

WSR 26-07-039
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed March 12, 2026, 12:39 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 26-03-033.

Title of Rule and Other Identifying Information: The department of social and health services (DSHS) is proposing amendments to WAC 388-400-0047 What is the heat and eat program and are you eligible?, and 388-450-0015 What types of income are not used by the department to figure out my benefits?

Hearing Location(s): On April 21, 2026, at 10:00 a.m., virtually via 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 April 22, 2026.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, beginning noon on March 18, 2026, by 5:00 p.m. on April 21, 2026.

Assistance for Persons with Disabilities: Contact Shelley Tencza, rules consultant, phone 360-664-6036, TTY 711 relay service, email Tenczsa@dshs.wa.gov, by 5:00 p.m. on April 7, 2026.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: These amendments are necessary to implement changes to the heat and eat program, as required by H.R.1 (P.L. 119-21); conferring the standard utility allowance only to households with an elderly or disabled member based on receipt of low-income energy assistance program (LIHEAP) payments through the department of commerce. It also implements changes to how LIHEAP payments are counted in determining eligibility for food assistance. Additionally, the amendments improve clarity, update policy, and better align our rules with state and federal laws.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.300, 74.04.0500, 74.04.510, 74.04.515, 74.08.090, 74.08A.010, 74.08A.120, 74.08A.903, and 82.08.0206.

Rule is necessary because of federal law, H.R.1, P.L. 119-21.

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: H.R.1, P.L. 119-21.

Is exempt under RCW 19.85.025(3) as the rules are adopting or incorporating by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule; and rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Is exempt under RCW 19.85.025(4).

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.

March 4, 2026
Katherine I. Vasquez
Rules Coordinator

SHS-5125.1

AMENDATORY SECTION (Amending WSR 17-09-008, filed 4/6/17, effective 5/7/17)

WAC 388-400-0047 What is the heat and eat program and are you eligible? (1) What is the heat and eat program?

(a) The heat and eat program is (~~(a special)~~) an energy assistance program for certain assistance units (AUs) that receive basic food, Washington combined application project (WASHCAP), or the food assistance program for legal immigrants (FAP).

(b) (~~(An assistance unit (AU))~~) AUs in the heat and eat program ((receives)) that receive federal basic food benefits are issued ((up to twenty dollars and one cent)) \$20.01 in federal low-income home energy assistance program (LIHEAP) benefits if they meet the requirements in subsection (3) of this section. This (~~(U.S. Department of Health and Human Services, Administration for Children and Families LIHEAP)~~) benefit makes the AU eligible for the standard utility allowance (SUA) under WAC 388-450-0195 for (~~(twelve))~~ 12 months. AUs that receive state-funded FAP benefits and meet the requirements in subsection (3) of this section qualify for the SUA when calculating basic food eligibility but do not receive the LIHEAP payment.

(2) If you receive WASHCAP, you will get LIHEAP and your AU is eligible for the (~~(standard utility allowance))~~ SUA under WAC 388-450-0195 for (~~(twelve))~~ 12 months.

(3) Is your AU eligible for heat and eat?

Your AU is eligible for heat and eat if you meet all of the following:

(a) The AU contains an elderly or disabled member, as defined in WAC 388-400-0040;

(b) You receive at least one dollar in basic food or FAP benefits prior to any recoupments;

~~((b))~~ (c) Your basic food or FAP AU includes at least one U.S. citizen or qualified alien as defined under WAC 388-424-0001 ~~((as))~~ and required by 8 U.S.C. Sec. 1611 (a)(1);

~~((e))~~ (d) You do not receive transitional food assistance ~~((TFA))~~ under WAC 388-489-0005;

~~((d))~~ (e) You are not eligible for ~~((the standard utility allowance (SUA)))~~ SUA under WAC 388-450-0195 ~~((based on having))~~ because you do not have out-of-pocket costs for heating or cooling;

~~((e))~~ (f) You have not received a regular LIHEAP benefit amount of more than ~~((twenty dollars))~~ \$20.00 in the past ~~((twelve))~~ 12 months;

(g) You have not received a LIHEAP payment within the last 12 months from a community agency contracted with the department of commerce; and

~~((f))~~ (h) You do not receive the maximum allotment for your AU size under WAC 388-478-0060 without using the SUA.

(4) How do you receive heat and eat?

(a) If you are eligible for a heat and eat payment, we deposit the cash benefit on your EBT card.

(b) The heat and eat ~~((benefit))~~ program provides a single payment to eligible households once every 12 ~~((is good for twelve))~~ months.

(c) ~~((After twelve months, we look at your circumstances to see if you are still eligible))~~ Eligibility for heat and eat is reviewed annually.

(5) How do you apply for heat and eat?

(a) ~~((You do not apply for heat))~~ Heat and eat doesn't have an application process.

(b) We will determine if your food program AU is eligible to receive heat and eat and automatically provide the benefit to you if you qualify.

AMENDATORY SECTION (Amending WSR 26-01-187, filed 12/23/25, effective 1/23/26)

WAC 388-450-0015 What types of income are not used by the department to figure out my benefits? (1) We do not count the following types of income when we determine your cash assistance and basic food benefits:

(a) Bona fide loans as defined in WAC 388-470-0045, except certain student loans as specified under WAC 388-450-0035;

(b) Federal income tax refunds, earned income tax credit (EITC), and Washington's working families tax credit (WFTC) payments in the month received;

(c) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;

(d) Federal \$25 supplemental weekly unemployment compensation ~~((payment))~~ payments authorized by the American Recovery and Reinvestment Act of 2009;

(e) Title IV-E and state foster care maintenance payments if you choose not to include the foster child in your assistance unit (AU);

- (f) ~~((Energy assistance payments;~~
~~(g))~~) Educational assistance we do not count under WAC 388-450-0035;
- ~~((h))~~) (g) Native American benefits and payments we do not count under WAC 388-450-0040;
- ~~((i))~~) (h) Income from employment and training programs we do not count under WAC 388-450-0045;
- ~~((j))~~) (i) Money withheld from a benefit to repay an overpayment from the same income source;
- ~~((k))~~) (j) One-time payments issued under the Department of State or Department of Justice reception and replacement programs, such as voluntary agency (VOLAG) payments;
- ~~((l))~~) (k) Payments we are directly told to exclude as income under state or federal law;
- ~~((m))~~) (l) Payments made to someone outside of the household for the benefits of the ~~((assistance unit))~~ AU using funds that are not owed to the household;
- ~~((n))~~) (m) Distributions for qualified disability expenses from an achieving a better life experience (ABLE) account; and
- ~~((o))~~) (n) Medicare advantage supplemental benefits.
- (2) For basic food only:
- (a) We do not count the total monthly amount of all legally obligated current or back child support payments paid by the ~~((assistance unit))~~ AU to someone outside of the ~~((assistance unit))~~ AU for:
- (i) A person who is not in the ~~((assistance unit))~~ AU; or
- (ii) A person who is in the ~~((assistance unit))~~ AU to cover a period of time when they were not living with the member of the ~~((assistance unit))~~ AU responsible for paying the child support on their behalf; and
- (b) We do count money withheld because you were overpaid for not meeting requirements of a federal, state, or local means tested programs such as temporary assistance for needy families (TANF), state family assistance (SFA), aged, blind, or disabled (ABD) cash assistance, pregnant women assistance (PWA), and supplemental security income (SSI).
- (c) We do not count energy assistance payments for households that include an elderly or disabled AU member.
- (3) For cash only we do not count:
- (a) Income to individuals to compensate participation in part-time boards and commissions received under RCW 43.03.230.
- (b) For temporary assistance for needy families (TANF) or state family assistance (SFA) recipients, legally obligated, current child support payments as defined in WAC 388-422-0005.
- (c) Energy assistance payments.