

WSR 24-11-140
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed May 21, 2024, 2:27 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-07-005.

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 June 25, 2024, at 10:00 a.m., virtually via Microsoft 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 earlier than June 26, 2024.

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 May 22, 2024, by June 25, 2024, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, rules consultant, phone 360-664-6036, fax 360-664-6185, 711 relay service, email shelley.tencza@dshs.wa.gov, by June 11, 2024, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Effective July 1, 2024, these amendments support funding provided in the operating budget (ESSB 5950, chapter 376, Laws of 2024) to replace cash benefits stolen by skimming, cloning, or other fraudulent methods up to two times each federal fiscal year. In addition, the amendments update WAC language to align with federal rules requiring a signed statement from a household member prior to replacing food purchased with food assistance benefits that were destroyed in a household disaster or misfortune.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 43.20A.550, 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, and 74.08.090.

Statute Being Implemented: Operating budget (ESSB 5950, chapter 376, Laws of 2024).

Rule is necessitated by federal law, part of this change aligns with 7 C.F.R. 274.6 (a)(4).

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 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute

or regulations. Citation of the specific federal statute or regulation and description of the consequences to the state if the rule is not adopted: Part of this change aligns with 7 C.F.R. 274.6 (a)(4).

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

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

Explanation of exemptions: These amendments do not impact small businesses. They only impact DSHS customers.

Scope of exemption for rule proposal:

Is fully exempt.

May 17, 2024
Katherine I. Vasquez
Rules Coordinator

SHS-5030.1

AMENDATORY SECTION (Amending WSR 23-23-129, filed 11/17/23, effective 12/18/23)

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_or food assistance, 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, 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 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((-)); and

(i) ~~((For us to replace your benefits, you must report))~~ You reported the loss to the department within 10 days from the date of the loss((-)); and

(ii) You submitted a signed statement attesting to the household's loss within 10 days from the date the loss was reported.

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

~~((iii))~~ (iv) 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 food 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.

(g) Your cash benefits were stolen, despite your EBT card being in your possession, via card skimming, cloning, or other similar fraudulent method on or after July 1, 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 cash replacements in the current federal fiscal year; and

(iii) You received cash benefits through one of these programs: temporary assistance for needy families (TANF), state family assistance (SFA), pregnant women assistance (PWA), refugee cash assistance (RCA), or aged, blind, or disabled (ABD) cash assistance.

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

(v) Replacement of cash benefits stolen via card skimming, cloning, or other similar method will end on September 30, 2024, or on the date that the federal government ends the requirement that food benefits must be replaced, whichever is later.

(vi) Replacement of cash benefits stolen via card skimming, cloning, or other similar method will end if state funds appropriated for this purpose are exhausted.

(2) We will not replace your benefits if:

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

(b) Your EBT card was lost, stolen, or misplaced except for (1)(b) of this section;

(c) 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) 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.

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.