



RULE-MAKING ORDER EMERGENCY RULE ONLY

CR-103E (December 2017) (Implements RCW 34.05.350 and 34.05.360)

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STATE OF WASHINGTON
FILED

DATE: November 17, 2021

TIME: 11:58 AM

WSR 21-23-112

Agency: Department of Social and Health Services, Economic Services Administration

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify) November 21, 2021

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes
- No
- If Yes, explain:

Purpose: The Department is extending emergency adoption of WAC 388-439-0005, What is the pandemic EBT program?; WAC 388-439-0010, Eligibility of pandemic EBT benefits for the 2020-2021 school year; WAC 388-439-0015, General information about pandemic EBT benefits; WAC 388-439-0020, Eligibility for pandemic EBT benefits for children under age six; and WAC 388-439-0025, Eligibility for pandemic EBT benefits during the 2021 summer period.

Emergency adoption of these rules support implementation of the Pandemic EBT (P-EBT) program for eligible children who do not have access to regular free or reduced-price school meals or childcare meals due to limited onsite learning or attendance in any school year in which there is a federal public health emergency designation (as allowed under Section 1101 of H.R. 6201, Families First Coronavirus Response Act, as amended by Section 1108 of H.R. 1319, American Rescue Plan Act of 2021).

Citation of rules affected by this order:

- New: WAC 388-439-0005; WAC 388-439-0010; WAC 388-439-0015; WAC 388-439-0020; and WAC 388-439-0025
- Repealed: None
- Amended: None
- Suspended: None

Statutory authority for adoption: RCW 74.04.050, RCW 74.04.055, RCW 74.04.057, RCW 74.04.500, RCW 74.04.510, RCW 74.08.090 and RCW 74.08A.120

Other authority: H.R. 6201, H.R. 8337; H.R. 133; H.R. 1319

EMERGENCY RULE

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: Emergency adoption of these rules is necessary to support implementation of the P-EBT program which protects the health, safety, and general welfare of Washington residents by supporting access to public assistance.

The Department is showing forward progress with this filing by undertaking appropriate procedures to adopt the rule as a permanent rule and filed a CR 101 pre-proposal under WSR 21-23-108.

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	<u>5</u>	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	___	Repealed	___

The number of sections adopted at the request of a nongovernmental entity:

New	___	Amended	___	Repealed	___
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The number of sections adopted on the agency's own initiative:

New	___	Amended	___	Repealed	___
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	<u>5</u>	Amended	___	Repealed	___
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The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	<u>5</u>	Amended	___	Repealed	___

Date Adopted: November 17, 2021

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



**Chapter 388-439 WAC
PANDEMIC EBT (P-EBT) PROGRAM**

NEW SECTION

WAC 388-439-0005 What is the pandemic EBT program? (1) The pandemic electronic benefits transfer (P-EBT) program is a federally funded nutrition program administered by the department of social and health services (department) and provides food benefits to eligible children who do not have access to meals at a covered childcare center or free or reduced-price school meals due to school closures or lack of in-person instruction caused by the COVID-19 public health emergency.

(2) The following definitions apply to this program:

(a) "Benefit level" means the P-EBT benefit amount provided to an eligible child based on the school's reported meal service to the majority of students enrolled in the school for the majority of the month;

(b) "Direct certification" means a determination that a child is eligible for free or reduced-priced school meals without further application to the national school lunch program due to:

(i) Receiving a benefit from a federal-means tested assistance program, including the supplemental nutrition assistance program (SNAP), temporary assistance for needy families (TANF), food distribution program on Indian reservations (FDPIR), some medicaid programs; or

(ii) Other source eligible categories, including children in foster care, children experiencing homelessness, students enrolled in the migrant education program, and children enrolled in head start or the early childhood education and assistance program (ECEAP);

(c) "Eligible student" means a child or student, regardless of age, who would have access to free or reduced-price school meals through the national school lunch program (NSLP) and school breakfast program (SBP) during the school year, who is:

(i) Enrolled in a school or registered in a program in Washington state that normally participates in the NSLP;

(ii) Attending a school that has been closed or has reduced attendance or hours for five or more consecutive days during the school year due to the COVID-19 public health emergency designation; and

(iii) Determined by the school to be eligible for free or reduced-priced school meals or attends a school that operates the community eligibility provision or the provision 2 lunch and breakfast program. Students are identified as eligible for free or reduced-price school meals using direct certification or free or reduced-price school meals application;

(d) "Free or reduced-price school meals" means meals provided to students qualified as eligible by the Richard B. Russell National School Lunch Act;

(e) "Full in-person learning" means meal service is available five days per week to the majority of students enrolled in the school for the majority of the month;

(f) "Majority" means more than fifty percent;

(g) "Meal service" means the typical meals (SBP and NSLP) served when school is in session and consumed onsite as part of the school day. Meal service includes both breakfast and lunch. Schools define the meal service provided to the majority of students enrolled in the school for the majority of the month as follows:

(i) "Full remote learning" means no meal service to students on school campus;

(ii) "Hybrid-learning" means partial in-person learning and meal service on school campus. Due to various hybrid-learning models across the state, the following levels have been defined as:

(A) "Level 1" is one-day meal service per week to students on school campus;

(B) "Level 2" is two-days meal service per week to students on school campus;

(C) "Level 3" is three-days meal service per week to students on school campus; or

(D) "Level 4" is four-days meal service per week to school on school campus;

(h) "Operating days" are days a school regularly operates, excluding weekends, breaks, and holidays;

(i) "P-EBT card" means the unique electronic benefit transfer (EBT) card that accesses P-EBT food benefits issued to eligible students or children under age six;

(j) "Public health emergency" means a federal declaration of a public health emergency due to the COVID-19 pandemic as issued by the secretary of health and human services;

(k) "School" means any public or nonprofit private schools, charter schools, and tribal compact schools within the state of Washington;

(l) "School closure" means that the school was closed for in-person or remote learning for the majority of the month, with no meal service available to students enrolled in the school;

(m) "Summer period" means the months between the end of the school year and the start of the next school year during which there was a public health emergency.

NEW SECTION

WAC 388-439-0010 Eligibility of pandemic EBT benefits for the 2020-2021 school year. (1) To be eligible for federally funded pandemic electronic benefits transfer (P-EBT) benefit for the 2020-2021 school year, a student must be:

(a) An eligible student as defined under WAC 388-439-0005(2)(b) between September 1, 2020, to June 30, 2021; and

(b) Enrolled in a school that had a school closure, full remote learning, or hybrid-learning meal service during the public health emergency as reported by the school.

(2) An eligible student's P-EBT benefit level is calculated for the 2020-2021 school year by:

(a) Using the full daily meal reimbursement rate of six dollars and eighty-two cents for breakfast, lunch, and snack;

(b) Multiplied by the statewide average operating days of eighteen days per month;

(c) Multiplied using the percentage of benefit reimbursement based on the school's reported meal service under WAC 388-439-0005, reducing in twenty percent intervals as the student attends more days in-person with meal service; and

(d) Rounding the total benefit amount up to the nearest dollar.

Meal service reported	Dollar amount for the month
Full remote learning or school closure—Full benefit	\$123
Hybrid learning—Level 1—80% benefit	\$99
Hybrid learning—Level 2—60% benefit	\$74
Hybrid learning—Level 3—40% benefit	\$50
Hybrid learning—Level 4—20% benefit	\$25

(3) An eligible student is not eligible for P-EBT benefits if the school reports full in-person learning for the majority of students enrolled in the school for the majority of the month.

(4) P-EBT benefits are issued for a retroactive period of time to allow schools to report the applicable meal service during the applicable eligibility period.

(a) An initial one-time P-EBT allotment is issued for the months of September 2020 to January 2021;

(b) A subsequent one-time P-EBT allotment may be issued in April 2021, using the school's reported meal service for the preceding two months of February and March 2021;

(c) A subsequent one-time P-EBT allotment may be issued in June 2021, using the school's reported meal service for April, May, and June 2021; and

(d) P-EBT during the summer period benefits are disbursed under WAC 388-439-0025.

(5) An eligible student's benefits will be placed on a P-EBT card under WAC 388-439-0015.

(6) Issuance of P-EBT benefits beyond September 30, 2021, is subject to U.S. Department of Agriculture, Food and Nutrition Service (FNS) approval.

NEW SECTION

WAC 388-439-0015 General information about pandemic EBT benefits. (1) Pandemic electronic benefit transfer (P-EBT) benefits will be deposited into an account accessible with a debit card called a P-EBT card. A P-EBT card will be issued to each eligible student or child under age six. Each P-EBT card will be:

(a) Linked to an EBT account for each eligible student or child under age six for P-EBT benefits; and

(b) Mailed to either:

(i) The address on file with the school for the eligible student;

or

(ii) The address on file with the department for the basic food case for the child under age six.

(2) To use a P-EBT account:

(a) The P-EBT card can be used by the eligible student or child under age six or responsible household member, such as a parent or caregiver, on behalf of the eligible student or child under age six, to access the benefits in their EBT account;

(b) A personal identification number (PIN) has to be created that must be used with the P-EBT card to purchase food items;

(c) P-EBT benefits must be accessed from the P-EBT card of an eligible student or child under age six. P-EBT benefits cannot be transferred to a bank account or issued as a check;

(d) P-EBT benefits that are not used within two hundred seventy-four days from the last purchase or deposit activity on the eligible child's account will be removed; and

(e) P-EBT benefits cannot be replaced once redeemed or removed. Families are responsible for keeping the P-EBT card and PIN of an eligible student or child under age six in a safe and secure place.

(3) The purpose of P-EBT benefits is to help low-income families or individuals have a more nutritious diet by providing food benefits to eligible children due to the COVID-19 public health emergency.

(a) P-EBT benefits are used to buy food items for an eligible child (or youth) from a food retailer authorized to accept supplemental nutrition assistance program (SNAP) benefits by the U.S. department of agriculture food and nutrition service (FNS).

(b) Use P-EBT benefits the same as other food benefits under WAC 388-412-0046 (2)(c).

(c) It is not legal to use P-EBT benefits as described under WAC 388-412-0046 (2)(d).

(d) If people intentionally misuse P-EBT benefits, they may be:

(i) Subject to fines; or

(ii) Subject to legal action, including criminal prosecution. Department of social and health services (DSHS) will cooperate with state, local, and federal prosecuting authorities to prosecute trafficking in P-EBT benefits.

NEW SECTION

WAC 388-439-0020 Eligibility for pandemic EBT benefits for children under age six. (1) To be eligible for federally funded pandemic electronic benefits transfer (P-EBT) benefits for children under age six, a child must be:

(a) A member of a household that received supplemental nutrition assistance program (SNAP) between October 1, 2020, to June 30, 2021;

(b) Under the age of six; and

(c) Residing in a county with at least one school in that county that had a school closure, full remote learning, or hybrid-learning meal service during the public health emergency as reported by the school.

(2) Children who do not qualify for federally funded P-EBT benefits because they are on state-funded food assistance program (FAP) may be eligible for state-funded P-EBT.

(a) State-funded P-EBT follows the same eligibility rules as subsection (1) of this section, except that the child must be a member of

a household that received FAP, instead of SNAP, between October 1, 2020, to June 30, 2021.

(b) State-funded P-EBT benefits is contingent on the availability of state funds.

(3) We calculate a county standard benefit level for each month of P-EBT eligibility by:

(a) Using the full daily meal reimbursement rate of six dollars and eighty-two cents for breakfast, lunch, and snack;

(b) Multiplied by the statewide average operating days of eighteen days per month;

(c) Multiplied using a percentage of benefit reimbursement based on the school's reported meal service under WAC 388-439-0005 using the lowest available on-site meal service for at least one school in each county of the child's residence, as follows:

(i) One hundred percent if the lowest meal service is full remote learning or school closure;

(ii) Seventy percent if the lowest school meals service reported is hybrid learning - Level 1 or hybrid learning - Level 2; or

(iii) Thirty percent if the lowest school meal service reported is hybrid learning - Level 3 or hybrid learning - Level 4; and

(d) Rounding the total benefit amount up to the nearest dollar.

County lowest on-site school meal service	Dollar amount for the month
Full remote learning or school closure—Full benefit	\$123
Hybrid learning—Level 1—or Hybrid learning—Level 2—70% benefit	\$86
Hybrid learning—Level 3—or Hybrid learning—Level 4—70% benefit	\$37

(e) P-EBT benefits are issued for each month that:

(i) The household receives a SNAP or FAP benefit more than zero dollars; and

(ii) There is limited on-site meal service for at least one school in the county.

(4) P-EBT benefits are issued for a child under age six for a retroactive period of time as follows:

(a) An initial one-time P-EBT allotment is issued for the months of October 2020 to March 2021;

(b) A subsequent one-time P-EBT allotment is issued for the months of April to June 2021; and

(c) P-EBT during the summer period benefits are disbursed under WAC 388-439-0025.

(5) Benefits for a child under age six will be placed on a P-EBT card under WAC 388-439-0015.

(6) A child under age six who received P-EBT as an eligible student under WAC 388-439-0005(2)(d) and WAC 388-439-0010, but who would receive more benefits as a child under age six under this section will be supplemented by federal or state funded P-EBT benefits. The child's total benefit amount is not to exceed the maximum P-EBT benefit of \$123 per month.

(7) Issuance of P-EBT benefits beyond September 30, 2021, is subject to U.S. Department of Agriculture, Food and Nutrition Service (FNS) approval and the availability of state funds.

NEW SECTION

WAC 388-439-0025 Eligibility for pandemic EBT benefits during the 2021 summer period. (1) During the summer period of July and August 2021, schools and covered childcare centers will be deemed as closed.

(2) To be eligible for the pandemic electronic benefits transfer (P-EBT) benefit during the summer period after 2020-2021 school year, prior to August 31, 2021, a child must be:

(a) An eligible student as defined under WAC 388-439-0005(c) in June 2021; or

(b) A child under age six, as defined under WAC 388-439-0020(1), between June 1, 2021, to August 31, 2021.

(3) A child determined eligible in subsection (2) of this section will receive a one-time, lump sum payment of \$375 for the 2021 summer period.

(4) Summer P-EBT benefits for an eligible student or a child under age six will be placed on a P-EBT card under WAC 388-439-0015.

(5) Issuance of summer period benefits beyond September 30, 2021, is subject to U.S. Department of Agriculture, Food and Nutrition Service (FNS) approval and the availability of state funds.