



PROPOSED RULE MAKING

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

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FILED

DATE: March 16, 2021

TIME: 2:41 PM

WSR 21-07-072

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 20-20-138 ; 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 amendments to WAC 388-310-1600, WorkFirst—Sanctions.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
April 27, 2021	10:00 a.m.	Office Building 2 DSHS Headquarters 1115 Washington Street SE Olympia, WA 98501 Or by Skype	Public parking at 11 th and Jefferson. A map is available at: https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2 Due to the COVID 19 pandemic, hearing may be held via Skype, see DSHS website for most up to date information.

Date of intended adoption: Not earlier than April 28, 2021 (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. April 27, 2021

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) April 13, 2021

Purpose of the proposal and its anticipated effects, including any changes in existing rules: Proposed amendments to WAC 388-310-1600 will support implementation of Substitute House Bill 2441 (Chapter 338, Laws of 2020), effective July 1, 2021, which extends the amount of time a Temporary Assistance for Needy Families program recipient can remain in sanction status due to noncompliance with WorkFirst activities before the assistance grant is terminated.

Reasons supporting proposal: See purpose statement above.

Statutory authority for adoption: RCW 74.04.050, RCW 74.04.055, RCW 74.04.057, RCW 74.08.025, RCW 74.08.090, RCW 74.09.035, RCW 74.09.530, RCW 74.62.030, chapter 74.08A RCW, and chapter 74.12 RCW

Statute being implemented: RCW 74.08A.260

Is rule necessary because of a:

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

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

<input type="checkbox"/> Private
<input type="checkbox"/> Public
<input checked="" type="checkbox"/> Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Jake Deskins	PO Box 45470, Olympia, WA 98504-5770	360-480-3411
Implementation:	Jake Deskins	PO Box 45470, Olympia, WA 98504-5770	360-480-3411
Enforcement:	Jake Deskins	PO Box 45470, Olympia, WA 98504-5770	360-480-3411

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: This amendment is exempt as allowed under RCW 34.05.328(5)(b)(vii) which states in part, "[t]his section does not apply to...rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents".

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)(c) (Incorporation by reference)
- RCW 34.05.310 (4)(d) (Correct or clarify language)
- RCW 34.05.310 (4)(e) (Dictated by statute)
- RCW 34.05.310 (4)(f) (Set or adjust fees)
- 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 34.05.328(5)(b)(vii).

Explanation of exemptions, if necessary: These amendments do not impact small businesses. They only affect DSHS clients.

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: March 15, 2021

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:

WAC 388-310-1600 WorkFirst—Sanctions. (1) What WorkFirst requirements do I have to meet?

You must do the following when you are a mandatory WorkFirst participant:

(a) Give the department the information we need to develop your individual responsibility plan (IRP) (see WAC 388-310-0500);

(b) Show that you are participating fully to meet all of the requirements listed on your individual responsibility plan;

(c) Go to scheduled appointments listed in your individual responsibility plan;

(d) Follow the participation and attendance rules of the people who provide your assigned WorkFirst services or activities; and

(e) Accept available paid employment when it meets the criteria in WAC 388-310-1500.

(2) What happens if I don't meet WorkFirst requirements?

(a) If you do not meet WorkFirst requirements, we will send you a letter telling you what you did not do, and inviting you to a noncompliance case staffing. ~~((The letter will also schedule a home visit that will happen if you don't attend your noncompliance case staffing. We may schedule an alternative meeting, instead of a home visit, when there are safety or access issues.))~~

(i) A noncompliance case staffing is a meeting with you, your case manager, and other people who are working with your family, such as representatives from tribes, community or technical colleges, employment security, ~~((the children's administration))~~ department of children, youth, and families, family violence advocacy providers or limited-English proficient (LEP) pathway providers to review your situation and compliance with your participation requirements.

(ii) You will be notified when your noncompliance case staffing is scheduled so you can attend.

(iii) You may invite anyone you want to come with you to your noncompliance case staffing.

(b) You will have ten days to contact us so we can talk with you about your situation. You can contact us in writing, by phone, by going to the noncompliance case staffing ~~((appointment))~~ described in the letter, or by asking for an individual appointment.

(c) If you do not contact us within ten days, we will make sure you have been screened for family violence and other barriers to participation and that we provided necessary supplemental accommodations as required by chapter 388-472 WAC. We will use existing information to decide whether:

(i) You were unable to do what was required; or

(ii) You were able, but refused, to do what was required.

(d) If you had a good reason not to do a required activity we will work with you and may change the requirements in your individual responsibility plan if a different WorkFirst activity would help you move towards independence and employment sooner. If you have been unable to meet your WorkFirst requirements because of family violence, you and your case manager will develop an individual responsibility plan to help you with your situation, including referrals to appropriate services.

~~((e) If you do not attend your noncompliance case staffing, and we determine you did not have a good reason, we will conduct the home visit (or alternative meeting) to review your circumstances and discuss next steps and options.))~~

(3) What is considered a good reason for not doing what WorkFirst requires?

You have a good reason if you were not able to do what WorkFirst requires (or get an excused absence, described in WAC 388-310-0500(5)) due to a significant problem or event outside your control. Some examples of good reasons include, but are not limited to:

(a) You had an emergent or severe physical, mental or emotional condition, confirmed by a licensed health care professional that interfered with your ability to participate;

(b) You were threatened with or subjected to family violence;

(c) You could not locate child care for your children under thirteen years that was:

(i) Affordable (did not cost you more than your copayment would under the working connections child care program in chapter 110-15 WAC);

(ii) Appropriate (licensed, certified or approved under federal, state or tribal law and regulations for the type of care you use and you were able to choose, within locally available options, who would provide it); and

(iii) Within a reasonable distance (within reach without traveling farther than is normally expected in your community).

(d) You could not locate other care services for an incapacitated person who lives with you and your children.

(e) You had an immediate legal problem, such as an eviction notice; or

(f) You are a person who gets necessary supplemental accommodation (NSA) services under chapter 388-472 WAC and your limitation kept you from participating. If you have a good reason because you need NSA services, we will review your accommodation plan.

(4) What happens in my noncompliance case staffing?

(a) At your noncompliance case staffing we will ensure you were offered the opportunity to participate and discuss with you:

(i) Whether you had a good reason for not meeting WorkFirst requirements.

(ii) What happens if you are sanctioned;

(iii) How you can participate and get out of sanction status;

(iv) How you and your family benefit when you participate in WorkFirst activities;

(v) That your case may be closed after you have been in grant reduction sanction status for ~~((two))~~ ten months in a row;

(vi) How you plan to care for and support your children if your case is closed. We will also discuss the safety of your family, as needed, using the guidelines under RCW 26.44.030; and

(vii) How to reapply if your case is closed.

(b) If you do not come to your noncompliance case staffing, we will make a decision based on the information we have ~~((and))~~. We will send you a letter letting you know whether we found that you had a good reason for not meeting WorkFirst requirements.

~~(5) ((What happens if we do a home visit because you didn't attend your noncompliance case staffing?~~

~~If you didn't attend your noncompliance case staffing, and we determined you did not have a good reason for failure to meet WorkFirst~~

~~requirements, we will attempt to contact you during your scheduled home visit (or alternative meeting).~~

~~(a) If we are able to contact you, we will review the information that we planned to discuss at your noncompliance case staffing, including whether you had a good reason for failing to meet WorkFirst requirements and how you can participate and get out of sanction status. If you don't have a good reason, we will follow the process to place you in sanction status.~~

~~(b) If we are unable to contact you, we will follow the process to place you in sanction status based on the determination we made at your noncompliance case staffing.~~

~~(6-))~~ **What if we decide that you did not have a good reason for not meeting WorkFirst requirements?**

(a) Before you are placed in sanction, a supervisory level employee will review your case to make sure:

(i) You knew what was required;

(ii) You were told how you can resume WorkFirst participation to avoid or end your sanction;

(iii) We tried to talk to you and encourage you to participate; and

(iv) You were given a chance to tell us if you were unable to do what we required.

(b) If we decide that you did not have a good reason for not meeting WorkFirst requirements, and a supervisory level employee approves the sanction and sanction penalties, we will send you a letter that tells you:

(i) What you failed to do;

(ii) That you are in sanction status;

(iii) Penalties that will be applied to your grant;

(iv) When the penalties will be applied;

(v) How to request an administrative hearing if you disagree with this decision; and

(vi) How to end the penalties and get out of sanction status.

~~(c) ((If your case is closed because you failed to attend your noncompliance case staffing and home visit (or alternative meeting), this information will be included in your termination letter.~~

~~(d-))~~ We will also provide you with information about resources you may need if your case is closed. If you are sanctioned, then we will actively attempt to contact you another way so we can talk to you about the benefits of participation and how to end your sanction.

~~((7-))~~ **(6) What is sanction status?**

When you are a mandatory WorkFirst participant, you must follow WorkFirst requirements to qualify for your full grant. If you or someone else on your grant doesn't do what is required and you can't prove that you had a good reason, you are placed in WorkFirst sanction status.

~~((8-))~~ **(7) Are there penalties when you or someone in your household goes into sanction status?**

When you or someone in your household is in sanction status, we impose penalties. The penalties last until you or the household member meet WorkFirst requirements. ~~((There are different penalties depending on if you attended your noncompliance case staffing or home visit (or alternative meeting).))~~ Your household will only enter sanction status if we determine that you or someone else in your household did not have a good reason for failing to meet the WorkFirst requirements.

~~(a) ((If you attended your noncompliance case staffing or home visit (or alternative meeting) and entered sanction status,))~~ You will

receive a grant reduction sanction penalty following two months of noncompliance.

~~((i))~~ (b) Your grant is reduced by one person's share or forty percent, whichever is more.

~~((ii))~~ (c) The reduction is effective the first of the month following ten-day notice from the department; and

~~((iii))~~ (d) Your case may be closed effective the first of the month after your grant has been reduced for ~~((two))~~ ten months in a row.

~~((b) If you did not attend your noncompliance case staffing or home visit (or alternative meeting) and entered sanction status you will receive a case closure sanction penalty.~~

~~(i) Your case may be closed the first of the month following the ten-day notice from the department.~~

~~(ii) If your case is reopened under subsection (14)(b), you will remain in sanction status and receive a grant reduction sanction penalty.~~

~~(A) Your grant is reduced by one person's share or forty percent, whichever is more.~~

~~(B) The reduction is effective the first of the month that your grant is reopened; and~~

~~(C) Your case may be closed effective the first of the month after your grant has been reduced for two months in a row.)~~ (())

~~((9))~~ (8) What happens before your case is closed due to sanction?

(a) Before we close your case due to sanction status, we will send you a letter to tell you:

~~((a))~~ (i) What you failed to do;

~~((b))~~ (ii) When your case will be closed;

~~((c))~~ (iii) How you can request an administrative hearing if you disagree with this decision;

~~((d))~~ (iv) How you can end your penalties and keep your case open (if you are able to participate for four weeks in a row before we close your case); and

~~((e))~~ (v) How your participation before your case is closed can be used to meet the participation requirement in subsection ~~((13))~~ (12).

(b) Attempt to contact you each month to begin the process of ending penalties and getting out of sanction status.

~~((10))~~ (9) What happens ((if)) to my WorkFirst sanction ((grant reduction penalty started before November)) before July 1, ((2014)) 2021?

(a) If your case is open and in sanction status as of June 30th, 2021, your case will no longer be in sanction status.

(b) If ((you are in)) your case enters sanction ((and entered sanction before November)) status after July 1, ((2014)) 2021, your case may be closed after you have been in grant reduction sanction status for ~~((four))~~ ten months in a row.

~~((11))~~ (10) How do I resume participation to avoid or end ((the penalties and get out of)) sanction status?

~~((To end the penalties and get out of sanction status:))~~

(a) You must provide the information we requested to develop your individual responsibility plan; and/or

(b) Start and continue to do your required WorkFirst activities for four weeks in a row (that is, twenty-eight calendar days). The four weeks starts on the day you complete your comprehensive evaluation and you agree to your individual responsibility plan activities.

~~((12))~~ (11) What happens when I get out of sanction status before my case is closed?

When you get out of sanction status before your case is closed, your grant will be restored to the level you are eligible for beginning the first of the month following your four weeks of participation. For example, if you finished your four weeks of participation on June 15, your grant would be restored on July 1.

~~((13))~~ (12) What if I reapply for TANF or SFA and I was in sanction status when my case closed?

(a) For cases that close on or after July 1, 2021:

(i) If your case closed due to sanction, you will need to follow the sanction reapplication process in subsection ~~((14))~~ (13).

(ii) If your case closed for another reason while you were in sanction status and is reopened, you will reopen in ~~((month two of))~~ grant reduction sanction status. For example, if you closed while you were in month four of grant reduction sanction status, your grant will be opened in month five of grant reduction sanction status.

(b) For cases that closed prior to July 1, 2021, your case will not open in sanction status, and subsection (13) will not apply.

~~((14))~~ (13) What if I reapply for TANF or SFA after my case is closed due to sanction?

~~((a) Except as specified in subsection ~~(14)(b))~~) If you reapply for TANF or SFA after your case is closed due to sanction, you must participate for four weeks in a row before you can receive cash. Once you have met your four week participation requirement, your cash benefits will start, going back to the date we had all the other information we needed to make an eligibility decision.~~

~~((b) We will take the actions below if you received the sanction penalty in subsection (8)(b), you reapply for TANF or SFA after your case is closed due to sanction and you complete the interview required under WAC 388-452-0005 by the end of the month that your benefits stopped. For example, if your benefits stop effective July 1, you must reapply and complete the interview by July 31. If you meet this time-frame:~~

~~(i) We will undo your case closure sanction penalty; and~~

~~(ii) If you are determined eligible, we will reopen your grant in sanction status with a grant reduction sanction penalty, going back to the effective date of your case closure.)~~