

WSR 22-03-005
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
(Division of Child Support)
[Filed January 6, 2022, 4:46 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-17-058.

Title of Rule and Other Identifying Information: WAC 388-14A-3140
What can happen at a hearing on a support establishment notice?,
388-14A-8100 Are there special rules for setting child support for
children in foster care?, and 388-14A-8130 How does DCS complete the
WSCSS worksheets when setting a joint child support obligation?

These WAC changes will increase efficiency and better serve our
customers regarding eliminating joint noncustodial parent (JNCP) ca-
ses. A JNCP case is one where both parents are married and residing
together and the child is not in the home.

Hearing Location(s): On February 22, 2022, at 10:00 a.m., at Of-
fice Building 2, Department of Social and Health Services (DSHS) Head-
quarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public
parking at 11th and Jefferson. A map is available at [https://
www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-
bldg-2](https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2); or virtually. Due to the impacts of COVID-19, hearings are be-
ing held virtually. Please see the DSHS website for the most current
information.

Date of Intended Adoption: Not earlier than February 23, 2022.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box
45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov,
fax 360-664-6185, by 5:00 p.m., on February 22, 2022.

Assistance for Persons with Disabilities: Contact Shelley Tencza,
DSHS rules consultant, phone 360-664-6198, fax 360-664-6185, TTY 711
relay service, email tencza@dshs.wa.gov [tencza@dshs.wa.gov], by 5:00
p.m., on February 8, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including
Any Changes in Existing Rules: The establishment of a joint and sever-
al administrative child support order does not work well when the goal
of family reunification and the fluid nature of reunification plans
are taken into account. Married parents often choose to separate (or
are required to separate) so that the child can return to the home of
one of them. The obligation of the parent with physical custody is
suspended by WAC 388-14A-3810, leaving the parent out of the home
bearing the full brunt of the joint and several administrative order,
further impacting reunification efforts. When the parent out of the
home seeks to modify the joint and several order, it is sometimes
modified only as to that particular parent, leaving the first parent
still subject to the joint and several order if the child ever leaves
the first parent's custody. This result does not align with division
of child support's (DCS) efforts to establish and enforce right size
orders and can result in harm to families. To resolve this, DCS is
changing its policy and will no longer be setting up joint obligations
for married parents living together where the child is not living in
the home.

Reasons Supporting Proposal: The proposed change will allow DCS
to discontinue the practice of setting up and enforcing JNCP cases,

which will produce better outcomes for families and help further DCS's efforts to establish and enforce right size orders.

Statutory Authority for Adoption: RCW 26.18.170, 26.23.050, 26.23.110, 74.08.090, 74.20A.055.

Statute Being Implemented: RCW 26.09.105, 26.18.170, 26.23.050, 26.23.110.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: Not applicable.

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

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Brady Horenstein, DCS Rules Coordinator, DCS Headquarters, P.O. Box 9162, Olympia, WA 98507-9162, 360-664-5291.

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 under RCW 34.05.328 (5)(b)(vii) because they are rules of DSHS 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(4) and 34.05.328 (5)(b)(vii).

Explanation of exemptions: This proposal does not affect small businesses. These rules are exempt under RCW 34.05.328 (5)(b)(vii) because they are concerning liability for care of dependents.

January 6, 2022
Katherine I. Vasquez
Rules Coordinator

SHS-4901.2

AMENDATORY SECTION (Amending WSR 11-12-006, filed 5/19/11, effective 6/19/11)

WAC 388-14A-3140 What can happen at a hearing on a support establishment notice? (1) When a party 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:

(a) Resolving the current and future support obligation and the accrued support debt of the noncustodial parent (NCP); and

(b) 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))) child or children.

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

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

(4) The NCP and/or the CP must show cause why the terms in the NFFR, NFPR, or NFMR are incorrect.

(5) 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.

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

(7) 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.

(8) In support establishment hearings, both 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 the NCP and CP both 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 the NCP and CP both appear for hearing, see WAC 388-14A-3133.

(9) In some cases prior to (effective date), there ~~((can))~~ could be two NCPs, called "joint NCPs." This ~~((happens))~~ happened when DCS ~~((serves))~~ served a joint support establishment notice on the marital community made up of ~~((a husband and wife))~~ spouses who ~~((reside))~~ re-sided together, or on the domestic partnership community made up of two registered domestic partners who ~~((reside))~~ resided together, seeking to establish a support obligation for a child in common who ~~((is))~~ was not residing in their home.

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

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

(c) Prior to (effective date), one joint NCP ~~((may))~~ could appear and represent the other joint NCP.

(10) When a CP is granted good cause level B (see WAC 388-422-0020), DCS notifies the CP that the CP will 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.

(11) If any party appears for the hearing and elects to proceed, the ALJ hears the matter and enters a final 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 are limited to an appeal on the record made at the hearing.

[Statutory Authority: 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 74.20A.056(11). WSR 11-12-006, § 388-14A-3140,

filed 5/19/11, effective 6/19/11. Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.160. WSR 06-09-015, § 388-14A-3140, filed 4/10/06, effective 5/11/06. Statutory Authority: RCW 74.08.090, 34.05.310 (4)(d), 34.05.220(1), 74.20A.055, 74.20A.056. WSR 03-20-072, § 388-14A-3140, filed 9/29/03, effective 10/30/03. Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.055, 74.20A.056. WSR 00-15-016 and 00-20-022, § 388-14A-3140, filed 7/10/00 and 9/25/00, effective 11/6/00. Formerly WAC 388-11-400 and 388-11-425.]

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

WAC 388-14A-8100 Are there special rules for setting child support for children in foster care? (1) Child support obligations for children in foster care are set according to the Washington state child support schedule (the WSCSS), found in chapter 26.19 RCW.

(2) When a child or children are placed in foster care, DCS may use the administrative process to set a support obligation:

(a) ~~((As a joint obligation for married parents who reside together;~~

~~(b-))~~ As ~~((two))~~ a separate ~~((obligations))~~ obligation for ~~((parents who do not reside together))~~ each parent; or

~~((e-))~~ (b) For just one parent, if:

(i) There is already a court or administrative order setting the support obligation of the other parent;

(ii) The other parent is dead; or

(iii) The other parent is unknown.

(3) When setting a support obligation for only one parent, DCS follows the procedure set out in WAC 388-14A-8125.

(4) ~~((When setting))~~ Prior to (effective date), DCS used the administrative process to set a joint support obligation for parents who are married or in a registered domestic partnership and residing together. When setting a joint obligation, DCS ((follows)) followed the procedures set out in WAC 388-14A-8130.

[Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.055, 74.20A.056. WSR 06-16-073, § 388-14A-8100, filed 7/28/06, effective 8/28/06. Statutory Authority: RCW 13.34.160(3), 13.34.270(7), 74.08.090, 74.13.031(11), 74.13.350, 74.20A.030(4), and 74.20A.310. WSR 05-12-135, § 388-14A-8100, filed 6/1/05, effective 7/2/05. Statutory Authority: RCW 74.08.090. WSR 01-03-089, § 388-14A-8100, filed 1/17/01, effective 2/17/01.]

AMENDATORY SECTION (Amending WSR 11-12-006, filed 5/19/11, effective 6/19/11)

WAC 388-14A-8130 How ((does)) did DCS complete the WSCSS worksheets when setting a joint child support obligation for a child in foster care prior to (effective date)? (1) ~~((When))~~ Prior to (effective date), the division of child support (DCS) ~~((is preparing))~~ prepared an administrative support notice to establish a joint support obligation for the parents of a child in foster care, DCS ~~((follows))~~

followed the steps set out in this section for completing the worksheets under the Washington state child support schedule (WSCSS).

(2) DCS (~~(establishes)~~) established a joint support obligation when, at the time of order establishment, the parents (~~(reside)~~) resided together and (~~(are)~~) were either married or in a registered domestic partnership, unless a child support order covering current support for that child (~~(has)~~) had already been established for one of the parents.

(3) DCS (~~(calculates)~~) calculated each parent's income under the rules set out in WAC 388-14A-3205, and then (~~(calculates)~~) calculated the income of the marital or domestic partnership community by combining both parents' income in one column of the worksheet and (~~(does)~~) did not put any income or other information in the other column.

(4) DCS (~~(calculates)~~) calculated the joint support obligation using the limitations contained in RCW 26.19.065:

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

(b) DCS (~~(follows)~~) followed WAC 388-14A-3410 when calculating and applying the self-support reserve limitation.

(c) Even though there (~~(are)~~) were two parents involved, and despite the application of any limitations, the presumptive minimum obligation of fifty dollars per month per child (~~(applies)~~) applied when DCS (~~(sets)~~) set a joint child support obligation.

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

(5) As described in subsection (3) of this section, the support obligation in the column of the WSCSS worksheet which contains information regarding both parents is the joint support obligation of the parents.

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

(7) The rules in this section still apply if parties request modification of joint noncustodial parent (NCP) obligations established by administrative orders prior to (effective date).

[Statutory Authority: 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 74.20A.056(11). WSR 11-12-006, § 388-14A-8130, filed 5/19/11, effective 6/19/11. Statutory Authority: RCW 34.05.220(1), 74.08.090, 74.20A.055, 74.20A.056. WSR 06-16-073, § 388-14A-8130, filed 7/28/06, effective 8/28/06.]