

WSR 22-09-075
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed April 19, 2022, 3:52 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-21-107.

Title of Rule and Other Identifying Information: The department proposes amending WAC 388-310-0350 WorkFirst—Other exemptions from mandatory participation.

Hearing Location(s): On May 24, 2022, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 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>; or virtually. Due to the impacts of the COVID-19 pandemic, hearings are being held virtually. Please see the DSHS website for the most current information.

Date of Intended Adoption: Not earlier than May 25, 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 May 24, 2022, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email Tencza@dshs.wa.gov [Tencza@dshs.wa.gov], by May 10, 2022, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing these amendments to clarify that the inability to participate in WorkFirst activities during a declared state of emergency is determined by the department.

Reasons Supporting Proposal: Proposed amendments to WAC 388-310-0350 clarify the department's responsibility to determine participation requirements while considering the nature of a declared state of emergency.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.010.

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: Jake Deskins, P.O. Box 45470, Olympia, WA 98504-5770, 360-480-3411.

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, "[t]his 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 34.05.328 (5)(b)(vii).

Explanation of exemptions: These amendments do not impact small business[es], only DSHS clients.

April 14, 2022
Katherine I. Vasquez
Rules Coordinator

SHS-4917.2

AMENDATORY SECTION (Amending WSR 21-12-004, filed 5/19/21, effective 7/1/21)

WAC 388-310-0350 WorkFirst—Other exemptions from mandatory participation. (1) When am I exempt from mandatory participation?

Except as provided in subsection (4) of this section, you are exempt from mandatory participation if you are:

(a) A caretaker relative as defined by WAC 388-454-0010, included in the assistance unit and:

(i) You are (~~(fifty-five)~~) 55 years of age or older and caring for a child and you are not the child's parent; and

(ii) Your age is verified by any reliable documentation (such as a birth certificate or a driver's license).

(b) An adult with a severe and chronic disability as defined below:

(i) You have been assessed by a DSHS SSI facilitator as likely to be approved for SSI or other benefits and are required to apply for SSI or another type of federal disability benefit (such as railroad retirement or Social Security disability) in your individual responsibility plan. Your SSI application status may be verified through the SSI facilitator and/or state data exchange; or

(ii) Your disability is a severe and chronic mental, physical, emotional, or cognitive impairment that prevents you from participating in work activities for more than (~~(ten)~~) 10 hours a week and is expected to last at least (~~(twelve)~~) 12 months. Your disability and ability to participate must be verified by documentation from the division of developmental disabilities (DDD), division of vocational rehabilitation (DVR), home and community services division (HCS), division of mental health (MHD), behavioral health organization (BHO), and/or regional service area (RSA), or evidence from one of the medical or mental health professionals listed in subsection (2) of this section.

(c) Required in the home to care for a child with special needs when:

(i) The child has a special medical, developmental, mental, or behavioral condition; and

(ii) The child is determined by a public health nurse, school professional, one of the medical or mental health professionals listed in subsection (2) of this section, HCS, MHD, BHO, and/or an RSA to require specialized care or treatment that prevents you from participating in work activities for more than (~~(ten)~~) 10 hours per week.

(d) Required to be in the home to care for another adult with disabilities when:

- (i) The adult with disabilities cannot be left alone for significant periods of time; and
- (ii) No adult other than yourself is available and able to provide the care; and
- (iii) The adult with the disability is related to you; and
- (iv) You are unable to participate in work activities for more than ~~((ten))~~ 10 hours per week because you are required to be in the home to provide care; and
- (v) The disability and your need to care for your disabled adult relative is verified by documentation from DDD, DVR, HCS, MHD, BHO and/or an RSA, or evidence from one of the medical or mental health professionals listed in subsection (2) of this section.

(e) ~~((Unable))~~ Determined by the department to be unable to participate in WorkFirst activities due to a declared state of emergency.

(2) What types of medical or mental health professionals can provide medical evidence when I have a disability?

We accept medical evidence from the following sources when considering disability:

- (a) For a physical impairment:
 - (i) A physician, which includes:
 - (A) Medical doctor (M.D.); and
 - (B) Doctor of osteopathy (D.O.);
 - (ii) An advanced registered nurse practitioner (ARNP) for physical impairments;
 - (iii) A physician's assistant (P.A.);
 - (iv) A doctor of optometry (O.D.) for visual acuity impairments;

or

- (v) Doctor of podiatry (D.P.) for foot disorders;
- (b) For a mental impairment:
 - (i) A psychiatrist;
 - (ii) A psychologist;
 - (iii) An ARNP certified in psychiatric nursing;
 - (iv) A mental health professional provided the person's training and qualifications at a minimum include a master's degree; or
 - (v) A physician who is currently treating you for a mental impairment.

(c) We do not accept medical evidence from the medical professionals listed in subsections (2)(a) and (b), unless they are licensed in Washington state or the state where the examination was performed.

(3) Who reviews and approves an exemption from participation?

(a) If it appears that you may qualify for an exemption or you ask for an exemption, your case manager or social worker will review the information and we may use the case staffing process to determine whether the exemption will be approved. Case staffing is a process to bring together a team of multidisciplinary experts including relevant professionals and the client to identify participant issues, review case history and information, and recommend solutions.

(b) If additional medical or other documentation is needed to determine if you are exempt, your IRP will allow between ~~((thirty))~~ 30 days and up to ~~((ninety))~~ 90 if approved to gather the necessary documentation.

(c) Information needed to verify your exemption should meet the standards for verification described in WAC 388-490-0005. If you need help gathering information to verify your exemption, you can ask us for help. If you have been identified as needing NSA services, under chapter 388-472 WAC, your accommodation plan should include information on how we will assist you with getting the verification needed.

(d) After a case staffing, we will send you a notice that tells you whether your exemption was approved, how to request a fair hearing if you disagree with the decision, and any changes to your IRP that were made as a result of the case staffing.

(4) If I am an adult who is exempt due to my severe and chronic disability, can I still be required to participate in the WorkFirst program?

When you are exempt due to your severe and chronic disability, you may be required to do one or both of the following:

(a) Pursue SSI or another type of federal disability benefit; ((and/or))

(b) Participate in available treatment that is recommended by your treating medical or mental health provider or by a chemical dependency professional.

(5) Can I participate in WorkFirst while I am exempt?

(a) You may choose to fully participate in WorkFirst while you are exempt.

(b) Your WorkFirst case manager may refer you to other service providers who may help you improve your skills and move into employment.

(c) If you decide later to stop participating, and you still qualify for an exemption, you will be put back into exempt status with no financial penalty.

(6) Does an exemption from participation affect my ((sixty-)) 60-month time limit for receiving TANF/SFA benefits?

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

(7) How long will my exemption last?

Unless you are an older caretaker relative, your exemption will be reviewed at least every ((twelve)) 12 months to make sure that you still meet the criteria for an exemption. Your exemption will continue as long as you continue to meet the criteria for an exemption.

(8) What happens when I am no longer exempt?

If you are no longer exempt, then:

(a) You will become a mandatory participant under WAC 388-310-0400; and

(b) If you have received ((sixty)) 60 or more months of TANF/SFA, your case will be reviewed for an extension. (See WAC 388-484-0006 for a description of TANF/SFA time limit extensions.)

(9) For time-limited extensions, see WAC 388-484-0006.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.010 and C.F.R. 20 § 416.2095 through § 416.2099. WSR 21-12-004, § 388-310-0350, filed 5/19/21, effective 7/1/21. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.08A.010. WSR 15-24-056, § 388-310-0350, filed 11/24/15, effective 1/1/16. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, and chapters 74.08A and 74.12 RCW. WSR 10-24-013, § 388-310-0350, filed 11/18/10, effective 12/19/10. Statutory Authority: RCW 74.04.050, 74.08.090, and 74.08A.340. WSR 09-16-079, § 388-310-0350, filed 7/31/09, effective 9/1/09; WSR 03-24-057, § 388-310-0350, filed 12/1/03, effective 1/1/04. Statutory Authority: RCW 74.08A.010(4), 74.08A.340, 74.08.090, 74.04.050. WSR 02-12-068, § 388-310-0350, filed 5/31/02, effective 6/1/02.]