



PROPOSED RULE MAKING

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

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FILED

DATE: July 15, 2022

TIME: 3:25 PM

WSR 22-15-057

Agency: Department of Social and Health Services, Economic Services Administration, Division of Child Support

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 21-20-049 ; 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 change WAC 388-14A-4300 – What can I do if I think I'm paying more than the custodial parent is spending for day care or other special expenses for my child?, 388-14A-4302 – Who participates in a hearing on petition for reimbursement?, 388-14A-4303 – What happens at a hearing on petition for reimbursement?, and 388-14A-4304 – What happens if the judge determines that I have paid too much for day care and special expenses?

Hearing location(s):

| Date: | Time: | Location: (be specific) | Comment: |
|-----------------|------------|---|---|
| August 23, 2022 | 10:00 a.m. | Office Building 2 DSHS Headquarters 1115 Washington Olympia, WA 98504 Or Virtually | 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, hearings are held virtually, see the DSHS website for the most current information. |

Date of intended adoption: Not earlier than August 24, 2022 (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. on August 23, 2022

Assistance for persons with disabilities:

Contact Shelley Tencza, DSHS Rules Consultant

Phone: 360-664-6036

Fax: 360-664-6185

TTY: 711 Relay Service

Email: tencza@dshs.wa.gov

Other:

By (date) 5:00 p.m. on August 9, 2022

Purpose of the proposal and its anticipated effects, including any changes in existing rules: This rulemaking will clarify applicable lookback periods and statutes of limitations for daycare expenses under In re: the Marriage of Blackburn, 12 Wn.App.2d 798, 460 P.3d 202 (2020). DCS is also updating circumstances in which a daycare overpayment hearing is applicable, various hearing procedures, and how notices are sent by DCS and the Office of Administrative Hearings. Rules are necessary to ensure compliance with recent case law regarding the lookback periods and statutes of limitations that apply

to claims for daycare expenses that were previously paid. Rules are also necessary to improve efficiencies and clarify daycare-related hearing and notice policies and procedures.

Reasons supporting proposal: This rulemaking is necessary to bring child support daycare rules in line with recent case law under In re: Marriage of Blackburn, 12 Wn.App.2d 798, 460 P.3d 202 (2020) regarding the statute of limitations as it applies to daycare reimbursement requests. It also updates our procedures around daycare overpayment hearings and notice requirements.

Statutory authority for adoption: RCW 26.23.035, RCW 26.23.110, and RCW 34.05.220

Statute being implemented: RCW 26.19.080, RCW 26.23.035, and 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: In re: the Marriage of Blackburn, 12 Wn.App.2d 798, 460 P.3d 202 (2020).

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: n/a

Name of proponent: (person or organization) Department of Social and Health Services, Economic Services Administration, Division of Child Support Private Public Governmental

Name of agency personnel responsible for:

| | Name | Office Location | Phone |
|-----------------------------|-----------------------------|---|----------------|
| Drafting: Coordinator | Brady Horenstein, DCS Rules | DCS HQ, POB 9162, Olympia WA 98507-9162 | (360) 664-5291 |
| Implementation: Coordinator | Brady Horenstein, DCS Rules | DCS HQ, POB 9162, Olympia WA 98507-9162 | (360) 664-5291 |
| Enforcement: Coordinator | Brady Horenstein, DCS Rules | DCS HQ, POB 9162, Olympia WA 98507-9162 | (360) 664-5291 |

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: These rules are exempt under RCW 34.05.328(5)(b)(vii) 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:

- | | |
|--|--|
| <input checked="" type="checkbox"/> RCW 34.05.310 (4)(b) (Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e) (Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c) (Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f) (Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d) (Correct or clarify language) | <input type="checkbox"/> 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 19.85.025(4) because the proposed amendments do not impact small business and impose no new or disproportionate costs on small businesses so a small business economic impact statement is not required.

Explanation of exemptions, if necessary: These rules are exempt under RCW 34.05.328(5)(b)(vii) 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.

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:

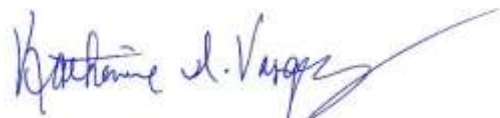
Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Date: July 12, 2022

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



WAC 388-14A-4300 What can I do if I think I'm paying more than the custodial parent is spending for day care or other special expenses for my child? (1) When a court or administrative child support order requires a ((A)) noncustodial parent (NCP) to pay a fixed monthly amount for day care or special child rearing expenses, an NCP who has paid child support under a court or administrative order and believes that day care or special child rearing expenses were not actually incurred in the amount of the order may file ((an application for)) a petition for reimbursement. This petition requests the division of child support (DCS) set an administrative hearing to determine if an overpayment of at least ((twenty)) 20 ((per cent)) percent has occurred and how the overpayment should be reimbursed.

~~((a))~~ (2) A petition for reimbursement ((may)) must cover a ((twelve)) 12-month period((; and)) .

~~((b))~~ (a) The ((twelve)) 12-month period may be:

(i) A calendar year; or

(ii) The ((twelve)) 12-month period following the anniversary date of the support order; or

(iii) The ((twelve)) 12-month period following an adjudication under this section.

~~((e))~~ (b) ((Twelve)) 12-month periods under this section may not overlap.

~~((2))~~ (3) The ((application)) petition must be in writing and at a minimum state:

(a) The ((twelve)) 12-month time period to be considered;

(b) The date of the order requiring the payment of day care or special child rearing expenses;

(c) The amounts required by the court or administrative order for day care or special child rearing expenses for that time period;

(d) The amounts actually paid by the NCP for that time period;

(e) The total amount of day care or special child rearing expenses which the NCP claims the custodial parent (CP) actually incurred for that time period;

(f) The NCP's proportionate share of the expenses actually incurred; and

(g) The amount of reimbursement for overpayment to which the NCP claims to be entitled for that time period.

(4) An NCP must file a petition for reimbursement within two years of the alleged overpayment in order to be entitled to reimbursement under WAC 388-14A-4300 through 388-14A-4304 and RCW 4.16.130. The effective date of the petition is the date DCS receives the written request.

~~((3) The effective date of a hearing request is the date DCS receives the written request.)~~

~~((4) WAC 388-14A-4300 through 388-14A-4304 apply only to amounts paid during the twelve-month period ending May 31, 1996 or later.)~~

(5) When a court or administrative child support order requires an NCP to pay variable day care or special child rearing expenses and the fixed monthly amount of day care or special child rearing expenses was calculated in a notice of support owed, an NCP who believes they overpaid such expenses:

(a) May request an annual review of the notice of support owed under WAC 388-14A-3330; and

(b) Is not entitled to a hearing on a petition for reimbursement under WAC 388-14A-4300 through 388-14A-4304.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-4302 Who participates in a hearing on petition for reimbursement? (1) The ~~((division of child support (DCS)))~~ office of administrative hearings (OAH) sends notice of a hearing under this subsection to the noncustodial (NCP) and to the custodial parent (CP).

(2) The NCP and the CP participate in the hearing as independent parties with the same procedural rights.

AMENDATORY SECTION (Amending WSR 01-03-089, filed 1/17/01, effective 2/17/01)

WAC 388-14A-4303 What happens at a hearing on petition for reimbursement? (1) The noncustodial parent (NCP) has the burden of proving the amounts actually paid by the NCP under the order.

(2) The custodial parent (CP) has the burden of proving the amounts actually incurred for day care and special child rearing expenses.

(3) The CP is not required to provide the address of the day care provider unless the administrative law judge (ALJ) finds that the information may be disclosed under the standards set forth in WAC 388-14A-2105 for the disclosure of the address of the CP.

(4) The division of child support (DCS) and the parties may enter a consent order or agreed settlement instead of proceeding to hearing any time a parent has requested a hearing on a petition for reimbursement. See WAC 388-14A-3600 for the rules regarding consent orders and agreed settlements.

~~((4))~~ (5) If the NCP fails to appear for the hearing, upon proof of service of the notice of hearing the ALJ issues an order of default against the NCP and dismisses the petition for reimbursement.

~~((5))~~ (6) If the CP fails to appear for the hearing, upon proof of service of the notice of hearing the ALJ issues an order of default against the CP and may either hold~~((s))~~ a hearing on the merits of the petition for reimbursement or issue a consent order.

~~((6))~~ (7) A hearing under this subsection is for the limited purpose of determining whether the amount paid by the NCP exceeds the NCP's proportionate share of the amount actually incurred for day care and special child rearing expenses.

(a) If the ALJ determines that the overpayment amounts to ~~((twenty))~~ 20 percent or more of the NCP's share of annual day care and special child rearing expenses, the ALJ enters an order stating:

(i) The ~~((twelve))~~ 12-month time period in question;

(ii) The amount of the overpayment; and

(iii) The method ~~((by which the overpayment shall be reimbursed by the CP))~~ of reimbursement as set forth at WAC 388-14A-4304.

(b) If the ALJ determines that the overpayment amounts to less than (~~twenty~~) 20 percent of the NCP's share of annual day care and child rearing expenses, the ALJ enters an order stating:

(i) Whether the NCP has overpaid or underpaid the day care and special child rearing expenses;

(ii) If an overpayment has occurred, by what percentage of the annual proportionate share; and

(iii) That reimbursement under this section is denied for that (~~twelve~~) 12-month period.

AMENDATORY SECTION (Amending WSR 05-07-087, filed 3/16/05, effective 4/16/05)

WAC 388-14A-4304 What happens if the judge determines that I have paid too much for day care and special expenses?

(1) If at a hearing under WAC 388-14A-4303, the administrative law judge (ALJ) decides that the custodial parent (CP) has not incurred costs in the amount paid by the noncustodial parent (NCP), any ordered overpayment reimbursement may be applied (~~an as~~) as an offset to any nonassistance child support arrears owed by the NCP on that case only. If there is no nonassistance debt owed on the case, the reimbursement must be in the form of a credit against the NCP's future child support obligation:

(a) Spread equally over (~~a twelve~~) one 12-month period starting the month after the administrative order becomes final; or

(b) When the future support obligation will end under the terms of the order in less than (~~twelve~~) 12 months, spread equally over the life of the order; or

(c) With the consent of the CP, in the form of a direct reimbursement by the CP to the NCP.

(2) The NCP may not pay more than his or her proportionate share of day care or other special child rearing expenses in advance and then deduct the overpayment from future support transfer payments unless:

(a) Specifically agreed to by the CP; and

(b) Specifically agreed to in writing by DCS for periods when the CP or the dependent child receives public assistance.