

WSR 23-06-019
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed February 17, 2023, 10:45 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-14-027.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-454-0006 The department makes background checks on adults who are acting in place of a parent without court-ordered custody.

Hearing Location(s): On April 4, 2023, 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 COVID[-19] pandemic, hearings are being held virtually. Please see the DSHS website for the most up-to-date information.

Date of Intended Adoption: No earlier than April 5, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by April 4, 2023, 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, by March 21, 2023, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These amendments clarify eligibility requirements for temporary assistance for needy families and state family assistance "*in loco parentis*" households and outline DSHS responsibilities when supporting these families.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 43.43.832, 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.12.290.

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 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(4).

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

Explanation of exemptions: The proposed rules do not impact small businesses. They only impact DSHS clients.

Scope of exemption for rule proposal:

Is fully exempt.

February 15, 2023
Katherine I. Vasquez
Rules Coordinator

SHS-4949.3

AMENDATORY SECTION (Amending WSR 21-23-020, filed 11/8/21, effective 12/9/21)

~~WAC 388-454-0006 ((The department makes background checks on adults who are acting in place of a parent without court-ordered custody. How can I receive TANF/SFA as an In Loco Parentis caregiver?~~

~~(1) We check your background when you ask for temporary assistance for needy families (TANF) or state family assistance (SFA) benefits for a child who:~~

~~(a) Is not related to you; and~~

~~(b) Lives with you but you do not have a court order that gives you legal custody of the child.~~

~~(2) A child who is not related to you cannot receive TANF/SFA benefits while living with you until we have completed a background check and the results of the background check meet the criteria in subsection (3) through (5) of this section.~~

~~(3) A child who is not related to you cannot receive benefits while living with you if:~~

~~(a) You have been convicted of a crime listed in WAC 110-04-0100 (1)(a) through (e); or~~

~~(b) You have been convicted of a crime listed in WAC 110-04-0110 (1) through (3) within the last five years; or~~

~~(c) You have a pending criminal charge for a disqualifying crime listed in WAC 110-04-0130 (1)(a) through (b); or~~

~~(d) You are determined by the department to not have the character, suitability, and competence necessary to receive benefits for a child not related to you, as described in subsection (4) and (5) of this section.~~

~~(4) We review your background when you have been convicted of a crime listed in WAC 110-04-0110 (1) through (3), more than five years ago to determine your character, suitability, and competence to receive benefits for a child not related to you. We consider the following factors:~~

~~(a) The amount of time that has passed since you were convicted;~~

~~(b) The seriousness of the crime that led to the conviction;~~

~~(c) The number and types of convictions in your background; and~~

~~(d) Your age at the time of the conviction.~~

~~(5) When you have a conviction for a crime other than those listed in WAC 110-04-0100 (1)(a) through (e), or 110-04-0110 (1) through (3) or have a founded finding of child abuse or neglect, as defined in WAC 110-03-0020, we review your background as described in subsection (4) of this section.~~

~~(6) If you disclose to us that you have received a certificate of parental improvement, as described in WAC 110-05-0001, and we verify it, then the related founded finding of child abuse or neglect, or de-~~

~~pendency finding will not be considered in our determination under this section.~~

~~(7) Expunged, pardoned, sealed, or vacated conviction records, or those convictions for which you received a certificate of rehabilitation, do not count against you.)~~

~~(1) *In Loco Parentis* caregiver means:~~

~~(a) You are acting as a parent for a child living with you;~~

~~(b) The child is not related to you; and~~

~~(c) You do not have a court order that gives you legal custody or guardianship of the child.~~

~~(2) You are required to complete a financial interview to determine eligibility of the child in your care, per WAC 388-400-0005.~~

~~(3) You are eligible to receive a TANF/SFA grant for the child in your care as long as:~~

~~(a) The child meets all of the criteria under WAC 388-400-0005;~~

~~(b) You, and all adults 18 years of age or older, residing in the household must complete, sign, and provide the department a background check authorization form.~~

~~(4) In addition to the cash grant, you will be offered a voluntary assessment from the department to discuss the child's needs. The assessment may include a home visit. During the assessment, you will receive a referral to resources in your local community to provide support for the child in your care.~~

~~(5) If the background check or the assessment with the department raises concerns of child abuse or neglect, per RCW 26.44.030 the department will make a report to the department of children, youth, and families for the safety of the child.~~

~~(6) With regard to *In Loco Parentis* applicants, the department must do the following:~~

~~(a) Determine financial eligibility;~~

~~(b) Notify the child's parents of the approval of the TANF/SFA assistance per WAC 388-454-0025;~~

~~(c) Provide the caregiver information of exemptions under WAC 388-422-0020 from the requirement to cooperate with the division of child support on collection of child support from the non-custodial parents, where there are safety concerns for the caregiver or the child;~~

~~(d) Process the background check of all adults 18 years of age or older residing in the household and evaluate the findings for suitability and competency to care for the child in your home;~~

~~(e) Accept a certificate of parental improvement, from the *In Loco Parentis* applicant, as described in WAC 110-05-0001, and not considering the related finding of child abuse or neglect in the background check;~~

~~(f) Provide a voluntary assessment, voluntary home visit, and offer resources to the child in the home of the *In Loco Parentis* caregiver.~~

[Statutory Authority: RCW 43.43.832, 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.12.290. WSR 21-23-020, § 388-454-0006, filed 11/8/21, effective 12/9/21. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, and 74.08.090. WSR 16-24-037, § 388-454-0006, filed 11/30/16, effective 1/1/17. Statutory Authority: RCW 13.32A.080, 13.32A.082, 74.04.050, 74.08.090, 74.12.290, 74.12.450, 74.12.460. WSR 02-01-011, § 388-454-0006, filed 12/7/01, effective 1/7/02.]

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.