

WSR 11-06-034
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
(Division of Child Support)

[Filed February 25, 2011, 3:06 p.m., effective February 26, 2011]

Effective Date of Rule: February 26, 2011.

Purpose: The division of child support (DCS) is filing this sixth emergency rule in order to maintain the status quo as we await the rule-making hearing for the adoption of final rules. **THESE RULES ARE EXACTLY THE SAME AS THE PRIOR EMERGENCY RULES ADOPTED AS WSR 10-22-049 AND EFFECTIVE ON OCTOBER 29, 2010.** This sixth set of emergency rules takes effect on February 26, 2011, and is identical in every respect to the prior emergency rules filed as WSR 10-22-049. **See below for more information.** NOTE: As DCS files this emergency rule-making order, DCS is filing the CR-102, Notice of proposed rule making, to schedule the public rule-making hearing on the final rules. While the sixth emergency rules are exactly the same as the fifth emergency rules, DCS encourages all interested parties to review the rules proposed in the CR-102, because *the proposed final rules differ from the emergency rules in several respects.*

BASIS FOR ADOPTION OF EMERGENCY RULES: ESHB 1794 (chapter 84, Laws of 2009) and SHB 1845 (chapter 476, Laws of 2009) both had an effective date of October 1, 2009. Although DCS has begun the regular rule-making process to adopt rules under this bill, we were unable to complete the adoption process by the effective date. DCS continues the regular rule-making process and at the same time it files these emergency rules, DCS is filing the CR-102, Notice of proposed rule making, to schedule the public rule-making hearing.

In the 2009 legislative session, the Washington state legislature adopted ESHB 1794 (chapter 84, Laws of 2009), which makes changes to chapter 26.19 RCW, the Washington state child support schedule, based on recommendations of the 2007 child support schedule workgroup which was convened under 2SHB 1009 (chapter 313, Laws of 2007) and SHB 1845 (chapter 476, Laws of 2009), regarding medical support obligations in child support orders. Both of these bills had an effective date of October 1, 2009.

DCS filed emergency rules under WSR 09-20-030 in order to implement this legislation by October 1, 2009. DCS filed the second emergency rules, identical to the first, under WSR 10-04-037 with an effective date of January 28, 2010. The third emergency was filed under WSR 10-12-039, and was effective on May 26, 2010. The fourth emergency was filed under WSR 10-14-065, and was effective on July 1, 2010; that rule-making order removed certain sections (WAC 388-14A-5002, 388-14A-5003, 388-14A-5004, 388-14A-5005 and 388-14A-5006) in order to amend DCS rules regarding the distribution of collections from federal tax refund offset, and those sections were amended by emergency rule adopted under WSR 10-14-063, effective July 1, 2010. DCS again filed emergency rules under WSR 10-22-049; those rules were effective on October 29, 2010.

For a list of section numbers and titles in this sixth emergency filing, see Citation of existing rules below.

STATUS OF ADOPTION OF FINAL RULES: DCS began the regular rule-making process by filing a CR-101, Preproposal notice of inquiry, for each of the bills: The CR-101 for ESHB 1794 was filed as WSR 09-10-046, and the CR-101 for SHB 1845 was filed as WSR 09-14-075. Because both of the bills impact the establishment of child support obligations, DCS determined that it was necessary to adopt just one set of rules which covers both bills instead of two separate rule-making projects.

At the same time we file this CR-103E, DCS is filing the CR-102, Notice of proposed rule making. When published, the CR-102 will set the date for the public rule-making hearing on the final rules. DCS has done a significant amount of redrafting and revising the rules from the form in which they were first proposed, after consulting with DCS staff, stakeholders and other partners. Between the filing of the CR-102 and the public rule-making hearing, DCS will again work with DCS staff, stakeholders and other partners to incorporate more comments and feedback.

While the sixth emergency rules are exactly the same as the fifth emergency rules, DCS encourages all interested parties to review the rules proposed in the CR-102, because the proposed rules differ from the emergency rules in several respects. The proposed rules will be published with the CR-102, and will be available on the DSHS rule-making web site. Interested parties may request a copy of the proposed rules by contacting Nancy Koptur, DCS rules coordinator, at nkoptur@dshs.wa.gov or by calling her at (360) 664-5065.

Citation of Existing Rules Affected by this Order:
Amending WAC 388-14A-1020 What definitions apply to the rules regarding child support enforcement?, 388-14A-2035 Do I assign my rights to support when I receive public assistance?, 388-14A-2036 What does assigning my rights to support mean?, 388-14A-3140 What can happen at a hearing on a support establishment notice?, 388-14A-3205 How does DCS calculate my income?, 388-14A-3310 The division of child support serves a notice of support owed to establish a fixed dollar amount under an existing child support order, 388-14A-3312 The division of child support serves a notice of support owed for ~~((unreimbursed))~~ medical ~~((expenses))~~ support to establish a fixed dollar amount owed under a child support order, 388-14A-3315 When DCS serves a notice of support debt ~~((or))~~, notice of support owed ~~((or))~~, notice of support owed for ~~((unreimbursed))~~ medical ~~((expenses))~~ support, we notify the other party to the child support order, 388-14A-3317 What is an annual review of a support order under RCW 26.23.110?, 388-14A-3318 What is an annual review of a notice of support owed under WAC 388-14A-3312?, 388-14A-3320 What happens at a hearing on a notice of support owed?, 388-14A-3400 Are there limitations on how much of my income is available for child support?, 388-14A-4100 How does the division of child support enforce my obligation to provide health insurance for my children?, 388-14A-4110 If my support order requires me to provide ~~((health insurance))~~ medical support for my children, what do I have to do?, 388-14A-4112 When does the division of child support enforce a custodial parent's obligation to provide ~~((health insurance coverage))~~ medical support?, 388-14A-4115 Can my support order reduce my support obligation if I pay for health insurance?, 388-14A-4120 DCS uses the National

Medical Support Notice to enforce an obligation to provide health insurance coverage, 388-14A-4165 What happens when a noncustodial parent does not earn enough to pay child support plus the health insurance premium?, 388-14A-4175 (~~Is an employer~~) Who is required to notify the division of child support when insurance coverage for the children ends?, 388-14A-4180 When must the division of child support communicate with the DSHS health and recovery services administration?, 388-14A-5007 If the paying parent has more than one case, can DCS apply support money to only one specific case?, 388-14A-6300 Duty of the administrative law judge in a hearing to determine the amount of a support obligation and 388-14A-8130 How does DCS complete the WSCSS worksheets when setting a joint child support obligation when the parents of a child in foster care are married and residing together?; and new section WAC 388-14A-4111 When may DCS decline a request to enforce a medical support obligation?

Statutory Authority for Adoption: RCW 26.09.105(17), 26.18.170(19), 26.23.050(8), 26.23.110(14), 34.05.020, 34.05.060, 34.05.220, 74.08.090, 74.20.040, 74.20A.055 (9) and (11).

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: See Purpose above.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 23, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 23, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 23, Repealed 0.

Date Adopted: February 25, 2011.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-02-059, filed 1/5/09, effective 1/27/09)

WAC 388-14A-1020 What definitions apply to the rules regarding child support enforcement? For purposes of this chapter, the following definitions apply:

"Absence of a court order" means that there is no court order setting a support obligation for the noncustodial parent (NCP), or specifically relieving the NCP of a support obligation, for a particular child.

"Absent parent" is a term used for a noncustodial parent.

"Accessible coverage" means health insurance coverage which provides primary care services to the children with reasonable effort by the custodian.

"Accrued debt" means past-due child support which has not been paid.

"Administrative order" means a determination, finding, decree or order for support issued under RCW 74.20A.055, 74.20A.056, or 74.20A.059 or by another state's agency under an administrative process, establishing the existence of a support obligation (including medical support) and ordering the payment of a set or determinable amount of money for current support and/or a support debt. Administrative orders include:

- (1) An order entered under chapter 34.05 RCW;
- (2) An agreed settlement or consent order entered under WAC 388-14A-3600; and
- (3) A support establishment notice which has become final by operation of law.

"Agency" means the Title IV-D provider of a state. In Washington, this is DCS.

"Agreed settlement" is an administrative order that reflects the agreement of the noncustodial parent, the custodial parent and the division of child support. An agreed settlement does not require the approval of an administrative law judge.

"Aid" or **"public assistance"** means cash assistance under the temporary assistance for needy families (TANF) program, the aid to families with dependent children (AFDC) program, federally funded or state-funded foster care, and includes day care benefits and medical benefits provided to families as an alternative or supplement to TANF.

"Alternate recipient" means a child of the employee or retiree named within a support order as being entitled to coverage under an employer's group health plan.

"Annual fee" means the twenty-five dollar annual fee charged between October 1 and September 30 each year, required by the federal deficit reduction act of 2005 and RCW 74.20.040.

"Applicant/custodian" means a person who applies for nonassistance support enforcement services on behalf of a child or children residing in their household.

"Applicant/recipient," "applicant," and "recipient" means a person who receives public assistance on behalf of a child or children residing in their household.

"Arrears" means the debt amount owed for a period of time before the current month.

"Assistance" means cash assistance under the state program funded under Title IV-A of the federal Social Security Act.

"Assistance unit" means a cash assistance unit as defined in WAC 388-408-0005. An assistance unit is the group of people who live together and whose income or resources the department counts to decide eligibility for benefits and the amount of benefits.

"Birth costs" means medical expenses incurred by the custodial parent or the state for the birth of a child.

"Cash medical support" is a term used in RCW 26.09.-105 and certain federal regulations to refer to amounts paid by an obligated parent to the other parent or to the state in

order to comply with the medical support obligation stated in a child support order.

"Conditionally assigned arrears" means those temporarily assigned arrears remaining on a case after the period of public assistance ends.

"Conference board" means a method used by the division of child support for resolving complaints regarding DCS cases and for granting exceptional or extraordinary relief from debt.

"Consent order" means a support order that reflects the agreement of the noncustodial parent, the custodial parent and the division of child support. A consent order requires the approval of an administrative law judge.

"Court order" means a judgment, decree or order of a Washington state superior court, another state's court of comparable jurisdiction, or a tribal court.

"Current support" or **"current and future support"** means the amount of child support which is owed for each month.

"Custodial parent or CP" means the person, whether a parent or not, with whom a dependent child resides the majority of the time period for which the division of child support seeks to establish or enforce a support obligation.

"Date the state assumes responsibility for the support of a dependent child on whose behalf support is sought" means the date that the TANF or AFDC program grant is effective. For purposes of this chapter, the state remains responsible for the support of a dependent child until public assistance terminates, or support enforcement services end, whichever occurs later.

"Delinquency" means failure to pay current child support when due.

"Department" means the Washington state department of social and health services (DSHS).

"Dependent child" means a person:

(1) Seventeen years of age or younger who is not self-supporting, married, or a member of the United States armed forces;

(2) Eighteen years of age or older for whom a court order requires support payments past age eighteen;

(3) Eighteen years of age or older, but under nineteen years of age, for whom an administrative support order exists if the child is participating full-time in a secondary school program or the same level of vocational or technical training.

"Disbursement" means the amount of child support distributed to a case that is paid to the family, state, other child support enforcement agency in another state or foreign country, Indian tribe, or person or entity making the payment.

"Disposable earnings" means the amount of earnings remaining after the deduction of amounts required by law to be withheld.

"Distribution" means how a collection is allocated or split within a case or among multiple cases.

"Earnings" means compensation paid or payable for personal service. Earnings include:

(1) Wages or salary;

(2) Commissions and bonuses;

(3) Periodic payments under pension plans, retirement programs, and insurance policies of any type;

(4) Disability payments under Title 51 RCW;

(5) Unemployment compensation under RCW 50.40.-020, 50.40.050 and Title 74 RCW;

(6) Gains from capital, labor, or a combination of the two; and

(7) The fair value of nonmonetary compensation received in exchange for personal services.

"Employee" means a person to whom an employer is paying, owes, or anticipates paying earnings in exchange for services performed for the employer.

"Employer" means any person or organization having an employment relationship with any person. This includes:

(1) Partnerships and associations;

(2) Trusts and estates;

(3) Joint stock companies and insurance companies;

(4) Domestic and foreign corporations;

(5) The receiver or trustee in bankruptcy; and

(6) The trustee or legal representative of a deceased person.

"Employment" means personal services of whatever nature, including service in interstate commerce, performed for earnings or under any contract for personal services. Such a contract may be written or oral, express or implied.

"Family" means the person or persons on whose behalf support is sought, which may include a custodial parent and one or more children, or a child or children in foster care placement. The family is sometimes called the assistance unit.

"Family arrears" means the amount of past-due support owed to the family, which has not been conditionally, temporarily or permanently assigned to a state. Also called "nonassistance arrears."

"Family member" means the caretaker relative, the child(ren), and any other person whose needs are considered in determining eligibility for assistance.

"Foreign order" means a court or administrative order entered by a tribunal other than one in the state of Washington.

"Foster care case" means a case referred to the Title IV-D agency by the Title IV-E agency, which is the state division of child and family services (DCFS).

"Fraud," for the purposes of vacating an agreed settlement or consent order, means:

(1) The representation of the existence or the nonexistence of a fact;

(2) The representation's materiality;

(3) The representation's falsity;

(4) The speaker's knowledge that the representation is false;

(5) The speaker's intent that the representation should be acted on by the person to whom it is made;

(6) Ignorance of the falsity on the part of the person to whom it is made;

(7) The latter's:

(a) Reliance on the truth of the representation;

(b) Right to rely on it; and

(c) Subsequent damage.

"Full support enforcement services" means the entire range of services available in a Title IV-D case.

"Good cause" for the purposes of late hearing requests and petitions to vacate orders on default means a substantial

reason or legal justification for delay, including but not limited to the grounds listed in civil rule 60. The time periods used in civil rule 60 apply to good cause determinations in this chapter.

"Head of household" means the parent or parents with whom the dependent child or children were residing at the time of placement in foster care.

"Health care costs" means medical expenses. Certain statutes in chapter 26.19 RCW refer to medical expenses as health care costs.

"Health insurance" means insurance coverage for all medical services related to an individual's general health and well being. These services include, but are not limited to: Medical/surgical (inpatient, outpatient, physician) care, medical equipment (crutches, wheel chairs, prosthesis, etc.), pharmacy products, optometric care, dental care, orthodontic care, preventive care, mental health care, and physical therapy.

"Health insurance coverage" does not include medical assistance provided under chapter 74.09 RCW.

"Hearing" means an adjudicative proceeding authorized by this chapter, or chapters 26.23, 74.20 and 74.20A RCW, conducted under chapter 388-02 WAC and chapter 34.05 RCW.

"I/me" means the person asking the question which appears as the title of a rule.

"Income" includes:

- (1) All gains in real or personal property;
- (2) Net proceeds from the sale or exchange of real or personal property;
- (3) Earnings;
- (4) Interest and dividends;
- (5) Proceeds of insurance policies;
- (6) Other periodic entitlement to money from any source; and
- (7) Any other property subject to withholding for support under the laws of this state.

"Income withholding action" includes all withholding actions which DCS is authorized to take, and includes but is not limited to the following actions:

- (1) Asserting liens under RCW 74.20A.060;
- (2) Serving and enforcing liens under chapter 74.20A RCW;
- (3) Issuing orders to withhold and deliver under chapter 74.20A RCW;
- (4) Issuing notices of payroll deduction under chapter 26.23 RCW; and
- (5) Obtaining wage assignment orders under RCW 26.18.080.

"Locate" can mean efforts to obtain service of a support establishment notice in the manner prescribed by WAC 388-14A-3105.

"Medical assistance" means medical benefits under Title XIX of the federal Social Security Act provided to families as an alternative or supplement to TANF.

"Medical expenses" for the purpose of establishing support obligations under RCW 26.09.105, 74.20A.055 and 74.20A.056, or for the purpose of enforcement action under chapters 26.23, 74.20 and 74.20A RCW, including the notice of support debt and the notice of support owed, means((=

•)) medical costs incurred on behalf of a child, which include:

- Medical services related to an individual's general health and well-being, including but not limited to, medical/surgical care, preventive care, mental health care and physical therapy; and
- Prescribed medical equipment and prescribed pharmacy products;
- Health care coverage, such as coverage under a health insurance plan, including the cost of premiums for coverage of a child;
- Dental and optometrical costs incurred on behalf of a child; and
- Copayments and/or deductibles incurred on behalf of a child.

Medical expenses are sometimes also called health care costs or medical costs.

"Medical support" means ~~((either or both))~~ any combination of the following:

- (1) ~~((Medical expenses; and~~
- ~~(2)))~~ Health insurance coverage for a dependent child;
- (2) Amounts owed by one parent to the other parent as a monthly payment toward the premium paid by the other parent for health insurance coverage for a dependent child;
- (3) Amounts owed by a noncustodial parent to the state as a monthly payment toward the cost of managed care coverage for the child by the state, if the child receives state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment; and
- (4) Amounts owed by one parent to the other parent as his or her proportionate share of uninsured medical expenses for a dependent child.

"Monthly payment toward the premium" means a parent's contribution toward:

- Premiums paid by the other parent for insurance coverage for the child; or
- Amounts paid for managed care coverage for the child by the state, if the child receives state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment.

This contribution is based on the obligated parent's proportionate share of the premium paid, but may not exceed twenty-five percent of the obligated parent's basic support obligation.

"National Medical Support Notice" or "NMSN" is a federally mandated form that DCS uses to enforce a health insurance support obligation; the NMSN is a notice of enrollment as described in RCW 26.18.170.

"Noncustodial parent or NCP" means the natural parent, adoptive parent, responsible stepparent or person who signed and filed an affidavit acknowledging paternity, from whom the state seeks support for a dependent child. A parent is considered to be an NCP when for the majority of the time during the period for which support is sought, the dependent child resided somewhere other than with that parent.

"Obligated parent" means a parent who is required under a child support order to provide health insurance coverage or to reimburse the other parent for his or her share of medical expenses for a dependent child. The obligated parent could be either the NCP or the CP.

"Other ordinary expense" means an expense incurred by a parent which:

- (1) Directly benefits the dependent child; and
- (2) Relates to the parent's residential time or visitation with the child.

"Participant" means an employee or retiree who is eligible for coverage under an employer group health plan.

"Pass-through" means the portion of a support collection distributed to assigned support that the state pays to a family currently receiving TANF.

"Past support" means support arrear.

"Paternity testing" means blood testing or genetic tests of blood, tissue or bodily fluids. This is also called genetic testing.

"Payment services only" or "PSO" means a case on which the division of child support's activities are limited to recording and distributing child support payments, and maintaining case records. A PSO case is not a IV-D case.

"Permanently assigned arrears" means those arrears which the state may collect and retain up to the amount of unreimbursed assistance.

"Physical custodian" means custodial parent (CP).

"Plan administrator" means the person or entity which performs those duties specified under 29 USC 1002 (16)(A) for a health plan. If no plan administrator is specifically so designated by the plan's organizational documents, the plan's sponsor is the administrator of the plan. Sometimes an employer acts as its own plan administrator.

"Proportionate share" means an amount equal to a parent's percentage share of the combined monthly net income of both parents as computed on the worksheets when determining a parent's child support obligation under chapter 26.19 RCW.

"Putative father" includes all men who may possibly be the father of the child or children on whose behalf the application for assistance or support enforcement services is made.

"Reasonable efforts to locate" means any of the following actions performed by the division of child support:

- (1) Mailing a support establishment notice to the noncustodial parent in the manner described in WAC 388-14A-3105;
- (2) Referral to a sheriff or other server of process, or to a locate service or department employee for locate activities;
- (3) Tracing activity such as:
 - (a) Checking local telephone directories and attempts by telephone or mail to contact the custodial parent, relatives of the noncustodial parent, past or present employers, or the post office;
 - (b) Contacting state agencies, unions, financial institutions or fraternal organizations;
 - (c) Searching periodically for identification information recorded by other state agencies, federal agencies, credit bureaus, or other record-keeping agencies or entities; or
 - (d) Maintaining a case in the division of child support's automated locate program, which is a continuous search process.
- (4) Referral to the state or federal parent locator service;

(5) Referral to the attorney general, prosecuting attorney, the IV-D agency of another state, or the Department of the Treasury for specific legal or collection action;

(6) Attempting to confirm the existence of and to obtain a copy of a paternity acknowledgment; or

(7) Conducting other actions reasonably calculated to produce information regarding the NCP's whereabouts.

"Required support obligation for the current month" means the amount set by a superior court order, tribal court order, or administrative order for support which is due in the month in question.

"Resident" means a person physically present in the state of Washington who intends to make their home in this state. A temporary absence from the state does not destroy residency once it is established.

"Residential care" means foster care, either state or federally funded.

"Residential parent" means the custodial parent (CP), or the person with whom the child resides that majority of the time.

"Responsible parent" is a term sometimes used for a noncustodial parent.

"Responsible stepparent" means a stepparent who has established an in loco parentis relationship with the dependent child.

"Retained support" means a debt owed to the division of child support by anyone other than a noncustodial parent.

"Satisfaction of judgment" means payment in full of a court-ordered support obligation, or a determination that such an obligation is no longer enforceable.

"Secretary" means the secretary of the department of social and health services or the secretary's designee.

"State" means a state or political subdivision, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a federally recognized Indian tribe or a foreign country.

"Superior court order" means a judgment, decree or order of a Washington state superior court, or of another state's court of comparable jurisdiction.

"Support debt" means support which was due under a support order but has not been paid. This includes:

- (1) Delinquent support;
- (2) A debt for the payment of expenses for the reasonable or necessary care, support and maintenance including medical expenses, birth costs, child care costs, and special child rearing expenses of a dependent child or other person;
- (3) A debt under RCW 74.20A.100 or 74.20A.270; or
- (4) Accrued interest, fees, or penalties charged on a support debt, and attorney's fees and other litigation costs awarded in an action under Title IV-D to establish or enforce a support obligation.

"Support enforcement services" means all actions the Title IV-D agency is required to perform under Title IV-D of the Social Security Act and state law.

"Support establishment notice" means a notice and finding of financial responsibility under WAC 388-14A-3115, a notice and finding of parental responsibility under WAC 388-14A-3120, or a notice and finding of medical responsibility under WAC 388-14A-3125.

"Support money" means money paid to satisfy a support obligation, whether it is called child support, spousal support, alimony, maintenance, enforcement of medical expenses, health insurance, or birth costs.

"Support obligation" means the obligation to provide for the necessary care, support and maintenance of a dependent child or other person as required by law, including health insurance coverage, medical expenses, birth costs, and child care or special child rearing expenses.

"Temporarily assigned arrears" means those arrears which accrue prior to the family receiving assistance, for assistance applications dated on or after October 1, 1997, but before October 1, 2008. After the family terminates assistance, temporarily assigned arrears become conditionally assigned arrears.

"Temporary assistance for needy families," or "TANF" means cash assistance under the temporary assistance for needy families (TANF) program under Title IV-A of the Social Security Act.

"Title IV-A" means Title IV-A of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 USC.

"Title IV-A agency" means the part of the department of social and health services which carries out the state's responsibilities under the temporary assistance for needy families (TANF) program (and the aid for dependent children (AFDC) program when it existed).

"Title IV-D" means Title IV-D of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 USC.

"Title IV-D agency" or **"IV-D agency"** means the division of child support, which is the agency responsible for carrying out the Title IV-D plan in the state of Washington. Also refers to the Washington state support registry (WSSR).

"Title IV-D case" is a case in which the division of child support provides services which qualifies for funding under the Title IV-D plan.

"Title IV-D plan" means the plan established under the conditions of Title IV-D and approved by the secretary, Department of Health and Human Services.

"Title IV-E" means Title IV-E of the Social Security Act established under Title XX of the Social Security amendments and as incorporated in Title 42 U.S.C.

"Title IV-E case" means a foster care case.

"Tribal TANF" means a temporary assistance for needy families (TANF) program run by a tribe.

"Tribunal" means a state court, tribal court, administrative agency, or quasi-judicial entity authorized to establish, enforce or modify support orders or to determine parentage.

"Uninsured medical expenses":

~~((+))~~ For the purpose of ~~establishing or enforcing support obligations (under RCW 26.23.110;)~~ means:

~~((+))~~ (1) Medical expenses not paid by insurance for medical, dental, prescription and optometrical costs incurred on behalf of a child; and

~~((+))~~ (2) Premiums, copayments, or deductibles incurred on behalf of a child ~~(-and~~

~~(2) Includes health insurance premiums that represent the only health insurance covering a dependent child when either:~~

~~(a) Health insurance for the child is not required by a support order or cannot be enforced by the division of child support (DCS); or~~

~~(b) The premium for covering the child exceeds the maximum limit provided in the support order).~~

"Unreimbursed assistance" means the cumulative amount of assistance which was paid to the family and which has not been reimbursed by assigned support collections.

"Unreimbursed medical expenses" means any amounts paid by one parent for uninsured medical expenses, which that parent claims the obligated parent owes under a child support order, which percentage share is stated in the child support order itself, not just in the worksheets.

"We" means the division of child support, part of the department of social and health services of the state of Washington.

"WSSR" is the Washington state support registry.

"You" means the reader of the rules, a member of the public, or a recipient of support enforcement services.

AMENDATORY SECTION (Amending WSR 06-03-120, filed 1/17/06, effective 2/17/06)

WAC 388-14A-2035 Do I assign my rights to support when I receive public assistance? (1) When you receive public assistance you assign your rights to support to the state. This section applies to all applicants and recipients of cash assistance under the state program funded under Title IV-A of the federal Social Security Act.

(2) As a condition of eligibility for assistance, a family member must assign to the state the right to collect and keep, subject to the limitation in subsection (3), any support owing to the family member or to any other person for whom the family member has applied for or is receiving assistance.

(3) Amounts assigned under this section may not exceed the lesser of the total amount of assistance paid to the family or the total amount of the assigned support obligation.

(4) When you receive medicaid or medical benefits, you assign your rights to medical support to the state. This applies to all recipients of medical assistance under the state program funded under Title XIX of the federal Social Security Act.

(a) If your children receive medicaid or other state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment and if your order provides for the payment of a monthly payment toward the premium when the obligated parent does not provide coverage, the division of child support (DCS) may serve a notice of support owed to establish the amount owed by the noncustodial parent as a monthly payment toward the premium paid for coverage by the state, as provided in WAC 388-14A-3312.

(b) Any amounts established under WAC 388-14A-3312 for periods while your children receive medicaid or other state-financed medical coverage are assigned to the state and are distributed as provided in WAC 388-14A-5011.

(c) Amounts assigned under this section may not exceed the lesser of the total amount of premiums paid by the state for your children or the total amount of the assigned monthly payment toward the premium.

(5) In addition to the assignment described in this section, there is an assignment of support rights under Title IV-E of the social security act when a child receives foster care services.

(a) The state provides foster care programs which may be federally-funded or state funded, or may place a child with a relative.

(b) As part of its state plan under Title IV-D of the social security act and 45 CFR 302.52, DCS provides child support enforcement services for foster care cases as required by 45 CFR 302.33, RCW 74.20.330 and 74.20A.030.

AMENDATORY SECTION (Amending WSR 09-02-059, filed 1/5/09, effective 1/27/09)

WAC 388-14A-2036 What does assigning my rights to support mean? (1) As a condition of eligibility for assistance, a family member must assign to the state the right to collect and keep, subject to the limitation in WAC 388-14A-2035(3):

(a) Any support owing to the family member or to any other person for whom the family member has applied for or is receiving assistance if the family applied for cash public assistance before October 1, 2008.

(b) Support owing to the family member, or to any other person for whom the family member has applied for or is receiving cash public assistance, for any month during which the family receives assistance.

(2) While your family receives assistance, support is distributed and disbursed in accordance with WAC 388-14A-5000 through 388-14A-5015.

(3) After your family terminates from assistance, certain accrued arrears remain assigned to the state in accordance with the following rules:

(a) For assistance applications dated prior to October 1, 1997, you permanently assigned to the state all rights to support which accrued before the application date until the date your family terminated from assistance.

(b) For assistance applications dated on or after October 1, 1997, and before October 1, 2000:

(i) You permanently assigned to the state all rights to support which accrued while your family receives assistance; and

(ii) You temporarily assigned to the state all rights to support which accrued before the application date, until October 1, 2000, or when your family terminated from assistance, whichever date is later.

(c) For assistance applications dated on or after October 1, 2000, and before October 1, 2008:

(i) You permanently assigned to the state all rights to support which accrued while the family received assistance; and

(ii) You temporarily assigned to the state all rights to support which accrued before the application date, until the date your family terminated from assistance.

(d) For assistance applications dated on or after October 1, 2008, you permanently assign to the state all rights to support which accrue while the family receives assistance.

(4) When you assign your medical support rights to the state, you authorize the state on behalf of yourself and the

children in your care to enforce the noncustodial parent's full duty to provide medical support.

(a) When you begin receiving medicaid or medical assistance, you do not assign to the state any accrued medical support arrears that may be owed to you by the noncustodial parent (NCP).

(b) If your support order provides for the payment of a monthly payment toward the premium when the obligated parent does not provide coverage, the division of child support (DCS) may serve a notice of support owed to establish the amount owed by the NCP as a monthly payment toward the premium paid for coverage by the state, as provided in WAC 388-14A-3312.

(c) After you terminate medicaid or medical assistance, any assigned medical arrears remain assigned to the state.

AMENDATORY SECTION (Amending WSR 06-09-015, filed 4/10/06, effective 5/11/06)

WAC 388-14A-3140 What can happen at a hearing on a support establishment notice? (1) When a parent requests a hearing on a notice and finding of financial responsibility (NFFR), notice and finding of parental responsibility (NFPR), or notice and finding of medical responsibility (NFMR), the hearing is limited to resolving the ((NCP's)) current and future support obligation and the accrued support debt of the noncustodial parent (NCP), and to establishing the medical support obligations of both the NCP and the custodial parent (CP), if the CP is the legal or biological parent of the child(ren). The hearing is not for the purpose of setting a payment schedule on the support debt.

(2) The ~~((noncustodial parent (NCP) has))~~ NCP and the CP each have the burden of proving any defenses to their own liability. See WAC 388-14A-3370.

(3) ~~((Both))~~ The NCP and/or the custodial parent (CP) must show cause why the terms in the NFFR, NFPR, or NFMR are incorrect.

(4) The administrative law judge (ALJ) has authority to enter a support obligation that may be higher or lower than the amounts set forth in the NFFR, NFPR, or NFMR, including the support debt, current support, and the future support obligation.

(a) The ALJ may enter an order that differs from the terms stated in the notice, including different debt periods, if the obligation is supported by credible evidence presented by any party at the hearing, without further notice to any nonappearing party, if the ALJ finds that due process requirements have been met.

(b) Any support order entered by the ALJ must comply with the requirements of WAC 388-14A-6300.

(5) The ALJ has no authority to determine custody or visitation issues, or to set a payment schedule for the arrears debt.

(6) When a party has advised the ALJ that they will participate by telephone, the ALJ attempts to contact that party on the record before beginning the proceeding or rules on a motion. The ALJ may not disclose to the other parties the telephone number or the location of the party appearing by phone.

(7) In most support establishment hearings, the NCP and CP may participate in the hearing. However, in certain cases, there is no "custodial parent" because the child or children are in foster care.

(a) If both the NCP ((fails)) and CP fail to appear for hearing, see WAC 388-14A-3131.

(b) If only one of the parties appears for the hearing, see WAC 388-14A-3132.

(c) If both the NCP ((appears)) and CP appear for hearing, see WAC 388-14A-3133.

(8) In ((certain)) some cases, there can be two NCPs, called "joint NCPs." This happens when DCS serves a joint support establishment notice on the marital community made up of a husband and wife ((are jointly served a support establishment notice)) who reside together, seeking to establish a support obligation for a ((common)) child in common who is not residing in their home.

(a) If both joint NCPs fail to appear for hearing, see WAC 388-14A-3131;

(b) If both joint NCPs appear for hearing, see WAC 388-14A-3133; or

(c) One joint NCP may appear and represent the other joint NCP.

(9) When the CP ((asserts)) is granted good cause level B (see WAC 388-422-0020), DCS notifies the CP that ((they)) the CP will ((continue to)) receive documents, notices and orders. The CP may choose to participate at any time. Failure to appear at hearing results in a default order but does not result in a sanction for noncooperation under WAC 388-14A-2041.

(10) If any party appears for the hearing and elects to proceed, ((absent the granting of a continuance)) the ALJ hears the matter and enters an initial decision and order based on the evidence presented, unless the ALJ grants a continuance. The ALJ includes a party's failure to appear in the initial decision and order as an order of default against that party. The direct appeal rights of the party who failed to appear ((shall be)) are limited to an appeal on the record made at the hearing.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-3205 How does DCS calculate my income? (1) The division of child support (DCS) calculates a parent's income using the best available information~~((s))~~. In the absence of records of a parent's actual earnings, DCS and/or the administrative law judge (ALJ) may impute a parent's income under RCW 26.19.071(6) in the following order of priority:

(a) ((Actual income)) Full-time earnings at the current rate of pay;

(b) ((Estimated income, if DCS has:

(i) Incomplete information;

(ii) Information based on the prevailing wage in the parent's trade or profession; or

(iii) Information that is not current.

(e) Imputed income under RCW 26.19.071(6)) Full-time earnings at the historical rate of pay based on reliable information, such as employment security department data;

(c) Full-time earnings at a past rate of pay where information is incomplete or sporadic;

(d) Full-time earnings at minimum wage in the jurisdiction where the parent resides if the parent has a recent history of minimum wage earnings, is recently coming off public assistance, general assistance-unemployable, supplemental security income, or disability, has recently been released from incarceration, or is a high school student; or

(e) Median net monthly income of year-round full-time workers as derived from the United States bureau of census, current population reports.

(2) As an exception to the imputation process described in subsection (1) of this section, DCS and/or the ALJ imputes full time earnings at the minimum wage to a TANF recipient in the absence of actual income information((DCS imputes full time earnings at the minimum wage to a TANF recipient)). You may rebut the imputation of income if you are excused from being required to work while receiving TANF, because:

(a) You are either engaged in other qualifying WorkFirst activities which do not generate income, such as job search; or

(b) You are excused or exempt from being required to work in order to receive TANF, because of other barriers such as family violence or mental health issues.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-3310 The division of child support serves a notice of support owed to establish a fixed dollar amount under an existing child support order. (1) The division of child support (DCS) may serve a notice of support owed under RCW 26.23.110 on either parent whenever it is necessary to establish a fixed dollar amount owed under a child support order. Situations when DCS may serve a notice of support owed include, but are not limited to:

(a) When the support obligation is not a fixed dollar amount;

(b) When DCS is implementing an adjustment or escalation provision of a court order; or

(c) When DCS is establishing the obligation of either the noncustodial parent (NCP) or custodial parent (CP) to contribute his or her proportionate share of medical support or medical expenses for the child(ren).

(2) DCS may serve a notice of support owed under RCW 26.23.110 on a noncustodial parent (NCP) ((under RCW 26.23.110)) to establish a fixed dollar amount of monthly support and accrued support debt, including day care costs:

(a) If the support obligation under an order is not a fixed dollar amount; or

(b) To implement an adjustment or escalation provision of a court order.

((2)) (3) The notice of support owed may include day care costs and medical support if the court order provides for such costs.

(4) DCS may serve a notice of support owed under RCW 26.23.110 on either of the parties to a support order, whether the party being served is the noncustodial parent (NCP) or the custodial parent (CP), in order to establish that parent's share

of medical expenses and/or medical support owed for the child or children covered by a support order. WAC 388-14A-3312 describes the use of a notice of support owed for this purpose.

(a) DCS may use the notice of support owed to collect unreimbursed medical expenses from either of the parties to a support order when the support order provides that a parent is responsible for his or her proportionate share of uninsured medical expenses, no matter which one has custody of the child(ren).

~~((3))~~ (b) DCS may serve a notice of support owed to establish a parent's share of a health insurance premium paid by the other parent or DSHS for coverage for the child(ren), as provided in RCW 26.09.105 (1)(c). If the child support order provides that either or both parents are obligated to pay a monthly payment in the form of a proportionate share of the health insurance premium for the child(ren), and the obligated parent does not have health insurance available through his or her union or employer, DCS may serve a notice of support owed under RCW 26.23.110. DCS may serve the notice on:

(i) The NCP to establish and enforce the NCP's monthly payment toward the premium paid for coverage by the CP or by the state; or

(ii) The CP to establish and enforce the CP's monthly payment toward the premium paid for coverage by the NCP.

(5) DCS serves a notice of support owed under this section on ~~((an))~~ the NCP or the CP, as appropriate, like a summons in a civil action or by certified mail, return receipt requested.

~~((4))~~ (6) Following service of a notice of support owed under this section, DCS mails notice to the other party to the support order.

(a) After service on the NCP, DCS mails a notice to payee under WAC 388-14A-3315.

(b) After service on the CP, DCS mails the NCP a copy of the notice which was served on the NCP.

~~((5))~~ (7) In a notice of support owed, DCS includes the information required by RCW 26.23.110, and:

(a) The factors stated in the order to calculate monthly support or the amounts claimed for medical support;

(b) Any other information not contained in the order that was used to calculate monthly support or medical support and ~~((the))~~ any support debt; and

(c) Notice of the right to request an annual review of the order or a review on the date, if any, given in the order for an annual review.

~~((6))~~ (8) The NCP, or the CP as appropriate, must make all support payments after service of a notice of support owed to the Washington state support registry. DCS does not credit payments made to any other party after service of a notice of support owed except as provided in WAC 388-14A-3375.

~~((7))~~ (9) A notice of support owed becomes final and subject to immediate income withholding and enforcement without further notice under chapters 26.18, 26.23, and 74.20A RCW unless the NCP (or CP as appropriate), within twenty days of service of the notice in Washington:

(a) Contacts DCS, and signs an agreed settlement;

(i) Files a request with DCS for a hearing under this section; or

(ii) Obtains a stay from the superior court.

(b) A notice of support owed served in another state becomes final according to WAC 388-14A-7200.

~~((8))~~ (10) DCS may enforce at any time:

(a) A fixed or minimum dollar amount for monthly support stated in the court order or by prior administrative order entered under this section;

(b) Any part of a support debt that has been reduced to a fixed dollar amount by a court or administrative order; and

(c) Any part of a support debt that neither party claims is incorrect.

~~((9))~~ (11) For the rules on a hearing on a notice of support owed, see WAC 388-14A-3320.

~~((10))~~ (12) A notice of support owed or a final administrative order issued under WAC 388-14A-3320 must inform the parties of the right to request an annual review of the order.

~~((11))~~ (13) If ~~((an))~~ either the NCP or ~~((custodial parent (CP)))~~ CP requests a late hearing, ~~((the party))~~ he or she must show good cause for filing the late hearing request if it is filed more than one year after service of the notice of support owed.

~~((12))~~ (14) A notice of support owed fully and fairly informs the ~~((NCP))~~ parties of the rights and responsibilities in this section.

~~((13))~~ (15) For the purposes of this section, WAC 388-14A-3312, 388-14A-3315 and 388-14A-3320, the term "payee" includes "physical custodian," "custodial parent," or "party seeking reimbursement."

(16) DCS serves a notice of support owed under this section only when the party on whose behalf the notice is served has:

(a) An open IV-D case; and

(b) A Washington child support order.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-3312 The division of child support serves a notice of support owed for ~~((unreimbursed))~~ medical ~~((expenses))~~ support to establish a fixed dollar amount owed under a child support order. (1) Depending on the specific requirements of the child support order, the division of child support (DCS) may serve a notice of support owed for ~~((unreimbursed))~~ medical ~~((expenses))~~ support under RCW 26.23.110 on either the noncustodial parent (NCP) or the custodial parent (CP), as appropriate, in order to:

(a) Establish as a sum certain and collect the obligated parent's proportionate share of uninsured medical expenses owed to the party seeking reimbursement;

(b) Establish as a sum certain and collect the obligated parent's monthly payment toward the premium paid by the other parent for insurance coverage for the child;

(c) Establish as a sum certain and collect the NCP's monthly payment toward the premium amounts paid for managed care coverage for the child by the state, if the child receives state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment; or

(d) Establish and collect amounts owed under both subsections (a) and (b) of this section.

(2) Either the NCP or the CP (if the CP is both a parent and a party to the support order) may ask DCS to serve a notice of support owed ~~((for))~~ on the other party to the support order in order to establish the obligated parent's proportionate share of unreimbursed medical expenses ~~((on the other party to the support order, if that party is an obligated party under))~~ if the support order establishes such an obligation.

(a) If the CP is not both a parent and a party to the support order, DCS can not assist the CP in making a claim for unreimbursed medical expenses, but the CP may seek to recover such expenses by filing an action in court.

(b) DCS serves the notice if the party seeking reimbursement provides proof of payment of at least five hundred dollars in uninsured medical expenses.

(3) Either the NCP or the CP may ask DCS to serve a notice of support owed on the other parent when the support order provides that if health insurance is not available through the obligated parent's employer or union at a cost not to exceed twenty-five percent of the basic support obligation, the obligated parent must pay a monthly payment toward the premium paid for coverage which represents the obligated parent's proportionate share of the health insurance premium paid by the other parent or the state.

(a) DCS serves the notice to establish a monthly payment toward the premium paid by the other parent only if the obligated parent is not already providing coverage for the children.

(b) If the CP is not both a parent and a party to the support order DCS cannot assist the CP in making a claim for a monthly contribution toward any insurance coverage provided by the CP.

(4) Each parent's proportionate share of income and basic support obligation is found on the Washington state child support schedule worksheet that was completed as part of the support order.

(5) If the support order provides for the payment of a monthly amount as part of the parent's medical support obligation under RCW 26.09.105 (1)(c) but does not set that obligation as a sum certain, the division of child support (DCS) may serve a notice of support owed under RCW 26.23.110 to establish the amount owed by the obligated parent as a monthly payment toward the premium paid for coverage by the other parent or the state, when appropriate.

(6) When either parent asks DCS to serve a notice of support owed to establish the other parent's proportionate share of unreimbursed medical expenses and the expenses include premiums for health insurance for the child(ren) covered by the order, DCS reviews the order to determine whether it provides for a monthly payment toward the premium when the obligated parent does not have insurance available through his or her employer or union.

(a) If the order does not have such a requirement, DCS includes the health insurance premiums in the claim for reimbursement of uninsured medical expenses.

(b) If the order does have such a requirement, DCS serves a notice of support owed which:

(i) Includes the health insurance premiums in the claim for reimbursement of uninsured medical expenses; and

(ii) If appropriate, includes the provisions necessary to establish a monthly contribution which represents the obligated parent's proportionate share of the premium paid by the other parent (not to exceed twenty-five percent of the obligated parent's basic support obligation), if the obligated parent is not already providing health insurance coverage for the child(ren).

(7) Once DCS serves a notice of support owed under this section that establishes a monthly payment toward the premium, which represents the obligated parent's proportionate share of the premium paid by the other parent or the state, the obligated parent is not required to reimburse the other parent or the state for any amounts of the obligated parent's proportionate share of the premium which are not paid because those amounts exceed twenty-five percent of the obligated parent's basic support obligation. The obligation to contribute a proportionate share of other uninsured medical expenses is not affected by the establishment of a monthly payment toward the premium under this section.

(8) If the child(ren) receive medicaid or other state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment, DCS may serve a notice of support owed under RCW 26.23.110 to establish the amount owed by the noncustodial parent as a monthly payment toward the premium paid for coverage by the state, which represents the obligated parent's proportionate share of the premium paid by the state (not to exceed twenty-five percent of the obligated parent's basic support obligation), if the obligated parent is not already providing health insurance coverage for the child(ren).

(9) A parent's request that DCS serve a notice of support owed to establish the other parent's obligation for ~~((unreimbursed))~~ medical ~~((expenses))~~ support:

(a) May be for a period of up to twenty-four consecutive months.

(b) May include only medical services provided after July 21, 2007.

(c) May include only health insurance coverage provided after September 30, 2009.

(d) May not include months which were included in a prior notice of support owed for ~~((unreimbursed))~~ medical ~~((expenses))~~ support or a prior judgment.

~~((d))~~ (e) Need not be for the twenty-four month period immediately following the period included in the prior notice of support owed for ~~((unreimbursed))~~ medical ~~((expenses))~~ support.

~~((d))~~ (10) The party seeking reimbursement must ask DCS to serve a notice of support owed for ~~((unreimbursed))~~ medical ~~((expenses))~~ support within two years of the date that the expense ~~((being))~~ or premium was incurred.

(a) The fact that a ~~((claim for unreimbursed))~~ request that DCS serve a notice of support owed for medical ~~((expenses))~~ support is ~~((rejected by DCS))~~ denied, either in whole or in part, does not mean that the parent cannot pursue reimbursement of those expenses by proceeding in court.

(b) If a parent obtains a judgment for ~~((unreimbursed))~~ reimbursement of medical ~~((expenses))~~ support, DCS enforces the judgment.

~~((5))~~ (11) DCS does not serve a notice of support owed ~~((for unreimbursed medical expenses))~~ under RCW 26.23.110 unless the party seeking reimbursement for medical support declares under penalty of perjury that he or she has asked the obligated party to pay his or her share of the medical expenses and/or medical support, or provides good cause for not asking the obligated party to pay.

(a) If the medical expenses have been incurred within the last twelve months, this requirement is waived.

(b) If the obligated party denies having received notice that the other party was seeking reimbursement for medical expenses or support, the service of the notice of support owed ~~((for unreimbursed medical expenses))~~ constitutes the required notice.

~~((6))~~ (12) The NCP must apply for full child support enforcement services before the NCP may ask DCS to enforce the CP's medical support obligation.

(a) DCS opens a separate case to enforce a CP's medical support obligation.

(b) The case where DCS is enforcing the support order and collecting from the NCP is called the main case.

(c) The case where DCS is acting on NCP's request to enforce CP's medical support obligation is called the medical support case.

~~((7))~~ (d) WAC 388-14A-4112 describes the circumstances under which DCS enforces a CP's obligation to provide medical support.

(13) DCS serves a notice of support owed for medical support on the obligated parent like a summons in a civil action or by certified mail, return receipt requested.

~~((8))~~ (14) Following service on the obligated parent, DCS mails a notice to the party seeking reimbursement under WAC 388-14A-3315.

~~((9))~~ (15) In a notice of support owed for ~~((unreimbursed))~~ medical ((expenses)) support, DCS includes the information required by RCW 26.23.110, and:

(a) The factors stated in the order regarding medical support;

(b) A statement of uninsured medical expenses and a declaration by the parent seeking reimbursement; and

(c) Notice of the right to request an annual review of the order, as provided in WAC 388-14A-3318.

~~((10))~~ (16) A notice of support owed for ~~((unreimbursed))~~ medical ((expenses)) support becomes final and subject to immediate income withholding and enforcement without further notice under chapters 26.18, 26.23, and 74.20A RCW unless ~~((the obligated))~~ either parent, within twenty days of service of the notice in Washington:

(a) Contacts DCS, and signs an agreed settlement;

(b) Files a request with DCS for a hearing under this section; or

(c) Obtains a stay from the superior court.

~~((11))~~ (17) A notice of support owed for ~~((unreimbursed))~~ medical ((expenses)) support served in another state becomes final according to WAC 388-14A-7200.

~~((12))~~ (18) For the rules on a hearing on a notice of support owed for ~~((unreimbursed))~~ medical ((expenses)) support, see WAC 388-14A-3320.

~~((13))~~ (19) A notice of support owed for ~~((unreimbursed))~~ medical ((expenses)) support or a final administra-

tive order issued under WAC 388-14A-3320 must inform the parties of the right to request an annual review of the order.

~~((14))~~ (20) If the obligated parent is the NCP, any amounts owing determined by the final administrative order are added to the debt on the main case.

(a) Amounts owed to the CP are added to the CP debt on the main case.

(b) Amounts owed to reimburse the state for medicaid or other state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment are added to the main case as permanently assigned arrears.

~~((15))~~ (21) If the obligated parent is the CP, any amounts owing determined by the final administrative order are paid in the following order:

(a) Any amount owed by the CP to the NCP is applied as an offset to any nonassistance child support arrears owed by the NCP on the main case only; or

(b) If there is no debt owed to the CP on the main case, payment of the amount owed by the CP is in the form of a credit against the NCP's future child support obligation:

(i) Spread equally over a twelve-month period starting the month after the administrative order becomes final, but not to exceed ten percent of the current support amount; or

(ii) When the future support obligation will end under the terms of the order in less than twelve months, spread equally over the life of the order, but not to exceed ten percent of the current support amount.

(c) If the amount owed by the CP exceeds the amount that can be paid off using the methods specified in subsections (a) and (b) of this section, DCS uses the medical support case to collect the remaining amounts owed using the remedies available to DCS for collecting child support debts.

~~((16))~~ (22) If either the obligated parent or the parent seeking reimbursement or payment toward the premium requests a late hearing, that party must show good cause for filing the late hearing request if it is filed more than one year after service of the notice of support owed for ~~((unreimbursed))~~ medical ((expenses)) support.

~~((17))~~ (23) A notice of support owed for ~~((unreimbursed))~~ medical ((expenses)) support fully and fairly informs the obligated parent of the rights and responsibilities in this section.

~~((18))~~ (24) A notice of support owed for ~~((unreimbursed))~~ medical ((expenses)) support under this section is subject to annual review as provided in WAC 388-14A-3318.

~~((19))~~ (25) If both CP and NCP request that DCS serve a notice of support owed for ~~((unreimbursed))~~ medical ((expenses)) support on the other party, those notices remain separate and may not be combined.

(a) The office of administrative hearings (OAH) may schedule consecutive hearings but may not combine the matters under the same docket number.

(b) The administrative law judge (ALJ) must issue two separate administrative orders, one for each obligated parent.

~~((20))~~ (26) DCS does not serve a second or subsequent notice of support owed for ~~((unreimbursed))~~ medical ((expenses)) support on an obligated parent until the party seeking reimbursement meets the conditions set forth in WAC 388-14A-3318.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-3315 ~~When DCS serves a notice of support debt ((ø)), notice of support owed ((ø)), notice of support owed for ((unreimbursed)) medical ((expenses)) support, we notify the other party to the child support order.~~ (1) The division of child support (DCS) sends a notice to the payee/obligee under a Washington child support order or a foreign child support order when DCS receives proof of service on the ~~((noncustodial))~~ obligated parent ((NCP)) of:

(a) A notice of support owed under WAC 388-14A-3310; ~~((ø))~~

(b) A notice of support owed for ~~((unreimbursed))~~ medical ~~((expenses))~~ support under WAC 388-14A-3312; or

(c) A notice of support debt under WAC 388-14A-3304.

(2) DCS sends the notice to payee by first class mail to the last known address of the payee and encloses a copy of the notice served on the ~~((NCP))~~ obligated parent.

(3) In a notice to payee, DCS informs the payee of the right to file a request with DCS for a hearing on a notice of support owed under WAC 388-14A-3310, a notice of support owed for ~~((unreimbursed))~~ medical ~~((expenses))~~ support under WAC 388-14A-3312, or a notice of support debt under WAC 388-14A-3304 within twenty days of the date of a notice to payee that was mailed to a Washington address.

(4) If the notice to payee was mailed to an out-of-state address, the payee may request a hearing within sixty days of the date of the notice to payee.

(5) The notice of support owed under WAC 388-14A-3312 informs both the CP and the NCP of the right to file a request for hearing on the notice within twenty days of the date of a notice to payee that was mailed to a Washington address, or within sixty days if the NCP copy is mailed to an out-of-state address.

(6) The effective date of a hearing request is the date DCS receives the request.

~~((6) When DCS serves a notice of support owed for unreimbursed medical expenses under WAC 388-14A-3312, DCS mails the notice to payee to the parent seeking reimbursement.))~~

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-3317 **What is an annual review of a support order under RCW 26.23.110?** (1) RCW 26.23.110 provides for an annual review of the ~~((support))~~ final administrative order which ~~((was previously the subject of))~~ resulted from a notice of support owed ~~((under that statute)), but only if ((the division of child support (DCS), the noncustodial parent (NCP), or the custodial parent (CP)))~~ one of the parties to that administrative order requests a review.

(a) This ~~((type of annual review concerns))~~ section describes the annual review that ((takes place after service øf)) occurs for a final administrative order that resulted from a notice of support owed that was served under WAC 388-14A-3310.

(b) ~~((For the definition of an annual review of a support order under RCW 26.23.110 that takes place after service of))~~

WAC 388-14A-3318 describes the annual review that for a final administrative order that results from a notice of support owed for ((unreimbursed)) medical ((expenses)) support that was served under WAC 388-14A-3312~~((see WAC 388-14A-3318)).~~

(2) For purposes of chapter 388-14A WAC, an "annual review of a support order" is defined as:

(a) The collection by DCS of necessary information from CP and NCP;

(b) The service of a notice of support owed under WAC 388-14A-3310; and

(c) The determination of arrears and current support amount with an effective date which is at least twelve months after the date the last notice of support owed, or the last administrative order or decision based on a notice of support owed, became a final administrative order.

(3) A notice of support owed may be prepared and served sooner than twelve months after the date the last notice of support owed, or the last administrative order or decision based on a notice of support owed, became a final administrative order, but the amounts determined under the notice of support owed may not be effective sooner than twelve months after that date.

(4) Either CP or NCP may request an annual review of the support order, even though ~~((the statute))~~ RCW 26.23.110 mentions only the NCP.

(5) DCS may ~~((request))~~ commence an annual review of the support order on its own initiative, but has no duty to ~~((øø))~~ commence an annual review unless either the CP or NCP requests a review.

(6) For the purpose of this section, the terms "payee" and "CP" are interchangeable, and can mean either the payee under the order or the person with whom the child resides the majority of the time.

(7) The twelve-month requirement for an annual review under this section runs separately from the twelve-month requirement for an annual review under WAC 388-14A-3318.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-3318 **What is an annual review of a notice of support owed under WAC 388-14A-3312?** (1) RCW 26.23.110 provides for an annual review of the support order which was previously the subject of a notice of support owed under that statute if the noncustodial parent (NCP) or the custodial parent (CP) requests a review.

(2) For purposes of chapter 388-14A WAC, the following rules apply to an "annual review of a support order" for a notice of support owed for ~~((unreimbursed))~~ medical ~~((expenses))~~ support served under WAC 388-14A-3312:

(a) Either the CP or the NCP may be the party seeking reimbursement.

(b) The party seeking reimbursement of uninsured medical expenses must provide proof of payment of at least five hundred dollars in uninsured medical expenses for services provided in the last twenty-four months.

(c) There is no minimum dollar amount required when asking for an annual review concerning the monthly payment toward the premium paid by the other party or the state.

(d) At least twelve months must have passed since:

(i) The date the last notice of support owed for (~~(unreimbursed)~~) medical (~~(expenses)~~) support on behalf of the party seeking reimbursement became a final order; or

(ii) The last administrative order or decision based on a notice of support owed for (~~(unreimbursed)~~) medical (~~(expenses)~~) support on behalf of that party became a final administrative order.

(3) In the event that DCS has served both a notice of support owed under WAC 388-14A-3310 and a notice of support owed for (~~(unreimbursed)~~) medical (~~(expenses)~~) support under WAC 388-14A-3312 on the same case, each type of notice of support owed has its own twelve-month cycle for annual review.

(4) For purposes of this section, the twelve-month cycle for annual review runs separately for the NCP and for the CP, depending on which one is the party seeking reimbursement.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-3320 What happens at a hearing on a notice of support owed? (1) A hearing on a notice of support owed is only for interpreting the order for support and any modifying orders and not for changing or deferring the support provisions of the order.

(2) A hearing on a notice of support owed served under WAC 388-14A-3310 is only to determine:

(a) The amount of monthly support as a fixed dollar amount;

(b) Any accrued arrears through the date of hearing; and

(c) If a condition precedent in the order to begin or adjust the support obligation was met.

(3) A hearing on a notice of support owed for (~~(unreimbursed)~~) medical (~~(expenses)~~) support served under WAC 388-14A-3312 is only to determine:

(a) Issues regarding unreimbursed medical expenses, such as:

(i) Whether the parent on whom the notice was served is obligated under the support order to pay for uninsured medical expenses for the children covered by the order;

(~~((b))~~) (ii) The total amount of uninsured medical expenses paid by the party seeking reimbursement;

(~~((c))~~) (iii) The obligated parent's share of the uninsured medical expenses;

(~~((d))~~) (iv) The amount, if any, the obligated parent has already paid to the party seeking reimbursement; and

(~~((e))~~) (v) The amount owed by the obligated parent to the party seeking reimbursement for unreimbursed medical expenses.

(b) Issues regarding a monthly payment toward the premium paid for coverage for the children, such as:

(i) Whether the support order requires the obligated parent to pay when the obligated parent does not provide coverage;

(ii) Whether the obligated parent is currently providing coverage, or did so during the time period in question;

(iii) The amount of the premium paid by the other parent or by the state to cover the child(ren);

(iv) The obligated parent's proportionate share of the premium;

(v) The amount, if any, the obligated parent has already contributed toward health insurance premiums paid by the other parent or the state for the time period in question; and

(vi) The monthly amount to be paid by the obligated parent as his or her proportionate share of the health insurance premium.

(4) If the administrative law judge (ALJ) determines that the uninsured medical expenses claimed by the parent seeking reimbursement do not amount to at least five hundred dollars, the ALJ:

(a) May not dismiss the notice on this basis;

(b) Must make the determination listed in subsection (3) above.

(5) The hearing is not for the purpose of setting a payment schedule on the support debt.

(6) Either the noncustodial parent (NCP) or payee may request a hearing on a notice of support owed served under WAC 388-14A-3310.

(7) Either the obligated parent or the party seeking reimbursement may request a hearing on a notice of support owed for (~~(unreimbursed)~~) medical (~~(expenses)~~) support served under WAC 388-14A-3312.

(8) The party who requested the hearing has the burden of proving any defenses to liability that apply under WAC 388-14A-3370 or that the amounts stated in the notice of support owed are incorrect.

(9) The office of administrative hearings (OAH) sends a notice of hearing to the NCP, to the division of child support (DCS), and to the custodial parent (CP). The NCP and the CP each may participate in the hearing as an independent party.

(10) If only one party appears and wishes to proceed with the hearing, the administrative law judge (ALJ) holds a hearing and issues an order based on the evidence presented or continues the hearing. See WAC 388-14A-6110 and 388-14A-6115 to determine if the ALJ enters an initial order or a final order.

(a) An order issued under this subsection includes an order of default against the nonappearing party and limits the appeal rights of the nonappearing party to the record made at the hearing.

(b) If neither the NCP nor the CP appears or wishes to proceed with the hearing, the ALJ issues an order of default against both parties.

(11) If either party requests a late hearing on a notice of support owed, that party must show good cause for filing the late hearing request, as provided in WAC 388-14A-3500.

(12) For purposes of this section, the terms "payee" and "CP" are used interchangeably and can mean either the CP, the payee under the order or both, except that a CP who is not also the payee under the support order may not ask DCS to serve a notice of support owed for (~~(unreimbursed)~~) medical (~~(expenses)~~) support under WAC 388-14A-3312.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-3400 Are there limitations on how much of my income is available for child support? (1) There are two kinds of limitations based on your income when we set your child support obligation:

(a) The monthly basic child support (~~(amount)~~) obligation for all of your biological or legal children cannot exceed forty-five percent of your monthly net income, unless there are special circumstances as provided in chapter 26.19 RCW; and

(b) The monthly basic child support (~~(amount)~~) obligation cannot reduce your net monthly income below ~~((the one person need standard (WAC 388-478-0015)))~~ one hundred twenty-five percent of the federal poverty level, unless there are special circumstances as provided in chapter 26.19 RCW.

(2) RCW 74.20A.090 limits the amount that can be withheld from your wages for child support to fifty percent of your net monthly earnings.

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

WAC 388-14A-4100 How does the division of child support enforce my obligation to provide health insurance for my children? (1) If a child support order requires ~~((the noncustodial parent (NCP)))~~ a parent to provide health insurance for the children, the division of child support (DCS) attempts to enforce that requirement according to the terms of the order. ~~((The following subsections describe the different types of premium limitations that could apply to a support order))~~ A parent required to provide medical support or health insurance coverage for a child is called the obligated parent, and can be either the custodial parent (CP) or the non-custodial parent (CP).

(2) When DCS is enforcing a support order which contains a specific dollar limit for the cost of health insurance premiums or provides for coverage which is available at no cost to the ~~((NCP))~~ obligated parent, DCS does not require the ~~((NCP))~~ obligated parent to provide health insurance if coverage is not available within the limitations of the order.

(3) When DCS is enforcing a support order entered in Washington on or after October 1, 2009, which provides that either or both parents must provide coverage and/or a proportionate share of uninsured medical expenses as part of the medical support obligation under RCW 26.09.105, the rules in this subsection apply unless the support order specifies differently:

(a) The obligated parent must provide health insurance for dependent children covered by the order if coverage is:

(i) Available or becomes available through private insurance which is not provided through the obligated parent's employer or union; or

(ii) Available or becomes available through the obligated parent's employment or union at a cost of not greater than twenty-five percent of the obligated parent's basic support obligation.

(b) If the obligated parent does not provide proof of coverage or if coverage is not available, DCS may serve a notice of support owed under WAC 388-14A-3312 to determine the

monthly amount that the obligated parent must pay as his or her proportionate share of any premium paid by the other parent or by the state on behalf of the child(ren).

~~((4))~~ (4) When DCS is enforcing a support order entered ((on or after)) in Washington between May 13, 1989 and September 30, 2009, unless the support order specifies differently, the ((NCP)) obligated parent must provide health insurance for dependent children if coverage is:

(a) Available or becomes available through the ((NCP's)) obligated parent's employment or union; and

(b) Available at a cost of not greater than twenty-five percent of the ((NCP's)) obligated parent's basic support obligation.

~~((4))~~ (5) When DCS is enforcing a Washington support order entered prior to May 13, 1989, unless the support order specifies differently, the ((NCP)) obligated parent must provide health insurance for dependent children if coverage is available or becomes available through the ((NCP's)) obligated parent's employment or union:

(a) For a maximum of twenty-five dollars per month, if the order specifies that the ((NCP)) obligated parent must provide coverage only if it is available at a reasonable cost; or

(b) For any premium amount whatsoever, if the order does not specify reasonable cost.

~~((5))~~ (6) When DCS is enforcing a support order entered by a court or administrative tribunal that is not located in Washington, unless the order provides differently, DCS enforces the medical support obligation as provided in subsection (4) of this section.

(7) DCS serves a notice of intent to enforce a health insurance obligation if the support order:

(a) Requires the ((NCP)) obligated parent either to provide health insurance coverage or prove that coverage is not available; and

(b) Does not inform the ((NCP)) obligated parent that failure to provide health insurance or prove it is not available may result in enforcement of the order without notice to the ((NCP)) obligated parent.

~~((6))~~ (8) DCS serves the notice of intent to enforce a health insurance obligation on the ((NCP)) obligated parent by certified mail, return receipt requested, or by personal service.

~~((7))~~ (9) The notice advises the ((NCP)) obligated parent that ((the NCP)) he or she must submit proof of coverage, proof that coverage is not available, or proof that the ((NCP)) obligated parent has applied for coverage, within twenty days of the date of service of the notice.

~~((8))~~ (10) The notice advises the ((NCP)) obligated parent that, if health insurance is not yet available, the ((NCP)) obligated parent must immediately notify DCS if health insurance coverage becomes available through the ((NCP's)) obligated parent's employer or union.

~~((9))~~ (11) When DCS enforces an ((NCP's)) obligated parent's health insurance obligation, such enforcement may include asking the employer and the plan administrator to enroll the ((NCP)) obligated parent in a health insurance plan available through the employer.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-4110 If my support order requires me to provide ((health insurance)) medical support for my children, what do I have to do? (1) Once a support order is entered requiring ((health insurance)) medical support, the obligated parent must take the following actions within twenty days:

- (a) Provide health insurance coverage; and
- (b) Provide proof of coverage to the other parent and to the division of child support (DCS), such as:
 - (i) The name of the insurer providing the health insurance coverage;
 - (ii) The names of the beneficiaries covered;
 - (iii) The policy number;
 - (iv) That coverage is current; and
 - (v) The name and address of the obligated parent's employer.

(2) If health insurance coverage that is accessible to the children named in the order is available, the obligated parent must:

(a) Provide for coverage for the children without waiting for an open enrollment period, as provided under RCW 48.01.235 (4)(a); and

(b) Submit proof of coverage as outlined in subsection (1)(b) above.

(3) If health insurance is not immediately available to the obligated parent, as soon as health insurance becomes available, the obligated parent must:

(a) Provide for coverage for the children named in the order; and

(b) Submit proof of coverage as outlined in subsection (1)(b) above.

(4) Medical assistance provided by the department under chapter 74.09 RCW does not substitute for health insurance.

(5) DCS may serve a notice of support owed for medical support under WAC 388-14A-3312 to establish either or both of the following:

(a) Either parent's share of uninsured medical expenses owed to the other parent; or

(b) Either parent's monthly payment toward the premium paid for coverage by the other parent or the state, if:

(i) Health insurance coverage is not available through the parent's employer or union or is not otherwise provided; and

(ii) The support order provides for the payment of a monthly payment toward the premium when the obligated parent does not provide coverage.

(6) See WAC 388-14A-4165 for a description of what happens when the combined total of a noncustodial parent's current support obligation, arrears payment and health insurance premiums to be withheld by the employer exceeds the fifty per cent limitation for withholding.

(7) Both parents must notify DCS any time there is a change to the health insurance coverage for the children named in the order.

NEW SECTION

WAC 388-14A-4111 When may DCS decline a request to enforce a medical support obligation? The divi-

sion of child support (DCS) may decline to enforce a medical support obligation using the remedies available under RCW 26.09.105, 26.18.170 and 26.23.110 if one or more of the following apply:

(1) The medical support obligation is imposed by a child support order that was not entered in a court or administrative forum of the state of Washington;

(2) The department of social and health services is not paying public assistance or providing foster care services;

(3) The party requesting enforcement of the medical support obligation does not have an open IV-D case with DCS for the child;

(4) The party requesting enforcement of the medical support obligation is not a parent of the child for whom the medical support obligation was established;

(5) The party requesting enforcement of the medical support obligation is not a former recipient of public assistance as described in WAC 388-14A-2000 (2)(d);

(6) DCS has not received a request for services from a child support agency in another state or a child support agency of an Indian tribe or foreign country;

(7) The party requesting enforcement of the medical support obligation has not applied for full support enforcement services;

(8) The party requesting enforcement of the medical support obligation does not qualify as a party who can receive child support enforcement services from DCS under WAC 388-14A-2000;

(9) The case does not meet the requirements for provision of support enforcement services from DCS under WAC 388-14A-2010;

(10) DCS denies the application under WAC 388-14A-2020; or

(11) The case meets one or more of the reasons set out in WAC 388-14A-4112(2) that DCS does not enforce a custodial parent's obligation to provide medical support.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-4112 When does the division of child support enforce a custodial parent's obligation to provide ((health insurance coverage)) medical support? (1) A non-custodial parent (NCP) may file an application for full child support enforcement services and specifically request that the division of child support (DCS) enforce the ((health insurance)) medical support obligation of the custodial parent (CP). DCS does not enforce the CP's medical support obligation unless the NCP files an application for services under WAC 388-14A-2000 (2)(c). The NCP must specify whether he or she is requesting that DCS enforce one or both parts of the CP's medical support obligation:

(a) The CP's proportionate share of uninsured medical expenses; or

(b) The CP's obligation to provide health insurance coverage (including the possibility of a monthly payment toward the premium paid for coverage when appropriate).

(2) A medical support obligation includes providing health insurance coverage or contributing a monthly payment toward the premium paid for coverage when appropriate, and

paying a proportionate share of any uninsured medical expenses for the children.

(a) DCS may enforce the CP's obligation to pay a proportionate share of any uninsured medical expenses for the children under WAC 388-14A-3312.

(b) DCS may decide whether it is appropriate to enforce the CP's obligation to provide health insurance coverage or contribute a monthly payment toward the premium paid for coverage under subsection (3) of this section.

(3) DCS does not enforce a custodial parent's obligation to provide health insurance coverage or pay a monthly payment toward the premium paid for coverage when:

(a) The support order does not include a medical support obligation which includes providing health insurance ((obligation)) or paying monthly payment toward the premium paid for coverage for the CP.

(b) The NCP is already providing health insurance coverage for the children covered by the order.

(c) The amount that the CP would have to pay for the premium for health insurance exceeds the NCP's monthly support obligation for the children.

(d) The children are covered by health insurance provided by someone else.

(e) The children are receiving medicaid.

(f) The children are receiving TANF.

(g) The CP does not reside in Washington state.

(h) The CP is a tribal member living on or near the reservation.

(i) The CP is receiving child support enforcement services through a tribal IV-D program.

~~((3))~~ (4) If none of the conditions under subsection ((2)) (3) exist, DCS may enforce the CP's obligation to provide health insurance coverage when the CP has health insurance available at a reasonable cost through the CP's employer or union.

~~((4))~~ (5) A "reasonable cost" for health insurance coverage is defined as twenty-five percent of the basic support obligation for the children covered by the order, unless the support order provides a different limitation.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-4115 Can my support order reduce my support obligation if I pay for health insurance? (1) Some support orders reduce the noncustodial parent's ~~((support obligation))~~ transfer payment based on health insurance premiums paid by the noncustodial parent (NCP).

(2) An NCP is entitled to the reduction for premiums paid only if(=

~~((a))~~ the NCP submits proof of the cost of coverage ((as provided in WAC 388-14A-4110(1)(b); and

(b) NCP actually pays the required premium)) which is actually being provided at the time the support order is entered, so that the amounts can be included in the worksheet calculation.

~~((3) If the NCP fails to submit proof or pay the premium, the division of child support (DCS) collects the NCP's adjusted basic support obligation without a reduction for health insurance premium payments.))~~

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-4120 DCS uses the National Medical Support Notice to enforce an obligation to provide health insurance coverage. (1) The division of child support (DCS) uses a notice of enrollment called the National Medical Support Notice (NMSN) to enforce an obligated parent's obligation to provide health insurance coverage under chapter 26.18 RCW.

(2) DCS sends the NMSN to the obligated parent's employer in one of the following ways:

(a) In the same manner as a summons in a civil action,

(b) By certified mail, return receipt requested,

(c) By regular mail, or

(d) By electronic means as provided in WAC 388-14A-4040 (1)(d).

(3) DCS sends the NMSN without notice to the obligated parent, who could be either the noncustodial parent (NCP) or the custodial parent (CP) when:

(a) A court or administrative order requires the obligated parent to provide insurance coverage for a dependent child;

(b) The obligated parent fails to provide health insurance (either by not covering the child or by letting the coverage lapse) or fails to provide proof of coverage;

(c) The requirements of RCW 26.23.050 are met; and

(d) DCS has reason to believe that coverage is available through the obligated parent's employer or union.

(4) If sending the NMSN does not result in coverage for the child, DCS may seek to enforce the obligated parent's medical support obligation by other means, as provided in RCW 26.18.170 and WAC 388-14A-4110.

AMENDATORY SECTION (Amending WSR 04-17-119, filed 8/17/04, effective 9/17/04)

WAC 388-14A-4165 What happens when a noncustodial parent does not earn enough to pay child support plus the health insurance premium? (1) Under RCW 26.23.060(3), a payroll deduction may not exceed fifty percent of the noncustodial parent's disposable earnings in each pay period.

(2) When the division of child support (DCS) enforces a child support obligation through an income withholding action and also enforces a health insurance obligation, the noncustodial parent's employer often must withhold amounts for:

(a) Current child support;

(b) Child support arrears; and

(c) Health insurance premiums.

(3) When the employer or plan administrator must enroll the noncustodial parent (NCP) in a health insurance plan in order to enroll the children (see WAC 388-14A-4140), the premium amount for the NCP's coverage is included in the amounts to withhold under subsection (2) above. If the NCP is already enrolled in a plan, the premium amount for the NCP's coverage is not included the amounts to withhold under that subsection.

(4) If the combined amounts for current support, support arrears and health insurance premiums are more than fifty

percent of the noncustodial parent's disposable earnings, the employer must notify DCS immediately.

(5) In certain circumstances, DCS may adjust the amount to be withheld for support arrears so that the total amount withheld does not exceed fifty percent of the noncustodial parent's disposable earnings.

(6) If the noncustodial parent's current support obligation plus health insurance premiums exceeds fifty percent of the noncustodial parent's disposable earnings, DCS:

(a) Enforces the child support obligation through income withholding; but

(b) Is not able to enforce the noncustodial parent's health insurance obligation at that time.

(7) In the situation described in subsection (6), DCS may establish a monthly payment toward the premium, as described in WAC 388-14A-3312, even if the combined amount for the current support obligation and the monthly payment toward the premium exceeds fifty percent of the NCP's disposable earnings.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-4175 (~~Is an employer~~) Who is required to notify the division of child support when insurance coverage for the children ends? (1) Once the division of child support (DCS) has notified an employer that a parent is obligated by a support order to provide health insurance coverage for the children named in the order, the National Medical Support Notice (NMSN) or other notice of enrollment remains in effect as specified in WAC 388-14A-4170.

(2) If coverage for the children is terminated, the employer must notify DCS within thirty days of the date coverage ends.

(3) A parent who is required by a child support order to provide health insurance coverage for his or her children must notify DCS and the other parent within thirty days of the date coverage for the children ends. This requirement applies whether the obligated parent is the custodial parent or the noncustodial parent.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-4180 When must the division of child support communicate with the DSHS health and recovery services administration? (1) The division of child support (DCS) must inform the DSHS health and recovery services administration (HRSA) of the existence of a new or modified court or administrative order for child support when the order includes a requirement for medical support. HRSA is the part of DSHS which provides services for the state of Washington under Title XIX of the federal Social Security Act.

(2) DCS must provide HRSA with the following information:

(a) Title IV-A case number, Title IV-E foster care case number, medicaid number or the individual's Social Security number;

(b) Name of the obligated parent;

(c) Social Security number of the obligated parent;

(d) Name and Social Security number of the child(ren) named in the order;

(e) Home address of the obligated parent;

(f) Name and address of the obligated parent's employer;

(g) Information regarding the obligated parent's health insurance policy; and

(h) Whether the child(ren) named in the order are covered by the policy.

(3) DCS must periodically communicate with HRSA to determine if there have been any lapses (stops and starts) in the obligated parent's health insurance coverage for medicaid applicants.

(4) Before DCS may serve a notice of support owed for medical support under WAC 388-14A-3312 to establish an obligated parent's monthly payment toward the premium paid by the state for coverage, HRSA must provide information regarding the premium paid for each child covered by the notice.

(a) DCS distributes to HRSA any collections based on the obligation established under WAC 388-14A-3312 when the child receives state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment.

(b) Such collections are retained by the department to reimburse the state, subject to the limitations in WAC 388-14A-2035(4).

AMENDATORY SECTION (Amending WSR 01-24-078, filed 12/3/01, effective 1/3/02)

WAC 388-14A-5007 If the paying parent has more than one case, can DCS apply support money to only one specific case? (1) The division of child support (DCS) applies amounts to a support debt owed for one family or household and distributes the amounts accordingly, rather than make a proportionate distribution between support debts (~~owned~~) owed to different families, when:

(a) Proportionate distribution is administratively inefficient; or

(b) The collection resulted from the sale or disposition of a specific piece of property against which a court awarded the custodial parent (CP) a judgment lien for child support; or

(c) The collection is the result of a contempt order which provides that DCS must distribute the amounts to a particular case.

(2) If the collection is the result of an automated enforcement of interstate (AEI) transaction under RCW 74.20A.188, DCS applies the payment as provided in WAC 388-14A-5006, even if the requesting state wants the payment applied to a specific case.

AMENDATORY SECTION (Amending WSR 08-12-029, filed 5/29/08, effective 7/1/08)

WAC 388-14A-6300 Duty of the administrative law judge in a hearing to determine the amount of a support obligation. (1) A support order entered under this chapter must conform to the requirements set forth in RCW 26.09.105 and 26.18.170, and in RCW 26.23.050 (3) and (5). The administrative law judge (ALJ) must comply with the

DSHS rules on child support and include a Washington state child support schedule worksheet when entering a support order.

(2) In hearings held under this chapter to contest a notice and finding of financial responsibility or a notice and finding of parental responsibility or other notice or petition, the ALJ must determine:

(a) The noncustodial parent's obligation to provide support under RCW 74.20A.057;

(b) The names and dates of birth of the children covered by the support order;

(c) The net monthly income of the noncustodial parent (NCP) and any custodial parent (CP);

(d) The NCP's share of the basic support obligation and any adjustments to that share, according to his or her circumstances;

(e) If requested by a party, the NCP's share of any special child-rearing expenses in a sum certain amount per month;

(f) A statement that either or both parents are obligated to provide medical support under RCW 26.09.105 and 26.18.170, including but not limited to the following:

(i) A requirement that either or both parents are obligated to provide health insurance coverage for the child covered by the support order if coverage that can be extended to cover the child is or becomes available through the parent's employment or union;

(ii) Notice that if proof of health insurance coverage or proof that the coverage is unavailable is not provided to DCS within twenty days, DCS may seek direct enforcement through the obligated parent's employer or union without further notice to the parent; and

(iii) The reasons for not ordering health insurance coverage if the order fails to require such coverage;

(g) A provision which determines the mother and the father's proportionate share of uninsured medical expenses;

(h) The NCP's accrued debt and order payments toward the debt in a monthly amount to be determined by the division of child support (DCS);

(i) The NCP's current and future monthly support obligation as a per month per child amount and order payments in that amount; and

(j) The NCP's total current and future support obligation as a sum certain and order payments in that amount.

(3) Having made the determinations required in subsection (2) above, the ALJ must order the NCP to make payments to the Washington state support registry (WSSR).

(4) The ALJ must allow DCS to orally amend the notice at the hearing to conform to the evidence. The ALJ may grant a continuance, when necessary, to allow the NCP or the CP additional time to present rebutting evidence or argument as to the amendment.

(5) The ALJ may not require DCS to produce or obtain information, documents, or witnesses to assist the NCP or CP in proof of defenses to liability. However, this rule does not apply to relevant, nonconfidential information or documents that DCS has in its possession.

(6) In a hearing held on a notice of support owed for medical support issued under WAC 388-14A-3312, the ALJ must determine either or both of the following, depending on what was requested in the notice:

(a) The amount owed by the obligated parent to the other for unreimbursed medical expenses;

(b) The monthly amount to be paid by the obligated parent as his or her proportionate share of the health insurance premium paid by the other parent or the state.

~~((a))~~ (7) The ALJ does not specify how the amounts owed by the obligated parent should be paid.

~~((b))~~ (8) In the event that DCS has served a notice under WAC 388-14A-3312 on both the NCP and the CP, the ALJ must issue a separate administrative order for each notice issued, and may not set off the debts against each other.

AMENDATORY SECTION (Amending WSR 06-16-073, filed 7/28/06, effective 8/28/06)

WAC 388-14A-8130 How does DCS complete the WSCSS worksheets when setting a joint child support obligation when the parents of a child in foster care are married and residing together? (1) When the division of child support (DCS) is setting a joint support obligation for married parents who reside together, DCS follows the steps set out in this section for completing the worksheets under the Washington state child support schedule (WSCSS).

(2) DCS calculates each parent's income under the rules set out in WAC 388-14A-3205, and then calculates the income of the marital community by combining both parents' income in ~~((the "Father"))~~ one column of the worksheet and does not put any income in the ~~(("Mother"))~~ other column.

(3) DCS calculates the joint support obligation using the limitations contained in RCW 26.19.065:

(a) The joint child support obligation may not exceed forty-five percent of the net income of the marital community except for good cause.

(b) Even ~~((with))~~ though there are two parents involved, DCS uses the one-person amount when determining the ~~((need standard))~~ one hundred twenty-five percent of federal poverty level limitation.

(c) Despite the application of any limitations, there is a presumptive minimum obligation of ~~((twenty-five))~~ fifty dollars per month per child.

~~((e))~~ (d) DCS or the administrative law judge (ALJ) may find reasons for deviation and must support those reasons with appropriate findings of fact in the support order.

(4) As described in subsection (2) of this section, the support obligation in the ~~(("Father"))~~ column of the WSCSS worksheet which contains information regarding both parents is the joint support obligation of the parents. ~~((The support obligation in the "Mother" column of the WSCSS worksheet is irrelevant for purposes of this particular support calculation.))~~

(5) DCS determines the joint support obligation of the parents without regard to the cost of foster care placement, as provided in WAC 388-14A-8105.

WSR 11-07-001
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed March 2, 2011, 3:49 p.m., effective March 2, 2011, 3:49 p.m.]

Effective Date of Rule: Immediately.

Purpose: In order to disregard income tax refunds received after December 31, 2009, the department is proposing to amend by emergency adoption WAC 388-450-0015, 388-455-0005, 388-470-0045, 388-470-0055, 388-475-0550, and 388-475-0860.

These amendments are necessary to comply with the United States Department of Health and Human Services instructions dated January 28, 2011, and the United States Department of Agriculture Food and Nutrition Service memo dated February 1, 2011, requiring states to disregard federal income tax refunds received after December 31, 2009, as income and resources for a period of twelve months when determining eligibility for federal [federally] funded programs, such as TANF, SNAP, and medicaid.

Citation of Existing Rules Affected by this Order: Amending 388-450-0015, 388-455-0005, 388-470-0045, 388-470-0055, 388-475-0550, and 388-475-0860.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and chapters 74.08A and 74.12 RCW.

Other Authority: The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 announcement dated December 17, 2010.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: This rule is necessary to bring Washington state public assistance programs into compliance with new federal requirements.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 6, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 6, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 2, 2011.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-17-103, filed 8/17/10, effective 8/19/10)

WAC 388-450-0015 What types of income does the department not use to figure out my benefits? This section applies to cash assistance, children's, family, or pregnancy medical, and basic food benefits.

(1) There are some types of income we do not count to figure out if you can get benefits and the amount you can get. Some examples of income we do not count are:

(a) Bona fide loans as defined in WAC 388-470-0045, except certain student loans as specified under WAC 388-450-0035;

(b) Federal income tax refunds and earned income tax credit (EITC) payments for up to twelve months from the date of receipt;

(c) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;

(d) Federal twenty-five dollar supplemental weekly unemployment compensation payment authorized by the American Recovery and Reinvestment Act of 2009;

(e) Title IV-E and state foster care maintenance payments if you choose not to include the foster child in your assistance unit;

(f) Energy assistance payments;

(g) Educational assistance we do not count under WAC 388-450-0035;

(h) Native American benefits and payments we do not count under WAC 388-450-0040;

(i) Income from employment and training programs we do not count under WAC 388-450-0045;

(j) Money withheld from a benefit to repay an overpayment from the same income source. For Basic Food, we **do not** exclude money that is withheld because you were overpaid for purposely not meeting requirements of a federal, state, or local means tested program such as TANF/SFA, GA, and SSI;

(k) Legally obligated child support payments received by someone who gets TANF/SFA benefits;

(l) One-time payments issued under the Department of State or Department of Justice Reception and Replacement Programs, such as Voluntary Agency (VOLAG) payments; and

(m) Payments we are directly told to exclude as income under state or federal law.

(n) **For cash and Basic Food:** Payments made to someone outside of the household for the benefits of the assistance unit using funds that are not owed to the household;

(o) **For Basic Food only:** The total monthly amount of all legally obligated current or back child support payments paid by the assistance unit to someone outside of the assistance unit for:

(i) A person who is not in the assistance unit; or

(ii) A person who is in the assistance unit to cover a period of time when they were not living with the member of the assistance unit responsible for paying the child support on their behalf.

(p) **For medical assistance:** Only the portion of income used to repay the cost of obtaining that income source.

(2) For children's, family, or pregnancy medical, we also do not count any insurance proceeds or other income you have recovered as a result of being a Holocaust survivor.

AMENDATORY SECTION (Amending WSR 10-15-069, filed 7/16/10, effective 8/16/10)

WAC 388-455-0005 How do lump sum payments affect benefits? (1) A lump sum payment is money that someone receives but does not expect to receive on a continuing basis.

(2) For cash assistance and family medical programs, we count a lump sum payment:

(a) As a resource, under WAC 388-455-0010, if it was awarded for wrongful death, personal injury, damage, or loss of property.

(b) As income, under WAC 388-455-0015, if it was received for any other reason, with the exception of subsection (3) and (4) of this section.

(3) For medical programs, receipt of a lump sum by a member of a federally recognized tribe from exercising federally protected rights or extraction of exempt resources is considered an exempt resource in the month of receipt. Any amounts remaining on the first of the next month will be counted if they remain in the form of a countable resource. Any amounts remaining the first of the month after conversion will remain exempt if they are in the form of an exempt resource.

(4) For cash and family medical programs, tax refunds and earned income tax lump sums are excluded as income and excluded as a resource for twelve months from the date of receipt.

(5) For Basic Food, we count lump sum payments for a previous period as a resource under WAC 388-470-0055. We count any amount for current or future months as income to your assistance unit.

AMENDATORY SECTION (Amending WSR 10-15-069, filed 7/16/10, effective 8/16/10)

WAC 388-470-0045 How do my resources count toward the resource limits for cash assistance and family medical programs? (1) We count the following resources toward your assistance unit's resource limits for cash assistance and family medical programs to decide if you are eligible for benefits under WAC 388-470-0005:

(a) Liquid resources not specifically excluded in subsection (2) below. These are resources that are easily changed into cash. Some examples of liquid resources are:

- (i) Cash on hand;
- (ii) Money in checking or savings accounts;
- (iii) Money market accounts or certificates of deposit (CDs) less any withdrawal penalty;
- (iv) Available retirement funds or pension benefits, less any withdrawal penalty;
- (v) Stocks, bonds, annuities, or mutual funds less any early withdrawal penalty;
- (vi) Available trusts or trust accounts;
- (vii) Lump sum payments as described in chapter 388-455 WAC; or

(viii) Any funds retained beyond the month of receipt from conversion of federally protected rights or extraction of exempt resources by members of a federally recognized tribe that are in the form of countable resources.

(b) The cash surrender value (CSV) of whole life insurance policies.

(c) The CSV over fifteen hundred dollars of revocable burial insurance policies or funeral agreements.

(d) The amount of a child's irrevocable educational trust fund that is over four thousand dollars per child.

(e) Funds withdrawn from an individual development account (IDA) if they were removed for a purpose other than those specified in RCW 74.08A.220.

(f) Any real property like a home, land or buildings not specifically excluded in subsection (3) below.

(g) The equity value of vehicles as described in WAC 388-470-0070.

(h) Personal property that is not:

- (i) A household good;
- (ii) Needed for self-employment; or
- (iii) Of "great sentimental value," due to personal attachment or hobby interest.

(i) Resources of a sponsor as described in WAC 388-470-0060.

(j) For cash assistance only, sales contracts.

(2) The following types of liquid resources do not count when we determine your eligibility:

- (a) Bona fide loans, including student loans;
- (b) Basic Food benefits;
- (c) Income tax refunds (~~in the month~~) for twelve months from the date of receipt;

(d) Earned income tax credit (EITC) in the month received and (~~the following~~) for up to twelve months;

(e) Advance earned income tax credit payments;

(f) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;

(g) Individual development accounts (IDAs) established under RCW 74.08A.220;

(h) Retroactive cash benefits or TANF/SFA benefits resulting from a court order modifying a decision of the department;

(i) Underpayments received under chapter 388-410 WAC;

(j) Educational benefits that are excluded as income under WAC 388-450-0035;

(k) The income and resources of an SSI recipient;

(l) A bank account jointly owned with an SSI recipient if SSA already counted the money for SSI purposes;

(m) Foster care payments provided under Title IV-E and/or state foster care maintenance payments;

(n) Adoption support payments;

(o) Self-employment accounts receivable that the client has billed to the customer but has been unable to collect;

(p) Resources specifically excluded by federal law; and

(q) For medical benefits, receipts from exercising federally protected rights or extracted exempt resources (fishing, shell-fishing, timber sales, etc.) during the month of receipt for a member of a federally recognized tribe.

(3) The following types of real property do not count when we determine your eligibility:

(a) Your home and the surrounding property that you, your spouse, or your dependents live in;

(b) A house you do not live in, if you plan on returning to the home and you are out of the home because of:

- (i) Employment;
- (ii) Training for future employment;
- (iii) Illness; or
- (iv) Natural disaster or casualty.

(c) Property that:

(i) You are making a good faith effort to sell;

(ii) You intend to build a home on, if you do not already own a home;

(iii) Produces income consistent with its fair market value, even if used only on a seasonal basis; or

(iv) A household member needs for employment or self-employment. Property excluded under this section and used by a self-employed farmer or fisher retains its exclusion for one year after the household member stops farming or fishing.

(d) Indian lands held jointly with the tribe, or land that can be sold only with the approval of the Bureau of Indian Affairs.

(4) If you deposit excluded liquid resources into a bank account with countable liquid resources, we do not count the excluded liquid resources for six months from the date of deposit.

(5) If you sell your home, you have ninety days to reinvest the proceeds from the sale of a home into an exempt resource.

(a) If you do not reinvest within ninety days, we will determine whether there is good cause to allow more time. Some examples of good cause are:

(i) Closing on your new home is taking longer than anticipated;

(ii) You are unable to find a new home that you can afford;

(iii) Someone in your household is receiving emergent medical care; or

(iv) Your children are in school and moving would require them to change schools.

(b) If you have good cause, we will give you more time based on your circumstances.

(c) If you do not have good cause, we count the money you got from the sale as a resource.

AMENDATORY SECTION (Amending WSR 08-18-043, filed 8/29/08, effective 10/1/08)

WAC 388-470-0055 How do my resources count toward the resource limit for Basic Food? (1) For Basic Food, if your assistance unit (AU) is not categorically eligible (CE) under WAC 388-414-0001, we count the following resources toward your AU's resource limit to decide if you are eligible for benefits under WAC 388-470-0005:

(a) Liquid resources. These are resources that are easily changed into cash. Some examples of liquid resources are:

- (i) Cash on hand;
- (ii) Money in checking or savings accounts;
- (iii) Money market accounts or certificates of deposit (CDs) less any withdrawal penalty;

(iv) Stocks, bonds, annuities, or mutual funds less any early withdrawal penalty;

(v) Available trusts or trust accounts; or

(vi) Lump sum payments. A lump sum payment is money owed to you from a past period of time that you get but do not expect to get on a continuing basis.

(b) Nonliquid resources, personal property, and real property not specifically excluded in subsection (2) below.

(c) Vehicles as described in WAC 388-470-0075.

(d) The resources of a sponsor as described in WAC 388-470-0060.

(2) The following resources do not count toward your resource limit:

(a) Your home and the surrounding property that you, your spouse, or your dependents live in;

(b) A house you do not live in, if you plan on returning to the home and you are out of the home because of:

- (i) Employment;
- (ii) Training for future employment;
- (iii) Illness; or
- (iv) Natural disaster or casualty.

(c) Property that:

(i) You are making a good faith effort to sell;

(ii) You intend to build a home on, if you do not already own a home;

(iii) Produces income consistent with its fair market value, even if used only on a seasonal basis;

(iv) Is essential to the employment or self-employment of a household member. Property excluded under this section and used by a self-employed farmer or fisher retains its exclusion for one year after the household member stops farming or fishing; or

(v) Is essential for the maintenance or use of an income-producing vehicle; or

(vi) Has an equity value equal to or less than half of the resource limit as described in WAC 388-470-0005.

(d) Household goods

(e) Personal effects;

(f) Life insurance policies, including policies with cash surrender value (CSV);

(g) One burial plot per household member;

(h) One funeral agreement per household member, up to fifteen hundred dollars;

(i) Pension plans or retirement funds not specifically counted in subsection (1) above;

(j) Sales contracts, if the contract is producing income consistent with its fair market value;

(k) Government payments issued for the restoration of a home damaged in a disaster;

(l) Indian lands held jointly with the Tribe, or land that can be sold only with the approval of the Bureau of Indian Affairs;

(m) Nonliquid resources that have a lien placed against them;

(n) Earned Income Tax Credits (EITC):

(i) For twelve months, if you were a Basic Food recipient when you got the EITC and you remain on Basic Food for all twelve months; or

(ii) The month you get it and the month after, if you were not getting Basic Food when you got the EITC.

- (o) Energy assistance payments or allowances;
- (p) The resources of a household member who gets SSI, TANF/SFA, or GA benefits;
- (q) Retirement funds or accounts that are tax exempt under the Internal Revenue Code;
- (r) Education funds or accounts in a tuition program under section 529 or 530 of the Internal Revenue Code;
- ~~((and))~~
- (s) Resources specifically excluded by federal law; and
- (t) Federal income tax refunds for twelve months whether or not you were receiving Basic Food assistance at the time you got the refund.

(3) If you deposit excluded liquid resources into a bank account with countable liquid resources, we do not count the excluded liquid resources for six months from the date of deposit. **Exception:** Federal tax refunds are not counted for twelve months even when mixed with countable resources.

(4) If you sell your home, you have ninety days to reinvest the proceeds from the sale of a home into an exempt resource.

(a) If you do not reinvest within ninety days, we will determine whether there is good cause to allow more time. Some examples of good cause are:

- (i) Closing on your new home is taking longer than anticipated;
- (ii) You are unable to find a new home that you can afford;
- (iii) Someone in your household is receiving emergent medical care; or
- (iv) Your children are in school and moving would require them to change schools.

(b) If you have good cause, we will give you more time based on your circumstances.

(c) If you do not have good cause, we count the money you got from the sale as a resource.

AMENDATORY SECTION (Amending WSR 10-15-069, filed 7/16/10, effective 8/16/10)

WAC 388-475-0550 SSI-related medical—All other excluded resources. All resources described in this section are excluded resources for SSI-related medical programs. Unless otherwise stated, interest earned on the resource amount is counted as unearned income.

(1) Resources necessary for a client who is blind or disabled to fulfill a department approved self-sufficiency plan.

(2) Retroactive payments from SSI or RSDI, including benefits a client receives under the interim assistance reimbursement agreement with the Social Security Administration, are excluded for nine months following the month of receipt. This exclusion applies to:

- (a) Payments received by the client, spouse, or any other person financially responsible for the client;
- (b) SSI payments for benefits due for the month(s) before the month of continuing payment;
- (c) RSDI payments for benefits due for a month that is two or more months before the month of continuing payment; and

(d) Proceeds from these payments as long as they are held as cash, or in a checking or savings account. The funds

may be commingled with other funds, but must remain identifiable from the other funds for this exclusion to apply. This exclusion does not apply once the payments have been converted to any other type of resource.

(3) All resources specifically excluded by federal law, such as those described in subsections (4) through (12) as long as such funds are identifiable.

(4) Payments made under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

(5) Payments made to Native Americans as listed in 20 CFR 416.1182, Appendix to subpart K, section IV, paragraphs (b) and (c), and in 20 CFR 416.1236.

(6) The following Native American/Alaska Native funds are excluded resources:

(a) Resources received from a native corporation under the Alaska Native Claims Settlement Act, including:

- (i) Shares of stock held in a regional or village corporation;
- (ii) Cash or dividends on stock received from the native corporation up to two thousand dollars per person per year;
- (iii) Stock issued by a native corporation as a dividend or distribution on stock;
- (iv) A partnership interest;
- (v) Land or an interest in land; and
- (vi) An interest in a settlement trust.

(b) All funds contained in a restricted individual Indian money (IIM) account.

(7) Exercise of federally protected rights, including extraction of exempt resources by a member of a federally recognized tribe during the month of receipt. Any funds from the conversion of the exempt resource which are retained on the first of the month after the month of receipt will be considered exempt if they are in the form of an exempt resource, and will be countable if retained in the form of a countable resource.

(8) Restitution payment and any interest earned from this payment to persons of Japanese or Aleut ancestry who were relocated and interned during war time under the Civil Liberties Act of 1988 and the Aleutian and Pribilof Islands Restitution Act.

(9) Funds received from the Agent Orange Settlement Fund or any other funds established to settle Agent Orange liability claims.

(10) Payments or interest accrued on payments received under the Radiation Exposure Compensation Act received by the injured person, the surviving spouse, children, grandchildren, or grandparents.

(11) Payments or interest accrued on payments received under the Energy Employees Occupational Illness Compensation Act of 2000 (EEOICA) received by the injured person, the surviving spouse, children, grandchildren, or grandparents.

(12) Payments from:

(a) The Dutch government under the Netherlands' Act on Benefits for Victims of Persecution (WUV).

(b) The Victims of Nazi Persecution Act of 1994 to survivors of the Holocaust.

(c) Susan Walker vs. Bayer Corporation, et al., 96-C-5024 (N.D. Ill.) (May 8, 1997) settlement funds.

(d) Ricky Ray Hemophilia Relief Fund Act of 1998 P.L. 105-369.

(13) The unspent social insurance payments received due to wage credits granted under sections 500 through 506 of the Austrian General Social Insurance Act.

(14) Tax refunds and earned income tax credit refunds and payments are excluded as resources for ~~((nine))~~ twelve months after the month of receipt.

(15) Payments from a state administered victim's compensation program for a period of nine calendar months after the month of receipt.

(16) Cash or in-kind items received as a settlement for the purpose of repairing or replacing a specific excluded resource are excluded:

(a) For nine months. This includes relocation assistance provided by state or local government.

(b) Up to a maximum of thirty months, when:

(i) The client intends to repair or replace the excluded resource; and

(ii) Circumstances beyond the control of the settlement recipient prevented the repair or replacement of the excluded resource within the first or second nine months of receipt of the settlement.

(c) For an indefinite period, if the settlement is from federal relocation assistance.

(d) Permanently, if the settlement is assistance received under the Disaster Relief and Emergency Assistance Act or other assistance provided under a federal statute because of a catastrophe which is declared to be a major disaster by the President of the United States, or is comparable assistance received from a state or local government or from a disaster assistance organization. Interest earned on this assistance is also excluded from resources. Any cash or in-kind items received as a settlement and excluded under this subsection are considered as available resources when not used within the allowable time periods.

(17) Insurance proceeds or other assets recovered by a Holocaust survivor as defined in WAC 388-470-0026(4).

(18) Pension funds owned by an ineligible spouse. Pension funds are defined as funds held in a(n):

(a) Individual retirement account (IRA) as described by the IRS code; or

(b) Work-related pension plan (including plans for self-employed individuals, known as Keogh plans).

(19) Cash payments received from a medical or social service agency to pay for medical or social services are excluded for one calendar month following the month of receipt.

(20) SSA- or DVR-approved plans for achieving self-support (PASS) accounts, allowing blind or disabled individuals to set aside resources necessary for the achievement of the plan's goals, are excluded.

(21) Food and nutrition programs with federal involvement. This includes Washington Basic Food, school reduced and free meals and milk programs and WIC.

(22) Gifts to, or for the benefit of, a person under eighteen years old who has a life-threatening condition, from an organization described in section 501 (c)(3) of the Internal Revenue Code of 1986 which is exempt from taxation under section 501(a) of that code, as follows:

(a) In-kind gifts that are not converted to cash; or

(b) Cash gifts up to a total of two thousand dollars in a calendar year.

(23) Veteran's payments made to, or on behalf of, natural children of Vietnam veterans regardless of their age or marital status, for any disability resulting from spina bifida suffered by these children.

(24) The following are among assets that are not considered resources and as such are neither excluded nor counted:

(a) Home energy assistance/support and maintenance assistance;

(b) Retroactive in-home supportive services payments to ineligible spouses and parents; and

(c) Gifts of domestic travel tickets. For a more complete list please see POMS @ <http://policy.ssa.gov/poms.nsf/lnx/0501130050>.

AMENDATORY SECTION (Amending WSR 06-04-046, filed 1/26/06, effective 2/26/06)

WAC 388-475-0860 SSI-related medical—Income exclusions under federal statute or other state laws. The Social Security Act and other federal statutes or state laws list income that the department excludes when determining eligibility for SSI-related medical programs. These exclusions include, but are not limited to:

(1) Income tax refunds;

(2) Federal earned income tax credit (EITC) payments for ~~((nine))~~ twelve months after the month of receipt;

(3) Compensation provided to volunteers in the Corporation for National and Community Service (CNCS), formerly known as ACTION programs established by the Domestic Volunteer Service Act of 1973. P.L. 93-113;

(4) Assistance to a person (other than wages or salaries) under the Older Americans Act of 1965, as amended by section 102 (h)(1) of Pub. L. 95-478 (92 Stat. 1515, 42 U.S.C. 3020a);

(5) Federal, state and local government payments including assistance provided in cash or in-kind under any government program that provides medical or social services;

(6) Certain cash or in-kind payments a client receives from a governmental or nongovernmental medical or social service agency to pay for medical or social services;

(7) Value of food provided through a federal or nonprofit food program such as WIC, donated food program, school lunch program;

(8) Assistance based on need, including:

(a) Any federal SSI income or state supplement payment (SSP) based on financial need;

(b) Food stamps;

(c) GA-U;

(d) CEAP;

(e) TANF; and

(f) Bureau of Indian Affairs (BIA) general assistance.

(9) Housing assistance from a federal program such as HUD if paid under:

(a) United States Housing Act of 1937 (section 1437 et seq. of 42 U.S.C.);

(b) National Housing Act (section 1701 et seq. of 12 U.S.C.);

(c) Section 101 of the Housing and Urban Development Act of 1965 (section 1701s of 12 U.S.C., section 1451 of 42 U.S.C.);

(d) Title V of the Housing Act of 1949 (section 1471 et seq. of 42 U.S.C.); or

(e) Section 202(h) of the Housing Act of 1959;

(f) Weatherization provided to low-income homeowners by programs that consider income in the eligibility determinations;

(10) Energy assistance payments including:

(a) Those to prevent fuel cutoffs, and

(b) To promote energy efficiency.

(11) Income from employment and training programs as specified in WAC 388-450-0045.

(12) Foster grandparents program;

(13) Title IV-E and state foster care maintenance payments if the foster child is not included in the assistance unit;

(14) The value of any childcare provided or arranged (or any payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act, as amended by section 8(b) of P.L. 102-586 (106 Stat. 5035).

(15) Educational assistance as specified in WAC 388-450-0035.

(16) Up to two thousand dollars per year derived from an individual's interest in Indian trust or restricted land.

(17) Native American benefits and payments as specified in WAC 388-450-0040 and other Native American payments excluded by federal statute. For a complete list of these payments, see 20 CFR 416, Subpart K, Appendix, IV.

(18) Payments from Susan Walker v. Bayer Corporation, et al., 96-c-5024 (N.D. Ill) (May 8, 1997) settlement funds;

(19) Payments from Ricky Ray Hemophilia Relief Fund Act of 1998, P.L. 105-369;

(20) Disaster assistance paid under Federal Disaster Relief P.L. 100-387 and Emergency Assistance Act, P.L. 93-288 amended by P.L. 100-707 and for farmers P.L. 100-387;

(21) Payments to certain survivors of the Holocaust as victims of Nazi persecution; payments excluded pursuant to section 1(a) of the Victims of Nazi Persecution Act of 1994, P.L. 103-286 (108 Stat. 1450);

(22) Payments made under section 500 through 506 of the Austrian General Social Insurance Act;

(23) Payments made under the Netherlands' Act on Benefits for Victims of Persecution (WUV);

(24) Restitution payments and interest earned to Japanese Americans or their survivors, and Aleuts interned during World War II, established by P.L. 100-383;

(25) Payments made from the Agent Orange Settlement Funds or any other funds to settle Agent Orange liability claims established by P.L. 101-201;

(26) Payments made under section six of the Radiation Exposure Compensation Act established by P.L. 101-426;

(27) Any interest or dividend is excluded as income, except for the community spouse of an institutionalized individual.

WSR 11-07-017
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-32—Filed March 9, 2011, 11:23 a.m., effective March 9, 2011, 11:23 a.m.]

Effective Date of Rule: Immediately.

Purpose: Amend recreational fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900E; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.04.020, 77.12.047, and 77.12.330.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The Grays Harbor Poggie Club is sponsoring a kids' fishing derby at Failor Lake one week prior to the opening of the lowland lake season. In previous years, the derby has been held on opening day for the lowland lake season, but congestion and competition from adult anglers interferes with the kids' enjoyment of the derby and the smooth operations of the derby. An emergency rule is needed to open the lake for the derby one week early. There is insufficient time to adopt a permanent rule.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 9, 2011.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900E Exceptions to statewide rules—Failor Lake (Grays Harbor Co.) Notwithstanding the provisions of WAC 232-28-619, Failor Lake is open to fishing on April 23, 2011, from 8:00 a.m. to noon, for anglers age fourteen years old and younger who are participating in the youth fishing event. Adults may assist children participating in the event, but no child may fish with more than one fishing rod. All other provisions of the permanent rule remain in effect.

REPEALER

The following section of the Washington Administrative Code is repealed, effective 12:01 p.m. on April 23, 2011:

WAC 232-28-61900E Exceptions to statewide rules—Failor Lake (Grays Harbor Co.)

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: March 9, 2011.

Katherine I. Vasquez
Rules Coordinator

WSR 11-07-032
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed March 10, 2011, 4:21 p.m., effective March 10, 2011, 4:21 p.m.]

Effective Date of Rule: Immediately.

Purpose: The division of developmental disabilities is proposing to amend WAC 388-827-0115(10) which governs eligibility for the state supplementary program (SSP). This amendment will expand the number of clients eligible for SSP. By amending this rule, state money will be preserved that is currently used to fund the individual and family services program. SSP is a federally mandated program which requires the division to spend monies to meet a maintenance of effort in order to continue to receive SSP. Currently the division has a surplus in SSP dollars and by converting clients from the individual and family services program, more clients can be served that previously received services from the individual and family services program. The changes to this rule will manage budget shortfalls, and maintain fund solvency.

This is the second emergency rule-making order for this WAC which will add additional clients to SSP.

Citation of Existing Rules Affected by this Order: Amending WAC 388-827-0115.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.040.

Under RCW 34.05.350 the agency for good cause finds that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: See above.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

AMENDATORY SECTION (Amending WSR 09-19-107, filed 9/21/09, effective 10/1/09)

WAC 388-827-0115 What are the programmatic eligibility requirements for DDD/SSP? Following are the programmatic eligibility requirements to receive DDD/SSP:

(1) You received one or more of the following services from DDD with state-only funding between March 1, 2001 and June 30, 2003 and continue to demonstrate a need for and meet the DDD program eligibility requirements for these services. Additionally, you must have been eligible for or received SSI prior to July 1, 2006; or you received Social Security Title II benefits as a disabled adult child prior to July 1, 2006 and would have been eligible for SSI if you did not receive these benefits.

(a) Certain voluntary placement program services, which include:

- (i) Foster care basic maintenance,
- (ii) Foster care specialized support,
- (iii) Agency specialized support,
- (iv) Staffed residential home,
- (v) Out-of-home respite care,
- (vi) Agency in-home specialized support,
- (vii) Group care basic maintenance,
- (viii) Group care specialized support,
- (ix) Transportation,
- (x) Agency attendant care,
- (xi) Child care,
- (xii) Professional services,
- (xiii) Nursing services,
- (xiv) Interpreter services,

(b) Family support;

(c) One or more of the following residential services:

- (i) Adult family home,
- (ii) Adult residential care facility,
- (iii) Alternative living,
- (iv) Group home,
- (v) Supported living,
- (vi) Agency attendant care,
- (vii) Supported living or other residential service allow-

ance,

(viii) Intensive individual supported living support (companion homes).

(2) For individuals with community protection issues as defined in WAC 388-820-020, the department will determine eligibility for SSP on a case-by-case basis.

(3) For new authorizations of family support opportunity:

(a) You were on the family support opportunity waiting list prior to January 1, 2003; and

(b) You are on the home and community based services (HCBS) waiver administered by DDD; and

(c) You continue to meet the eligibility requirements for the family support opportunity program contained in WAC 388-825-200 through 388-825-242; and

(d) You must have been eligible for or received SSI prior to July 1, 2003; or you received Social Security Title II benefits as a disabled adult child prior to July 1, 2003 and would have been eligible for SSI if you did not receive these benefits.

(4) For individuals on one of the HCBS waivers administered by DDD (Basic, Basic Plus, Core or community protection):

(a) You must have been eligible for or received SSI prior to April 1, 2004; and

(b) You were determined eligible for SSP prior to April 1, 2004.

(5) You received medicaid personal care (MPC) between September 2003 and August 2004; and

(a) You are under age eighteen at the time of your initial comprehensive assessment and reporting evaluation (CARE) assessment;

(b) You received or were eligible to receive SSI at the time of your initial CARE assessment;

(c) You are not on a home and community based services waiver administered by DDD; and

(d) You live with your family, as defined in WAC 388-825-020.

(6) If you meet all of the requirements listed in (5) above, your SSP will continue.

(7) You received one or more of the following state-only funded residential services between July 1, 2003 and June 30, 2006 and continue to demonstrate a need for and meet the DDD program eligibility requirements for these services:

(a) Adult residential care facility;

(b) Alternative living;

(c) Group home;

(d) Supported living;

(e) Agency attendant care;

(f) Supported living or other residential allowance.

(8) You received one or more of the following residential services between July 1, 2003 and June 30, ~~((2009))~~ 2013 and demonstrate an ongoing need for a residential allowance request on a periodic, or routine basis of at least once a quarter. You must also receive SSI or would receive SSI if it were not for the receipt of DAC as well as continue to meet the program eligibility requirements for these services:

(a) Alternative living;

(b) Supported living; or

(c) Companion homes.

(9) As of December 31, 2010, you met the eligibility requirements listed in WAC 388-832-0015 for the individual and family services program (IFS), you had an IFS service level of three or four, and your individual service plan included IFS services. Additionally, you must have been eligible for or received SSI prior to January 1, 2011, or you received Social Security Title II benefits as a disabled adult child prior to January 1, 2011 and would have been eligible for SSI if you did not receive these benefits.

(10) As of March 31, 2011, you met the eligibility requirements listed in WAC 388-832-0015 for the individual and family services program (IFS), you had an IFS service

level of one or two, and your individual service plan included IFS services. Additionally, you must have been eligible for or received SSI prior to April 1, 2011, or you received social security title II benefits as a disabled adult child prior to April 1, 2011 and would have been eligible for SSI if you did not receive these benefits.

NEW SECTION

WAC 388-827-0133 What is the impact on medicaid eligibility on the receipt of state supplemental payments (SSP)? The impact on medicaid eligibility on the receipt of state supplemental payments is that it does not in and of itself qualify an individual for medicaid.

WSR 11-07-036

EMERGENCY RULES

DEPARTMENT OF FISH AND WILDLIFE

[Order 11-35—Filed March 14, 2011, 10:12 a.m., effective March 19, 2011, 12:01 p.m.]

Effective Date of Rule: March 19, 2011, 12:01 p.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-56-36000Q; and amending WAC 220-56-360.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Survey results show that adequate clams are available for harvest in Razor Clam Areas 1, 2 and those portions of Razor Clam Area 3 open for harvest. Washington department of health has certified clams from these beaches to be safe for human consumption. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 14, 2011.

Philip Anderson
Director

NEW SECTION

WAC 220-56-36000Q Razor clams—Areas and seasons. Notwithstanding the provisions of WAC 220-56-360, it is unlawful to dig for or possess razor clams taken for personal use from any beach in Razor Clam Areas 1, 2, or 3, except as provided for in this section:

1. Effective 12:01 p.m. March 19 through 11:59 p.m. March 19, 2011, razor clam digging is allowed in Razor Clam Area 1, Razor Clam Area 2 and that portion Razor Clam Area 3 that is between the Grays Harbor North Jetty and the southern boundary of the Quinault Indian Nation (Grays Harbor County). Digging is allowed from 12:01 p.m. to 11:59 p.m. each day only.

2. Effective 12:01 a.m. March 20 through 11:59 a.m. March 22, 2011, razor clam digging is allowed in Razor Clam Area 1 and Razor Clam Area 2. Digging is allowed from 12:01 a.m. to 11:59 a.m. each day only.

3. Effective 12:01 a.m. March 20 through 11:59 a.m. March 20, 2011, razor clam digging is allowed in that portion Razor Clam Area 3 that is between the Grays Harbor North Jetty and the southern boundary of the Quinault Indian Nation (Grays Harbor County). Digging is allowed from 12:01 a.m. to 11:59 a.m. each day only.

4. It is unlawful to dig for razor clams at any time in Long Beach, Twin Harbors Beach or Copalis Beach Clam sanctuaries defined in WAC 220-56-372.

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

REPEALER

The following section of the Washington Administrative Code is repealed effective 12:01 p.m. March 22, 2011:

WAC 220-56-36000Q Razor clams—Areas and seasons.

**WSR 11-07-037
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 11-34—Filed March 14, 2011, 10:39 a.m., effective March 16, 2011]

Effective Date of Rule: March 16, 2011.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900D and 232-28-61900F; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047, 77.04.020, and 77.32.400.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or

general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Sufficient surplus of hatchery fish exists to provide opportunity for Americans with Disabilities (ADA)-only sport fishery. The department is in the process of adopting this as a permanent rule.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 14, 2011.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900F Exceptions to statewide rules—Satsop River. Notwithstanding the provisions of WAC 232-28-619, effective March 16 through March 31, 2011:

(a) Persons with disabilities who permanently use a wheelchair and/or who have a designated harvester card under WAC 220-55-065 may fish from the ADA-accessible site at the Bingham Creek Hatchery, defined as those waters from Bingham Creek hatchery barrier dam on the East Fork Satsop River downstream 400 feet, provided such persons follow all applicable rules and regulations. Night closure and single point barbless hooks required.

(b) Designated harvesters may fish from the ADA-accessible site with persons with disabilities who permanently use a wheelchair and/or who have a designated harvester card, if room allows. However, persons with disabilities who permanently use a wheelchair have priority over others if the ADA-accessible site becomes overcrowded.

REPEALER

The following section of the Washington Administrative code is repealed effective March 16, 2011:

WAC 232-28-61900D Exceptions to statewide rules—Satsop River. (10-300)

The following section of the Washington Administrative code is repealed effective April 1, 2011:

WAC 232-28-61900F Exceptions to statewide rules—Satsop River.

WSR 11-07-038
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-31—Filed March 14, 2011, 2:15 p.m., effective March 26, 2011]

Effective Date of Rule: March 26, 2011.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900B; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This emergency regulation is needed to allow an early fishing opportunity for juveniles, seniors, and holders of a department of fish and wildlife disability license. Following this early opening for these fishing groups, the lake will close until the last Saturday in April. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 14, 2011.

Philip Anderson
 Director

NEW SECTION

WAC 232-28-61900B Exceptions to statewide rules—Vance Creek Pond #1 (Grays Harbor Co.) Notwithstanding the provisions of WAC 232-28-619, effective March 26 through April 10, 2011, juveniles, holders of a senior license, and holders of a Department of Fish and Wildlife disability license may fish in those waters of Vance Creek Pond #1.

REPEALER

The following section of the Washington Administrative Code is repealed effective April 11, 2011:

WAC 232-28-61900B Exceptions to statewide rules—Vance Creek Pond #1: (Grays Harbor Co.)

WSR 11-07-041
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Economic Services Administration)

[Filed March 14, 2011, 3:45 p.m., effective March 14, 2011, 3:45 p.m.]

Effective Date of Rule: Immediately.

Purpose: The department is proposing to amend by emergency adoption WAC 388-478-0030 in order to decrease the grant payment standards to disability lifeline (DL) and Alcohol and Drug Addition Treatment and Support Act (ADATSA) recipients effective April 1, 2011.

Citation of Existing Rules Affected by this Order: Amending WAC 388-478-0030 Payment standard for disability lifeline and ADATSA.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.08.090, 74.04.005, and 74.04.770.

Other Authority: ESHB 1086.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; and that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: The department needs to make further reductions to DL in order to achieve a reduction in expenditures required by the supplemental budget, ESHB 1086, signed by Governor Gregoire on February 18, 2011, which imposed an additional \$7.9 million reduction in state funding for DL.

Expenditures for the program are anticipated to exceed the funds appropriated by \$23.1 million for the current fiscal year (which ends June 30, 2011). This shortfall is the result of increased demand for DL benefits, reductions in appropriated funds, and the department's inability to implement benefit month time limits due to the temporary restraining order signed by United States [States] District Judge Pechman on October 6, 2010. In the last two years, the DL caseload has grown by more than eighteen percent, from 33,171 cases in July 2008 to 39,192 cases in June of this year.

In December 2010:

- During December 11, 2010, special session, HB 3225 approved by legislature modified appropriations for the 2009-11 operating budget. The state general fund appropriations were reduced by \$490.4 million, while the total budgeted amount was reduced by \$336.5 million. The department appropriations included a reduction of \$856,000 GF-S for the remaining of SFY 2011.

- December 15, 2010, Governor Gregoire announced proposed 2011-2013 budget cuts needed to close an additional \$4.6 billion projected shortfall in the next state fiscal biennium, and proposed eliminating or restructuring many state programs, agencies, boards and commissions. "We face unprecedented times," the governor said. "Few alive today have witnessed a recession of this magnitude and length." See the governor's proposed budget for SFY 2011-2013 at this link http://www.governor.wa.gov/priorities/budget/press_packet.pdf.

In January 2011:

The department implemented a twenty-one percent ratable reduction to DL grants on January 1, 2011, to address the cost savings lost by the inability to implement benefit time limits and to comply with the across-the-board reductions of state general fund allotments by 6.287 percent ordered by the governor.

The timing of the proposed budget reductions will lessen the adverse impact on clients. If immediate budget reductions are not realized, the department will have to make additional cuts in the future to DL assistance programs to stay within budget. Additional cuts could include greater reduction in grants than those currently proposed, or eliminating benefits rather than reducing them. The department is making reductions to begin to address the reduction in appropriations and allow the legislature additional time the [to] supplement the DL budget to avoid larger grant reductions that would have a more detrimental effect on vulnerable adults in need.

The department is concurrently working on the permanent rule-making process.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 14, 2011.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 10-24-070, filed 11/30/10, effective 1/1/11)

WAC 388-478-0030 Payment standards for disability lifeline and ADATSA. Effective April 1, 2011:

(1) The payment standards for disability lifeline (DL) and Alcohol and Drug Addiction Treatment and Support Act

(ADATSA) program assistance units with obligations to pay shelter costs are:

Assistance Unit Size	Payment Standard
1	\$((266)) <u>197</u>
2	((336)) <u>248</u>

(2) The payment standards for DL and ADATSA assistance units with shelter provided at no cost are:

Assistance Unit Size	Payment Standard
1	\$((+62)) <u>120</u>
2	((206)) <u>152</u>

WSR 11-07-056

**EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 11-36—Filed March 18, 2011, 2:50 p.m., effective March 18, 2011, 2:50 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-28-61900B and 232-28-61900G; and amending WAC 232-28-619.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This emergency regulation is needed to allow an early fishing opportunity for juveniles, seniors, and anglers with a disability who have a department of fish and wildlife reduced-fee license or designated harvester card. Following this early opening for these fishing groups, the lake will close until the last Saturday in April. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 0, Repealed 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 18, 2011.

Philip Anderson
Director

NEW SECTION

WAC 232-28-61900G Exceptions to statewide rules—Vance Creek Pond #1 (Grays Harbor Co.) Notwithstanding the provisions of WAC 232-28-619, effective March 26 through April 10, 2011, juveniles, holders of a senior license, and anglers with a disability who have a Department of Fish and Wildlife reduced-fee license or designated harvester card may fish in those waters of Vance Creek Pond #1.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 232-28-61900B Exceptions to statewide rules—Vance Creek Pond #1 (Grays Harbor Co.) (11-31)

The following section of the Washington Administrative Code is repealed effective April 11, 2011:

WAC 232-28-61900G Exceptions to statewide rules—Vance Creek Pond #1 (Grays Harbor Co.)

**WSR 11-07-057
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 11-33—Filed March 18, 2011, 2:53 p.m., effective March 18, 2011, 2:53 p.m.]

Effective Date of Rule: Immediately.

Purpose: Amend commercial fishing rules.

Citation of Existing Rules Affected by this Order: Amending WAC 220-48-015, 220-48-029, 220-48-032, 220-48-071, 220-49-056, and 220-52-069.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This change is needed to comply with provisions of the Endangered Species Act (ESA). On July 27, 2010, a federal decision to list two species of rockfish as threatened and one species of rockfish as endangered in Puget Sound became effective. The intent of this regulation is to comply with the ESA and to protect the listed species from capture in the specified fisheries. These rules are interim until permanent rules take effect.

Number of Sections Adopted in Order to Comply with Federal Statute: New 6, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 6, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 18, 2011.

Philip Anderson
Director

NEW SECTION

WAC 220-48-01500D Beam trawl and bottom trawl—Seasons. Notwithstanding the provisions of WAC 220-48-015, effective immediately until further notice, all waters of Puget Sound are closed to fishing using bottom trawl gear.

NEW SECTION

WAC 220-48-02900J Set net—Dogfish—Seasons. Notwithstanding the provisions of WAC 220-48-029, effective immediately until further notice, all waters of Puget Sound are closed to fishing using dogfish set net gear.

NEW SECTION

WAC 220-48-03200L Set line—Seasons. Notwithstanding the provisions of WAC 220-48-032, effective immediately until further notice, all waters of Puget Sound are closed to fishing using set line gear.

NEW SECTION

WAC 220-48-07100C Bottomfish pots—Gear and seasons. Notwithstanding the provisions of WAC 220-48-071, effective immediately until further notice, all waters of Puget Sound are closed to fishing using bottomfish pot gear.

NEW SECTION

WAC 220-49-05600G Smelt fishing—Seasons. Notwithstanding the provisions of WAC 220-49-056, effective immediately until further notice, all waters of Puget Sound are closed to smelt fishing using purse seine gear.

NEW SECTION

WAC 220-52-06900E Scallop fishery—Puget Sound. Notwithstanding the provisions of WAC 220-52-069, effective immediately until further notice, it is unlawful to fish for

or possess any pink or spiny scallops taken with trawl gear in all waters of Puget Sound.

WSR 11-07-058
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 11-37—Filed March 18, 2011, 4:08 p.m., effective April 1, 2011, 12:01 a.m.]

Effective Date of Rule: April 1, 2011, 12:01 a.m.

Purpose: Amend personal use fishing rules.

Citation of Existing Rules Affected by this Order:
 Repealing WAC 232-28-61900H.

Statutory Authority for Adoption: RCW 77.12.047 and 77.04.020.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: The steelhead sport fishery opened by emergency regulation on December 8, 2010, will close effective April 1, 2011, consistent with all steelhead sport fisheries in the Columbia and Snake rivers. This action is necessary to protect spawning steelhead and to reduce impacts to returning adult ESA-listed spring chinook salmon. There is insufficient time to adopt permanent rules.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 18, 2011.

Lori Preuss
 for Philip Anderson
 Director

REPEALER

The following section of the Washington Administrative Code is repealed effective April 1, 2011:

WAC 232-28-61900H	Exceptions to statewide rules—Columbia River (10-308)
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WSR 11-07-073
EMERGENCY RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed March 22, 2011, 10:12 a.m., effective March 22, 2011, 10:12 a.m.]

Effective Date of Rule: Immediately.

Purpose: The division of child support (DCS) is filing this emergency amendment to strike subsection (4) of WAC 388-14A-4200 because we believe that subsection (4) goes beyond the intent of RCW 26.18.190, the statute which the rule is meant to implement.

This amendment qualifies for emergency rule making because subsection (4) of the current rule does not allow DCS to give credit to a noncustodial parent (NCP) for dependent disability payments paid on the NCP's behalf for his or her children unless the payments are made to the custodial payment or the state. RCW 26.18.190 does not contain this limitation.

DCS is also filing a CR-101, preproposal statement of inquiry, at this time to start the regular rule-making process.

Citation of Existing Rules Affected by this Order:
 Amending WAC 388-14A-4200.

Statutory Authority for Adoption: RCW 26.18.190, 26.23.035, 74.08.090, and 74.20A.055.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: This amendment qualifies for emergency rule making because subsection (4) of the current rule does not allow DCS to give credit to a noncustodial parent for dependent disability payments paid on the NCP's behalf for his or her children unless the payments are made to the custodial payment or the state. RCW 26.18.190 does not contain this limitation.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: March 18, 2011.

Katherine I. Vasquez
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-4200 Do I get credit for dependent disability payments paid on my behalf to my children? (1) When the department of labor and industries or a self-insurer pays compensation under chapter 51.32 RCW on behalf of or on account of the child or children of a noncustodial parent (NCP), the division of child support (DCS) treats the amount of compensation the department or self-insurer pays on behalf of the child or children as if the NCP paid the compensation toward the NCP's child support obligations.

(2) When the Social Security administration pays Social Security disability dependency benefits, retirement benefits, or survivors insurance benefits on behalf of or on account of the child or children of an NCP who is a disabled person, a retired person, or a deceased person, DCS treats the amount of benefits paid for the child or children as if the NCP paid the benefits toward the NCP's child support obligation for the period for which benefits are paid.

(3) Under no circumstances does the NCP have a right to reimbursement of any compensation paid under subsection (1) or (2) of this section.

~~((4) The NCP gets credit only for payments made to the custodial parent or the state. The NCP does not get credit for dependent payments made to the NCP.))~~

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: March 11, 2011.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-11-054, filed 5/13/09, effective 6/13/09)

WAC 388-832-0025 Am I eligible for the IFS program if I currently receive other DDD paid services? (1) If you receive other nonwaiver DDD funded services, you may be eligible for the IFS program.

(2) If you receive SSP in lieu of traditional family support ~~((or))~~ family support opportunity, or individual and family services, you are not eligible to receive IFS program funding including emergency and one time awards.

WSR 11-07-083

EMERGENCY RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services)

[Filed March 22, 2011, 10:44 a.m., effective March 22, 2011, 10:44 a.m.]

Effective Date of Rule: Immediately.

Purpose: The department is proposing to amend rules for clients that are on the individual and family services program and receive funding through the state supplementary program (SSP). The proposed amendments also do not allow clients to receive state funded emergency or one time awards. This amendment is necessary to match the SSP WAC that we have filed in emergency status.

Citation of Existing Rules Affected by this Order:
Amending WAC 388-832-0025.

Statutory Authority for Adoption: RCW 74.08.090.

Under RCW 34.05.350 the agency for good cause finds that in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this Finding: See above.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.