



# 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: June 21, 2023

TIME: 9:20 AM

WSR 23-13-118

**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 23-06-055 ; 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 388-458-0040, What happens if I ask for a fair hearing before the change happens?; and creation of 388-494-0010, What is the diaper related payment?

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
July 25, 2023	10:00 am	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 July 26, 2023 (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) July 25, 2023, at 5:00 pm

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

Other:

By (date) July 11, 2023, at 5:00pm

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** These amendments will authorize issuance of diaper related payments to TANF and SFA households with a child under age three, in compliance with SSB 5838 (Chapter 100, Laws of 2022).

**Reasons supporting proposal:** See above

**Statutory authority for adoption:** RCW 74.04.050, 74.04.055, and 74.04.057

**Statute being implemented:** SSB 5838, (Chapter 100, Laws of 2022)

**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:	Kathryn Gussett	PO Box 45470, Olympia, WA 98504-5470	509-290-8435
Implementation:	Kathryn Gussett	PO Box 45470, Olympia, WA 98504-5470	509-290-8435
Enforcement:	Kathryn Gussett	PO Box 45470, Olympia, WA 98504-5470	509-290-8435

**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, "this 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"/> <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: The proposed 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:

<b>Date:</b> June 20, 2023	<b>Signature:</b> 
<b>Name:</b> Katherine I. Vasquez	
<b>Title:</b> DSHS Rules Coordinator	

**WAC 388-458-0040 What happens if I ask for ((a-fair)) an administrative hearing before the change happens?** (1) If you ask for ((a-fair)) an administrative hearing within the ((ten)) 10-day notice period, you may keep getting the amount of benefits you were getting before the change. This is called continued benefits.

(2) If the ((tenth)) 10th day falls on a weekend or holiday, you have until the next business day to ask for ((a-fair)) an administrative hearing and still be able to get continued benefits.

(3) If the ((tenth)) 10th day happens before the end of the month, you have until the end of the month to ask for ((a-fair)) an administrative hearing and still be able to get continued benefits.

(4) For food assistance, you cannot get continued benefits if your certification period is ending.

(5) For diaper related payments, you can get continued benefits if you meet the conditions of WAC 388-494-0010(3).

(6) If you get continued benefits, you keep getting them through the end of the month the ((fair)) administrative hearing decision is mailed unless:

(a) You:

(i) Tell us in writing that you do not want continued benefits;

(ii) Withdraw your ((fair)) administrative hearing request in writing; or

(iii) Do not follow through with the ((fair)) administrative hearing process.

(b) An administrative law judge (ALJ) tells us in writing to stop your continued benefits before the hearing.

(c) For food assistance, your certification period ends.

((+6)) (7) After the ((fair)) administrative hearing, you have to pay back continued benefits you get, as described in chapter 388-410 WAC, if the ALJ agrees with our decision.

NEW SECTION

**WAC 388-494-0010 What is the diaper related payment?** (1) What is the diaper related payment?

The diaper related payment is a cash assistance payment for certain clients receiving Temporary Assistance for Needy Families (TANF) or State Funded Assistance (SFA) with at least one qualifying child, to support them in meeting the basic needs for diapers and other related necessities essential for early development.

(2) The following definitions apply:

(a) "Assistance Unit" as defined in WAC 388-408-0005.

(b) "Qualifying child" means a child recipient under 3 years old.

(3) Who is eligible for the diaper related payment?

(a) You must have a qualifying child receiving TANF or SFA;

(b) The assistance unit (AU) is active and receiving TANF or SFA benefits for the month of issuance:

(i) AUs must be eligible for a TANF or SFA grant of at least \$10 to receive the payment.

(ii) The payment will not be pro-rated based on application date.

(4) How do I apply for the diaper related payment?

You do not need to apply for the diaper related payment. The department automatically reviews your eligibility for the diaper related payment each month of issuance.

(5) What benefits will I receive if I am eligible for the diaper related payment?

(a) The AU will receive a \$100 diaper related payment each month;

(b) We determine if your AU is eligible to receive the diaper related payment and automatically provide the benefit to you.

(c) The payment is a cash assistance payment issued in the same manner as your TANF or SFA grant.

(6) The diaper related payment benefit amount is set based on annual funding appropriated for the program and the projected total number of eligible households.

(7) The department may discontinue or reduce program benefit issuances during periods of time when funds provided for the diaper related payment are exhausted, projected to be overspent, or not appropriated.