



# PROPOSED RULE MAKING

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

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STATE OF WASHINGTON  
FILED

DATE: July 11, 2019

TIME: 9:35 AM

WSR 19-15-036

**Agency:** Department of Social and Health Services, Economic Services Administration

**Original Notice**

**Supplemental Notice to WSR** \_\_\_\_\_

**Continuance of WSR** \_\_\_\_\_

**Preproposal Statement of Inquiry was filed as WSR 18-18-103 ; 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 amending sections in chapter 388-14A WAC in order to streamline procedures regarding the use of a form called the Notice to Payee. The Division of Child Support (DCS) uses the Notice to Payee to do the following: 1) Provide notice to a custodial parent when DCS serves a Notice of Support Debt or Notice of Support Owed to establish the amount of back support debt or proportionate share of expenses owed by a noncustodial parent; or 2) Provide notice to a noncustodial parent when DCS serves a Notice of Support Owed to establish the amount of back support debt or proportionate share of expenses owed by a custodial parent.

The department is proposing to amend the following rules in this filing: WAC 388-14A-3304 "The division of child support may serve a notice of support debt and demand for payment when it is enforcing a support order issued in Washington state, a foreign court order or a foreign administrative order for support", WAC 388-14A-3310 "What notice does the division of child support serve to establish a fixed dollar amount under an existing child support order?", and WAC 388-14A-3315 "When DCS serves a notice of support debt or a notice of support owed, we notify the other party to the child support order".

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
August 27, 2019	10:00 a.m.	Office Building 2 DSHS Headquarters 1115 Washington Olympia, WA 98504	Public parking at 11th and Jefferson. A map is available at: <a href="https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2">https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2</a>

**Date of intended adoption:** Not earlier than August 28, 2019 (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](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov)

Fax: 360-664-6185

Other:

By (date) 5:00 p.m. August 27, 2019

**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](mailto:Kildaja@dshs.wa.gov)

Other:

By (date) August 13, 2019

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** To streamline procedures and increase efficiency regarding the use of the form called the Notice to Payee. DCS believes this change will benefit children and families in our caseload.

**Reasons supporting proposal:** Current rules regarding the Notice to Payee require DCS to wait to send a Notice to Payee until after DCS has successfully served a Notice of Support Debt or Notice of Support Owed on a noncustodial parent (NCP), or to wait to send a Notice to Payee until after DCS has successfully served a Notice of Support Owed on a custodial parent (CP). Experience has shown that delaying the mailing of the Notice to Payee until after DCS receives proof of service occasionally leads to delayed or no notice, which creates due process concerns.

The proposed change will allow DCS to send the Notice to Payee at the same time DCS starts the process to serve the Notice of Support Debt or Notice of Support Owed, instead of waiting until after service.

**Statutory authority for adoption:** RCW 26.09.105, RCW 26.18.170, RCW 26.23.110, RCW 34.05.220, RCW 74.04.055, RCW 74.08.090, RCW 74.20.040, RCW 74.20A.310

**Statute being implemented:** RCW 26.23.110

**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: Coordinator	Nancy Koptur, DCS Rules	DCS HQ, POB 9162, Olympia WA 98507-9162	360-664-5065
Implementation: Coordinator	Nancy Koptur, DCS Rules	DCS HQ, POB 9162, Olympia WA 98507-9162	360-664-5065
Enforcement: Coordinator	Nancy Koptur, DCS Rules	DCS HQ, POB 9162, Olympia WA 98507-9162	360-664-5065

**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: Although this rule may meet the definition of a significant legislative rule under RCW 34.05.328, the requirement for a cost-benefit analysis does not apply under RCW 34.05.328(5)(b)(vii).

**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:

- |   |   |
|---|---|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)<br>(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)<br>(Dictated by statute)  |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)<br>(Incorporation by reference)     | <input type="checkbox"/> RCW 34.05.310 (4)(f)<br>(Set or adjust fees)   |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)<br>(Correct or clarify language)    | <input type="checkbox"/> RCW 34.05.310 (4)(g)<br>(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 19.85.025(4).

Explanation of exemptions, if necessary: This proposal does not affect small businesses.

**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: July 9, 2019

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



**WAC 388-14A-3304 The division of child support may serve a notice of support debt and demand for payment when it is enforcing a support order issued in Washington state, a foreign court order or a foreign administrative order for support.** (1) The division of child support (DCS) may serve a notice of support debt and demand for payment on a noncustodial parent (NCP) under RCW 74.20A.040 to provide notice that DCS is enforcing a support order entered in Washington state, a foreign court order or a foreign administrative order for support.

(a) A "foreign" order is one entered in a jurisdiction other than a Washington state court or administrative forum.

(b) DCS uses the notice of support debt and demand for payment when there is only one current child support order for the NCP and the child or children in the case.

(c) When there are multiple current support orders for the same obligor and child or children, DCS determines which order to enforce as provided under WAC 388-14A-3307.

(2) DCS serves a notice of support debt and demand for payment like a summons in a civil action or by certified mail, return receipt requested.

(3) In a notice of support debt and demand for payment, DCS includes the information required by RCW 74.20A.040, the amount of current and future support, accrued support debt, interest (if interest is being assessed under WAC 388-14A-7110), any health insurance coverage obligation, and any day care or child care costs under the court or administrative order.

(4) After service of a notice of support debt and demand for payment, the NCP must make all support payments to the Washington state support registry. DCS does not credit payments made to any other party after service of a notice of support debt and demand for payment except as provided in WAC 388-14A-3375.

(5) A notice of support debt and demand for payment becomes final and subject to immediate wage withholding and enforcement without further notice under chapters 26.18, 26.23, and 74.20A RCW, subject to the terms of the order, unless, within twenty days of service of the notice in Washington, or within sixty days of service of the notice outside of Washington, the NCP:

(a) Files a request with DCS for a conference board under WAC 388-14A-6400. The effective date of a conference board request is the date DCS receives the request;

(b) Obtains a stay from the superior court; or

(c) Objects to either the validity of the foreign support order or the administrative enforcement of the foreign support order, in which case DCS proceeds with registration of the foreign support order under WAC 388-14A-7100.

(6) RCW 26.21A.515 controls the calculation of the debt on a notice of support debt and demand for payment.

(7) Enforcement of the following are not stayed by a request for a conference board or hearing under this section or WAC 388-14A-6400:

(a) Current and future support stated in the order; and

(b) Any portion of the support debt that the NCP and custodial parent (CP) fail to claim is not owed.

(8) ~~((Following service of))~~ At the same time that DCS sends the notice of support debt and demand for payment for service on the NCP, DCS notifies either the CP or the payee under the order, or both if appropriate, by mailing a form called the notice to payee, which is described in WAC 388-14A-3315.

(a) DCS does not wait to confirm service of the notice of support debt and demand for payment before mailing out the notice to payee;

(b) DCS mails to the last known address of the CP ~~((and/or))~~ or the payee under the order, as appropriate;

(c) The notice to payee contains:

~~((a))~~ (i) A copy of the notice of support debt and demand for payment; and

~~((b) A notice to payee under WAC 388-14A-3315 regarding))~~ (ii) A statement that:

(A) ~~The ((payee's rights))~~ payee has the right to contest the notice of support debt ~~((The))~~; and

(B) A CP who is not the payee under the order has the same rights to contest the notice of support debt and demand for payment.

(9) If the NCP requests a conference board under subsection (5)(a) of this section, DCS mails a copy of the notice of conference board to the CP informing the CP of the CP's right to:

(a) Participate in the conference board; or

(b) Request a hearing under WAC 388-14A-3321 within twenty days of the date of a notice of conference board that was mailed to a Washington address. If the notice of conference board was mailed to an out-of-state address, the CP may request a hearing within sixty days of the date of the notice of conference board. The effective date of a hearing request is the date DCS receives the request.

(10) If the CP requests a hearing under subsection ~~((8)(b))~~ (8)(c) of this section, DCS must:

(a) Stay enforcement of the notice of support debt and demand for payment except as required under subsection ~~((6))~~ (7) of this section; and

(b) Notify the NCP of the hearing.

(11) If a CP requests a late hearing under subsection ~~((7))~~ (8)(c) of this section, the CP must show good cause for filing the late request.

(12) The NCP is limited to a conference board to contest the notice and may not request a hearing on a notice of support debt and demand for payment. However, if the CP requests a hearing, the NCP may participate in the hearing.

(13) A notice of support debt and demand for payment must fully and fairly inform the NCP of the rights and responsibilities in this section.

AMENDATORY SECTION (Amending WSR 11-22-116, filed 11/2/11, effective 12/3/11)

**WAC 388-14A-3310 What notice does the division of child support serve to establish a fixed dollar amount under an existing child support order?**

(1) The division of child support (DCS) may serve a notice of support owed under RCW 26.23.110 on either the noncustodial parent (NCP) or the custodial parent (CP) whenever it is necessary to establish a fixed dollar amount owed under a child support order that

was entered in Washington or by any other tribunal. This section provides general information regarding the notice of support owed.

(a) WAC 388-14A-3311 describes the procedures for service of a notice of support owed on the NCP to determine the fixed dollar amount of the support debt or the fixed dollar amount of the current and future support obligation, including:

(i) The NCP's proportionate share of daycare or child care expenses incurred on behalf of the ~~((child(ren)))~~ the child or children; and

(ii) Converting a support order set in foreign currency using the current rate of exchange to fix the amount of support in U.S. dollars, if necessary; and

(b) WAC 388-14A-3312 describes the procedures for service of a notice of support owed on either parent to establish that parent's share of medical expenses ~~((and/or))~~ or medical support, or both, owed for the child or children covered by a support order.

(2) The notice of support owed contains an initial finding, showing DCS' calculation of the fixed dollar amount of:

(a) The current and future support obligation;

(b) Any support debt owed; or

(c) Both amounts.

(3) The notice of support owed facilitates enforcement of the underlying support order by implementing the terms of the order, but it cannot modify the terms of the order.

(4) The reasons that DCS may serve a notice of support owed include, but are not limited to:

(a) The underlying support order sets a support obligation but does not state the monthly support obligation as a fixed dollar amount;

(b) The underlying support order sets a support obligation stated in foreign currency and DCS seeks to convert that amount using the current rate of exchange to fix the amount of support stated in U.S. dollars;

(c) DCS is implementing the adjustment or escalation provision of a court order;

(d) The support order provides that the NCP is responsible for paying for a portion of daycare or child care expenses incurred on behalf of the ~~((child(ren)))~~ child or children, but does not reduce the amount owed to a fixed dollar amount. DCS serves the notice of support owed to determine the NCP's proportionate share of those expenses; or

(e) The support order provides that either the NCP or the CP must provide medical support as required under either RCW 26.19.105 or 74.20A.300, but does not reduce the medical support obligation to a fixed dollar amount.

(5) Because of the different purposes for which DCS may serve a notice of support owed under RCW 26.23.110, DCS has developed two separate forms to use for the notice of support owed:

(a) The basic form used by DCS to establish a fixed dollar amount owed by an NCP under an existing child support order is called the notice of support owed.

(b) DCS developed a special form called the "notice of support owed - Medical support" which is used only for the following purposes:

(i) To notify an obligated parent of the obligation to pay a portion of the premium for health insurance provided by the other parent or state of Washington; or

(ii) To determine a fixed dollar amount for uninsured medical expenses incurred on behalf of the child or children and to demand pay-

ment of the obligated parent's proportionate share when a support order requires the obligated parent to pay a specific percentage of uninsured medical expenses.

(6) For the purposes of this chapter, the term "notice of support owed" includes "notice of support owed" and "notice of support owed - Medical support."

(7) DCS serves a notice of support owed on the NCP or the CP, as appropriate, like a summons in a civil action or by certified mail, return receipt requested.

(8) WAC 388-14A-3315 provides that, when DCS serves a notice of support owed on one party, DCS notifies the other party to the support order by sending a form called the notice to payee, and encloses a copy of the notice (~~(that was served)~~).

(a) (~~(After service on)~~) If DCS is serving a notice of support owed on the NCP, DCS mails ((a)) the notice to payee to the CP and to the payee under the order, if the CP is not the payee under the order.

(b) (~~(After service on)~~) If DCS is serving a notice of support owed on the CP, DCS mails ((a)) the notice to payee to the NCP.

(9) In a notice of support owed, DCS includes:

(a) The information required by RCW 26.23.110;

(b) Any provision or factors contained in the underlying order regarding how to calculate the monthly support or the amounts claimed for medical support;

(c) Any other information not contained in the order that DCS used to calculate the amounts in the notice; and

(d) Notice of the right to request an annual review of the order or a review on the date given in the order for an annual review, if any. WAC 388-14A-3330 describes the procedures for the annual review of a notice of support owed.

(10) A notice of support owed fully and fairly informs the parties of the rights and responsibilities in this section.

(11) After service of a notice of support owed, the recipient of the notice (which could be either the CP or the NCP, as appropriate,) must make all support payments required by the notice to the Washington state support registry (WSSR). DCS does not credit payments made to any other party after service of a notice of support owed except as provided in WAC 388-14A-3375.

(12) The need to serve a notice of support owed does not require DCS to cease all enforcement actions on a case. At any time, DCS may enforce:

(a) A fixed or minimum dollar amount for monthly support stated in the court order or a prior administrative order entered under this section;

(b) Any part of a support debt that has been reduced to a fixed dollar amount by a court or administrative order; and

(c) Any part of a support debt that neither party claims is incorrect.

(13) A notice of support owed becomes final and subject to immediate income withholding and enforcement as provided in WAC 388-14A-3316.

(14) An objection or request for hearing on a notice of support owed may be timely or untimely:

(a) WAC 388-14A-3317 discusses what happens if a parent makes a timely request for hearing; and

(b) WAC 388-14A-3318 discusses what happens if a parent makes an untimely request for hearing.

(15) WAC 388-14A-3320 provides general information regarding an administrative hearing on a notice of support owed.

(16) WAC 388-14A-3330 provides information regarding the annual review of a notice of support owed.

(17) For the purposes of this section and WAC 388-14A-3311 through 388-14A-3330, the term "payee" includes "physical custodian," "custodial parent," or "party seeking reimbursement."

AMENDATORY SECTION (Amending WSR 11-12-006, filed 5/19/11, effective 6/19/11)

**WAC 388-14A-3315 When DCS serves a notice of support debt or a notice of support owed, we notify the other party to the child support order.** (1) When the division of child support (DCS) needs to notify the parties that DCS is enforcing a previously entered support order, DCS serves the appropriate notice under WAC 388-14A-3302. DCS may serve a notice of support owed on either the noncustodial parent (NCP) or the custodial parent (CP), as provided in WAC 388-14A-3310.

(2) ~~((After))~~ At the same time that DCS ~~((serves))~~ sends a notice of support debt or a notice of support owed for service on one party, DCS notifies the other party ~~((to the order))~~ by sending a form called the notice to payee, with a copy of the notice ~~((that was served, when DCS receives proof of service))~~.

(3) DCS serves a notice of support debt or a notice of support owed on the NCP when DCS is enforcing an order that sets the NCP's support obligation. ~~((After service of))~~ At the same time that DCS sends the notice for service on the NCP:

(a) DCS sends the notice to payee to the CP, if the CP is the payee under the order; and

(b) DCS sends the notice to payee to the CP and to the payee under the order, if the CP is not also the payee under the order.

(4) When DCS serves a notice of support owed on the CP ~~((when))~~ because DCS is enforcing an order that sets the CP's medical support obligation ~~((After service of the notice on the CP))~~, DCS sends the notice to payee to the NCP.

(5) DCS sends the notice to payee by first class mail to the last known address DCS has on file, and encloses a copy of the notice that was ~~((served))~~ sent for service on the obligated parent.

(a) In a notice to payee, DCS informs the payee of the right to file a request with DCS for a hearing on the notice of support owed or the notice of support debt within twenty days of the date of a notice to payee that was mailed to a Washington address.

(b) If the notice to payee was mailed to an out-of-state address, the payee may request a hearing within sixty days of the date of the notice to payee.

(6) The effective date of a hearing request is the date DCS receives the request.