

WSR 24-12-088
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
(Division of Child Support)
[Filed June 5, 2024, 10:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-08-044.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) is amending five sections in chapter 388-14A WAC to reflect that the department of children, youth, and families (DCYF) administers the state's foster care program, not DSHS, and that the division of child support (DCS) provides child support services for children in residential care when DCYF refers the case to DCS. WAC 388-14A-1025 What are the responsibilities of the division of child support?, 388-14A-2105 Basic confidentiality rules for the division of child support, 388-14A-4111 When may DCS decline a request to enforce a medical support obligation?, 388-14A-8110 What happens to the money if current support is higher than the cost of care?, and 388-14A-8120 Are there special rules for collection in foster care cases?

Hearing Location(s): On July 10, 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 before July 11, 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 June 5, 2024, by 5:00 p.m. on July 10, 2024.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email Shelley.Tencza@dshs.wa.gov, by 5:00 p.m. on June 26, 2024.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DSHS is amending WAC 388-14A-1025, 388-14A-2105, 388-14A-4111, 388-14A-8110, and 388-14A-8120, related to foster care cases.

This proposal will:

(1) Make technical updates to WAC 388-14A-1025, 388-14A-4111, 388-14A-8110, and 388-14A-8120 to reflect that DCYF now administers the foster care program for Washington, not DSHS.

(2) Make additional amendments to WAC 388-14A-1025 and 388-14A-8120 to align with DCYF's WAC chapters and policy regarding when DCS provides child support services for a child in residential care. As currently written, both sections say DCS provides child support services whenever a child is in residential care. That is inaccurate. Based on clarification provided to states by the federal administration for children and families' children's bureau and office of child support services, the agency administering the state's foster care program has the authority to determine when it is appropriate to send a referral for a child in residential care to the state's child support program. DCYF changed their criteria and sends far fewer referrals than they previously did. Amendment is more appropriate than

repeal because DCS must maintain the legal framework to provide child support services when requested by DCYF.

(3) Amend WAC 388-14A-2105 to strike subsection (11) because it is obsolete. Both DCS and the community services division refer parents' requests for the whereabouts of a child receiving foster care services to the economic services administration (ESA) public disclosure unit. Subsection (11) is no longer accurate.

(4) Make other technical edits in line with the office of the code reviser's drafting guidelines.

Reasons Supporting Proposal: This rule making ensures DCS and DCYF WAC chapters and policies align and provides correct and current information to the general public.

Statutory Authority for Adoption: RCW 26.09.105, 26.18.170, 26.23.050, 26.23.110, 26.23.120, 34.05.020, 34.05.060, 74.08.090, 74.20.040, 74.20A.055, and 74.20A.056.

Statute Being Implemented: RCW 26.09.105, 26.18.170, 26.23.050, 26.23.110, 26.23.120, 74.20.330, 74.20A.030.

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

Name of Proponent: DSHS, ESA, DCS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Monica Turnbaugh, Rules Coordinator, DCS Headquarters, P.O. Box 9162, Olympia, WA 98507-9162, 360-664-5339.

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. Although these rules meet the definition of significant legislative rules under RCW 34.05.328(5), the requirement for a cost-benefit analysis does not apply because they adopt or incorporate by reference rules of another Washington state agency (RCW 34.05.328 (5)(b)(ii)) and they are DSHS rules relating only to liability for care of dependents (RCW 34.05.328 (5)(b)(vii)).

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: This proposal does not affect small businesses. This rule is exempt under RCW 34.05.328 (5)(b)(vii) Rules of the department of social and health services ... concerning liability for care of dependents.

Scope of exemption for rule proposal:

Is fully exempt.

June 3, 2024
Katherine I. Vasquez
Rules Coordinator

SHS-5036.2

AMENDATORY SECTION (Amending WSR 13-01-075, filed 12/18/12, effective 1/18/13)

WAC 388-14A-1025 What are the responsibilities of the division of child support?

- (1) The division of child support (DCS) provides support enforcement services when:
- (a) The department of social and health services pays public assistance (~~(or provides foster care services)~~);
 - (b) A former recipient of public assistance is eligible for services, as provided in WAC 388-14A-2000 (2)(c);
 - (c) The department of children, youth, and families:
 - (i) Provides residential care (foster care) for a dependent child; and
 - (ii) Refers a noncustodial parent (NCP) or parents (NCPs) to DCS for DCS to provide support enforcement services for the child in residential care;
 - (~~(d)~~) A custodial parent (CP) or (~~(noncustodial parent (-))~~) NCP (~~(+)~~) requests nonassistance support enforcement services under RCW 74.20.040 and WAC 388-14A-2000;
 - (~~(d)~~) (e) A support order or wage assignment order under chapter 26.18 RCW directs the NCP to make support payments through the Washington state support registry (WSSR);
 - (~~(e)~~) (f) A support order under which there is a current support obligation for dependent children is submitted to the WSSR;
 - (~~(f)~~) (g) A former (~~(custodial parent (-))~~) CP (~~(+)~~) requests services to collect a support debt accrued under a court or administrative support order while the (~~(child(-ren))~~) child or children resided with the CP;
 - (~~(g)~~) (h) A child support enforcement agency in another state or foreign country requests support enforcement services; or
 - (~~(h)~~) (i) A child support agency of an Indian tribe requests support enforcement services.
- (2) DCS takes action under chapters 26.09, 26.18, 26.19, 26.21A, 26.23, 26.26A, 26.26B, 74.20, and 74.20A RCW to establish, enforce, and collect child support obligations.
- (a) DCS refers cases to the county prosecuting attorney or attorney general's office when judicial action is required.
 - (b) If DCS has referred a case to the county prosecuting attorney or attorney general's office and the CP has been granted good cause level A, DCS does not share funding under Title IV-D for any actions taken by the prosecutor or attorney general's office once DCS advises them of the good cause finding.
- (3) DCS does not take action on cases where the community services office (CSO) has granted the CP good cause not to cooperate under WAC 388-422-0020, when the CSO grants "level A good cause." If the CSO grants "level B good cause," DCS proceeds to establish and (~~(/or)~~) enforce support obligations but does not require the CP to cooperate with DCS. WAC 388-14A-2065 and 388-14A-2070 describe the way DCS handles cases with good cause issues.
- (4) DCS establishes, maintains, retains, and disposes of case records in accordance with the department's records management and retention policies and procedures adopted under chapter 40.14 RCW.
- (5) DCS establishes, maintains, and monitors support payment records.
- (6) DCS receives, accounts for, and distributes child support payments required under court or administrative orders for support.

(7) DCS charges and collects fees as required by federal and state law regarding the Title IV-D child support enforcement program.

(8) DCS files a satisfaction of judgment when we determine that a support obligation is either paid in full or no longer legally enforceable. WAC 388-14A-2099 describes the procedures for filing a satisfaction of judgment. WAC 388-14A-2099(4) describes how DCS determines a support obligation is satisfied or no longer legally enforceable.

(9) Based on changes in federal statutes and regulations, DCS establishes or changes the rules regarding its responsibilities when acting as either the initiating agency or responding agency in an intergovernmental child support case.

AMENDATORY SECTION (Amending WSR 07-08-055, filed 3/29/07, effective 4/29/07)

WAC 388-14A-2105 Basic confidentiality rules for the division of child support. (1) Under RCW 26.23.120, all information and records, concerning persons who owe a support obligation or for whom the division of child support (DCS) provides support enforcement services, are private and confidential.

(2) DCS discloses information and records only to a person or entity listed in this section or in RCW 26.23.120, and only for a specific purpose allowed by state or federal law. See WAC 388-14A-7500 regarding disclosure of personal information in the context of referrals under the Uniform Interstate Family Support Act (UIFSA).

(3) DCS may disclose information to:

(a) The person who is the subject of the information or records (~~(r)~~) unless the information or records are exempt under RCW (~~(42.17.310)~~) 42.56.210;

(b) Local, state, and federal government agencies for support enforcement and related purposes;

(c) A party to a judicial proceeding or a hearing under chapter 34.05 RCW, if the superior court judge or administrative law judge (ALJ) enters an order to disclose. The judge or presiding officer must base the order on a written finding that the need for the information outweighs any reason for maintaining privacy and confidentiality;

(d) A party under contract with DCS, including a federally recognized Indian tribe, if disclosure is for support enforcement and related purposes;

(e) A person or entity, including a federally recognized Indian tribe, when disclosure is necessary to the administration of the child support program or the performance of DCS functions and duties under state and federal law;

(f) A person, representative, or entity if the person who is the subject of the information and records consents, in writing, to disclosure;

(g) The office of administrative hearings or the office of appeals for administration of the hearing process under chapter 34.05 RCW. The ALJ or review judge must:

(i) Not include the address of either party in an administrative order, or disclose a party's address to the other party;

(ii) State in support orders that the address is known by the Washington state support registry; and

(iii) Inform the parties they may obtain the address by submitting a request for disclosure to DCS under WAC 388-14A-2110(2).

(4) DCS may publish information about a noncustodial parent (NCP) for locate and enforcement purposes.

(5) WAC 388-14A-2114(1) sets out the rules for disclosure of address, employment, or other information regarding the custodial parent (CP) or the children in response to a public disclosure request.

(6) WAC 388-14A-2114(2) sets out the rules for disclosure of address, employment, or other information regarding the NCP in response to a public disclosure request.

(7) DCS may disclose the Social Security number of a dependent child to the ~~((noncustodial parent-))~~ NCP ~~((+))~~ to enable the NCP to claim the dependency exemption as authorized by the Internal Revenue Service.

(8) DCS may disclose financial records of an individual obtained from a financial institution only for the purpose of, and to the extent necessary, to establish, modify, or enforce a child support obligation of that individual.

(9) Except as provided elsewhere in chapter 388-14A WAC, chapter 388-01 WAC governs the process of requesting and disclosing information and records.

(10) DCS must take timely action on requests for disclosure. DCS must respond in writing within five working days of receipt of the request.

~~((11))~~ ~~((If a child is receiving foster care services, the parent(s) must contact their local community services office for disclosure of the child's address information.~~

~~((12))~~ The rules of confidentiality and penalties for misuse of information and reports that apply to a IV-D agency employee, also apply to a person who receives information under this section.

~~((13))~~ (12) Nothing in these rules:

(a) Prevents DCS from disclosing information and records when such disclosure is necessary to the performance of its duties and functions as provided by state and federal law;

(b) Requires DCS to disclose information and records obtained from a confidential source.

~~((14))~~ (13) DCS cannot provide copies of the confidential information form contained in court orders. You must go to court to get access to the confidential information form. DCS may disclose information contained within the confidential information form if disclosure is authorized under RCW 26.23.120, chapter 388-01 ~~((WAC))~~, or ~~((chapter))~~ 388-14A WAC.

~~((15))~~ (14) DCS may provide a Support Order Summary to the parties to an administrative support order under WAC 388-14A-2116.

AMENDATORY SECTION (Amending WSR 19-02-017, filed 12/21/18, effective 1/21/19)

WAC 388-14A-4111 When may DCS decline a request to enforce a medical support obligation? The division of child support (DCS) may decline to enforce a medical support obligation using the remedies available under RCW 26.09.105, 26.18.170, and 26.23.110 if one or more of the following apply:

- (1) The medical support obligation is imposed by a child support order that was not entered in a court or administrative forum of the state of Washington;
- (2) The department of social and health services is not paying public assistance (~~(or providing foster care services)~~);
- (3) The department of children, youth, and families is not providing services for a child in residential care (foster care);
- (4) The party requesting enforcement of the medical support obligation does not have an open IV-D case with DCS for the child;
- ~~((4))~~ (5) The party requesting enforcement of the medical support obligation is not a parent of the child for whom the medical support obligation was established;
- ~~((5))~~ (6) The party is requesting reimbursement of the obligated parent's proportionate share of medical premium costs, and the obligated parent is currently providing accessible health care coverage for the child;
- ~~((6))~~ (7) The party requesting enforcement of the medical support obligation is not a former recipient of public assistance as described in WAC 388-14A-2000 (2) (d);
- ~~((7))~~ (8) DCS has not received a request for services from a child support agency in another state or a child support agency of an Indian tribe or foreign country;
- ~~((8))~~ (9) The party requesting enforcement of the medical support obligation has not applied for full support enforcement services;
- ~~((9))~~ (10) The party requesting enforcement of the medical support obligation does not qualify as a party who can receive child support enforcement services from DCS under WAC 388-14A-2000;
- ~~((10))~~ (11) The case does not meet the requirements for provision of support enforcement services from DCS under WAC 388-14A-2010;
- ~~((11))~~ (12) DCS denies the application under WAC 388-14A-2020;
- ~~((12))~~ (13) The party requesting enforcement of the medical support obligation does not provide proof of payment, any required forms, ~~(and/)~~ or the declaration under penalty of perjury required under WAC 388-14A-3312;
- ~~((13))~~ (14) The case meets one or more of the reasons set out in WAC 388-14A-4112(2) that DCS does not enforce a custodial parent's obligation to provide medical support.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-8110 What happens to the money if current support is higher than the cost of care? (1) When the division of child support (DCS) collects child support (~~(from the parent(s) of a child in)~~) on a foster care case, DCS sends the amounts collected to the (~~(division of child and family services (DCFS))~~) department of children, youth, and families (DCYF), which administers foster care funds.

(2) (~~(DCFS and its office of accounting services (OAS) apply)~~) DCYF applies child support payments collected by DCS (~~(-~~ ~~(3) DCFS and/or OAS)~~) and deposits in a trust account for the child any child support payments which (~~(they don't)~~) it doesn't use to reimburse foster care expenses.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-8120 Are there special rules for collection in foster care cases? (1) (~~(Whenever the department provides residential care ("foster care") for a dependent child or children, the)~~) The non-custodial parent (NCP) or parents (NCPs) satisfy their obligation to support the child or children by paying to the ((department)) division of child support (DCS) the amount specified in a court order or administrative order, if a support order exists((-)), when:

(a) The department of children, youth, and families (DCYF) provides residential care (foster care) for a dependent child; and

(b) DCYF refers the NCP or NCPs to DCS for DCS to take action.

(2) (~~(The division of child support (-))~~) DCS ((+)) takes action under the provisions of chapters 74.20 and 74.20A RCW and this chapter to enforce and collect support obligations owed for children receiving foster care services.

(3) If, during a month when a child is in foster care, the NCP is the "head of household" with other dependent children in the home, DCS does not collect and retain a support payment if:

(a) The household's income is below the need standard for temporary assistance for needy families (TANF) (~~(+see)~~) WAC 388-478-0015(+); or

(b) Collection of support would reduce the household's income below the need standard.

(4) The NCP's support obligation for the child or children in foster care continues to accrue during any month DCS is prevented from collecting and retaining support payments under this section.

(5) If (~~(the department)~~) DCS has collected support payments from the head of household during the months which qualify under (~~(section -3-))~~ subsection (3) of this section, the NCP may request a conference board in accordance with WAC 388-14A-6400.

(6) The NCP must prove at the conference board that the income of the household was below or was reduced below the need standard during the months DCS collected payments.

(7) If the conference board determines that DCS has collected support payments from the head of household that the department or DCYF is not entitled to retain according to this section, DCS must promptly refund, without interest, any support payments, or the portion of a payment which reduced the income of the household below the need standard.

(8) This section does not apply to payments collected prior to August 23, 1983.