

WSR 23-20-020
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed September 25, 2023, 10:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-10-018.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) is proposing amendments to WAC 388-412-0040 Can I get my benefits replaced?

Hearing Location(s): On November 7, 2023, at 10:00 a.m., virtually via [Microsoft] Teams or call in. Please see the DSHS website for the most up-to-date information.

Date of Intended Adoption: Not earlier than November 8, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5840, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by November 7, 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 October 24, 2023, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These amendments are necessary to implement Section 501 of the 2023 Consolidated Appropriations Act, which allows replacement of stolen food benefits for households who are victims of skimming, cloning, or similar fraudulent methods of EBT theft. These amendments are currently in place under emergency rule filed as WSR 23-17-123.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.120.

Statute Being Implemented: P.L. 117-328, Title IV, Sec. 501.

Rule is necessary because of federal law, P.L. 117-328, Title IV, Sec. 501.

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 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.

September 25, 2023

Katherine I. Vasquez
Rules Coordinator

SHS-4991.6

AMENDATORY SECTION (Amending WSR 11-19-047, filed 9/13/11, effective 10/14/11)

WAC 388-412-0040 Can I get my benefits replaced? Under certain conditions, we may replace your benefits.

(1) You may get either your EBT cash ~~((and/))~~ or food assistance, ~~((benefits))~~ or both replaced if:

(a) We make a mistake that causes you to lose benefits;

(b) The EBT card mailed to you is stolen from the mail ~~((+))~~, and you never had the ability to use the benefits ~~((+))~~, and you lost benefits;

(c) You left a drug or alcohol treatment facility on or before the ~~((fifteenth))~~ 15th of the month and the facility does not have enough food assistance benefits in their EBT account for one-half of the allotment that they owe you;

(d) Your EBT benefits that were recently deposited into an inactive EBT account were canceled by mistake; or

(e) The food that your household purchased with food assistance benefits was destroyed in a household disaster or misfortune.

(i) For us to replace your benefits, you must report the loss to the department within ~~((ten))~~ 10 days from the date of the loss.

(ii) We replace the amount of your loss ~~((+))~~ up to a one-month benefit amount.

(iii) There is no limit to the number of replacements for food destroyed in a household misfortune.

(f) Your food benefits were stolen, despite your EBT card being in your possession, via card skimming, cloning, or other similar fraudulent method between October 1, 2022, and September 30, 2024; and

(i) The head of household of your assistance unit submitted a completed and signed claim within 30 days of discovering the loss; and

(ii) You have not already received two replacements in the current federal fiscal year.

(iii) We replace the amount of your loss or the amount of twice your food assistance allotment that was issued immediately prior to the date of the theft, whichever is less.

(iv) Retroactive claims for food assistance stolen between October 1, 2022, and August 22, 2023, must be reported no later than October 22, 2023.

(v) Replacement of benefits stolen via card skimming, cloning, or other similar method is contingent upon federal approval.

(2) We will not replace your benefits ~~((if your loss is for a reason other than those listed in subsection (1) above))~~ if:

(a) We decided that your request is fraudulent or skimming is not validated;

(b) Your ~~((food assistance benefits were))~~ EBT card was lost, stolen, or misplaced except for (1)(b) of this section ~~((after you received them))~~;

(c) ~~((You already received two replacements for food destroyed in household disaster or misfortune within the last five months))~~ You are

pending an administrative hearing decision regarding a denial of replacement benefits. You have the right to an administrative hearing if your request for replacement benefits is denied; or

(d) You received disaster supplemental nutrition assistance program (D-SNAP) benefits for the same month you requested a replacement for food assistance.

(3) ~~((EBT cards.))~~ It is your responsibility to keep track of your household's EBT card.

(a) If you have multiple EBT cards replaced, we may suspect you to be trafficking benefits as described under WAC 388-412-0046 (2)(d).

(b) If we suspect trafficking, we will refer your case for investigation by the office of fraud and accountability. Persons trafficking in food assistance benefits may be subject to fines, disqualification from food assistance, and legal action including criminal prosecution.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.04.510, 74.04.770, 74.12.260, 74.08.580, 9.91.142, 7 C.F.R. 273.16, the Food and Nutrition Act of 2008 as amended and 42 U.S.C. 601a; and 2011 c 42. WSR 11-19-047, § 388-412-0040, filed 9/13/11, effective 10/14/11. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 74.08.090. WSR 09-21-009, § 388-412-0040, filed 10/8/09, effective 11/15/09. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.04.510. WSR 08-14-047, § 388-412-0040, filed 6/24/08, effective 7/25/08; WSR 03-22-038, § 388-412-0040, filed 10/28/03, effective 12/1/03. Statutory Authority: RCW 74.04.510 and 74.08.090. WSR 01-18-054, § 388-412-0040, filed 8/30/01, effective 9/30/01. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. WSR 98-16-044, § 388-412-0040, filed 7/31/98, effective 9/1/98.]