



# PROPOSED RULE MAKING

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

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STATE OF WASHINGTON  
FILED

DATE: April 09, 2024

TIME: 12:23 PM

WSR 24-09-023

**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 24-02-044 ; 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 388-416-0005, "How long can I get Basic Food?", 388-418-0011, "What is a mid-certification review, and do I have to complete one in order to keep receiving benefits?", and 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?"

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
May 21, 2024	10:00am	Virtually via Teams or Call in	Hearings are held virtually, see the DSHS website at <a href="https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings">https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings</a> for the most current information.

**Date of intended adoption:** Not earlier than May 22, 2024 (Note: This is **NOT** the **effective** date)

**Submit written comments to:**  
 Name: DSHS Rules Coordinator  
 Address: PO Box 45850, Olympia 98504  
 Email: [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov)  
 Fax: 360-664-6185  
 Other:  
 By (date) May 21, 2024, at 5:00 p.m.

**Assistance for persons with disabilities:**  
 Contact Shelley Tencza, DSHS Rules Consultant  
 Phone: 360-664-6036  
 Fax: 360-664-6185  
 TTY: 711 Relay Service  
 Email: [shelley.tencza@dshs.wa.gov](mailto:shelley.tencza@dshs.wa.gov)  
 Other:  
 By (date) May 7, 2024, at 5:00 p.m.

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** These amendments are necessary to comply with the approved federal waiver for the Elderly Simplified Application Project (ESAP), extending the Basic Food certification period from 12 months to 36 months for households with no earned income where all members are age 60 or older and/or disabled adults.

Related emergency rules are currently in place under WSR 24-02-040.

**Reasons supporting proposal:** The department received approval from USDA/FNS to extend certification periods for this group of clients.

**Statutory authority for adoption:** RCW 74.04.050, 74.04.055, 74.04.057, 74.04.500, 74.04.510, 74.08.090, and 74.08A.902

**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

**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:	Carolyn Horlor	PO Box 45470, Olympia WA 98504-4570	360-764-0676
Implementation:	Carolyn Horlor	PO Box 45470, Olympia WA 98504-4570	360-764-0676
Enforcement:	Carolyn Horlor	PO Box 45470, Olympia WA 98504-4570	360-764-0676

**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 checked="" type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(b)<br>(Internal government operations) | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(e)<br>(Dictated by statute)  |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(c)<br>(Incorporation by reference)                | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(f)<br>(Set or adjust fees)   |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(d)<br>(Correct or clarify language)               | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (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\(4\)](#) (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 customers.

**(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:

<b>Date:</b> April 5, 2024	<b>Signature:</b> 
<b>Name:</b> Katherine I. Vasquez	
<b>Title:</b> DSHS Rules Coordinator	

AMENDATORY SECTION (Amending WSR 11-16-030 and 11-18-012, filed 7/27/11 and 8/26/11, effective 10/16/11)

**WAC 388-416-0005 How long can I get Basic Food?** (1) The length of time the department determines your assistance unit (AU) is eligible to get Basic Food is called a certification period. The department may certify your AU for up to ~~((twelve))~~ 12 months, unless:

(a) You receive food assistance under the Washington state combined application project (WASHCAP). ~~((τ))~~ We set your WASHCAP certification period as described under WAC 388-492-0090.

~~((b))~~ (b) You receive food assistance under the elderly simplified application project (ESAP). ESAP households are certified for 36 months.

~~((b))~~ (c) You receive transitional food assistance ~~((τ))~~ (TFA). We set your TFA certification period as described under WAC 388-489-0015.

(2) We terminate your Basic Food benefits before the end of your certification period in subsection (1) of this section if:

(a) You fail to complete a mid-certification review as described under WAC 388-418-0011;

(b) We get proof of a change that makes your AU ineligible; or

(c) We get information that your AU is ineligible and you do not provide needed information to verify your AU's circumstances.

AMENDATORY SECTION (Amending WSR 22-17-080, filed 8/17/22, effective 9/17/22)

**WAC 388-418-0011 What is a mid-certification review, and do I have to complete one in order to keep receiving benefits?** (1) A **mid-certification review** (MCR) is a form we send you to ask about your current circumstances during your certification period. We use the answers you give us to decide if you are still eligible for benefits and to calculate your monthly benefits.

(2) If you receive cash assistance or basic food benefits, you must complete a mid-certification review unless you meet one of the exceptions below:

(a) You **do not** have to complete a mid-certification review for cash assistance if you:

(i) Receive refugee cash assistance as described under WAC 388-400-0030;

(ii) Receive aged, blind, or disabled (ABD) program assistance as described under WAC 388-400-0060;

(iii) Receive a referral to the housing and essential needs (HEN) program as described under WAC 388-400-0070; or

(iv) Have a review period of six months or less.

(b) You **do not** have to complete a mid-certification review for basic food if:

(i) Your assistance unit has a certification period of six months or less; or

(ii) ~~((All adults in your))~~ Your assistance unit ~~((are))~~ consists only of elderly or disabled adults, or qualifies for the elderly simplified application project (ESAP), and does not have ~~((no))~~ earned income.

(3) **When we send the review form:**

If you must complete a MCR ...	We send your review form ...
(a) For one program such as basic food.	In the fifth month of your certification or review period. You must complete your review by the 10th day of month six.
<u>(b) If you are no longer eligible for ESAP but remain eligible for basic food for the remainder of a 36-month certification period converted from an ESAP certification.</u>	<u>In the 11th and 23rd months of your certification period when your certification period has more than 13 months remaining of the 36-month certification period. You must complete your review by the 10th day of the 12th month or the 24th month or both of the certification period.</u>
(((b))) (c) For two or more programs, and all programs have a 12-month certification or review period.	In the fifth month of your certification or review period. You must complete your review by the 10th day of month six.
(((e))) (d) For basic food and another program when either program has a certification or review period between six and 12 months.	In the fifth month of your basic food certification period when you receive basic food and another program. You must complete your review by the 10th day of month six of your basic food certification.

(4) If you must complete a mid-certification review, we send you the review form with questions about your current circumstances. You can choose to complete the review form online, or in one of the following ways:

(a) **Complete the form and return it to us.** For us to count your mid-certification review as complete, you must take all of the steps below:

- (i) Complete the review form, telling us about changes in your circumstances we ask about;
- (ii) Sign and date the form;
- (iii) Give us proof of any changes you report. If you report a change that will increase your benefits without giving proof of this change, we will not increase your benefits;
- (iv) If you receive temporary assistance for needy families and you are working or self-employed, you must give us proof of your income even if it has not changed; and
- (v) Mail or turn in the completed form and any required proof to us by the due date on the review.

(b) **Complete the mid-certification review over the phone.** For us to count your mid-certification review as complete, you must take all of the steps below:

- (i) Contact us at the phone number on the review form, telling us about changes in your circumstances we ask about;
- (ii) Give us proof of any changes you report. We may be able to verify some information over the phone. If you report a change that will increase your benefits without giving proof of this change, we will not increase your benefits;
- (iii) If you receive temporary assistance for needy families and you are working or self-employed, you must give us proof of your income even if it has not changed; and

(iv) Mail or turn in any required proof to us by the due date on the review.

(c) **Complete the application process for another program.** If we approve an application for another program in the month you must complete your mid-certification review, we use the application to complete your review when the same person is head of household for the application and the mid-certification review.

(5) If your benefits change because of what we learned in your mid-certification review, the change takes effect the next month even if this does not give you 10 days' notice before we change your benefits.

(6) If you do not complete your required mid-certification review, we stop your benefits at the end of the month the review was due.

(7) **Late reviews.** If you complete the mid-certification review after the last day of the month the review was due, we process the review as described below based on when we receive the review:

(a) **Mid-certification reviews you complete by the last day of the month after the month the review was due:** We determine your eligibility for ongoing benefits. If you are eligible, we reinstate your benefits based on the information in the review.

(b) **Mid-certification reviews you complete after the last day of the month after the month the review was due:** We treat this review as a request to send you an application. For us to determine if you are eligible for benefits, you must complete the application process as described in chapter 388-406 WAC.

AMENDATORY SECTION (Amending WSR 24-05-032, filed 2/13/24, effective 4/1/24)

**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 \$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~~) AU 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 182-519-0100. We do not allow your entire spenddown 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 ((24)) 36-month certification period, you can choose to use the expense as a one-time deduction, average the expense for the first 12 months of your certification period, or average it for the remainder of ((~~our~~)) your 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.