



PROPOSED RULE MAKING

CR-102 (July 2022) (Implements RCW 34.05.320) Do NOT use for expedited rule making

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FILED

DATE: December 27, 2023
TIME: 4:33 PM

WSR 24-02-046

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 23-20-093 ; 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 the following WAC sections: WAC 388-412-0025, "How do I receive my benefits?", 388-450-0162, "How does the department count my income to determine if my assistance unit is eligible and how does the department calculate the amount of my cash and basic food benefits?", 388-450-0200, "Will the medical expenses of elderly persons or individuals with disabilities in my assistance unit be used as an income deduction for basic food?", 388-450-0225, "How are my assistance unit's benefits calculated for the first month I am eligible for cash assistance?", 388-473-0010, "What are ongoing additional requirements and how do I qualify?", 388-473-0040, "Assistance for service animals as an ongoing additional requirement.", 388-478-0050, "Telephone and internet services as an ongoing additional requirement.", 388-478-0050, "Payment standards for ongoing additional requirements." Additionally, the department is proposing creation of the following WAC sections: WAC 388-473-0070, "Transportation as an ongoing additional requirement." and 388-473-0080, "Medical related items or services as an ongoing additional requirement."

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
February 6, 2024	10:00am	Virtually via Teams or call in	Hearings are being held virtually. Please see the DSHS website for the most up to date information.

Date of intended adoption: Not earlier than February 7, 2024_ (Note: This is **NOT** the **effective** date)

<p>Submit written comments to:</p> <p>Name: DSHS Rules Coordinator</p> <p>Address: PO Box 45850, Olympia WA 98504</p> <p>Email: DSHSRPAURulesCoordinator@dshs.wa.gov</p> <p>Fax: 360-664-6185</p> <p>Other:</p> <p>By (date) February 6, 2024, at 5:00 p.m.</p>	<p>Assistance for persons with disabilities:</p> <p>Contact Shelley Tencza, DSHS Rules Consultant</p> <p>Phone: 360-664-6036</p> <p>Fax: 360-664-6185</p> <p>TTY: 711 Relay Service</p> <p>Email: Tencza@dshs.wa.gov</p> <p>Other:</p> <p>By (date) January 23, 2024, a 5:00 p.m.</p>
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Purpose of the proposal and its anticipated effects, including any changes in existing rules: Effective April 1, 2024, these amendments expand potential eligibility of Ongoing Additional Requirements (OAR) to individuals with an incapacity (under WAC 388-400-0070). These amendments also increase payment standards for existing OAR benefits, and create new benefits to assist with things such as transportation and medical related items not covered by insurance. The Operating Budget includes funding to support this change.

Reasons supporting proposal: See above

Statutory authority for adoption: RCW 74.04.005 and 74.08.283

Statute being implemented: Operating Budget - Engrossed Substitute Senate Bill 5187 (Chapter 475, Laws of 2023).

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

Type of proponent: Private Public Governmental
Name of proponent: (person or organization) Department of Social and Health Services

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Evelyn Acopan	PO Box 45470, Olympia WA 98504-5470	253-778-2381
Implementation:	Evelyn Acopan	PO Box 45470, Olympia WA 98504-5470	253-778-2381
Enforcement:	Evelyn Acopan	PO Box 45470, Olympia WA 98504-5470	253-778-2381

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 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 and Small Business Economic Impact Statement
Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

(1) Identification of exemptions:
This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). 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)
(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\(4\)](#) (does not affect small businesses).

This rule proposal, or portions of the proposal, is exempt under RCW [34.05.328\(5\)\(b\)\(vii\)](#).

Explanation of how the above exemption(s) applies to the proposed rule: **These amendments do not impact small businesses. They only impact DSHS clients.**

(2) Scope of exemptions: *Check one.*

- The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.
- The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):
- The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

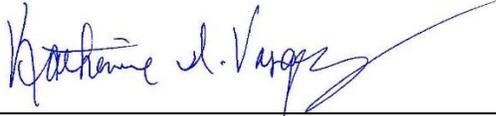
(3) Small business economic impact statement: *Complete this section if any portion is not exempt.*

If any portion of 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 minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. _____
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact 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: December 27, 2023	Signature: 
Name: Katherine I. Vasquez	
Title: DSHS Rules Coordinator	

WAC 388-412-0025 How do I receive my benefits? (1) You can choose to get your cash benefits by:

(a) Electronic benefit transfer (EBT), which is a direct deposit into a DSHS account that you access with a debit card called the Washington EBT Quest card;

(b) Electronic funds transfer (EFT), which is a direct deposit into your own bank account;

(c) A warrant (check) to an approved authorized representative (AREP);

(d) A warrant (check) to a payee who is not approved for direct deposit; or

(e) A warrant (check) to you if you get:

(i) Diversion cash assistance (DCA) that is not paid directly to a vendor;

(ii) Ongoing additional requirements (OAR) (~~that cannot be paid directly to a vendor~~) and are receiving SSI; or

(iii) Clothing and personal incidentals (CPI) payments.

(2) We send your **basic food** benefits to you by EBT.

(3) EBT accounts:

(a) We set up an EBT account for the head of household of each assistance unit (AU) that receives benefits by EBT.

(b) You use a Quest debit card to access your benefits in your EBT account. You select a personal identification number (PIN) that you must enter when using this card.

(c) You must use your cash and basic food benefits from your EBT account. We cannot transfer cash to your bank account or change cash or basic food benefits to checks.

(4) **Suspended EBT benefits:**

(a) We suspend access to benefits from your EBT account if:

(i) You are a single-person household; and

(ii) We are notified that you are incarcerated over 30 days.

(b) You must contact the department upon release to activate your EBT account for use within 48 hours.

(5) **Unused EBT benefits:**

(a) If you do not use your EBT account within 274 days, we cancel the cash and basic food on your account; or

(b) Benefits on your account will be cancelled upon verification you and all members of your household are deceased.

(6) **Replacing benefits:**

(a) **Replacing basic food benefits:** We **cannot replace** cancelled basic food benefits.

(b) **Replacing cash benefits:** We **can replace** cancelled cash benefits for you or another member of your assistance unit. Cash benefits are not transferable to someone outside of your assistance unit.

(c) **Replacing cash warrants:**

(i) If we issued you cash benefits as a warrant we can replace these benefits for you or a member of your assistance unit. Cash benefits are not transferable to someone outside of your assistance unit.

(ii) If we issued the benefits as a warrant 160 or fewer days ago, your local office can replace the warrant.

(iii) If we issued the benefits as a warrant more than 160 days ago, the Office of Accounting Services (OAS) can replace the warrant. We will contact OAS with the request.

(7) **Correcting your EBT balance:** When you make a purchase with your EBT card a system error can occur where the purchase amount is not deducted from your EBT account. When the error is discovered the following will happen:

(a) You will be notified in writing of the system error before the money is removed from your account; and

(b) You will have 90 days to request an administrative hearing. If you ask for an administrative hearing within 10 calendar days, the money will not be removed from your EBT account unless:

(i) You withdraw your administrative hearing request in writing;

(ii) You do not follow through with the administrative hearing process; or

(iii) The administrative law judge tells us in writing to remove the money.

AMENDATORY SECTION (Amending WSR 18-09-017, filed 4/10/18, effective 7/1/18)

WAC 388-450-0162 How does the department count my income to determine if my assistance unit is eligible and how does the department calculate the amount of my cash and basic food benefits? (1) Countable income is all income your assistance unit (AU) has after we subtract the following:

(a) Excluded or disregarded income under WAC 388-450-0015;

(b) For **cash assistance**, earned income incentives and deductions allowed for specific programs under WAC 388-450-0170, 388-450-0177, and 388-450-0178;

(c) For **basic food**, deductions allowed under WAC 388-450-0185; and

(d) Income we allocate to someone outside of the assistance unit under WAC 388-450-0095 through 388-450-0160.

(2) Countable income includes all income that we must deem or allocate from financially responsible persons who are not members of your AU under WAC 388-450-0095 through 388-450-0160.

(a) If the children in your care qualify for a TANF/SFA grant, the child's income is budgeted against the child-only payment standard amount.

(b) If the children in your care do not qualify for a TANF/SFA grant, they may still qualify for medical assistance under WAC 182-505-0210.

(3) For **cash assistance**:

(a) We compare your countable income to the payment standard in WAC 388-478-0020 and 388-478-0033 (~~(to the payment standard amount in subsection (3) of this section)~~).

(b) You are not eligible for benefits when your AU's countable income is equal to or greater than the payment standard (~~(plus any authorized additional requirements)~~).

(c) Your benefit level is the payment standard (~~(and authorized additional requirements)~~) minus your AU's countable income.

(4) For **basic food**, if you meet all other eligibility requirements for the program under WAC 388-400-0040, we determine if you meet the income requirements for benefits and calculate your AU's monthly benefits as specified under Title 7 Part 273 of code of federal regu-

lations for the supplemental nutrition assistance program (SNAP). The process is described in brief below:

(a) How we determine if your AU is income eligible for basic food:

(i) We compare your AU's total monthly income to the gross monthly income standard under WAC 388-478-0060. We don't use income that isn't counted under WAC 388-450-0015 as a part of your gross monthly income.

(ii) We then compare your AU's countable monthly income to the net income standard under WAC 388-478-0060.

(A) If your AU is categorically eligible for basic food under WAC 388-414-0001, your AU can have income over the gross or net income standard and still be eligible for benefits.

(B) If your AU includes a person who is (~~sixty~~) 60 years of age or older or has a disability, your AU can have income over the gross income standard, but must have income under the net income standard to be eligible for benefits.

(C) **All other AUs** must have income at or below the gross and net income standards as required under WAC 388-478-0060 to be eligible for basic food.

(b) How we calculate your AU's monthly basic food benefits:

(i) We start with the maximum allotment for your AU under WAC 388-478-0060.

(ii) We then subtract (~~thirty percent~~) 30% of your AU's countable income from the maximum allotment and round the benefit down to the next whole dollar to determine your monthly benefit.

(iii) If your AU is eligible for benefits and has one or two persons, your AU will receive at least the minimum allotment as described under WAC 388-412-0015, even if the monthly benefit we calculate is lower than the minimum allotment.

AMENDATORY SECTION (Amending WSR 16-09-065, filed 4/18/16, effective 5/19/16)

WAC 388-450-0200 Will the medical expenses of elderly persons or individuals with disabilities in my assistance unit be used as an income deduction for basic food? (1) If your basic food assistance unit (AU) includes an elderly person or individual with a disability as defined in WAC 388-400-0040, your AU may be eligible for an income deduction for that person's out-of-pocket medical expenses. We allow the deduction for medical expenses over (~~thirty-five dollars~~) \$35.00 each month.

(2) You can use an out-of-pocket medical expense toward this deduction if the expense covers services, supplies, medication, or other medically needed items prescribed by a state-licensed practitioner or other state-certified, qualified, health professional. Examples of expenses you can use for this deduction include those for:

(a) Medical, psychiatric, naturopathic physician, dental, or chiropractic care;

(b) Prescribed alternative therapy such as massage or acupuncture;

(c) Prescription drugs except medical marijuana;

(d) Over the counter drugs;

(e) Eye glasses;

(f) Medical supplies other than special diets;

(g) Medical equipment or medically needed changes to your home;

(h) Shipping and handling charges for an allowable medical item. This includes shipping and handling charges for items purchased through mail order or the internet;

(i) Long distance calls to a medical provider;

(j) Hospital and outpatient treatment including:

(i) Nursing care; or

(ii) Nursing home care including payments made for a person who was an assistance unit member at the time of placement.

(k) Health insurance premiums paid by the person including:

(i) Medicare premiums; and

(ii) Insurance deductibles and copayments.

(l) Out-of-pocket expenses used to meet a spenddown as defined in WAC ((~~182-519-0010~~) 182-519-0100). We do not allow your entire spend-down obligation as a deduction. We allow the expense as a deduction as it is estimated to occur or as the expense becomes due;

(m) Dentures, hearing aids, and prosthetics;

(n) Cost to obtain and care for a seeing eye, hearing, or other specially trained service animal. This includes the cost of food and veterinarian bills. We do not allow the expense of food or veterinary bills for a service animal as a deduction if you receive ongoing additional requirements under WAC 388-473-0040 to pay for this need;

(o) Reasonable costs of transportation and lodging to obtain medical treatment or services; and

(p) Attendant care necessary due to age, infirmity, or illness. If your AU provides most of the attendant's meals, we allow an additional deduction equal to a one-person allotment.

(3) There are two types of deductions for out-of-pocket expenses:

(a) One-time expenses are expenses that cannot be estimated to occur on a regular basis. You can choose to have us:

(i) Allow the one-time expense as a deduction when it is billed or due;

(ii) Average the expense through the remainder of your certification period; or

(iii) If your AU has a ((~~twenty-four-month~~) 24-month) certification period, you can choose to use the expense as a one-time deduction, average the expense for the first ((~~twelve~~) 12) months of your certification period, or average it for the remainder of our certification period.

(b) Recurring expenses are expenses that happen on a regular basis. We estimate your monthly expenses for the certification period.

(4) We do not allow a medical expense as an income deduction if:

(a) The expense was paid before you applied for benefits or in a previous certification period;

(b) The expense was paid or will be paid by someone else;

(c) The expense was paid or will be paid by the department or another agency;

(d) The expense is covered by health care insurance;

(e) We previously allowed the expense, and you did not pay it. We do not allow the expense again even if it is part of a repayment agreement;

(f) You included the expense in a repayment agreement after failing to meet a previous agreement for the same expense; or

(g) You claim the expense after you have been denied for presumptive SSI; and you are not considered disabled by any other criteria.

AMENDATORY SECTION (Amending WSR 03-21-029, filed 10/7/03, effective 11/1/03)

WAC 388-450-0225 How are my assistance unit's benefits calculated for the first month I am eligible for cash assistance? (1) To calculate your AU's cash benefit for your first month's benefits, we compare your AU's countable income to the payment standard as described in WAC 388-450-0162.

(2) ~~((Even if your AU has countable income over the payment standard, you may still receive additional requirements.~~

~~(3))~~ If your countable income is less than the payment standard, we prorate your grant amount based on the date you are eligible.

~~((4))~~ (3) We do not prorate any approved additional requirements.

~~((5))~~ (4) We prorate your grant by:

(a) Dividing your AU's grant amount by the number of days in the first month of eligibility; and

(b) Multiplying the result in ~~((5))~~ (4)(a) of this section by the number of days from the date of eligibility to the last day of the month.

AMENDATORY SECTION (Amending WSR 15-02-006, filed 12/26/14, effective 1/26/15)

WAC 388-473-0010 What are ongoing additional requirements and how do I qualify? "Ongoing additional requirement" means a need beyond essential food, clothing, and shelter needs and is necessary to help you continue living independently.

(1) We may authorize ongoing additional requirement benefits if you are active in one of the following programs:

(a) Temporary assistance for needy families (TANF), or tribal TANF;

(b) State family assistance (SFA);

(c) Pregnant women assistance (PWA);

(d) Refugee cash assistance (RCA);

(e) Aged, blind, or disabled (ABD) cash assistance; ~~((or))~~

(f) Housing and essential needs (HEN) referral; or

(g) Supplemental security income (SSI).

(2) You apply for an ongoing additional requirement benefit by notifying staff who maintain your ~~((cash))~~ public assistance that you need additional help to live independently.

(3) We authorize ongoing additional requirement benefits only when we determine the item is essential to you. We make the decision based on proof you provide of:

(a) The circumstances that create the need; and

(b) How the need affects your health, safety, and ability to continue to live independently.

(4) We authorize ongoing additional requirement benefits by ~~((increasing your monthly cash assistance benefit.))~~ :

(a) Increasing your cash assistance benefit if you receive cash assistance; or

(b) Issuing a cash benefit if you are a HEN referral or SSI recipient.

(5) We use the following review cycle table to decide when to review your need for the additional benefit(s).

REVIEW CYCLE	
Program	Frequency (Months)
<u>TANF/RCA/S FA/PWA</u>	6 Months
ABD	12 Months
<u>HEN referral</u>	<u>12 Months</u>
SSI	24 Months
All	Any time need or circumstances are expected to change

(6) Monthly payment standards for ongoing additional requirements are described under WAC 388-478-0050.

(7) The department may discontinue the program benefit issuances when state funds appropriated for ongoing additional requirements are exhausted.

AMENDATORY SECTION (Amending WSR 07-10-043, filed 4/26/07, effective 5/27/07)

WAC 388-473-0040 ((Feed)) Assistance for service animals as an ongoing additional requirement. (1) ((A)) "Service animal" ((is an animal that is trained for the purpose of assisting or accommodating a person with a disability's sensory, mental, or physical disability)) means any dog or miniature horse, as discussed in RCW 49.60.040, that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.

(2) We authorize benefits for food for a service animal if we decide the animal is necessary for your health and safety and supports your ability to continue to live independently.

(3) We authorize benefits for veterinary care for a service animal if we decide that a service animal has a medical necessity that would require treatment so that the service animal can continue to do the work or task the animal has been trained to perform.

(4) We authorize boarding for a service animal for a maximum amount of \$300.00 a year if we determine that you need medical or mental health care and are in a facility in which your service animal cannot reside and there is no one who can provide care for your service animal.

AMENDATORY SECTION (Amending WSR 00-15-053, filed 7/17/00, effective 9/1/00)

WAC 388-473-0050 Telephone and internet services as an ongoing additional requirement. (1) We authorize benefits for telephone services when we decide:

~~((1))~~ (a) Without a telephone, your life would be endangered, you could not live independently, or you would require a more expensive type of personal care; and

(b) You have applied for telephone assistance through a federal program.

~~(2) ((You have applied for the Washington telephone assistance program (WTAP) through your local telephone company.)) We authorize benefits for internet services when we decide:~~

(a) Without internet services, you could not live independently, or you would require a more expensive type of personal care; and

(b) You have applied for low-cost internet and need assistance paying the monthly bill.

(3) You are not eligible for benefits for telephone or internet services if you are receiving those services free of charge.

NEW SECTION

WAC 388-473-0070 Transportation as an ongoing additional requirement. (1) We authorize assistance for transportation costs as an ongoing additional requirement when we decide you need assistance:

(a) Getting to and from appointments; or

(b) Taking care of activities to continue living independently.

(2) You are not eligible for assistance for transportation if you are receiving this service from another agency or program.

NEW SECTION

WAC 388-473-0080 Medically related items or services as an ongoing additional requirement. (1) We authorize the following benefits as a one-time payment within a 12 month period:

(a) Dentures;

(b) Optometrist visit for eye glasses;

(c) Eye glasses;

(d) Hearing aids.

(2) Benefits are issued after we determine:

(a) You did not qualify for the service or item from any state, federal, or private insurance coverage; or

(b) You have been unable to obtain a replacement through state, federal, or private insurance.

AMENDATORY SECTION (Amending WSR 00-15-052, filed 7/17/00, effective 9/1/00)

WAC 388-478-0050 Payment standards for ongoing additional requirements. ~~((An "ongoing additional requirement" is a continuing need that you have for which you require additional financial benefits in order to continue living independently.))~~ The ~~((("payment standard")))~~ payment standard for ongoing additional requirement benefits is

the amount of money ((needed)) authorized to pay for these items or services. We use the following payment standards for ongoing additional requirements approved under chapter 388-473 WAC (~~388-473-0020 through 388-473-0060~~):

(1) Restaurant meals: (~~(\$187.09)~~) \$390.00 per month (~~((for \$6.04 per day with the payment rounded down to the nearest dollar amount))~~);

(2) Laundry: (~~(\$11.13)~~) \$20.84 per month;

(3) Service animal food: (~~(\$33.66)~~) \$50.00 per month;

(4) Home delivered meals: The amount charged by the agency providing the meals;

(5) Telephone: (~~The local telephone flat rate for the area; or the Washington telephone assistance program (WTAP) rate, whichever is less.~~) \$4.00 per month;

(6) Internet: Up to \$30.00 per month;

(7) Transportation: \$40.00 per month;

(8) Dentures: \$1,800.00 in a 12 month period;

(9) Optometrist visit for eye glasses: \$200.00 in a 12 month period;

(10) Eye glasses: \$240.00 in a 12 month period;

(11) Hearing aid(s): \$1,000.00 in a 12 month period;

(12) Veterinary cost for service animals: \$200.00 annual limit;

(13) Boarding for service animals: \$300.00 annual limit.