



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do **NOT** use for expedited rule making

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: April 16, 2018

TIME: 3:02 PM

WSR 18-09-069

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

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 18-04-072 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____ ; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) The department is proposing to amend and repeal existing WAC sections and create new WAC sections in chapter 388-27 WAC "Child Welfare Services—Adoption Services and Adoption Support".

Hearing location(s):

| Date: | Time: | Location: (be specific) | Comment: |
|--------------|------------|--|---|
| June 5, 2018 | 10:00 a.m. | Office Building 2 DSHS Headquarters 1115 Washington Olympia, WA 98504 | Public parking at 11 th and Jefferson. A map is available at: https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2 |

Date of intended adoption: Not earlier than June 6, 2018 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: DSHS Rules Coordinator

Address: PO Box 45850
Olympia, WA 98504

Email: DSHSRPAURulesCoordinator@dshs.wa.gov

Fax: 360-664-6185

Other:

By (date) 5:00 p.m. June 5, 2018

Assistance for persons with disabilities:

Contact Jeff Kildahl, DSHS Rules Consultant

Phone: 360-664-6092

Fax: 360-664-6185

TTY: 711 Relay Service

Email: Kildaja@dshs.wa.gov

Other:

By (date) May 22, 2018

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The department is amending chapter 388-27 WAC to reflect recent changes in state legislation regarding the adoption support subsidy. Other changes are being made to clarify language and update the statutory authority.

Reasons supporting proposal: The proposed changes are necessary to align with statute.

Statutory authority for adoption: RCW 74.13A.020, RCW 74.13A.025, RCW 74.13A.030, RCW 74.13.031, RCW 74.13A.040, RCW 74.13A.045, RCW 74.13A.047, RCW 74.13A.060, RCW 74.13A.075, RCW 74.13.080, RCW 74.13A.085, RCW 74.13A.100, RCW 74.13A.120, RCW 74.13A.125, RCW 74.15.020, 42 U.S.C. §671-675, 45 C.F.R. Sec. 1356.40

Statute being implemented:

Is rule necessary because of a:

Federal Law? Yes No
Federal Court Decision? Yes No
State Court Decision? Yes No

If yes, CITATION:

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: | Melanie Meyer | PO Box 45710 Olympia, WA 98504 | 360-902-7567 |
| Implementation: | Melanie Meyer | PO Box 45710 Olympia, WA 98504 | 360-902-7567 |
| Enforcement: | Melanie Meyer | PO Box 45710 Olympia, WA 98504 | 360-902-7567 |

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

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:
TTY:
Email:
Other:

No: Please explain: The proposed rules are exempt under RCW 34.05.328(5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of 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. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- RCW 34.05.310 (4)(b) (Internal government operations)
- RCW 34.05.310 (4)(e) (Dictated by statute)
- RCW 34.05.310 (4)(c) (Incorporation by reference)
- RCW 34.05.310 (4)(f) (Set or adjust fees)
- RCW 34.05.310 (4)(d) (Correct or clarify language)
- RCW 34.05.310 (4)(g) ((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW ____.

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated. _____

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

Date: April 12, 2018

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:

AMENDATORY SECTION (Amending WSR 04-06-024, filed 2/23/04, effective 3/25/04)

WAC 388-27-0120 What is the legal basis of the department's adoption support program? The legal authorities for the program are:

(1) ~~((Revised Code of Washington (RCW) 74.13.100 through 74.13.159)) Chapter 74.13A RCW;~~

(2) ~~((Chapter)) 42 ((United States Code (U.S.C.)) U.S.C. Sec. 671-675; ((and))~~

(3) 45 C.F.R. Sec. 1356; and

(4) The U.S. department of health and human services (DHHS) policy guidelines for states to use in determining a child's eligibility for Title IV-E adoption assistance benefits (contained in DHHS Child Welfare Policy Manual).

AMENDATORY SECTION (Amending WSR 04-06-024, filed 2/23/04, effective 3/25/04)

WAC 388-27-0130 What definitions apply to the adoption support program? The following definitions apply to this chapter:

"Adoption" means the granting of an adoption decree consistent with chapter 26.33 RCW.

"Adoption support agreement" means a written contract between the adoptive parent(s) and the department that identifies the specific ~~((support))~~ benefits available to the adoptive parent(s) and other terms and conditions of the agreement.

"Adoption support cash payment" means negotiated monthly cash payments paid pursuant to an adoption support agreement between the adoptive parent(s) and the department ~~((after the child's adoption))~~.

"Applicant" means a person or couple applying for adoption support on behalf of a child the person or couple plans to adopt.

"Child placing agency" means a private nonprofit agency licensed by the department under chapter 74.15 RCW to place children for adoption or foster care.

"Department" means the department of social and health services.

"Extenuating circumstances" means a finding by an administrative law judge or a review judge that one or more ~~((certain))~~ qualifying conditions or events occurred that erroneously prevented an otherwise eligible child from being placed on the adoption support program prior to adoption.

"Medical services" means services covered by medicaid ~~((+))~~ and administered by the ~~((medical assistance administration) unless defined differently in the adoption support agreement))~~ health care authority.

"Negotiation" means the process of working toward an agreement between the department and the adoptive parent on the terms of the adoption support agreement ~~((, including any amount of monthly cash payment))~~.

"Nonrecurring costs" means reasonable, necessary, and ~~((direct-ly))~~ direct expenses related to the cost of finalizing the adoption ~~((fees, court costs, attorney fees, and other expenses the adoptive parent incurs when finalizing the adoption))~~ of a special needs child.

~~((Total reimbursement from the department may not exceed one thousand five hundred dollars.))~~

"Placing agency" means the public or private nonprofit agency that has the legal authority to place the child for adoption. ~~((This may be the department or a private nonprofit child placing agency.))~~

"Program" means the department's adoption support program.

"Reconsideration" means the limited state-funded support that may be available to an eligible child whose adoption was finalized without a valid adoption support agreement in place.

"Resident state" (for purposes of the child's medicaid eligibility) means the state in which the child physically resides. In some cases this may be different from the state of the parent's legal residence.

~~((**"Special needs"** means the specific factors or conditions that apply to the child and that may prevent the child from being adopted unless the department provides adoption support services. See WAC 388-27-0140 for a detailed description of the factors or conditions.))~~

AMENDATORY SECTION (Amending WSR 04-06-024, filed 2/23/04, effective 3/25/04)

WAC 388-27-0135 What are the eligibility criteria for the adoption support program? For a child to be eligible for participation in the adoption support program, ~~((the department must first determine that adoption is the most appropriate plan for the child. If the department determines that adoption is in the child's best interest,))~~ the child must:

(1) Be less than eighteen years old when the department and the adoptive parents sign the adoption support agreement and at the time the adoption is finalized;

(2) Be legally free for adoption or eligible for a customary adoption;

(3) ~~((Have))~~ Be placed with a family with an approved preplacement report or home study (see RCW 26.33.190);

(4) Be a child with "special needs" ((factor or condition according to the definition in this rule (see)) as defined in WAC 388-27-0140); and

~~((4))~~ (5) Meet at least one of the following criteria:

(a) Is residing in ~~((state-funded))~~ a foster ~~((care))~~ home or child caring institution or was determined by the department to be eligible for and likely to be so placed (For a child to be considered "eligible for and likely to be placed in foster care" the department must have opened a case and determined that removal from the home was in the child's best interest~~((-))~~); or

(b) Is eligible for federally funded adoption assistance as defined in Title IV-E of the Social Security Act, the ~~((Code of Federal Regulations))~~ C.F.R., and the U.S. ~~((Department of Health and Human Services establishing))~~ DHHS guidelines for states to use in determining a child's eligibility for Title IV-E adoption assistance.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0140 What constitutes a "special needs"? To be considered a child with special needs the following three statements must be true:

(1) One or more of the following factors or conditions must exist, the child is:

(a) ~~((The child is))~~ Of a minority ethnic background and the child's ethnicity is creating a barrier to the child's adoption;

(b) ~~((The child is))~~ Six years of age or older at the time of application for adoption support;

(c) ~~((The child is))~~ A member of a sibling group of three or more or of a sibling group in which one or more siblings meets the definition of special needs, as defined in this section;

(d) ~~((The child is))~~ Diagnosed with a physical, mental, developmental, cognitive or emotional disability; or

(e) ~~((The child is))~~ At risk for a diagnosis of a physical, mental, developmental, cognitive or emotional disability due to prenatal exposure to toxins, a history of serious abuse or neglect, or genetic history.

(2) The state has determined that the child cannot or should not be returned to the home of the ~~((biological))~~ legal parent; and

(3) The department, other public or private non-profit child welfare agency, or child placing agency that placed the child for adoption ~~((must document))~~ has documented that except where it would be against the best interests of the child, the ~~((department or child))~~ placing agency ~~((had))~~ made a reasonable but unsuccessful effort to place the child for adoption without adoption support.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0145 What constitutes a reasonable effort to place a child for adoption without adoption support? Reasonable effort to place a child without adoption support includes a child:

(1) ~~((A child))~~ Registered for three months with the Washington adoption resource exchange (WARE) without finding an adoptive family; ~~((or))~~

(2) ~~((A child))~~ For whom a documented, ~~((formal))~~ agency search was conducted by the placing agency for three months, without finding a family who would adopt the child without adoption support services; or

(3) ~~((A child))~~ For whom the placing agency's selected prospective adoptive family is unable to adopt the child without assistance from the adoption support program.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0150 Under what circumstances would it be against the best interest of the child to search for a family that could adopt the child without adoption support? (~~((Searching for a family that could adopt the child without adoption support is against the best interest of the child when:))~~)

(1) When a foster parent desires to adopt a child who:

(a) Has been in the foster parent's home for (~~((six))~~) three months or more before that child becomes legally free for adoption; (~~((and))~~)

(b) The child has close emotional ties to the current foster parent which, if severed, may cause emotional damage to the child; and

(c) The foster parent has an approved adoptive home study, and is identified as the adoptive parent of choice by the department or placing agency staff (~~((having responsibility for the child))~~) (RCW 26.33.190 (~~((and 74.13.109(4))~~)); or

(2) The adoptive parent is a relative of (~~((specified degree))~~) the child as defined in RCW (~~((74.15.020(4)(a))~~) 74.15.020 (2)(a) and has an approved adoptive home study (~~((per))~~) that meets the requirements of RCW (~~((26.33.109 and 74.13.109(4))~~) 26.33.190.

AMENDATORY SECTION (Amending WSR 04-06-024, filed 2/23/04, effective 3/25/04)

WAC 388-27-0155 Are there other factors affecting a child's eligibility for adoption support? (1) A child is not eligible for adoption support program services and payments if the adopting parent is the birth parent or current stepparent of the child.

(2) The department must not use the adoptive parents' income as a basis for determining the child's eligibility for the adoption support program, however, the department must consider income and other financial circumstances of the adopting family as one factor in determining the amount of any adoption support cash payments to be made. (~~((See WAC 388-27-0230.))~~)

AMENDATORY SECTION (Amending WSR 04-06-024, filed 2/23/04, effective 3/25/04)

WAC 388-27-0160 How does a prospective adoptive parent apply for adoption support ((services))? (~~((There are two ways a prospective adoptive parent (applicant) may apply for adoption support services:))~~)

(1) An applicant may apply through the public or private agency social worker of the child to be adopted, if the child is in the custody of the department. The social worker (~~((must))~~) will:

(a) Register the child with the adoption support program; and

(b) Submit the applicant's completed program application along with a completed worksheet used to assist the family and the department in (~~((determining services and))~~) negotiating the amount of any

monthly cash payment(~~(, if needed, based on the needs of the child and family circumstances)~~).

(2) An applicant may also apply directly to the adoption support program for adoption support (~~services~~) if(~~(+~~

~~(a))~~ the child does not have an assigned social worker(~~(+or~~

~~(b) The applicant and the social worker have a dispute regarding the content of the program application)~~).

AMENDATORY SECTION (Amending WSR 04-06-024, filed 2/23/04, effective 3/25/04)

WAC 388-27-0165 What requirements apply to an application for ongoing adoption support?

(1) The application must include a copy of the child's medical and family background report signed by the adoptive parent(s) (DSHS 13-041 (~~minus the attachments~~)). It must also include copies of department records or medical (~~(and/or)~~) or therapist reports that document the child's physical, mental, developmental, cognitive or emotional disability, or risk of any such disability.

(2) The applicant must include a copy of a preplacement report or home study completed by the department, an agency, or an individual approved by the court (see RCW 26.33.190(1)).

(3) If the applicant is requesting a monthly cash payment, the applicant and the department must mutually (~~determine both the type and~~) agree to the amount of the payment according to the requirements of WAC (~~388-27-0230~~) 388-27-0220.

~~((3))~~ (4) If the applicant is requesting reimbursement of non-recurring costs, the applicant must include this request in the application. (See WAC 388-27-0380 and 388-27-0385 for the type and amount of expenses the department may reimburse.)

~~((4))~~ (5) The applicant must furnish a copy of the applicant's most recently filed federal income tax return. If the applicant is not required to file a federal income tax return, the applicant must submit a financial statement with the applicant's adoption support application.

AMENDATORY SECTION (Amending WSR 04-06-024, filed 2/23/04, effective 3/25/04)

WAC 388-27-0175 What must be included in an adoption support agreement? The adoption support agreement must:

(1) State the amount of any cash payments (~~(if any)~~) the department must make to the adoptive parent(s) on behalf of the child;

(2) (~~Include an itemized list of the additional services (including Title XIX)~~) State that the child is eligible for medical assistance through medicaid (~~(and Title XX social services) for which the child is eligible~~);

(3) (~~Contain statements that:~~

~~(a) Assure~~) State that participation in the adoption support program (~~must~~) will continue, as long as the child is eligible, regardless of where the adoptive family resides;

~~((b) Inform the adoptive parent(s) of specific))~~ (4) State that a change in the adoptive family's circumstances ((that)) or the child's needs may warrant further renegotiation and adjustment of the payment as mutually agreed to by the adoptive parents and the department;

~~((c) Inform the adoptive parent(s) that the agreement must be reviewed every five years. Terms of))~~ (5) State the basis for termination or suspension of benefits under the agreement ((may be modified according to WAC 388-27-0200)); and

~~((d) Inform the adoptive parent(s) that the department may suspend a child from the program within thirty days of any changes in circumstances (of the child or family) that affect the child's eligibility for program payments if the adoptive parent has failed to notify the department of the changes; and~~

~~(e) Define the circumstances under which the agreement may be terminated.~~

~~(4) Be signed by all relevant parties before the final adoption decree is issued (45 C.F.R. Sec. 1356.40))~~ (6) Include information that a youth adopted after age fourteen may have continued eligibility in the college bound scholarship program.

NEW SECTION

WAC 388-27-0178 When must the adoption support agreement be signed? The adoption support agreement must be signed by all parties before the final adoption decree is issued.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0180 If the adoptive family resides in or moves to another state, how is the child's participation in the adoption support ((services)) program affected? If the adoptive family resides in or moves to another state the child's participation in the adoption support program is affected as follows:

(1) ~~((Social services (Title XX) become the responsibility of the new state of residence))~~ Washington state remains responsible for any monthly cash payments made to the adoptive parent(s) on behalf of the child or any non-medicaid counseling that has been preauthorized by the adoption support program.

(2) If the child is not eligible for the Title IV-E adoption support program, medical benefits (Title XIX medicaid) remain the responsibility of Washington state ((if)) until the child ((is not)) becomes eligible for ((federal Title IV-E adoption assistance. However, Washington state is no longer responsible if the child becomes eligible for)) the resident state's Title XIX program ((through the Interstate Compact on Adoption and medical assistance or other eligibility factors)).

(3) If the child is eligible for Title IV-E adoption support, medical benefits (Title XIX medicaid benefits) become the responsibil-

ity of the resident state(~~((if the child receives Title IV-E adoption assistance))~~).

(4) Medicaid benefits included in Washington state's medicaid plan, but not included in the resident state's plan, (~~(must)~~) remain the responsibility of Washington state and subject to Washington state's plan limits and requirements.

~~((5) Washington state remains responsible for any cash payments made to the adoptive parent(s) on behalf of the child or any nonmedi-
caid counseling that has been preauthorized by the adoption support
program per WAC 388-27-0245.))~~

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0185 When does the adoption support agreement become effective? ~~((1) Unless otherwise stated in the adoption support agreement, an))~~ The adoption support agreement takes effect on the ((first)) day ((of the month following the month in which)) the ((court finalizes the adoption.

(2) If the child to be adopted needs support benefits prior to finalization, the assigned regional adoption support program manager may arrange an early effective date. To be eligible for an early effective date, the applicant must:

- (a) Have an adoption support agreement signed by all parties;
- (b) Sign the child's medical and family background report (DSHS 13-041) and a statement of the applicant's intention to adopt; and
- (c) Have the department's designee sign "an exception to policy" statement)) adoption is finalized unless an agreement for earlier implementation of the agreement has been agreed to by all parties.

AMENDATORY SECTION (Amending WSR 04-06-024, filed 2/23/04, effective 3/25/04)

WAC 388-27-0190 ((If the department implements adoption support services prior to the adoption, may the adoptive parent(s) continue to receive department-funded foster care payments while also receiving adoption support)) When will department-funded foster care and foster day care payments end? (1) ~~((The adoptive parent(s) may not continue to receive department-funded))~~ Foster care payments ((for a child while also receiving adoption support payments for the same child)) are paid after the month of service. Adoption support payments are paid prior to the month.

(2) If the adoptive parent(s) receives department-funded foster care and foster care child care for the child to be adopted, the department's social worker assigned to the child (~~(must)~~) will terminate that coverage on the ((last)) day ((of the month preceding the month in which the adoption support becomes effective)) prior to the date the early implementation adoption support agreement was signed, or the day prior to the finalization of the adoption.

(3) ~~((Foster care payments are paid after the month of service. Adoption support payments are paid prior to the month.~~

~~(4) The adoptive parent(s) may not receive foster care payments and adoption support cash payments for the same child for the same month.~~

~~(5)) If the adoptive parent is adopting a relative child and has been receiving ((a nonneedy relative grant)) funding through TANF the adoptive parent must notify the community services office financial services specialist that payment has been initiated through the adoption ~~((has been finalized))~~ support program. The adoptive parent may not receive both the TANF grant and adoption support payments for the same month for the same child.~~

AMENDATORY SECTION (Amending WSR 04-06-024, filed 2/23/04, effective 3/25/04)

WAC 388-27-0200 When may ((the department modify)) the terms of the adoption support agreement be modified? The ~~((department's adoption support program may modify the))~~ terms of an adoption support agreement may be changed or modified only if both the adoptive parent(s) and the department agree to the modification. The department will consider a modification when:

- ~~(1) ((At the request of))~~ Requested by the adoptive parent(s);
- ~~(2) ((When))~~ In the view of the department, it appears that specific circumstances warrant renegotiation and adjustment of monthly cash payment ~~((as agreed to by the adoptive parents and the department))~~;
- ~~(3) ((When the department loses contact with the adoptive parent(s))~~;
- ~~(4) When))~~ The child is placed outside of the adoptive parents' home at department expense; or
- ~~((5) If))~~ (4) The adoptive parent ((is no longer providing for the child's daily care and living expenses; or
- ~~(6) If the adoptive parent fails to notify the department's adoption support program within thirty days of a change of circumstance which affects the adopted child's continuing eligibility for adoption support program cash payments or services))~~ has agreed to an automatic reduction clause in the agreement and the clause states that, based on the anticipated reduction in the needs of the child (for child care for example), the amount will be reduced on a specific date.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0205 Does the adoptive parent need to let the department know if the family's circumstances change? The adoptive parent must inform the department's adoption support program of circumstances that might ~~((make))~~ affect the ~~((parent and the adoptive child either ineligible for))~~ child's eligibility for adoption assistance ~~((payments or))~~ benefits ((or eligible for adoption assistance payments or benefits in different amounts)), might result in an overpayment or missed payment, or might lead to modification of the agreement. Such changes include but are not limited to a:

- (1) ((A)) Significant change in the child's condition;
- (2) ((A)) Change in the marital status of the adoptive parent(s);
- (3) ((A)) Change in the legal or physical custody of the child;

or

- (4) ((A)) Change in the adoptive family's mailing address.

NEW SECTION

WAC 388-27-0208 Under what circumstances are benefits under the adoption support agreement suspended? (1) The monthly cash payment may be suspended if:

(a) The department cannot establish that the:

- (i) Parents are legally responsible for the support of the child;

or

(ii) Child is receiving any support from the parents; and

(b) Department has provided notice to the parents of the department's determination under subsection (1)(a)(i) or (ii) of this section, and of its intent to suspend the monthly cash payment in thirty days, if the parent does not provide documentation within that time to refute the department's determination; and

(c) Parents fail to provide satisfactory documentation.

(2) If the parents provide satisfactory documentation of continued legal responsibility and financial support for the child, the payment may not be suspended. If the parents fail to provide satisfactory documentation, the department must send a notice stating the payment will be suspended. The parents have a right to request a hearing to challenge the suspension and must be provided notice of that right.

AMENDATORY SECTION (Amending WSR 04-06-024, filed 2/23/04, effective 3/25/04)

WAC 388-27-0210 Under what circumstances would the adoption support agreement be terminated? The adoption support agreement is terminated according to the terms of the agreement or if any one of the following events occurs:

(1) The child reaches eighteen years of age(~~(;-(if-a))~~), unless:

(a) The child ((is at least eighteen but less than twenty one years old)) was adopted at age sixteen or older and meets the requirements of an eligible category for the extended foster care program as described in RCW 74.13.031(11). In such cases, the department may extend the terms of the adoption support agreement so long as the child continues to fall within an eligible category and the adoptive parent continues to provide ongoing financial support or the youth turns twenty-one, whichever occurs first. Under no circumstances may the department extend the agreement beyond the child's twenty-first birthday.

(b) The child was adopted prior to age sixteen and is ((a)) attending high school full((-)time in a curriculum leading to a high school ((student or working full time toward the completion of)) diploma or is attending an instructional program leading to a GED ((+)) or high school equivalency((+)) certificate (HSEC) and continues to

receive financial support from the adoptive parent(s), the department may extend the terms of the adoption support agreement until the child completes high school or achieves a ~~((GED))~~ HSEC. Under no circumstances may the department extend the agreement beyond the child's twenty first birthday.~~((+))~~

(c) Adoption support benefits will automatically stop on the child's eighteenth birthday unless the parent(s) requests continuation per this rule and have provided documentation of the child's continuation in school or other qualifying program. To prevent disruption in services the parent should contact the adoption support program at least ninety days prior to the child's eighteenth birthday if continued services are to be requested.

~~((The adoptive parents no longer have legal responsibility for))~~ Upon the child's death;

~~((The adoptive))~~ child is under eighteen years and the department determines the parents are no longer ~~((providing financial))~~ financially or legally responsible for the support ~~((for))~~ of the child;

~~((dies))~~ is under eighteen years old and the department determines the child is no longer receiving any support from the parents; or

(5) The adoptive parents die. (A child who met federal Title IV-E eligibility criteria for adoption assistance will be eligible for adoption assistance in a subsequent adoption.)

AMENDATORY SECTION (Amending WSR 04-06-024, filed 2/23/04, effective 3/25/04)

WAC 388-27-0215 What benefits ~~((may the))~~ are available to adoptive ~~((parent or child receive from))~~ parents through the adoption support program? The adoption support program ~~((may provide one or more of the following benefits))~~ provides:

(1) Reimbursement for nonrecurring adoption finalization costs;

(2) Monthly cash payments, as negotiated by the parties;

(3) Payment for counseling services as preauthorized which are not available from the state's medicaid mental health services (see WAC 388-27-0255 for conditions and terms); ~~((or))~~ and

(4) Medical ~~((services))~~ assistance through the department's medicaid program.

AMENDATORY SECTION (Amending WSR 04-06-024, filed 2/23/04, effective 3/25/04)

WAC 388-27-0220 What factors affect the amount of the monthly adoption support ~~((benefits a child))~~ payments an adoptive parent receives? ~~((The department bases the amount of support it provides on the child's needs and the family's circumstances, but limits the cash payment to an amount that does not exceed the foster care maintenance rate the child would receive if the child was in a foster family home. Specific circumstances as agreed to by the adoptive parent and the department in the agreement, may warrant future renegotiation and ad-~~

~~justment of the payment determined in an assessment of the child.))~~
(1) The amount of the adoption support monthly cash payment is determined through the discussion and negotiation process between the adoptive parents and representatives of the department based upon the needs of the child and the circumstances of the family. The payment that is agreed upon should combine with the parents' resources to cover the ordinary and special needs of the child projected over an extended period of time. Anticipation and discussion of these needs are part of the negotiation of the amount of the adoption assistance payment.

(2) Family circumstances to be considered include:

(a) Size, including the adopted child;

(b) Normal living expenses, including education and childcare expenses;

(c) Exceptional circumstances of any family member;

(d) Income;

(e) Resources and savings plans;

(f) Medical care and hospitalization needs;

(g) Ability to purchase or otherwise obtain medical care; and

(h) Additional miscellaneous expenses related to the adopted child.

(3) The department and the adoptive parents will jointly determine the level of adoption support cash payments needed to meet the basic needs of the child without creating a hardship on the family. However, under no circumstances may the amount of the adoption support monthly cash payment the department pays for the child exceed the statutory cap for the adoption support maintenance payment, under RCW 74.13.A.047.

(4) Where warranted, and where specifically set forth in the agreement, the adoptive parents and department may agree that specific circumstances require a particular payment for a limited period of time and, as set forth in the agreement, the payment will be automatically adjusted or renegotiated at the expiration of the time period.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0250 What specific department requirements apply to medical services? ~~((+1))~~ While an adoption support agreement remains in effect, medical assistance for the child is provided through the department's ((medical)) medicaid program ((rules)) and the medicaid program requirements apply ((to the adopted child)).

~~((2) The department must make all medical payments according to established department procedures and directly to the child's physician(s) or service provider(s).))~~

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0255 What specific department requirements apply to outpatient counseling ((and/or)) or mental health services not covered

by medicaid? ~~((When))~~ (1) The department's adoption support program directly pays for a child's counseling ~~((and/or))~~ or mental health services, when the following conditions apply:

~~((1))~~ (a) The adoptive parent must obtain written authorization from the department's adoption support program before the service is rendered;

(b) The adoptive parent must explain why these services are not available through the medicaid provider network or through private insurance;

~~((2))~~ (c) The adoptive parents' primary health care coverage must be billed prior to billing the department's adoption support program;

~~((3))~~ (d) The department will pay the adoption support program's ~~((authorized))~~ preauthorized rate minus any payment made by the primary (and other) insurer;

~~((4))~~ (e) The department may grant verbal authorization for no more than three counseling sessions prior to providing the required written authorization; and

~~((5))~~ (f) The child's therapist or other treatment provider must submit a written treatment plan prior to authorization for continued treatment~~((+))~~.

~~((6))~~ (2) The department may authorize counseling as follows:

(a) Up to six hours of outpatient counseling per month for up to twelve months; ~~((or))~~

(b) Up to a total of twenty hours per quarter when critical need warrants;

(c) For only one provider at a time unless a second provider is required for a different service; or

(d) Evidence based programs contracted by the department to help stabilize the child in the adoptive home if those programs are pertinent to the needs of the child and family.

~~((7))~~ (3) The department may extend the authorization for counseling (beyond the initial time period authorized) upon receipt of an updated treatment plan and documentation supporting the need for additional treatment from the treatment provider and a parent's request for continuing counseling ~~((DSHS 10-214));~~

~~(8) The department may authorize this service for only one provider at a time unless a second provider is required for a different service).~~

~~(9) The department encourages adoptive parents to seek an annual assessment of the functioning of the adoptive child within the family to determine if there are mental health services needed to help maintain and/or strengthen the adoptive placement)~~ (4) The provider must provide services to the client face-to-face, i.e., in the same room except where face-to-face services are not reasonably accessible to the child.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0260 **If the adoptive parent requests residential placement services for ~~((the parent's))~~ their adopted child, what department requirements apply?** (1) The adoption support program ~~((must))~~ is not able to pay for residential treatment placements of

children who are not in department custody. See RCW 74.13.080 and WAC 388-25-0025.

(2) If the adoptive parent ~~((requests))~~ is in need of residential treatment services for a child, the department will make the following referrals:

(a) For treatment of a mental illness, the department ~~((must))~~ will refer the family to the local ~~((regional support network (RSN)))~~ mental health treatment provider;

(b) If the child has been diagnosed with a ~~((diagnosis of))~~ physical, mental, developmental, cognitive or emotional disability ~~((is present))~~, the department ~~((staff must))~~ will refer the ~~((child))~~ family to the ~~((division of))~~ developmental disabilities ~~((+DDD))~~ administration (DDA) to determine ~~((eligibility of))~~ whether the child is eligible for services ~~((for which the child might be eligible));~~ or

(c) For reasons other than treatment of mental illness or developmental disabilities, the department ~~((staff must))~~ will refer the adoptive parent to ~~((the))~~ child welfare services ~~((intake))~~ at the local children's administration office ~~((of the division of children and family services (DCFS)).~~

~~(3) The adoption support program manager may assist the adoptive parent in arranging residential service for the child but must not be responsible for the child's placement or for the payment of the residential service).~~

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0265 **What are the consequences of** ~~((the department placing the))~~ **an adopted child being placed in foster care** ~~((, group care, or residential treatment))~~? (1) If a child is on active status with Washington state's adoption support program and the department places the child in foster care ~~((, group care, or residential treatment))~~, the department ~~((may report))~~ is required to refer the case to the division of child support and the program may report that good cause exists for not pursuing collection of support payments.

(2) The department ~~((must))~~ may review the adoption support agreement and ~~((must discontinue))~~ may renegotiate the amount of any cash payments to the adoptive parent during the child's out-of-home placement ~~((unless the adoptive parent(s) documents continuing expenses directly related to the child's needs)).~~

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0295 **What** ~~((requirements apply))~~ **process applies to** ~~((the review))~~ **a request for modification of a support agreement?** (1) The adoptive parent ~~((and the department must))~~ may request an opportunity to negotiate ~~((any changes in the agreement that result from a review;))~~ a modification of the adoption support agreement's monthly cash payment provision if there is a change in the needs of the child or in the circumstances of the family. The request must be in writing.

~~(2) ((Changes in the terms of))~~ The adoption support program must initiate a review of the adoption support agreement ((may be retroactive to the date the department received the written request; and)) no later than thirty days after receiving the adoptive parent's request for modification of the agreement.

~~(3) ((If the department modifies the terms of the agreement, the adoptive parent and the department must sign a new agreement))~~ The adoptive parent must provide supporting documentation when requested by the department.

~~(4) The department may request a copy of the adoptive parents' most recently filed federal tax return. If not required to file a federal tax return the adoptive parent(s) must submit a financial statement when requested by the department.~~

~~(5) The adoptive parent may request that the child's medical provider complete an early periodic screening, diagnosis, and treatment (EPSDT) examination and submit a report of the results to the adoption support program.~~

~~(6) The adoptive parent and the department will negotiate in an attempt to reach agreement on the request for modification.~~

~~(7) If the parties modify the terms of the agreement, the adoptive parent and the department must sign a new agreement.~~

~~(8) If the agreement is modified, the changes in the terms of the agreement will be retroactive to the first day of the month in which the department received the written request.~~

~~(9) If an agreement cannot be reached, the department will deny the request for modification and must provide the adoptive parent with written notice of the denial and of the right to appeal.~~

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0305 May an adoptive parent apply for adoption support services after the adoption has been finalized? Federal ((and state)) laws and rules require that a prospective adoptive parent must apply for adoption assistance prior to adopting a special needs child and that the prospective adoptive parent must have a valid adoption support agreement, signed by all parties, before the adoption is finalized.

However, ~~((both state and))~~ the federal government~~((s have recognized))~~ recognizes that in some situations there may have been extenuating circumstances that prevented the eligible child from being placed on the adoption support program prior to adoption. ~~((For these situations separate remedies have been created depending on which eligibility criteria are met by the child.))~~

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0310 If a child met federal Title IV-E eligibility for adoption assistance before the adoption, but was not placed on the ((adoptive)) adoption support program, what may the adoptive parent do

after adoption finalization to obtain adoption support services for the adopted child? For a child who met the Title IV-E eligibility criteria for adoption assistance prior to adoption, federal rules allow for a possible finding of extenuating circumstances through an administrative hearing process. In these situations, the adoptive parent must apply for adoption support. The department will deny the application and the adoptive parent may then request a review by an administrative law judge or a review judge to ((obtain an order authorizing the department to enter into a)) determine if extenuating circumstances exist that justify the department's post-adoption agreement to provide adoption support services to a special needs child.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0320 What is the effective date of an adoption support agreement that results from a finding of extenuating circumstances? ~~((The effective date of an adoption))~~ A support agreement ~~((the department and the adoptive parent have))~~ entered into as a result of a finding of extenuating circumstances may not be effective before the date the department received the written request for participation in the adoption support program from the adoptive parent ~~((for participation in the adoption support program))~~. Under no circumstances may the department back date an adoption support agreement more than two years from the date of an order of an administrative law judge or review judge authorizing the department to enter an adoption support agreement after finalization of the adoption.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0325 If a child did not meet federal Title IV-E eligibility for adoption assistance before the adoption, ((what may the adoptive parent do after)) may the child qualify for adoption ((finalization to obtain adoption)) support ((services for the adopted child)) after adoption finalization? For children ineligible for federal Title IV-E Adoption Assistance, the department may provide limited support through the state-funded adoption support reconsideration program, when the program is funded by the legislature.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0330 What is the adoption support reconsideration program? (1) When funded by the legislature, the adoption support reconsideration program allows the department to register an eligible adopted child for limited state-funded support (see RCW 74.13.150).

(2) The reconsideration program provides for payment of medical and counseling services to address the physical, mental, developmental, cognitive, or emotional disability of the child that resulted in the child's eligibility for the program. Payments are made directly to the provider, not to the adoptive parents.

(3) The adoptive parents' basic health insurance must provide primary coverage and must be used before billing the reconsideration program. The adoption support reconsideration program must be the secondary insurer.

(4) There is a twenty thousand dollar per child lifetime cap on this program.

~~((4))~~ (5) The program requires the adoptive parent and the department to sign an adoption support reconsideration agreement specifying the terms, conditions, and length of time the child will receive limited support.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0335 How does a child qualify for the adoption support reconsideration program? To be eligible for the adoption support reconsideration program, a child must:

(1) Have resided, immediately prior to adoption finalization, in a department funded pre-adoptive placement or in department funded foster care;

(2) Have a physical or mental ~~((handicap))~~ disability or emotional disturbance that existed and was documented before adoption or was at high risk for future physical or mental ~~((handicap))~~ disability or emotional disturbance due to conditions ~~((to which))~~ the child was exposed to before adoption;

(3) Reside in Washington state with an adoptive parent who lacks the financial resources to care for the child's special needs; and

(4) Be covered by a primary basic health insurance program.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0340 How does an adoptive parent apply for the adoption support reconsideration program? ~~((To apply,))~~ The adoptive parent must complete an application for adoption support reconsideration and attach:

(1) A written cost estimate of the child's proposed corrective-rehabilitative services;

(2) A current medical evaluation of the child including the cause(s) of the condition requiring corrective-rehabilitative services;

(3) A written statement explaining the child's current medical and counseling needs;

(4) A written statement giving the department permission to request and review pre-adoption information held by the adoption agency facilitating the child's adoption; and

(5) A copy of the adoptive parents' most recently filed ((IRS 1040)) federal income tax ((form)) return.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0365 Does an adoptive parent have the right to appeal department decisions regarding adoption support issues? (1) An adoptive parent has the right to an administrative hearing to contest the following department actions:

(a) Denial of a child's initial eligibility for the adoption support program or the adoption support reconsideration program;

(b) Failure to respond with reasonable promptness to a written application or request for services;

(c) Denial of a written request to modify the level of payment or service in the agreement;

(d) ~~((A decision to increase or decrease the level of the child's adoption support payments without the concurrence of the adoptive parent(s)))~~ Delay of more than thirty days when responding to a written request for modification of the agreement;

(e) Denial of a request for nonrecurring adoption expenses; ~~((or))~~

(f) Suspension of adoption support benefits; or

(g) Termination from the program.

(2) To initiate the appeal, the adoptive parent must submit a request for an administrative hearing to the office of administrative hearings within ninety days of receipt of the department's decision to deny a request, to suspend or terminate adoption support, or failure to respond to a request.

(3) The office of administrative hearings must apply the rules in WAC 388-27-0120 through 388-27-0390 as they pertain to the issues being contested.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0370 What information about adoption support agreements may be used in an administrative hearing? Adoption and adoption support files are confidential, and information contained in those files may not be disclosed without the consent of the person who is the subject of the file. By requesting an administrative hearing to challenge a department decision relating to adoption support the adoptive parent is agreeing that the department may release factual information about the case during the course of the proceedings. Actions taken by the department and decisions by administrative law judges or review judges in adoption support cases which do not directly involve the case being heard may not be cited or relied ~~((upon))~~ on in any administrative proceeding (RCW 26.33.340 and 74.04.060).

AMENDATORY SECTION (Amending WSR 03-02-059, filed 12/27/02, effective 1/27/03)

WAC 388-27-0375 Will the department reimburse an adoptive parent for nonrecurring adoption expenses? The department ~~((will))~~ has authority to agree to reimburse some or all of an adoptive parent's non-recurring adoption expenses if:

(1) The child has a qualifying factor or condition identified in WAC 388-27-0140(1);

(2) Washington state has determined that the child cannot or should not be returned to the home of the child's biological parent; ~~((and))~~

(3) Except where it would be against the best interest of the child, the department or a public or private nonprofit child placing agency has made a reasonable but unsuccessful effort to place the child with appropriate adoptive parents without the benefit of adoption assistance; and

(4) The child has been placed for adoption according to applicable state ~~((and local laws))~~ or tribal laws.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0380 What types of nonrecurring adoption expenses will the department reimburse? The department may reimburse:

(1) Court costs directly related to finalizing an adoption;

(2) Reasonable and necessary adoption fees;

(3) Reasonable and necessary attorney fees directly related to finalizing an adoption; and

(4) Costs associated with an adoption home study, including:

(a) Health and psychological examinations;

(b) Placement supervision before adoption;

(c) Transportation, lodging, and food costs incurred by the adoptive parent(s) and child during pre-placement visits; and

(d) Other costs directly related to finalizing the legal adoption of the child.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0385 Is there a limit to the amount of nonrecurring adoption expenses that the department will reimburse? ~~((Department))~~ Reimbursement by the department of nonrecurring adoption expenses must not exceed one thousand five hundred dollars per child.

AMENDATORY SECTION (Amending WSR 01-08-045, filed 3/30/01, effective 4/30/01)

WAC 388-27-0390 How does an adoptive parent get reimbursed for nonrecurring adoption expenses? (1) Before the adoption is finalized, the adoptive parent must sign an agreement with the department specifying the nature and amount of nonrecurring adoption expenses. This agreement may be part of an adoption support agreement or it may be a separate agreement specific to the reimbursement for nonrecurring adoption finalization costs. The department will make no reimbursement payments unless such an agreement exists.

(2) (~~Upon~~) After finalization of the adoption, the adoptive parent may request reimbursement. A copy of the adoption decree and documentation supporting actual costs incurred must accompany the request for reimbursement.

(3) The department must reimburse documented actual costs or the amount specified in the signed agreement, whichever is less.

(4) The department will not reimburse nonrecurring adoption expenses that are reimbursable from other sources (for example: (~~IRS,~~ ~~military,~~ ~~or the~~) adoptive parent's employer).

REPEALER

The following sections of the Washington Administrative Code are repealed:

- | | |
|-----------------|---|
| WAC 388-27-0195 | May the adoptive parent(s) change the benefits contained in the adoption support program? |
| WAC 388-27-0230 | How does the department evaluate a request for adoption support monthly cash payments? |
| WAC 388-27-0275 | When does the department review an adoption support agreement? |
| WAC 388-27-0280 | What is involved in the review process? |
| WAC 388-27-0285 | What is the department's responsibility when the adoptive parent(s) requests a review of the adoption support agreement? |
| WAC 388-27-0290 | What if the department does not respond to a request for a review of an adoption support agreement within thirty days? |
| WAC 388-27-0300 | After a review, what if the department and the adoptive parent cannot agree on the terms of the adoption support agreement? |