive, or social ability to perform past work.