



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: October 22, 2024
TIME: 4:47 PM

WSR 24-21-156

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

- Original Notice**
- Supplemental Notice to WSR** _____
- Continuance of WSR** _____

- Preproposal Statement of Inquiry was filed as WSR 24-16-001 ; 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) WAC 388-106-1021 Private Duty Nurse Holiday Pay. The proposed rule clarifying holiday pay for contracted private duty nurses.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
November 26, 2024	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: No earlier than November 27, 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
Fax 360-664-6185
Other

Beginning (date and time) noon on October 23, 2024
By (date and time) 5:00 p.m. on November 26, 2024

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. on November 12, 2024

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The purpose of this rulemaking is considering adding a new section to WAC 388-106-1000 through WAC 388-106-1055 in the paid Private Duty Nursing (PDN) section of WAC. The new section will be under WAC 388-106-1021, which is related PDN Paid Holidays. Currently PDN providers have been receiving holiday pay and referring to a Washington State Employee WAC. PDN providers are not Washington State Employees and therefore need to have clarity in this WAC section for paid holidays

Reasons supporting proposal: To identify the holidays for which PDN contracted nurses will receive holiday pay.

Statutory authority for adoption: RCW 74.08.090, 74.09.520, and 74.39A.030

Statute being implemented: RCW 74.08.090 and 74.09.520

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	Kaila O'Dell	4500 Blake East bldg. Lacey, WA	360-725-3549
Implementation	Kaila O'Dell	4500 Blake East bldg. Lacey, WA	360-725-3549
Enforcement	Kaila O'Dell	4500 Blake East bldg. Lacey, WA	360-725-3549

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: The department determined this rule is not a significant legislative rule under RCW 34.05.328. Currently, PDN contracted nurse receive holiday pay. This WAC is specifying holidays for contracted nurses rather than referring to state employee holidays.

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 checked="" 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 checked="" 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 [34.05.310\(4\)\(b\) and \(d\)](#).

Explanation of how the above exemption(s) applies to the proposed rule: This is an internal process that is already in practice, that is being clarified in rule. RCW 34.05.310(4)(d) states in part "... or clarify language of a rule without changing its effect"

(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:

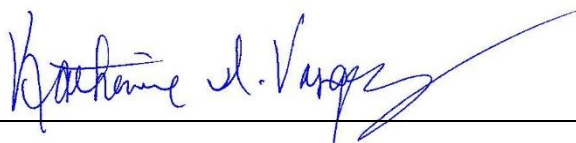
- Name
- Address
- Phone
- Fax
- TTY
- Email
- Other

Date: October 18, 2024

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



NEW SECTION

WAC 388-106-1021 What days are considered holidays for private duty nursing providers? The following dates are holidays solely for the purpose of contracted services rates for private duty nursing providers:

- (1) The first day of January (New Year's Day);
- (2) The third Monday of January (Martin Luther King, Jr.'s birthday);
- (3) The third Monday of February (Presidents' Day);
- (4) The last Monday of May (Memorial Day);
- (5) The 19th day of June (Juneteenth);
- (6) The fourth day of July (Independence Day);
- (7) The first Monday in September (Labor Day);
- (8) The 11th day of November (Veteran's Day);
- (9) The fourth Thursday in November (Thanksgiving Day);
- (10) The Friday immediately following the fourth Thursday in November (Native American Heritage Day); and
- (11) The 25th day of December (Christmas Day).