

WSR 25-01-136
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed December 17, 2024, 9:25 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-21-044.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) is proposing to amend WAC 388-410-0030 How does the department calculate and set up my basic food, FAP, or WASHCAP overpayment?

Hearing Location(s): On January 22, 2025, 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 January 23, 2025.

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 December 18, 2024, by 5:00 p.m. on January 22, 2025.

Assistance for Persons with Disabilities: Contact Shelley Tencza, rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email shelley.tencza@dshs.wa.gov by 5:00 p.m. on January 8, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These amendments clarify that overpayments due to intentional trafficking of food benefits will represent the entire value of the benefits determined to have been trafficked.

Reasons Supporting Proposal: 7 C.F.R. 273.18.

Statutory Authority for Adoption: RCW 43.20A.550, 43.20B.630, 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090.

Statute Being Implemented: 7 C.F.R. 273.18.

Rule is necessary because of federal law, 7 C.F.R. 273.18 (c)(2).

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Alexis Miller, P.O. Box 45470, Olympia, WA 98504-5470, 253-579-3144.

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. These rules are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "this section does not apply to rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents.["]

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

Is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: 7 C.F.R. 273.18 (c)(2). Proposed amendments clarify WAC and better align with federal rule.

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 clients.

Scope of exemption for rule proposal:
Is fully exempt.

December 12, 2024
Katherine I. Vasquez
Rules Coordinator

SHS-5061.1

AMENDATORY SECTION (Amending WSR 17-13-006, filed 6/8/17, effective 7/9/17)

WAC 388-410-0030 How does the department calculate and set up my basic food, FAP, or WASHCAP overpayment? (1) We calculate the amount of your basic food, Washington combined application project (WASHCAP), or food assistance program for legal immigrants (FAP) overpayment by counting ~~((the difference between))~~:

(a) The difference between the benefits your assistance unit (AU) received ~~((+))~~ and

~~((b) The))~~ the benefits your AU should have received.

(b) The entire amount trafficked when the overpayment was incurred due to trafficking as defined in WAC 388-446-0020 (3) (c).

(2) To calculate the benefits your AU should have received, we determine what we would have authorized if we:

(a) Had correct and complete information; and

(b) Followed all the necessary procedures to determine your AU's eligibility and benefits.

(3) If you did not report your earned income as required under WAC 388-418-0005 and 388-418-0007, you do not receive the earned income deduction under WAC 388-450-0185 when we calculate your overpayment amount.

(4) We must set up an inadvertent household error or administrative error overpayment if:

(a) We discovered the overpayment through the federal quality control process;

(b) The overpayment is over ~~((eighty-five dollars))~~ \$85 and you currently receive basic food, FAP, or WASHCAP benefits; or

(c) The overpayment is over ~~((one hundred twenty-five))~~ \$125 dollars and you do not currently receive basic food, FAP, or WASHCAP benefits.

(5) We do not set up an inadvertent household error or administrative error overpayment if all of the following are true:

(a) We did not discover the overpayment through the federal quality control process;

(b) You do not currently receive basic food, FAP, or WASHCAP benefits; and

(c) The total amount your household was overpaid was ~~((one hundred twenty-five dollars))~~ \$125 or less.

(6) If you have an inadvertent household error that we referred for prosecution or an administrative disqualification hearing, we will

not set up or start collecting the overpayment if doing so could negatively impact this process.

(7) We must set up an intentional program violation overpayment based on the results of an administrative disqualification hearing under chapter 388-02 WAC, unless:

(a) Your AU has repaid the overpayment; or

(b) We have referred your inadvertent household error for prosecution and collecting the overpayment could negatively impact this process.

(8) We must calculate the overpayment amount:

(a) For an administrative error overpayment - up to (~~twelve~~) 12 months prior to when we became aware of the overpayment;

(b) For an inadvertent household error overpayment - for no more than (~~twenty-four~~) 24 months before we became aware of the overpayment; and

(c) For intentional program violation (IPV) overpayments - from the month the IPV first occurred as determined under WAC 388-446-0015, but no more than six years before we became aware of the overpayment.

(9) If we paid you too few basic food, FAP, or WASHCAP benefits for a period of time, we will use the amount we underpaid your AU to reduce your overpayment if:

(a) We have not already issued you benefits to replace what you were underpaid; and

(b) We have not used this amount to reduce another overpayment.

(10) We will send you an overpayment notice under RCW 43.20B.630 and 7 C.F.R. Sec. 273.18. We send notices as required under chapter 388-458 WAC. If all adult AU members live at the same address, we serve an overpayment notice on the head of household.

(11) The overpayment becomes an established (set-up) debt in one of the following ways:

(a) By operation of law if you do not respond within (~~ninety~~) 90 days of service of the overpayment notice;

(b) By administrative order if you timely request a hearing; or

(c) By written agreement.

(12) You may request a hearing to contest an overpayment of your basic food, FAP, or WASHCAP benefits.

(a) The hearing may include issues such as whether you were overpaid, whether we calculated the amount of the overpayment correctly, and the type of the overpayment.

(b) The administrative law judge (ALJ) does not have the authority to compromise, terminate, write-off, defer, or otherwise waive the overpayment claim or recovery of the claim.

(13) If the overpayment has been referred for prosecution in accordance with WAC 388-446-0001(4), you may request that the administrative hearing related to the overpayment be postponed.