

WSR 24-13-123
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed June 20, 2024, 10:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-10-030.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) is proposing amendments to WAC 388-310-0300 WorkFirst—Infant care exemptions for mandatory participants, 388-310-1450 Pregnancy to employment, and 388-484-0006 TANF/SFA time limit extensions.

Hearing Location(s): On July 25, 2024, at 10:00 a.m., virtually via Microsoft Teams or call in. See the DSHS website at <https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings> for the most current information.

Date of Intended Adoption: Not earlier than July 26, 2024.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, beginning noon on June 20, 2024, by 5:00 p.m. on July 25, 2024.

Assistance for Persons with Disabilities: Contact Shelley Tencza, rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email shelley.tencza@dshs.wa.gov, by 5:00 p.m. on July 11, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These amendments support implementation of SHB 2007 (chapter 181, Laws of 2024), effective July 1, 2024, which creates a TANF time limit extension for households caring for a child under the age of two that qualify for an infant, toddler, or postpartum exemption from WorkFirst activities. As applicable, these amendments make additional changes required to improve clarity, update policy, or better align rule language with state and federal law or regulations.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.57 [74.04.057], 74.08.090.

Statute Being Implemented: SHB 2007 (chapter 181, Laws of 2024).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Sarah Mintzer, P.O. Box 45470, Olympia, WA 98504-5770, 360-764-0050.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This amendment is exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "this section does not apply to rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.025(4).

Is exempt under RCW 34.05.328 (5) (b) (vii).

Explanation of exemptions: These amendments do not impact small businesses. They only impact DSHS customers.

Scope of exemption for rule proposal:

Is fully exempt.

June 18, 2024

Katherine I. Vasquez

Rules Coordinator

SHS-5039.3

AMENDATORY SECTION (Amending WSR 22-20-017, filed 9/22/22, effective 10/23/22)

WAC 388-310-0300 WorkFirst—Infant care exemptions for mandatory participants. (1) When may I be exempted from participating in WorkFirst activities if I am a mandatory participant?

Either you or the other parent, living in the household, may claim an infant exemption from participating in WorkFirst activities provided you:

(a) Have a child under two years of age;

(b) Choose to not fully participate in the WorkFirst program (see WAC 388-310-0400); and

(c) Have not used up your lifetime 24 month infant care exemption(~~(-)~~); or

(d) You have used your lifetime 24 month infant care exemption, but have a child under the age of 12 weeks.

(2) If I choose my infant exemption, may I still be required to participate in the WorkFirst program?

You are required to participate up to 20 hours per week in mental health treatment, (~~(chemical dependency)~~) substance use disorder treatment, or a combination of these, if:

(a) The comprehensive evaluation or assessment indicates a need; and

(b) Services are available in your community.

(3) May I volunteer to participate in WorkFirst while I have a child under two years of age?

You may choose to fully participate in WorkFirst (see WAC 388-310-0400) while you have a child under two years of age. If you decide later to stop participating and you still qualify for an exemption, you will return to exempt status with no financial penalty provided you meet the conditions of subsections (1) and (2) of this section.

(4) Does an infant exemption from participation affect my 60 month time limit for receiving temporary assistance for needy families (TANF) or state family assistance (SFA) benefits?

Even if you are exempt from participation, each month you receive a TANF/SFA grant counts toward your 60 month limit (see WAC 388-484-0005).

AMENDATORY SECTION (Amending WSR 22-20-017, filed 9/22/22, effective 10/23/22)

WAC 388-310-1450 Pregnancy to employment. (1) How do I know if I am eligible to participate in pregnancy to employment?

If you are on temporary assistance for needy families (TANF) or state family assistance (SFA) and are pregnant or have a child under the age of two years, you are a participant in the pregnancy to employment pathway.

(2) What services are provided to the pregnancy to employment pathway?

(a) The pregnancy to employment pathway provides you with services, when available in your community, to look and prepare for work while supporting your child's needs. You and your WorkFirst worker will decide which variety of services you need. Service may include one or more of the items listed in (i) through (vi) of this section:

- (i) Home visiting or other parent supports;
- (ii) Safe and appropriate child care;
- (iii) Mental health treatment;
- (iv) ~~((Chemical dependency))~~ Substance use disorder treatment;
- (v) Domestic violence services; or
- (vi) Employment services.

(b) The WorkFirst worker will contact you every three months to offer you services if you are not required to participate and choose to claim ~~((the))~~ an infant exemption under WAC 388-310-0300(1).

(c) You will be offered a voluntary referral to either home visiting or other parent supports at various times in the pregnancy to employment pathway.

(3) What am I required to do while I am in the pregnancy to employment pathway?

You must participate in an assessment with a DSHS social service specialist and based on the results you will:

(a) Work with your WorkFirst worker to decide which required activities best meet your needs (these activities will depend on where you are in the pregnancy or the age of your child and will be added to your individual responsibility plan (IRP)); and

(b) Be required to participate in those activities, as identified in your IRP.

(4) What am I required to do while I am pregnant?

Based upon the results of your assessment, your participation:

(a) During your first and second trimester of pregnancy will be full-time work, looking for work, or preparing for work unless you have a good reason to participate fewer hours as described under WAC 388-310-1600.

(b) During your third trimester of pregnancy will be up to 20 hours per week in either mental health treatment or ~~((chemical dependency))~~ substance use disorder treatment, if:

- (i) The comprehensive evaluation or assessment indicates a need; and
- (ii) Services are available in your community.

(5) What am I required to do after my child is born?

After the birth of your child, you may choose to take the infant exemption under WAC 388-310-0300 or volunteer to participate in WorkFirst activities to the fullest of your abilities under WAC 388-310-0400.

(6) What if I have used my 24 month lifetime infant exemption?

If you have another child after using all 24 months of the infant exemption, you will be:

(a) Eligible for a 12 week postpartum (~~(deferral)~~) exemption period to personally take care of an infant less than 12 weeks of age but will be required to participate up to 20 hours per week in mental health or (~~(chemical dependency)~~) substance use disorder treatment, or a combination of these, if the comprehensive evaluation or assessment indicates a need and services are available in your community.

(b) Required to participate full time, unless otherwise exempt or you have good reason to participate fewer hours, once your child turns 12 weeks old in one or more of the following activities:

(i) Work;

(ii) Looking for work;

(iii) Preparing for work by participating in a combination of activities based upon the results of your assessment.

(7) **Will I be sanctioned if I refuse to participate?**

(a) You are required to participate in the WorkFirst program under WAC 388-310-0200 subject to sanction under WAC 388-310-1600 unless you have good reason and you:

(i) Are in your third trimester of pregnancy;

(ii) Have not used up your 24 month lifetime infant exemption and have a child under the age of two years old; or

(iii) Have used up your 24 month lifetime infant exemption and have a child under 12 weeks.

(b) You may be sanctioned if you stop participating in required mental health or (~~(chemical dependency)~~) substance use disorder treatment when you are:

(i) In your third trimester of pregnancy;

(ii) Claiming the infant exemption; or

(iii) Using a 12 week postpartum (~~(deferral)~~) exemption period.

AMENDATORY SECTION (Amending WSR 23-24-036, filed 11/30/23, effective 12/31/23)

WAC 388-484-0006 TANF/SFA time limit extensions. (1) What happens after I receive 60 or more months of TANF/SFA cash assistance?

After you receive 60 or more months of TANF/SFA cash assistance according to WAC 388-484-0005, you may qualify for additional months of cash assistance. We call these additional months of TANF/SFA cash assistance a hardship TANF/SFA time limit extension.

(2) Who is eligible for a hardship TANF/SFA time limit extension?

You are eligible for a hardship TANF/SFA time limit extension if you are on TANF, are otherwise eligible for TANF, received 60 cumulative months of TANF and you:

(a) Are approved for one of the exemptions from mandatory participation according to WAC 388-310-0350 (1)(a) through (d); or

(b) Are a Social Security disability insurance recipient; or

(c) Are at least 65 years old, blind as defined by the Social Security Administration or disabled as determined under chapter 388-449 WAC; or

(d) Have an open child welfare case with a state or tribal government and this is the first time you have had a (~~(child)~~) dependent child under RCW 13.34.030 in (~~(this)~~) Washington or another state or had a child a ward of a tribal court; or

(e) Are working in unsubsidized employment for 32 hours or more per week; or

(f) Document that you meet the family violence option criteria in WAC 388-61-001 and are participating satisfactorily in specialized activities needed to address your family violence according to a service plan developed by a person trained in family violence or have a good reason, as described in WAC 388-310-1600(3) for failure to participate satisfactorily in specialized activities; or

(g) Are homeless by reason of hardship, including when your family includes a child or youth who is without a fixed regular, and adequate nighttime residence as described in the federal McKinney-Vento Homeless Assistance Act (Title 42, U.S.C. 11434a(2), chapter 119, subchapter VI, part B) as it existed on January 1, 2020; or

(h) Have a child under the age of two years old who lives in the same household and you qualify for any of the infant related exemptions from WorkFirst activities as defined in WAC 388-310-0300(1), or

(i) Were an active TANF recipient from July 1, 2021, through June 30, 2023; or

~~((i))~~ (j) Were an active TANF recipient, beginning July 1, 2022, when Washington state employment security department's most recently published unemployment rate is seven percent or above.

~~((j))~~ (k) Do not qualify for other time limit extension criteria in this section and received TANF during a month on or after March 1, 2020, when the Washington state employment security department's unemployment rate was at seven percent or above. ~~((The extension provided for under this subsection (2)(b)(ix) is equal to the number of months that you received TANF on or after March 1, 2020, when the Washington state employment security department's unemployment rate was at seven percent or above.))~~ The duration of this extension criteria is equal to the number of months that you received TANF on or after March 1, 2020, when the Washington state employment security department's unemployment rate was at seven percent or above.

(3) Who reviews and approves a hardship time limit extension?

(a) Your case manager or social worker will review your case and determine whether a hardship time limit extension type will be approved.

(b) This review will not happen until after you have received at least 52 months of assistance but before you reach your time limit or lose cash assistance due to the time limit.

(c) Before you reach your time limit or lose cash assistance due to the time limit, the department will send you a notice that tells you whether a hardship time limit extension will be approved, when your time limit expires, and how to request an administrative hearing if you disagree with the decision.

(4) When I have an individual responsibility plan, do my WorkFirst participation requirements change when I receive a hardship TANF/SFA time limit extension?

(a) Even if you qualify for a hardship TANF/SFA time limit extension you will still be required to participate as required in your individual responsibility plan (WAC 388-310-0500). You must still meet all of the WorkFirst participation requirements listed in chapter 388-310 WAC while you receive a hardship TANF/SFA time limit extension.

(b) If you do not participate in the WorkFirst activities required by your individual responsibility plan, and you do not have a good reason under WAC 388-310-1600, the department will follow the sanction rules in WAC 388-310-1600.

(5) Do my benefits change if I receive a hardship TANF/SFA time limit extension?

(a) You are still a TANF/SFA recipient and your cash assistance, services, or supports will not change as long as you continue to meet all other TANF/SFA eligibility requirements.

(b) During the hardship TANF/SFA time limit extension, you must continue to meet all other TANF/SFA eligibility requirements. If you no longer meet TANF/SFA eligibility criteria during your hardship time limit extension, your benefits will end.

(6) How long will a hardship TANF/SFA time limit extension last?

(a) We will review your hardship TANF/SFA time limit extension and your case periodically for changes in family circumstances:

(i) If you are extended under WAC 388-484-0006 (2)(a) then we will review your extension at least every 12 months;

(ii) If you are extended under WAC 388-484-0006 (2)(b), (2)(c), (2)(d), or (2)(e) then we will review your extension at least every six months.

(b) Your hardship TANF/SFA time limit extension may be renewed for as long as you continue to meet the criteria to qualify for a hardship time limit extension.

(c) If during the extension period we get proof that your circumstances have changed, we may review your case and determine if you continue to qualify for a hardship TANF/SFA time limit extension. When you no longer qualify for a hardship TANF/SFA time limit extension we will stop your TANF/SFA cash assistance. You will be notified of your case closing and will be given the opportunity to request an administrative hearing before your benefits will stop.