



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, Economic Services Administration, Division of Child Support

- Preproposal Statement of Inquiry was filed as WSR 09-14-073 ; or
- 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)

DCS proposes to adopt changes to Chapter 388-14A WAC to implement SSB 5166 (Chapter 408, Laws of 2009) and to make certain changes to clarify procedures. DCS adopted emergency rules under WSR 09-15-183 which were effective on July 26, 2009, the effective date of the new law. This CR-102 continues the regular rule making process. For a list of section numbers and titles, see attached Appendix A (sorted by numerical order) and Appendix B (amended or new).

Hearing location(s):

Blake Office Park East – Rose Room
4500 – 10th Ave. SE
Lacey, Washington 98503
(behind Goodyear Courtesy Tire)
(One block north of the intersection of Pacific Ave. SE and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling 360-664-6094)

Date: **January 5, 2010** Time: **10:00 a.m.**

Submit written comments to:

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

by
5 p.m. on January 5, 2010

Assistance for persons with disabilities: Contact Jennisha Johnson, DSHS Rules Consultant by December 22, 2009
TTY (360) 664-6178 or (360) 664-6094 or
by e-mail at johnsjl4@dshs.wa.gov

Date of intended adoption: Not earlier than January 6, 2010
(Note: This is **NOT** the **effective** date)

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

The Washington legislature adopted SSB 5166 (Chapter 408, Laws of 2009) regarding license suspension for noncompliance with child support orders. Division of Child Support (DCS) must adopt rules to implement this legislation, which took effect on July 26, 2009. DCS adopted emergency rules under WSR 09-15-183 which were effective on that date. DCS proposes to adopt changes to Chapter 388-14A WAC to implement SSB 5166 and to make certain changes to clarify procedures. For a list of section numbers and titles, see attached Appendix A (sorted by numerical order) and Appendix B (sorted by status: amended and new).

Reasons supporting proposal: See above

Statutory authority for adoption: SSB 5166 (Chapter 408, Laws of 2009); RCW 34.05.060, 43.20A.550, 74.04.055, 74.04.057, 74.20A.310, 74.20A.320(10), 74.20A.350(14)

Statute being implemented: SSB 5166 (Chapter 408, Laws of 2009), which amends RCW 74.20A.320 and adds four new sections to Chapter 74.20A RCW.

Is rule necessary because of a:

Federal Law?

Yes No

Federal Court Decision?

Yes No

State Court Decision?

Yes No

If yes, CITATION:

DATE

November 13, 2009

NAME (type or print)

Stephanie Vaughn

SIGNATURE

TITLE

DSHS Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: November 13, 2009

TIME: 11:40 AM

WSR 09-23-068

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..... Nancy Koptur	DCS HQ, PO Box 9162, Olympia WA 98507-9162	(360) 664-5065
Implementation.... Nancy Koptur	DCS HQ, PO Box 9162, Olympia WA 98507	(360) 664-5065
Enforcement..... Nancy Koptur	DCS HQ, PO Box 9162, Olympia WA 98507	(360) 664-5065

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.

This rule does not have an economic impact on small businesses. It only affects individuals who have support obligations or individuals who are owed child support.

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:

The rule does meet the definition of a significant legislative rule but DSHS/DCS rules relating to the care of dependent children are exempt from preparing further analysis under RCW 34.05.328(5)(b)(vii).

APPENDIX A TO CR 102 LIST OF RULES IN NUMERICAL ORDER

AMENDATORY SECTION

WAC 388-14A-4500 What is the division of child support's license suspension program?

AMENDATORY SECTION

WAC 388-14A-4505 The notice of noncompliance and intent to suspend licenses.

AMENDATORY SECTION

WAC 388-14A-4510 Who is subject to the DCS license suspension program?

NEW SECTION

WAC 388-14A-4512 When may the division of child support certify a noncustodial parent for license suspension?

AMENDATORY SECTION

WAC 388-14A-4515 How do I avoid having my license suspended for failure to pay child support?

AMENDATORY SECTION

WAC 388-14A-4520 Signing a (~~repayment~~) payment agreement may avoid certification for noncompliance.

AMENDATORY SECTION

WAC 388-14A-4525 How to obtain a release of certification for noncompliance.

NEW SECTION

WAC 388-14A-4527 How does a noncustodial parent request an administrative hearing regarding license suspension?

AMENDATORY SECTION

WAC 388-14A-4530 (~~Administrative hearings~~) What happens at an administrative hearing regarding license suspension (~~are limited in scope~~)?

NEW SECTION

WAC 388-14A-4535 Can the noncustodial parent file a late request for hearing if a license has already been suspended?

NEW SECTION

WAC 388-14A-4540 When is a DCS conference board available regarding license suspension issues?

APPENDIX B TO CR102
LIST OF AMENDED RULES (IN NUMERICAL ORDER)
AND
LIST OF NEW RULES (IN NUMERICAL ORDER)

AMENDATORY SECTIONS

WAC 388-14A-4500 What is the division of child support's license suspension program?

WAC 388-14A-4505 The notice of noncompliance and intent to suspend licenses.

WAC 388-14A-4510 Who is subject to the DCS license suspension program?

WAC 388-14A-4515 How do I avoid having my license suspended for failure to pay child support?

WAC 388-14A-4520 Signing a ~~((repayment))~~ payment agreement may avoid certification for noncompliance.

WAC 388-14A-4525 How to obtain a release of certification for noncompliance.

WAC 388-14A-4530 ~~((Administrative hearings))~~ What happens at an administrative hearing regarding license suspension ~~((are limited in scope-))~~?

NEW SECTIONS

WAC 388-14A-4512 When may the division of child support certify a noncustodial parent for license suspension?

WAC 388-14A-4527 How does a noncustodial parent request an administrative hearing regarding license suspension?

WAC 388-14A-4535 Can the noncustodial parent file a late request for hearing if a license has already been suspended?

WAC 388-14A-4540 When is a DCS conference board available regarding license suspension issues?

AMENDATORY SECTION (Amending 03-18-114, filed 9/2/03, effective 10/15/03)

WAC 388-14A-4500 What is the division of child support's license suspension program? (1) RCW 74.20A.320 and sections 2 through 4 of SSB 5166 (chapter 408, Laws of 2009) provide(~~(s)~~) that, in some circumstances, the division of child support (DCS) may certify for license suspension a noncustodial parent (NCP) who is not in compliance with a child support order. These statutes call(~~(s)~~) the NCP "the responsible parent."

(a) "Certify" means to notify the department of licensing or other state licensing entities that the NCP is not in compliance with a child support order and to ask them to take appropriate action against licenses held by the NCP. Before DCS can certify an NCP, DCS serves a notice on the NCP as described in WAC 388-14A-4505 and 388-14A-4510. This notice is called the notice of noncompliance and intent to suspend licenses, and is sometimes called the notice of noncompliance.

(b) "Responsible parent" is defined in 388-14A-1020. The responsible parent is also called the "noncustodial parent."

(2) "Noncompliance with a child support order" is defined in RCW 74.20A.020(18) and in WAC 388-14A-4510(3).

(3) When DCS certifies the NCP, the department of licensing or other licensing entities take action to deny, suspend, or refuse to renew the NCP's license, according to the terms of RCW 74.20A.320 (~~((8) and (12))~~) (4) and section 3 of SSB 5166 (chapter 408, Laws of 2009).

(4) This section and sections WAC 388-14A-4505 through 388-14A-4530 cover the DCS license suspension program.

(5) DCS may certify an NCP who is not in compliance with a child support order to the department of licensing or any appropriate licensing entity. In determining which licensing entity receives the certification, DCS considers:

(a) The number and kind of licenses held by the parent; and

(b) The effect that suspension of a particular license will have in motivating the parent to pay support or to contact DCS to make appropriate arrangements for other relief.

(6) DCS may certify a parent to any licensing agency through which it believes the parent has obtained a license. DCS may certify a parent to as many licensing agencies as DCS feels necessary to accomplish the goals of the license suspension program.

(7) In certain circumstances spelled out in WAC 388-14A-4510 (2) and (3), DCS may serve the notice of noncompliance on a noncustodial parent but may stay the commencement of the (~~(twenty-day)~~) objection period in WAC 388-14A-4505 (4) (b).

WAC 388-14A-4505 The notice of noncompliance and intent to suspend licenses. (1) Before certifying a noncustodial parent (NCP) for noncompliance, the division of child support (DCS) must serve the NCP with a notice of noncompliance and intent to suspend licenses. This notice tells the NCP that DCS intends to submit the NCP's name to the department of licensing and any other appropriate licensing entity as a licensee who is not in compliance with a child support order.

(2) DCS must serve the notice by certified mail, return receipt requested. If DCS is unable to serve the notice by certified mail, DCS must serve the notice by personal service, as provided in RCW 4.28.080.

(3) The notice must include a copy of the NCP's child support order and must contain the address and phone number of the DCS office which issued the notice.

(4) The notice must contain the information required by RCW 74.20A.320(2), ~~((telling the NCP that))~~ including:

~~(a) ((The NCP may request an administrative hearing, but that the hearing is limited in scope (see WAC 388-14A-4530)) The address and telephone number of DCS office that issued the notice;~~

~~(b) ((DCS will certify the NCP unless the NCP makes a request for hearing within twenty calendar days of the date of service of the notice, except when a longer period of time is given, as provided in WAC 388-14A-4510 (2) or (3));~~

~~(c) The NCP may avoid certification by agreeing to make timely payments of current support and agreeing to a reasonable payment schedule on the support debt;~~

~~(d) Certification by DCS will result in suspension or nonrenewal of the NCP's license by the licensing entity until DCS issues a release stating that the NCP is in compliance with the child support order;~~

~~(e) Suspension of a license may affect the NCP's insurance coverage, depending on the terms of any policy;~~

~~(f) Filing a petition to modify the support obligation may stay (or put a hold on) the certification process; and~~

~~(g) Even after certification, the NCP may obtain a release from certification by complying with the support order)) That in order to prevent DCS from certifying the NCP's name to the department of licensing or other licensing entity, the NCP has twenty days from receipt of the notice, or sixty days after receipt if the notice was served outside the state of Washington, to contact the department and:~~

~~(i) Pay the overdue support amount in full;~~

~~(ii) Request a hearing as provided in WAC 388-14A-4527;~~

~~(iii) Agree to a payment schedule as provided in WAC 388-14A-4520; or~~

~~(iv) File an action to modify the child support order with the appropriate court or administrative forum, in which case DCS will stay the certification process up to six months.~~

~~(c) That failure to contact DCS within twenty days of receipt of the notice (or sixty days if the notice was served outside of the state of Washington) will result in certification of the NCP's name to the department of licensing and any other appropriate~~

licensing entity for noncompliance with a child support order. Upon receipt of the notice:

(i) The licensing entity will suspend or not renew the NCP's license and the department of licensing (DOL) will suspend or not renew any driver's license that the NCP holds until the NCP provides DOL or the other licensing entity with a release from DCS stating that the NCP is in compliance with the child support order;

(ii) The department of fish and wildlife will suspend a fishing license, hunting license, occupational licenses (such as a commercial fishing license), or any other license issued under chapter 77.32 RCW that the NCP may possess. In addition, suspension of a license by the department of fish and wildlife may also affect the NCP's ability to obtain permits, such as special hunting permits, issued by the department. Notice from DOL that an NCP's driver's license has been suspended shall serve a notice of the suspension of a license issued under chapter 77.32 RCW.

(d) That suspension of a license will affect insurability if the NCP's insurance policy excludes coverage for acts occurring after the suspension of a license; and

(e) If the NCP subsequently comes into compliance with the child support order, DCS will promptly provide the NCP and the appropriate licensing entities with a release stating the NCP is in compliance with the order.

AMENDATORY SECTION (Amending WSR 03-18-114, filed 9/2/03, effective 10/15/03)

WAC 388-14A-4510 Who is subject to the DCS license suspension program? (1) The division of child support (DCS) may serve a notice of noncompliance on a noncustodial parent (NCP) who is not in compliance with a child support order ~~((when:))~~.

~~(a) ((The NCP is required to pay child support under a court order or administrative order;~~

~~(b) The NCP is at least six months in arrears; and~~

~~(c) The NCP is not currently making payments to the Washington state support registry under a wage withholding action issued by DCS.~~

~~(2))~~ DCS may serve a notice of noncompliance on an NCP who meets the criteria of ~~((subsection (1) above))~~ this section, even if the NCP is in jail or prison. Unless the NCP has other resources available while in jail or prison, DCS stays the commencement of the ~~((twenty-day))~~ objection period set out in WAC 388-14A-4505 (4)(b) until the NCP has been out of jail or prison for thirty days.

~~((3))~~ (b) DCS may serve a notice of noncompliance on an NCP who meets the criteria of ~~((subsection (1) above))~~ this section, even if the NCP is a public assistance recipient. DCS stays the commencement of the ~~((twenty-day))~~ objection period in WAC 388-14A-4505 (4)(b) until the thirty days after the NCP's cash assistance grant is terminated.

~~((4))~~ (2) Compliance with a child support order for the purposes of the license suspension program means the NCP owes no

more than six months' worth of child support.

(3) ((*) Noncompliance with a child support order ((*) for the purposes of the license suspension program means an NCP has:

(a) An obligation to pay child support under a court or administrative order; and

(b) Accumulated a support debt, also called an ((arrears or)) arrears or arrearage, totaling more than six months' worth of child support payments; or

((b)) (c) Failed to do one of the following:

(i) Make payments required by a court order or administrative order towards a support debt in an amount that is more than six months' worth of payments; or

(ii) Make payments to the Washington state support registry under a written agreement with DCS toward((s a)) current support ((debt in an amount that is more than six months' worth of payments)) and arrearages and the arrearages still amount to more than six months' worth of child support payments((; or

(c) Failed to make payments required by a court order or administrative order towards a support debt in an amount that is more than six months' worth of payments)).

((5) There is no minimum dollar amount for the six months of arrears. The following are examples of when a NCP is at least six months in arrears:

(a) The child support order requires monthly payments of five hundred dollars. The NCP has not made a single payment since the order was entered seven months ago. This NCP is at least six months in arrears;

(b) The child support order requires monthly payments of one hundred dollars. The NCP has paid for the last few months, but owes a back debt of over six hundred dollars. This NCP is at least six months in arrears;

(c) The NCP owes a support debt according to a judgment, which requires payments of one hundred dollars per month. The NCP has not made payment for eight months. This NCP is at least six months in arrears; or

(d) The child support order required monthly payments of two hundred dollars, but the child is over eighteen so no current support is owed. However, the NCP has a debt of over twelve hundred dollars. This NCP is at least six months in arrears.

(6) For the purposes of the license suspension program, a NCP is in compliance with the child support order when the amount owed in arrears is less than six months' worth of support)).

(4) There is no minimum dollar amount required for license suspension, as long as the arrears owed by the NCP amount to more than six months' worth of support payments:

Example 1. Assume the child support order sets current support at one hundred dollars per month: The NCP has not made a single payment since the order was entered seven months ago. This NCP is more than six months in arrears.

Example 2. Assume the child support order sets current support at one hundred dollars per month: The NCP has paid for the last few months, but owes arrears of over six hundred dollars. This NCP is more than six months in arrears.

Example 3. Assume the child support order sets current support at one hundred dollars per month: The child is over eighteen, and no more current support is owed. However, the NCP has a debt of

over one thousand two hundred dollars. This NCP is more than six months in arrears.

Example 4. Assume a judgment of three thousand dollars is entered by the court: The order requires the NCP to pay fifty dollars per month toward the arrears. The NCP has not made payments toward this obligation for eight months. This NCP is more than six months in arrears.

NEW SECTION

WAC 388-14A-4512 When may the division of child support certify a noncustodial parent for license suspension? The division of child support (DCS) may certify a noncustodial parent (NCP) as being in noncompliance with a support order and may request the department of licensing (DOL) or any other licensing entity to suspend the NCP's license if:

(1) The NCP has failed to make a timely objection to a notice of noncompliance served under WAC 388-14A-4505. A timely objection must be filed within twenty days of receipt of the notice, or within sixty days of receipt if the notice was served outside of the state of Washington;

(2) The NCP has failed to file a motion with the appropriate court or administrative forum to modify the child support obligation within twenty days of service of the notice of noncompliance served under WAC 388-14A-4505 (or within sixty days if the notice was served outside of the state of Washington);

(3) The NCP has failed to comply with a payment agreement entered into under WAC 388-14A-4520;

(4) A hearing results in a final administrative order which determines that the NCP is not in compliance with a child support order and has not made a good faith effort to comply;

(5) The court enters a judgment on a petition for judicial review upholding an administrative order that determined that the NCP is not in compliance with a child support order and did not make a good faith effort to comply;

(6) The NCP has failed to comply with a payment schedule ordered by an administrative law judge (ALJ) under WAC 388-14A-4530; or

(7) The NCP failed to make satisfactory progress toward modification of the support order after a stay was granted under WAC 388-14A-4515(2).

AMENDATORY SECTION (Amending WSR 03-18-114, filed 9/2/03, effective 10/15/03)

WAC 388-14A-4515 How do I avoid having my license suspended for failure to pay child support? (1) After service of the notice of noncompliance, the division of child support (DCS) stays

(delays) certification action if the noncustodial parent (NCP) takes one of the following actions within twenty days of service ((of the notice)), or within sixty days of service if the notice was served outside of Washington:

(a) Contacts DCS and makes arrangements to pay the support debt in full;

(b) Requests an administrative hearing ((under WAC 388-14A-4530)) as provided in WAC 388-14A-4527; ((or))

((b)) (c) Provides proof that the NCP receives TANF, GAU, GAX or SSI;

(d) Provides proof that the NCP is currently incarcerated at a state or federal correctional facility;

(e) Provides proof that NCP has filed a proceeding to modify the support order; or

(f) Contacts DCS to negotiate ((a reasonable payment schedule on the arrears and agrees to make timely payments of current support)) and sign a written payment agreement as described in WAC 388-14A-4520.

(i) The stay for negotiation and obtaining signatures may last a maximum of thirty calendar days ((after)) from the date the NCP contacts DCS; and

(ii) If no written payment ((schedule)) agreement has been ((agreed to in writing after)) signed within thirty calendar days ((have passed)) from the date the NCP contacted DCS, DCS ((may proceed with certification of noncompliance;

(iii) A reasonable payment schedule is described in WAC 388-14A-4520, below; and

(iv) The NCP may request a conference board review under WAC 388-14A-6400 if the NCP feels that DCS has not negotiated in good faith)) schedules the matter for administrative hearing under WAC 388-14A-4530.

(2) If the NCP files a court or administrative action to modify the child support obligation, DCS stays the certification action.

((3)) (a) The stay for modification action may not exceed six months unless DCS finds good cause to extend the stay.

((4)) (b) The NCP must notify DCS that a modification proceeding is pending and must provide a copy of the motion or request for modification to DCS.

((5)) (3) A stay of certification does not require DCS to withdraw the notice of noncompliance.

(4) A stay of certification granted because the NCP is incarcerated, or because the NCP receives TANF, GAU, GAX or SSI is lifted thirty days after the justification no longer applies to the NCP.

AMENDATORY SECTION (Amending WSR 03-18-114, filed 9/2/03, effective 10/15/03)

WAC 388-14A-4520 Signing a ((repayment)) payment agreement may avoid certification for noncompliance. (1) If a noncustodial parent (NCP) signs a ((repayment)) payment agreement, the division

of child support (DCS) stays the certification action. ((The NCP must agree to pay current support in a timely manner and make regular payments on the support debt.))

(2) The signing of a payment agreement does not require DCS to withdraw the notice of noncompliance.

(3) By signing a payment agreement, the NCP waives the right to an administrative hearing on any notice of noncompliance served before the date the NCP signs the agreement.

(4) The ((repayment)) payment agreement must state that if the NCP fails to make payments under the terms of the agreement and the NCP owes a debt of more than six months' worth of child support payments, DCS may resume certification action with no further notice to the NCP.

~~((3) The signing of a repayment agreement does not require DCS to withdraw the notice of noncompliance.))~~

~~((4))~~ (5) In ((setting the repayment amount)) proposing or approving a payment agreement, DCS must take into account:

(a) The amount of the arrearages.

(b) The amount of the current support order.

(c) The ((financial situation of the NCP and the)) earnings of the NCP.

(d) The needs of all children who rely on the NCP for support.

~~((The NCP must supply sufficient financial information to allow DCS to analyze and document the NCP's financial situation and requirements, including normal living expenses and emergencies.))~~

(e) Any documented factors which make the NCP eligible for a monthly arrears payment less than the amount suggested in the table in subsection (8) of this section, including but not limited to:

(i) Special needs children; or

(ii) Uninsured health care expenses.

(f) Any documented factors which make the NCP eligible for an arrears payment higher than the amount suggested in the table in subsection (8) of this section, including but not limited to the factors listed in RCW 26.19.075 for deviation from the standard calculation for child support obligations.

(g) If the NCP does not supply sufficient financial information and documentation to allow DCS to analyze and document the NCP's current financial situation and requirements, DCS may not be able to tailor a payment plan to the individual circumstances of the NCP.

~~((5))~~ (6) The payment agreement must require timely payments of current support and on the arrears, but may in appropriate circumstances:

(a) Provide for the payment of less than the current monthly support obligation for a reasonable time without requiring any payment on the arrears; and

(b) Provide for the payment of current support only for a reasonable time without requiring any payment on the arrears; and

(c) Require a reasonable payment schedule on the arrears once the NCP is paying the entire current monthly support obligation.

(7) The payment agreement may, in appropriate cases, require the NCP to engage in employment-enhancing activities to attain a satisfactory payment level. These employment-enhancing activities must be tailored to the individual circumstances of the NCP.

(8)(a) A reasonable monthly arrears payment is defined as a percentage of the NCP's "adjusted net income," which is the NCP's

net monthly income minus any current support obligation. Documented factors as specified in subsection (4) of this section may be the basis for adjustments to the amounts on this table in order to develop a payment agreement which is tailored to the individual financial circumstances of the NCP.

(b) The following table sets forth the suggested monthly payments on arrears:

Monthly adjusted net income (ANI)	Monthly arrears payment = Percentage of ANI
\$1,000 or less	2%
\$1,001 to \$1,200	3%
\$1,201 to \$1,500	4%
\$1,501 to \$1,900	5%
\$1,901 to \$2,400	6%
\$2,401 to \$3,000	7%
\$3,001 or more	8%

~~((6))~~ (c) Examples of how to calculate the arrears payment are as follows:

(a) Monthly net income	=	\$1,500
Current support	=	\$300
Adjusted net income <u>(ANI)</u>	=	\$1,200
Arrears payment = 3% of ANI (((\$1,200))	=	\$36
(b) Monthly net income	=	\$3,100
Current support	=	\$-0-
Adjusted net income <u>(ANI)</u>	=	\$3,100
Arrears payment = 8% of ANI (((\$3,100))	=	\$248

~~((7))~~ The NCP must document any factors which make the NCP eligible for an arrears payment less than the amount shown in the table in subsection (5). Such factors include, but are not limited to:

- ~~(a) Special needs children, or~~
- ~~(b) Uninsured medical expenses.~~

~~(8)~~ The custodial parent and/or DCS must document any factors which make the NCP eligible for an arrears payment higher than the amount shown in the table in subsection (5). Such factors include, but are not limited to the factors listed in RCW 26.19.075 for deviation from the standard calculation for child support obligations.

~~(9)~~ If the NCP signs a repayment agreement under this section under the circumstances spelled out in WAC 388-14A-4510 (2) or (3), the NCP may make voluntary payments but DCS does not resume certification action until thirty days after NCP is released or stops receiving public assistance)

(9) If the NCP and DCS are unable to agree to a payment plan, DCS schedules the matter for an administrative hearing.

(10) If the NCP fails to make payments under the terms of the agreement, DCS may resume certification action with no further notice to the NCP.

AMENDATORY SECTION (Amending WSR 03-18-114, filed 9/2/03, effective 10/15/03)

WAC 388-14A-4525 How to obtain a release of certification for noncompliance. (1) After the division of child support (DCS) has certified a noncustodial parent (NCP) to a licensing entity for noncompliance, the NCP may obtain a release from DCS ((by taking the following actions)) if one of the following occurs:

(a) ((Paying)) NCP pays the support debt in full, in which case DCS withdraws the notice of noncompliance; ((or))

(b) ((Signing)) NCP enters into a ((repayment)) payment agreement under WAC 388-14A-4520 ((and paying the first installment due under the agreement. Signing a repayment agreement does not require DCS to withdraw the notice of noncompliance));

(c) DCS confirms that the NCP receives GAU, GAX, TANF or SSI;

(d) DCS confirms that the NCP is currently incarcerated at a state or federal correctional facility;

(e) The prosecuting attorney determines that the NCP is substantially complying with a contempt repayment agreement and recommends release;

(f) DCS receives any type of recurring payment, including but not limited to:

(i) Employer payments;

(ii) Unemployment compensation;

(iii) Labor and industries benefits;

(iv) Social security benefits;

(v) Retirement account garnishments;

(g) DCS believes that release of the certification for noncompliance will facilitate the NCP seeking employment, modification of the child support order(s), or compliance with the current order(s);

(h) DCS certified the NCP because the NCP failed to make a timely objection to the notice of noncompliance and:

(i) The NCP filed a late request for hearing; and

(ii) The final administrative order entered under WAC 388-14A-4530 contains a finding that the NCP made a good faith effort to comply with the order and establishes a payment schedule.

(2) If the NCP and DCS are unable to reach a payment agreement that would lead to release of the certification, the NCP may request a conference board under WAC 388-14A-6400.

(3) By signing a payment agreement with DCS, the NCP waives the administrative hearing right associated with any notice of noncompliance under WAC 388-14A-4505 which was served before the agreement was signed.

(4) DCS retains the right to reinstate the suspension action if the NCP meets the conditions of reinstatement but:

(a) Fails to follow through in a timely fashion with any verbal or written agreement made with DCS; or

(b) Fails to comply with the payment schedule contained in an administrative order entered under WAC 388-14A-4530.

(5) DCS may reinstate the suspension action at any time after releasing the certification, as long as the NCP's case still meets qualifications for certification.

(6) Unless the NCP pays the support debt in full, DCS is not required to withdraw the notice of noncompliance.

(7) DCS must provide a copy of the release to any licensing entity to which DCS has certified the NCP.

((+3+)) (8) The NCP must comply with any requirements of the licensing entity to get the license reinstated or reissued.

NEW SECTION

WAC 388-14A-4527 How does a noncustodial parent request an administrative hearing regarding license suspension? (1) After service of a notice of noncompliance and intent to suspend licenses under WAC 388-14A-4505, the noncustodial parent (NCP) may request an administrative hearing, also known as an adjudicative proceeding, under chapter 34.05 RCW.

(a) Any objection to the notice of noncompliance is considered to be a request for hearing, no matter how the objection is phrased.

(b) An objection that does not lead to the signing of a payment agreement under WAC 388-14A-4520 is considered to be a request for hearing on the notice.

(c) Even if the NCP specifically makes a request for hearing, the division of child support (DCS) always attempts to negotiate a payment agreement under WAC 388-14A-4520.

(2) A hearing request may be made in writing or orally, and may be made in person or by phone.

(3) A timely request for hearing must be received by DCS within twenty days of service of the notice of noncompliance, or within sixty days if the notice was served outside of the state of Washington.

(4) The effective date of a written request for hearing is the day the request is received by DCS. A written request for hearing must include:

(a) The NCP's current mailing address; and

(b) The NCP's daytime phone number, if available.

(5) The NCP may make an oral request for hearing under WAC 388-14A-6100:

(a) The request must contain sufficient information for DCS to identify the NCP, the DCS action objected to, and the case or cases involved in the hearing request.

(b) The effective date of an oral request for hearing is the date that the NCP makes a complete oral request for hearing, to any DCS representative in person or by leaving a message on the automated voice mail system of any DCS field office.

(6) If the NCP makes a timely request for hearing, DCS stays

(delays) the certification process until a final administrative order is entered.

(7) If the NCP makes a late request for hearing after DCS has already certified the NCP to a licensing agency based on NCP's failure to make a timely objection to the notice of noncompliance and the licensing agency has suspended the NCP's license, DCS schedules the matter for hearing with the office of administrative hearings, as provided in WAC 388-14A-4535.

(8) If DCS certified the NCP to a licensing agency based on NCP's failure to comply with a payment agreement or a payment schedule established by a final administrative order, the NCP does not have any additional hearing right on the original notice of noncompliance.

(a) If the NCP previously signed a payment agreement, the NCP waived the administrative hearing right associated with any notice of noncompliance which was served before the agreement was signed.

(b) If the NCP failed to comply with a payment schedule established by a final administrative order, the NCP has already exercised the hearing right associated with the underlying notice of noncompliance.

(c) The NCP may attempt to negotiate a payment agreement with DCS, and may request a conference board if negotiations are not successful, as provided in subsections (2) and (3) of WAC 388-14A-4525.

AMENDATORY SECTION (Amending 03-18-114, filed 9/2/03, effective 10/15/03)

WAC 388-14A-4530 (~~(Administrative hearings)~~) What can happen at an administrative hearing regarding license suspension ((are limited in scope.))? (1) An administrative hearing on a notice of noncompliance under WAC 388-14A-4505 is limited to the following issues:

(a) Whether the person named in the child support order is the noncustodial parent (NCP);

(b) Whether the NCP is required to pay child support under a child support order; ~~((and))~~

(c) Whether the NCP is ~~((at least))~~ more than six months in arrears; and

(d) Whether the NCP has made a good faith effort to comply with the order.

(2) When determining whether the NCP has made a good faith effort to comply with the order, the administrative law judge (ALJ) must consider whether the NCP:

(a) Kept DCS informed of any changes in address or employment;

(b) Provided employer information when employed so that DCS could institute income withholding;

(c) Paid at least one month's worth of current support by voluntary payment during a period when the NCP was not employed; or

(d) Can show any other relevant fact-based factors on which the ALJ may base a finding of good faith.

(3) If the ALJ finds that the NCP is not in compliance with

the support order, but has made a good faith effort to comply, the ALJ must formulate a payment schedule after considering:

- (a) The amount of the arrearages owed;
 - (b) The amount of the current support order;
 - (c) The earnings of the NCP; and
 - (d) The needs of all children who rely on the NCP for support.
- (4) The ALJ must:

(a) Consider the individual financial circumstances of the NCP in evaluating the parent's ability to pay; and

(b) Establish a fair and reasonable payment schedule tailored to the NCP's individual circumstances.

(5) The payment schedule may:

(a) Include a graduated payment plan as described in WAC 388-14A-4520(8);

(b) Require the NCP to engage in employment-enhancing activities in order to attain a satisfactory payment level; and

(c) May be for the payment of less than current monthly support for a reasonable time.

(6) Unless the NCP shows an ability to pay immediately, the payment schedule is not required to include a lump sum payment for the amount of the arrears.

(7) The administrative order must contain a provision stating that:

(a) If the NCP does not comply with the payment schedule, DCS may proceed with the certification process with no further notice to the NCP;

(b) The payment schedule is for the limited purpose of avoiding license suspension; and

(c) DCS's authority to collect any and all amounts authorized under chapters 26.18, 26.23, 47.20 and 74.20A RCW is not affected by the payment schedule.

(8) The administrative law judge (ALJ) is not required to calculate the outstanding support debt beyond determining whether the NCP is at least six months in arrears. Any debt calculation shall not be binding on the department or the NCP beyond the determination that there is at least six months of arrears.

~~((3) If the NCP requests a hearing on the notice, DCS stays the certification process until the hearing results in a finding that the NCP is not in compliance with the order, or that DCS is authorized to certify the NCP.~~

~~(4))~~ (9) If the NCP requests a hearing on the notice of noncompliance under the circumstances spelled out in WAC 388-14A-4510 ((2) and (3)) (1) (a) or (b), DCS asks the office of administrative hearings to schedule a hearing. If the hearing results in a finding that the NCP is not in compliance with the order, or that DCS is authorized to certify the NCP, DCS stays the certification process until thirty days after the NCP:

(a) Is released from jail or prison; or

(b) Stops receiving cash public assistance.

NEW SECTION

WAC 388-14A-4535 Can the noncustodial parent file a late request for hearing if a license has already been suspended? (1) The noncustodial parent (NCP) may file a late request for hearing if the division of child support (DCS) has certified the noncustodial parent (NCP) because of the NCP's failure to object to the notice of noncompliance as provided in WAC 388-14A-4512(1), even if the department of licensing (DOL) or other licensing entity has suspended the NCP's license.

(2) When an NCP files a late request for hearing, DCS does not release the certification until:

(a) The NCP pays the support debt in full;

(b) DCS and the NCP sign a payment agreement under WAC 388-14A-4520;

(c) There is a final administrative order entered establishing a payment schedule because the NCP made a good faith effort to comply with the order; or

(d) There is a final administrative order entered determining that the NCP did not owe more than six months worth of support and that license suspension was not appropriate at the time of the certification.

(3) If the late request for hearing is filed within one year of the date the notice was served, DCS schedules the matter for administrative hearing under WAC 388-14A-4530.

(4) If the late request for hearing is filed more than one year after the date the notice was served, DCS schedules the matter for administrative hearing under WAC 388-14A-4530. At the hearing:

(a) The NCP must show good cause for the late request for hearing.

(b) The administrative law judge (ALJ) must find that the NCP has made a showing of good cause before granting relief in an administrative order.

(5) DCS and the NCP may negotiate and sign a payment agreement under WAC 388-14A-4520 at any time during this process.

(6) If DCS certified the NCP to a licensing agency based on NCP's failure to comply with a payment agreement or a payment schedule established by a final administrative order, the NCP does not have any additional hearing right on the original notice of noncompliance.

(a) If the NCP previously signed a payment agreement, the NCP waived the administrative hearing right associated with any notice of noncompliance which was served before the agreement was signed. See WAC 388-14A-4525(3).

(b) If the NCP failed to comply with a payment schedule established by a final administrative order, the NCP has already exercised the hearing right associated with the underlying notice of noncompliance.

NEW SECTION

WAC 388-14A-4540 When is a DCS conference board available regarding license suspension issues? (1) A noncustodial parent

(NCP) may request a conference board under WAC 388-14A-6400 to resolve any complaints and problems concerning a division of child support (DCS) case.

(2) If the NCP and DCS are not successful in negotiating a payment agreement to avoid license suspension or to get a license reinstated, NCP may request a conference board at any time.

(a) A conference board is not available to the NCP regarding negotiations that occur immediately after the service of a notice of noncompliance under WAC 388-14A-4505.

(b) During that time period, the NCP has a right to an administrative hearing on the notice, and if the NCP is not able to negotiate a payment agreement, the appropriate remedy is an administrative hearing under WAC 388-14A-4530.