



# PROPOSED RULE MAKING

## CR-102 (June 2004)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

**Agency:** Department of Social and Health Services, Children's Administration

- Preproposal Statement of Inquiry was filed as **08-05-044**
- Expedited Rule Making--Proposed notice was filed as WSR \_\_\_\_\_; or
- Proposal is exempt under RCW 34.05.310(4).

- Original Notice
- Supplemental Notice to WSR
- Continuance of WSR

**Title of rule and other identifying information:** (Describe Subject)

The department is amending chapter 388-25 WAC Child Welfare Services –Foster Care

**Hearing location(s):**

Office Building 2 - Auditorium  
 (DSHS Headquarters)  
 1115 Washington  
 Olympia, WA 98504  
 Public parking at 11<sup>th</sup> and Jefferson. A map is available at:  
<http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>  
 or by calling 360-664-6094.

Date: **June 9, 2009** Time: **10:00 a.m.**

**Submit written comments to:**

Name: DSHS Rules Coordinator  
 Address: PO Box 45850, Olympia WA, 98504-5850  
 Delivery: 4500 – 10<sup>th</sup> Ave. SE, Lacey, Washington 98503  
 E-mail: [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov)  
 Fax: (360) 664-6185

by  
**5 p.m. on June 9, 2009**

**Assistance for persons with disabilities:** Contact Jennisha Johnson, DSHS Rules Consultant by May 26, 2009  
 TTY (360) 664-6178 or (360) 664-6094 or  
 by e-mail at [johnsjl4@dshs.wa.gov](mailto:johnsjl4@dshs.wa.gov)

**Date of intended adoption:** Not earlier than June 10, 2009  
(Note: This is **NOT** the **effective** date)

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:**

The purpose is to clarify the scope and nature of the right of a foster parent to receive notice and have an opportunity for a hearing to contest a foster care rate assessment.

**Reasons supporting proposal:** See above and see page 2.

**Statutory authority for adoption:**

RCW 74.08.090

**Statute being implemented:**

RCW 74.08.090

**Is rule necessary because of a:**

- |                         |                              |  |
|-------------------------|------------------------------|--|
| Federal Law?            | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision?   | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
- If yes, CITATION:

**DATE**

April 22, 2009

**NAME** (type or print)

Stephanie Schiller

**SIGNATURE**

**TITLE**

DSHS Rules Coordinator

**CODE REVISER USE ONLY**

**OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED**

**DATE: April 28, 2009**

**TIME: 12:08 PM**

**WSR 09-10-024**

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:  
None

**Name of proponent:** (person or organization) Department of Social and Health Services

- Private  
 Public  
 Governmental

**Name of agency personnel responsible for:**

Name	Office Location	Phone
Drafting..... Carrie Kendig	PO BOX 45710	(360) 902-7568
Implementation.... Carrie Kendig	PO BOX 45710	(360) 902-7568
Enforcement..... Carrie Kendig	PO BOX 45710	(360) 902-7568

**Has a small business economic impact statement been prepared under chapter 19.85 RCW?**

Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:  
Address:  
phone ( )  
fax ( )  
e-mail

No. Explain why no statement was prepared.

Foster parents are defined in the Social Security Act in SEC.475. [42.U.S.C. 675 (4)(A)]

The term "foster care maintenance payments" means payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence."

The position of foster parent consistent with the above federal definition receives a maintenance payment. Foster parents are required to have employment outside of foster parenting to support them. Child placing agencies may receive a payment which is disbursed to the foster parent. These situations are referred to in the above federal definition. This is considered reasonable costs for administration and operation the payment for the foster parent is through the child placing agency.

The foster parents who provide care under a Child Placing Agency receive maintenance and reimbursement which are not reportable as income. These homes are not businesses under IRS rules. Foster parents licensed through the state or private child placing agency do not fit the definition in Chapter 19.85 RCW for a small business.

CA has analyzed these proposed new rules and concludes that there are no additional costs to small businesses. The preparation of a comprehensive SBEIS is not required.

**Is a cost-benefit analysis required under RCW 34.05.328?**

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:  
Address:  
phone ( )  
fax ( )  
e-mail

No: Please explain:

Since the proposed changes to chapter 388-25 WAC meet several of the exemptions, no Cost-Benefit Analysis is necessary. The following are the applicable exemptions according to RCW 34.05.328(5)(b):

- (iv): Rules with only clarifying existing rule language and typographical errors;
- (vii) Rules relating only to client financial eligibility;
- (vii):Rules concerning liability for the care of dependents;

NEW SECTION

**WAC 388-25-0001 What kinds of financial support are available to licensed foster care providers?** In addition to medical assistance and other services that may be provided to meet the specific needs of a foster child, the department provides licensed foster parents with a monthly foster care maintenance payment. This payment is for the benefit of the child.

NEW SECTION

**WAC 388-25-0003 What is the purpose of the foster care maintenance payment?** The purpose of the foster care maintenance payment is to assist licensed foster parents in meeting the needs of their foster child. A basic rate payment (level 1) is paid to all foster parents to help cover the cost of food, clothing, shelter, and personal incidentals. In addition, there are three levels of supplemental payments (levels 2, 3 and 4) which are paid to foster parents who care for children with varying degrees of physical, mental, behavioral or emotional conditions that require increased effort, care or supervision that are above the needs of a typically developing child.

NEW SECTION

**WAC 388-25-0011 What method does the department use to determine what foster care rate will be paid for a foster child?** The department uses a standardized assessment tool, the foster care rate assessment, to determine foster care rate that will be paid on behalf of the child. The tool assesses the needs of the child and the foster parent's ability and time required to meet those needs.

NEW SECTION

**WAC WAC 388-25-0016 What are the essential features of the foster care rate assessment system?** The foster care rate assessment system includes the following essential features:

(1) Foster care maintenance payments are based on foster parent time and the nature of activities needed to meet the needs

of the child.

(2) Standardized assessment tool is used for all children.

(3) The assessment tool is completed jointly by foster parent and social worker.

(4) Assessments are updated periodically, in accordance with WAC 388-25-0032.

(5) The assessment process is automated.

#### NEW SECTION

**WAC 388-25-0022 How does the foster care rate assessment work?** The foster care rate assessment is a two-step process that includes the participation of the child's foster parent.

(1) Step one: The child's social worker or designated rate assessment specialist will meet with the foster parent in person or telephonically to jointly complete the standardized assessment form.

(2) Step two: After step one has been completed, the child's social worker or designated rate assessment specialist enters the information from the assessment into the computer and, based on the responses to the questions in the standardized assessment, the rate assessment software program automatically calculates the foster care rate that will be paid on behalf of the child.

#### NEW SECTION

**WAC 388-25-0027 What factors are considered in the foster care rate assessment?** The assessment tool considers the average number of hours, beyond those expected for a typically developing child of the same age, the foster parent spends in:

(1) Caring and/or advocating for the child to meet the child's physical and behavioral needs;

(2) Participating in parenting activities related to the child's physical or emotional/behavioral therapeutic plan;

(3) Engaging in parenting activities related to supervising and supporting the educational needs of the child;

(4) Participating in parenting activities related to scheduling, arranging, and supervising activities, such as medical and dental appointments for the child, visits between the child and his or her parents and/or siblings, or other school or recreational activities;

(5) Repairing, cleaning or replacing household items, over and above normal repair, due to the child's chronic physical problems or destructive behavior; and

(6) Preparing the child to transition back to the child's parents or to an adoptive or other foster care placement.

NEW SECTION

**WAC 388-25-0032 How often do the foster parent and social worker meet to complete the rate assessment?** The social worker or designated rate assessment specialist will meet with the foster parent in person or telephonically to complete the assessment:

- (1) Within thirty days of the child's placement in the foster parent's home;
- (2) At least every six months after the first assessment; and
- (3) When there is a significant change in circumstances for the child or in the foster parent's ability or time required to meet the child's needs.

NEW SECTION

**WAC 388-25-0037 What are the reimbursement levels?** The amount of foster care maintenance payments may change slightly from year to year. A basic rate payment (level 1) is paid to all foster parents to help cover the cost of food, clothing, shelter, and personal incidentals. In addition, there are three levels of supplemental payments that are paid to foster parents who care for children with varying degrees of physical, mental, behavioral, emotional and/or intellectual conditions that require increased effort, care or supervision. The levels of payments are as follows:

(1) **Level 1:** Children assessed at this level receive the basic foster care maintenance rate. The payment is based on the time typically spent by a foster parent to meet the needs of a child, who is developing comparably to children in the same age range. The payments are based on three age categories: birth to five years old, six to eleven years old, and twelve to eighteen years old.

(2) **Level 2:** Children assessed at this level require the foster parent's increased attention, time and supervision, beyond that required to meet the child's basic or routine needs, to address specific physical, mental, behavioral, emotional and/or intellectual challenges.

(3) **Levels 3 and 4:** Children assessed at these levels have the highest needs for attention and care. These children require significantly more time from the foster parent because of the severity of their issues. These children often will be participating in more than one treatment program, and may need to participate in treatment in the foster parent's home. A child assessed at level 3 or 4 may have serious medical, behavioral or psychiatric issues or behaviors that require a safety plan.

NEW SECTION

**WAC 388-25-0042 Can the child be assessed at a different level, depending on the foster home?** The assessment is based on

both the child's needs and the foster parent's ability and time required to meet those needs. It is possible that a child would be assessed at a different rate in one home than in another, depending on the foster parent's abilities or circumstances as well as the resources and support services available to the child and foster family.

#### NEW SECTION

**WAC 388-25-0047 Can the assessment change if the child's needs change?** The child will always receive at least the basic rate (level 1) for the child's age category. However, the child may be assessed at level 2, 3, or 4, as the child's needs change or the circumstances of the foster parents change.

**For example:** In cases where the child's needs decrease or the time required of the foster parent to meet the child's needs decreases, the standardized assessment may assess the child at a lower rate. For example, on a reassessment a child might be assessed at level 2, when the child's previous rate had been at level 3. In cases where the child's needs or the demands on the foster parent increase, the standardized assessment may assess the child at a higher level.

#### NEW SECTION

**WAC 388-25-0052 How will the foster parent be notified of the rate the child will receive?** The foster parent will receive a written letter and payment plan, generated by the department's foster care rate assessment computer program, which will notify the foster parent of

- (1) The amount of the monthly foster care maintenance payment that will be paid on behalf of the child;
- (2) The right to review the assessment and;
- (3) How to exercise the right of review.

#### NEW SECTION

**WAC 388-25-0057 Can a foster parent challenge the rate assessment?** A foster parent, acting on behalf of the foster child, may request a review of the rate assessment for the child.

NEW SECTION

**WAC 388-25-0062 How does a foster parent seek a department review of the rate assessment?** (1) The foster parent must make a written request for department review of the assessment.

(2) The request must be received by CA within twenty calendar days of the date of the letter informing the foster parent of the rate assessed for the child. If a request is not made within ten days, the department will not review the assessment.

(a) The department may grant a twenty-day extension of time for filing the request for review, if the foster parent has contacted a regional foster parent liaison within the initial twenty-day time period and asked for assistance in informally resolving any disagreement as to the rate assessed.

(b) The department has the descretion and may grant a ten-day extension for good cause.

(3) The request must include a statement explaining why the foster parent believes the assessed rate is incorrect. The foster parent may provide additional information that he or she believes is relevant to the questions asked on the standardized form.

(4) The request must be sent to the individual and address identified in the letter informing the foster parent of the rate assessed for the child.

NEW SECTION

**WAC 388-25-0067 What does the department consider in reviewing the request?** (1) The review will be conducted by department management level staff, or by a designee who was not involved in the rate assessment process.

(2) The review will be conducted within ten days of receiving the request for review.

(3) The reviewer will consider:

(a) Whether the foster parent and the social worker or designated rate assessment specialist met in person or telephonically to jointly complete the standardized assessment form;

(b) Whether the information obtained through the conversation between the social worker or rate assessment specialist and the foster parent was accurately recorded on the form;

(c) Whether any additional information provided by the foster parent, as authorized in WAC 388-25-0060(3) is relevant to the automated assessment;

(d) Whether the information was accurately entered into the computer program; and

(e) Whether the computer program was properly functioning in calculating the rate and providing the written report of the assessment.

(4) The department will not consider information about the child or the foster family that is outside the standardized assessment form and will not alter the computerized calculation that is based on a properly completed form.

NEW SECTION

**WAC 388-25-0072 How does the foster parent learn about the department's decision on review?** (1) The department will send the foster parent a written letter notifying the foster parent that the department either:

(a) Upholds the rate assessment; or  
(b) Agrees the rate was wrongly calculated and adjusts the rate to the proper level.

(2) If the department upholds the rate assessment, the notice will provide information about further review.

NEW SECTION

**WAC 388-25-0077 How does the foster parent appeal the department's decision on review?** (1) If the department upholds the rate assessment on review, the foster parent has the right to further challenge the assessment by timely requesting an administrative hearing.

(2) The request must be in writing and sent to the office of administrative hearings (OAH). WAC 388-02-0025 lists the current addresses for OAH.

(3) The request must be received by OAH within twenty days from the date of the letter notifying the foster parent of the department's decision on review.

(4) Foster care providers and recipients of foster care funds do not have a right to request an administrative hearing to challenge or dispute the established rates of the foster care program or to challenge the foster care rate assessment standardized form or program.

NEW SECTION

**WAC 388-25-0082 What law and rules govern the administrative law judge?** Chapter 34.05 RCW, chapter 388-02 WAC, and the sections of this chapter relating to foster care rate assessments govern any administrative hearing to review a child's foster care rate assessment. In the event of a conflict between the provisions of this chapter and chapter 388-02 WAC, the provisions of this chapter prevail.

NEW SECTION

**WAC 388-25-0087 What issues may be decided by the administrative law judge?** (1) The administrative law judge (ALJ) will consider only:

(a) Whether the foster parent and the social worker or designated rate assessment specialist met in person or telephonically to jointly complete the standardized assessment form;

(b) Whether the information obtained in the meeting between the social worker or rate assessment specialist and foster parent was accurately recorded on the form;

(c) Whether additional information provided by the foster parent on review to the department was accurately recorded on the form, if applicable;

(d) Whether the information was accurately entered into the computer program; and

(e) Whether the computer program was properly functioning in calculating the rate and providing the written report of the assessment.

(2) The ALJ must not consider information about the child or the foster family that is outside the standardized assessment form or that was not provided to the department at the time of the assessment or at the time of the department's review of the assessment.

(3) The ALJ must not make a determination that conflicts with a properly completed standardized foster care rate assessment.

(4) The ALJ must not consider a challenge to the department's established foster care rates or to the foster care rate assessment standardized form or program.

AMENDATORY SECTION (Amending WSR 01-08-047, filed 3/30/01, effective 4/30/01)

**WAC 388-25-0095 What are the requirements for release of foster parents' care records?** Foster parent care records may be disclosed upon request in accordance with RCW ((~~42.17.260~~)) 42.56.070.

NEW SECTION

**WAC 388-25-0107 What is the beginning date for payment of foster care?** (1) The department begins foster care payment for a child on the date the department or its authorized designee places the child in the licensed foster home.

(2) The department pays for each night a child resides in foster care.

AMENDATORY SECTION (Amending WSR 01-08-047, filed 3/30/01, effective 4/30/01)

**WAC 388-25-0195 How does the department make reimbursement for foster care for a child served by the department who moves out-of-state with the foster family?** (~~((1) A child may join a foster family in a move out-of-state only if this move supports achieving a permanency goal as outlined in the child's case plan.~~

~~(2) The department and the foster parent must follow CA requirements when a foster child and the licensed foster family moves out-of-state. This may include obtaining permission of the court before the move.~~

~~(3) When the foster family moves to another state, the department must arrange with the other state or local social service agency to license and supervise the home and the placement (see chapter 26.34 RCW). The department does not need to make such arrangements for supervision when the family leaves this state during a vacation.~~

~~(a) Before the foster family moves from Washington to the new state, the social worker or the foster parent may request a foster home license application from the new state.~~

~~(b) If the department and the foster parent are unable to obtain an application for license before the foster family leaves Washington, the foster parent must, upon arrival in the new state of residence, contact the local foster home licensing agency in the new state to apply for a license in that state.~~

~~(4) When the foster family moves to another state with a child in the department's custody, the child's DCFS social worker must submit necessary interstate compact on the placement of children (ICPC) application forms to the department's ICPC program manager. The social worker must do this as soon as the foster family has a new residence or address in the new state. The ICPC request must ask that the new state license the family as a foster home and provide ongoing supervision of the child in care.~~

~~(5) The department continues payments at the department's current rates until the other state fully licenses the home. After receiving a copy of the foster family home license from the other state, the DCFS supervising social worker authorizes payment at the receiving state's rates (see WAC 388-25-0195)) When the foster family moves to another state, the department must arrange with the other state or local social service agency to license and supervise the home and the placement (see chapter 26.34 RCW).~~

~~After receiving a copy of the foster family home license from the other state, the DCFS supervising social worker authorizes payment.~~

AMENDATORY SECTION (Amending WSR 01-08-047, filed 3/30/01, effective 4/30/01)

**WAC 388-25-0200 What payment procedures must the department follow for children placed across state borders?** (1) When the department places a child into a new placement with a family

residing and licensed in another state, the DCFS social worker must obtain the payment rates from that state. Following receipt of the other state's rates, the department will pay that state's rates ((in accordance with ICPC procedures when:

- ~~(a) Those rates are higher than Washington's rates; and~~
- ~~(b) The other state identifies its rates to the department)).~~

~~(2) ((When the child welfare department in another state places a child, who is a resident of the state of Washington, in foster care the department makes foster care payments at the rate requested by that state.~~

~~(3)) The CA ICPC program manager must approve out-of-state placement before the department makes payment for foster care.~~

### REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-25-0070	When does the department authorize foster care payments?
WAC 388-25-0080	Are dependency guardians who are licensed foster parents able to receive payment from more than one source?
WAC 388-25-0085	What happens if the dependency guardian receives payments from more than one source?
WAC 388-25-0120	What is the department's reimbursement schedule for regular family foster care?
WAC 388-25-0160	What are the reimbursement standards for payments above the basic foster care rate?
WAC 388-25-0170	What other services and reimbursements may be provided for the support of children placed in foster care by the department?
WAC 388-25-0180	Under what circumstances may the department provide reimbursement for foster care if the child is temporarily absent from the foster home or facility?
WAC 388-25-0205	How does the department treat the earnings of a child in foster care?
WAC 388-25-0225	What cases must be referred to the division of child support (DCS)?
WAC 388-25-0235	To whom must parents' send child support payments for their child in foster care?