

WSR 25-03-068
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
(Division of Child Support)
[Filed January 14, 2025, 2:06 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-08-063.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) is amending 22 sections in chapter 388-14A WAC related to the Uniform Parentage Act (UPA) to implement ESSB 6037 (chapter 6, Laws of 2018), and SSB 5333 (chapter 46, Laws of 2019), as codified in chapters 26.26A and 26.26B RCW. They are: WAC 388-14A-1020 What definitions apply to the rules regarding child support enforcement?, 388-14A-1030 What kinds of services can the division of child support provide?, 388-14A-1040 What must a request for locate services contain?, 388-14A-1050 The division of child support cooperates with tribes and other states and countries for support enforcement purposes, 388-14A-1060 The division of child support cooperates with courts and law enforcement, 388-14A-2000 Who can receive child support enforcement services from the division of child support?, 388-14A-2005 When does an application for public assistance automatically become an application for support enforcement services?, 388-14A-2040 Do I have to cooperate with the division of child support in establishing or enforcing child support?, 388-14A-2065 Does the division of child support provide support enforcement services if the CSO decides I have "good cause level A" or "good cause level B"?, 388-14A-2070 Does the division of child support provide support enforcement services if the CSO decides I have "good cause level B"?, 388-14A-2081 Under what circumstances can DCS close a case when the application for services was made directly to DCS?, 388-14A-3100 How does the division of child support establish a child support obligation when there is no child support order?, 388-14A-3102 When the parents have signed a paternity acknowledgment, which support establishment notice does the division of child support serve on the noncustodial parent?, 388-14A-3105 How does the division of child support serve support establishment notices?, 388-14A-3110 When can a support establishment notice become a final order?, 388-14A-3115 The notice and finding of financial responsibility is used to set child support when paternity is not at issue, 388-14A-3120 The notice and finding of parental responsibility is used to set child support when the father's duty of support is based upon an affidavit of paternity which is not a conclusive presumption of paternity, 388-14A-3125 DCS may establish a medical support obligation when the custodial parent receiving medical assistance declines full child support enforcement services, 388-14A-3127 How does DCS ask to add a monthly financial obligation to an existing administrative order for medical support only?, 388-14A-3350 Are there any limits on how much back support the division of child support can seek to establish?, 388-14A-7610 The division of child support complies with federal requirements regarding intergovernmental cases, and 388-14A-7820 What is the division of child support (DCS) required to do when DCS acts as the responding jurisdiction in an intergovernmental case?

Hearing Location(s): On March 25, 2025, at 10:00 a.m., virtually via 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 sooner than March 26, 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 January 22, 2025, by 5:00 p.m. on March 25, 2025.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email Shelley.Tencza@dshs.wa.gov, by 5:00 p.m. on March 11, 2025.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The division of child support (DCS) proposes to amend 22 sections in chapter 388-14A WAC as we complete implementation of two bills related to the 2017 version of the UPA and make other technical corrections.

In the 2018 session, the Washington state legislature passed ESSB 6037 (chapter 6, Laws of 2018), making Washington the first state to adopt the 2017 version of the UPA. The UPA recognizes a broader range of parentage by implementing acknowledgment of parentage, assertion of parentage, protections for gender-divergent parenting, rules for surrogate arrangements, legal processes for creating family structures, and protections for children. The bill, which took effect on January 1, 2019: (1) Created chapter 26.26A RCW; (2) repealed most of chapter 26.26 RCW; and (3) moved the nonrepealed sections of chapter 26.26 RCW to new chapter 26.26B RCW.

In the 2019 session, the Washington state legislature passed SSB 5333 (chapter 46, Laws of 2019), making many technical corrections and adding provisions to the UPA addressing records, notification, and consequences of sexual assault. SSB 5333 also amended RCW 74.20A.056, rendering the notice and finding of parental responsibility (NFPR) obsolete.

The UPA recognizes a broader range of parentage by implementing acknowledgment of parentage, assertion of parentage, protections for gender-diverse parenting, rules for surrogate arrangements, legal processes for creating family structures, and protections for children. Adopting the UPA is a continuation of state and federal trends towards broadening the definition of "family" and recognizing the variety in "parent-child" relationships.

In this rule-making action:

1. We add or amend definitions in WAC 388-14A-1020 to align with chapter 26.26A RCW.

- Birth mother - added.
- Birth record - added.
- Parentage or parent-child relationship - added.
- Paternity - added.
- Presumed parent - amended.
- Reasonable efforts to locate - amended.

2. We amend other definitions in WAC 388-14A-1020 based on the office of the code reviser's drafting guidelines, plain talk, and inclusive language principles.

3. We make the following changes throughout the WAC sections noted above:

- We substitute the term parentage for paternity wherever appropriate, in line with chapters 26.26A and 26.26B RCW. In some sections, we retain the term paternity for historical context. This

includes replacing paternity with parentage in the titles of some of the sections.

- We add references to the acknowledgment of parentage form currently used by the department of health.
- We update citations to specific sections in the UPA as currently codified in chapters 26.26A and 26.26B RCW. Unless required for historical context, references to sections in chapter 26.26 RCW are obsolete and have been stricken.
- We make other technical edits in line with the office of the code reviser's drafting guidelines.

4. In WAC 388-14A-2000, we state that a man may request child support services to establish parentage alleging they are the child's biological or genetic parent.

5. We seek to amend WAC 388-14A-2065 in consideration of RCW 26.26A.465, to clarify how DCS provides child support services if the community services division (CSD) grants good cause level A to a custodial parent. In particular, we add provisions around what happens if someone asks that a case previously closed for good cause level A be reopened. We also address what happens if the person whose actions are the basis for the good cause finding becomes the custodian of the child and either goes on temporary assistance for needy families or submits a nonassistance application for services. We also seek to amend the title of this section to reflect the name of the division issuing the good cause decision as CSD.

6. We propose to add a subsection to WAC 388-14A-2070 addressing the actions taken by the prosecutor or attorney general's office when CSD advises good cause level B has been granted in a case, for consistency with WAC 388-14A-2065. We will also amend the title of this section to reflect CSD as the name of the division that issues good cause decisions.

7. In WAC 388-14A-3100, 388-14A-3102, 388-14A-3105, 388-14A-3110, 388-14A-3115, 388-14A-3120, 388-14A-3125, and 388-14A-3127, DCS removes references to the notice and finding of parental responsibility (NFPR) or makes those references historical. This includes the titles of some of the sections. Historically, an NFPR was used to set child support when the father's duty of support was based upon an affidavit of paternity that was not a conclusive presumption of paternity. The NFPR differs from a notice and finding of financial responsibility (NFFR) because the parties could timely request genetic testing contesting paternity. Since January 1, 2019, DCS has not served the NFPR due to amendments to RCW 74.20A.056. DCS does, however, still enforce debt accrued under an NFPR. A person who was served an NFPR before the form became obsolete may still request a late hearing on the monetary amounts stated in the notice, but DCS would no longer facilitate genetic testing in the matter. All children for whom it was possible to serve an NFPR have long since reached majority.

8. In WAC 388-14A-3100, we strike subsection (4) because DCS no longer serves the NFPR or the notice and finding of medical responsibility. We also revise other subsections regarding legal instruments creating a presumption of paternity including a paternity affidavit, paternity acknowledgment, or acknowledgment of parentage. These legal instruments form the basis for service of a notice and finding of financial responsibility (NFFR) under WAC 388-14A-3115 or a "Medical support only" NFFR under WAC 388-14A-3125 if the case is open only to enforce medical support.

9. In WAC 388-14A-3102, we describe how the acknowledgment or affidavit has become a conclusive presumption of paternity or parentage under RCW 26.26A.220 even if one or both of the parents were under 18 years old when signing it. We clarify that DCS gives full faith and credit under RCW 26.26A.250 to an acknowledgment or affidavit of parentage or paternity filed with the vital records agency of another state and serve[s] an NFFR. Finally, we propose to add the term parentage to the title of the section.

10. In WAC 388-14A-3110, we strike subsections (9)(b) and (d) as obsolete. The office of administrative hearings issues a final order as a result of a support establishment hearing, rather than an initial decision. Initial decisions can be appealed to the DSHS board of appeals, but final orders cannot.

11. In WAC 388-14A-3115, we describe the process of establishing child support when parentage is not at issue. We add a subsection about recognizing other jurisdictions' instruments that conclusively establish parentage, unless rescinded or successfully changed in that jurisdiction.

Reasons Supporting Proposal: This rule making ensures chapter 388-14A WAC aligns with the UPA and other changes that resulted from ESSB 6037 and SSB 5333. It is in DSHS's best interest to provide correct and current information.

Statutory Authority for Adoption: RCW 26.23.050, 26.23.110, 43.20A.550, 74.04.055, 74.04.057, 74.08.090, 74.20.040, 74.20A.055, 74.20A.056, and 74.20A.310.

Statute Being Implemented: RCW 26.09.105, 26.18.170, 26.21A.230, 26.23.050, 26.26A.005 through 26.26A.903, 26.26B.010 through 26.26B.130, 74.20.330, 74.20A.055, 74.20A.056, and 74.20A.030.

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

Name of Proponent: DSHS, economic services administration, DCS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Monica Turnbaugh, DCS Headquarters, P.O. Box 9162, Olympia, WA 98507-9162, 360-664-5339.

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. Although this rule meets the definition of a significant legislative rule under RCW 34.05.328(5), the requirement for a cost-benefit analysis does not apply because DSHS rules concerning liability for care of dependents are exempt under RCW 34.05.328 (5)(b)(vii).

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(4).

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

Explanation of exemptions: This proposal does not affect small businesses. This rule is exempt under RCW 34.05.328 (5)(b)(vii), Rules of the department of social and health services ... concerning liability for care of dependents.

Scope of exemption for rule proposal:

Is fully exempt.

January 9, 2025
Katherine I. Vasquez
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 25-05 issue of the Register.