



RULE-MAKING ORDER PERMANENT RULE ONLY

CR-103P (December 2017) (Implements RCW 34.05.360)

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STATE OF WASHINGTON
FILED

DATE: November 29, 2021

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WSR 21-24-063

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

Effective date of rule:

Permanent Rules

- 31 days after filing.
 Other (specify) (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

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

- Yes No If Yes, explain:

Purpose: This proposal will update our income imputation WAC (388-14A-3205) to align with updated federal/state standards and current DCS practice. This proposal will also implement authorized changed to our notice of support owed process, which will increase efficiencies and improve outcomes for our clients.

Citation of rules affected by this order:

New: WAC 388-14A-3331

Repealed: n/a

Amended: WAC 388-14A-3205, WAC 388-14A-3300, WAC 388-14A-3302, WAC 388-14A-3310, WAC 388-14A-3311, WAC 388-14A-3312, WAC 388-14A-3316, WAC 388-14A-3330, WAC 388-14A-6300.

Suspended: n/a

Statutory authority for adoption: RCW 26.09.105, 26.23.110, 74.04.055, 74.08.090, 74.20.040 and 74.20A.310.

Other authority: n/a

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 21-20-024 on September 24, 2021 (date).

Describe any changes other than editing from proposed to adopted version: No changes.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Web site:

Other:

**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Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	<u>1</u>	Amended	<u>9</u>	Repealed	___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New	___	Amended	___	Repealed	___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	1	Amended	<u>9</u>	Repealed	___
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	<u>1</u>	Amended	9	Repealed	___
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The number of sections adopted using:

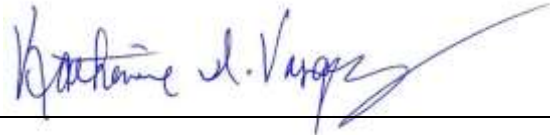
Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	<u>1</u>	Amended	9	Repealed	___

Date Adopted: November 29, 2021

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



WAC 388-14A-3205 How does DCS calculate my income? (1) The division of child support (DCS) calculates a parent's income using the best available information. If a parent is voluntarily unemployed or underemployed, either DCS or the administrative law judge (ALJ), or both may impute income to that parent. Voluntary underemployment or unemployment is determined based upon the parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, health, age, criminal record, dependency court obligations, and other employment barriers, record of seeking work, the local job market, the availability of employers willing to hire the parent, the prevailing earnings level in the local community, or any other relevant factors. Income is not imputed for an unemployable parent. Income is also not imputed to a parent to the extent the parent is unemployed or significantly underemployed due to the parent's efforts to comply with court-ordered reunification efforts under chapter 13.34 RCW or under a voluntary placement agreement with an agency supervising the child.

(2) In the absence of records of a parent's actual earnings, either DCS ((and/or)) or the administrative law judge (ALJ), or both may impute a parent's income under RCW 26.19.071(6) in the following order of priority:

(a) Full-time earnings at the current rate of pay;

(b) Full-time earnings at the historical rate of pay based on reliable information, such as employment security department data;

(c) Full-time earnings at a past rate of pay where information is incomplete or sporadic;

(d) ((Full-time)) Earnings of thirty-two hours per week at minimum wage in the jurisdiction where the parent resides if the parent ((has a recent history of minimum wage earnings,)) is on or recently coming off ((public assistance, disability lifeline benefits)) temporary assistance for needy families or recently coming off aged, blind, or disabled assistance benefits, pregnant women assistance benefits, essential needs and housing support, supplemental security income, or disability, has recently been released from incarceration, or is a ((high school student or)) recent high school graduate. Imputation at thirty-two hours per week under this subsection is a rebuttable presumption; ((or))

(e) Full-time earnings at minimum wage in the jurisdiction where the parent resides if the parent has a recent history of minimum wage earnings, has never been employed and has no earnings history, or has no significant earnings history; or

(f) Median net monthly income of year-round full-time workers as derived from the United States bureau of census, current population reports.

((+2)) (3) When a parent is currently enrolled in high school full-time, either DCS or the ALJ, or both may consider the totality of the circumstances of both parents when determining whether each parent is voluntarily unemployed or voluntarily underemployed. If the parent who is enrolled in high school is determined to be voluntarily unemployed or voluntarily underemployed, either DCS or the ALJ, or both may impute earnings of twenty hours per week at minimum wage in the jurisdiction where the parent resides. Imputation of earnings at twenty hours per week under this subsection is a rebuttable presumption.

(4) DCS and the ALJ impute (~~full-time~~) earnings of thirty-two hours per week at the minimum wage to a TANF recipient in the absence of actual income information. You may rebut the imputation of income if you are excused from being required to work while receiving TANF, because:

(a) You are either engaged in other qualifying WorkFirst activities which do not generate income, such as job search; or

(b) You are excused or exempt from being required to work in order to receive TANF, because of other barriers such as family violence or mental health issues.

AMENDATORY SECTION (Amending WSR 11-12-006, filed 5/19/11, effective 6/19/11)

WAC 388-14A-3300 How does the division of child support require me to make my support payments to the Washington state support registry when my support order says to pay someone else? (1) If a support order requires the noncustodial parent (NCP) to pay support to anywhere other than the Washington state support registry (WSSR), the division of child support (DCS) may serve a notice on the NCP telling the NCP to make all future payments to the WSSR.

(2) DCS determines which notice to serve on the NCP as provided in WAC 388-14A-3302 and elsewhere in this chapter.

(3) When DCS serves a notice of support debt under RCW 74.20A.040 or a notice of support owed under RCW 26.23.110, DCS notifies the (~~other party to~~) person entitled to receive the support as well as the payee under the order if appropriate. See WAC 388-14A-3315.

AMENDATORY SECTION (Amending WSR 11-22-116, filed 11/2/11, effective 12/3/11)

WAC 388-14A-3302 How does the division of child support decide what notice to serve when there is already an existing order for child support? (1) When the division of child support (DCS) serves a notice under WAC 388-14A-3300 to advise a noncustodial parent (NCP) that DCS is enforcing a support order, DCS may serve a notice of support debt, a notice of support debt and registration, a notice of support owed, or any other appropriate notice as provided in this chapter.

(2) If the support order sets the amount of the support obligation in a sum certain amount, DCS may serve a notice of support debt on the NCP as provided in RCW 74.20A.040 and WAC 388-14A-3304.

(3) If DCS is registering a support order or income-withholding order issued in another state, DCS may serve a notice of support debt and registration on the NCP, as provided in RCW 26.21A.500, 26.21A.540 and WAC 388-14A-7100.

(4) Under RCW 26.23.110, DCS may serve a notice of support owed on an NCP or a custodial parent (CP), as appropriate, if the underlying support order:

(a) Does not state the monthly support obligation as a fixed dollar amount stated in U.S. dollars;

(b) Contains an escalation clause or adjustment provision for which additional information not contained in the support order is needed to determine the fixed dollar amount of the support debt or the fixed dollar amount of the current and future support obligation, or both;

(c) Provides that the NCP is responsible for a portion of nonmedical expenses incurred on behalf of the child, but does not reduce the amount owed to a fixed dollar amount; or

(d) Provides that either the NCP or the custodial parent (CP) must provide medical support as provided under either RCW 26.19.105 or 74.20A.300, but does not reduce the medical support obligation to a fixed dollar amount.

(5) As of the effective date of this section, DCS does not serve a notice of support owed under RCW 26.23.110 to determine the NCP's proportionate share of any nonmedical expenses other than daycare or child care expenses incurred on behalf of the child(ren) covered by the order.

(6) The fact that an NCP or CP's request that DCS act on his or her claim for unreimbursed nonmedical expenses is rejected by DCS does not mean that the NCP or CP cannot pursue reimbursement of those expenses by proceeding in court.

(a) If a CP obtains a judgment for unreimbursed nonmedical expenses, DCS may enforce the judgment if the CP qualifies for services under WAC 388-14A-2000.

(b) If DCS served a notice of support owed to determine the NCP's proportionate share of nonmedical expenses at some time before the effective date of this section and either NCP or CP requests an annual review under RCW 26.23.110, DCS may continue to provide annual reviews for the support order which was the subject of the prior notice of support owed but only for the same nonmedical expenses addressed in the prior notice of support owed.

(7) See WAC 388-14A-3310 for the general rules for a notice of support owed.

(a) WAC 388-14A-3311 describes the procedures for service of a notice of support owed to:

(i) Determine the fixed dollar amount of the support debt or the fixed dollar amount of the current and future support obligation;

(ii) Implement an escalation clause or adjustment provision;

(iii) Convert a support order set in foreign currency using the current rate of exchange to fix the amount of support in U.S. dollars; or

(iv) Determine as a sum certain the NCP's proportionate share of daycare or child care expenses paid by the NCP.

(b) WAC 388-14A-3312 describes the procedures for service of a notice of support owed to establish a parent's share of medical expenses and/or medical support owed for the child or children covered by a support order.

(c) WAC 388-14A-3330 describes the procedures for service of a notice of support owed when DCS conducts an annual review of the amounts determined by an order resulting from a previous notice of support owed.

(8) WAC 388-14A-3307 discusses how DCS proceeds when DCS decides that a determination of controlling order under chapter 26.21A RCW is required. Under that section, DCS may serve a notice of support debt and registration as provided in WAC 388-14A-7100.

(9) WAC 388-14A-3315 provides that:

(a) When DCS serves a notice of support debt or a notice of support owed on the NCP, DCS notifies the CP and the payee under the order, if the CP is not the payee under the order; and

(b) When DCS serves a notice of support owed under WAC 388-14A-3312 on the CP, DCS notifies the NCP.

AMENDATORY SECTION (Amending WSR 20-03-024, filed 1/6/20, effective 4/1/20)

WAC 388-14A-3310 What notice does the division of child support serve to establish a fixed dollar amount under an existing child support order?

(1) The division of child support (DCS) may serve a notice of support owed under RCW 26.23.110 on either the noncustodial parent (NCP) or the custodial parent (CP) whenever it is necessary to establish a fixed dollar amount owed under a child support order that was entered in Washington or by any other tribunal. This section provides general information regarding the notice of support owed.

(a) WAC 388-14A-3311 describes the procedures for service of a notice of support owed on the NCP to determine the fixed dollar amount of the support debt or the fixed dollar amount of the current and future support obligation (~~, including:~~

~~(i) The NCP's proportionate share of daycare or child care expenses incurred on behalf of the child or children; and~~

~~(ii) Converting a support order set in foreign currency using the current rate of exchange to fix the amount of support in U.S. dollars, if necessary; and)) for nonmedical expenses.~~

(b) WAC 388-14A-3312 describes the procedures for service of a notice of support owed on either parent to establish that parent's share of medical expenses or medical support, or both, owed for the child or children covered by a support order.

(2) The notice of support owed contains an initial finding, showing DCS' calculation of the fixed dollar amount of:

(a) The current and future support obligation;

(b) Any support debt owed; or

(c) Both amounts.

(3) The notice of support owed facilitates enforcement of the underlying support order by implementing the terms of the order, but it cannot modify the terms of the order.

(4) The reasons that DCS may serve a notice of support owed include, but are not limited to:

(a) The underlying support order sets a support obligation but does not state the monthly support obligation as a fixed dollar amount;

(b) The underlying support order sets a support obligation stated in foreign currency and DCS seeks to convert that amount using the current rate of exchange to fix the amount of support stated in U.S. dollars;

(c) DCS is implementing the adjustment or escalation provision of a court order;

(d) The support order provides that the NCP is responsible for paying for a portion of daycare or child care expenses incurred on behalf of the child or children, but does not reduce the amount owed to a fixed dollar amount. DCS serves the notice of support owed to determine the NCP's proportionate share of those expenses; or

(e) The support order provides that either the NCP or the CP must provide medical support as required under either RCW 26.19.105 or 74.20A.300, but does not reduce the medical support obligation to a fixed dollar amount.

(5) (~~((Because of the different purposes for which DCS may serve a notice of support owed under RCW 26.23.110,))~~) DCS (~~((has developed two))~~) uses four separate forms to use for the notice of support owed:

(a) The basic form used by DCS to establish a fixed dollar amount owed by an NCP under an existing child support order is called the notice of support owed. The notice of support owed is also used to notify parties of an annual review of amounts owed established by a previous notice of support owed.

(b) (~~((DCS developed a special form called))~~) The "notice of support owed - Medical support" ((which)) is used ((only)) for the following purposes:

(i) To notify an obligated parent of the obligation to pay a portion of the premium for health insurance provided by the other parent or state of Washington; or

(ii) To determine a fixed dollar amount for uninsured medical expenses incurred on behalf of the child or children and to demand payment of the obligated parent's proportionate share when a support order requires the obligated parent to pay a specific percentage of uninsured medical expenses.

(iii) To determine the amounts owed in an annual review of the amounts established by a previous notice of support owed-Medical support.

(c) The notice of support owed-Daycare establishment is used to establish a daycare obligation for past-due and current and future daycare when the underlying order provides that daycare expenses must be determined by a percentage stated in the underlying order.

(d) The notice of support owed-Daycare annual review is used to review daycare expenses established by a previous notice of support owed-Daycare establishment or notice of support owed-Daycare annual review and to determine current and future daycare obligation subsequent to the effective period of the previous notice of support owed that addressed a daycare obligation.

(6) For the purposes of this chapter, the term "notice of support owed" includes "notice of support owed," (~~and~~) "notice of support owed - Medical support(~~(-)~~)," "notice of support owed-Daycare establishment," and "notice of support owed-Daycare annual review."

(7) DCS serves (~~(a)~~) an initial notice of support owed on the NCP or the CP, as appropriate, like a summons in a civil action or by certified mail, return receipt requested.

(8) (~~((WAC 388-14A-3315 provides that,))~~) When DCS serves a notice of support owed on one party, DCS notifies the other party to the support order by sending a form called the notice to payee, and encloses a copy of the notice.

(a) If DCS is serving a notice of support owed on the NCP, DCS mails the notice to payee to the CP and to the payee under the order, if the CP is not the payee under the order.

(b) If DCS is serving a notice of support owed on the CP, DCS mails the notice to payee to the NCP.

(9) If the order resulting from a previous notice of support owed included a statement that subsequent notices of support owed to review the amounts will be served in regular mail, DCS may serve a subsequent notice of support owed by regular mail to the parties at their last known mailing addresses on file with the department.

(10) If the previous notice of support owed does not include a statement that a subsequent notice of support owed may be mailed by first class mail, DCS must serve the notice of support owed in the same manner as an initial notice of support owed.

(11) See WAC 388-14A-3330 for procedures used by DCS for annual review of an obligation established by a prior notice of support owed.

(12) In a notice of support owed, DCS includes:

(a) The information required by RCW 26.23.110;

(b) Any provision or factors contained in the underlying order regarding how to calculate the monthly support or the amounts claimed for medical support;

(c) Any other information not contained in the order that DCS used to calculate the amounts in the notice; and

(d) Notice of the right to request an annual review of the order or a review on the date given in the order for an annual review, if any. WAC 388-14A-3330 describes the procedures for the annual review of a notice of support owed; and

(e) Notice that a subsequent notice of support owed for an annual review of the amounts established by the notice of support owed may be served by regular mail to each party at their last known address.

~~((10))~~ (13) A notice of support owed fully and fairly informs the parties of the rights and responsibilities in this section.

~~((11))~~ (14) After service of a notice of support owed, the recipient of the notice (which could be either the CP or the NCP, as appropriate,) must make all support payments required by the notice to the Washington state support registry (WSSR). DCS does not credit payments made to any other party after service of a notice of support owed except as provided in WAC 388-14A-3375.

~~((12))~~ (15) The need to serve a notice of support owed does not require DCS to cease all enforcement actions on a case. At any time, DCS may enforce:

(a) A fixed or minimum dollar amount for monthly support stated in the court order or a prior administrative order entered under this section;

(b) Any part of a support debt that has been reduced to a fixed dollar amount by a court or administrative order; and

(c) Any part of a support debt that neither party claims is incorrect.

~~((13))~~ (16) A notice of support owed becomes final and subject to immediate income withholding and enforcement as provided in WAC 388-14A-3316.

~~((14))~~ (17) An objection or request for hearing on a notice of support owed may be timely or untimely:

(a) WAC 388-14A-3317 discusses what happens if a parent makes a timely request for hearing; and

(b) WAC 388-14A-3318 discusses what happens if a parent makes an untimely request for hearing.

~~((15))~~ (18) WAC 388-14A-3320 provides general information regarding an administrative hearing on a notice of support owed.

~~((16))~~ (19) WAC 388-14A-3330 provides information regarding the annual review of a notice of support owed.

~~((17))~~ (20) For the purposes of this section and WAC 388-14A-3311 through ~~((388-14A-3330))~~ 388-14A-3331, the term "payee" includes "physical custodian," "custodial parent," or "party seeking reimbursement."

WAC 388-14A-3311 How does DCS prepare a notice of support owed to determine amounts owed to establish a fixed dollar amount under an existing child support order? (1) The division of child support (DCS) serves a notice of support owed under RCW 26.23.110, WAC 388-14A-3310 and this section on the noncustodial parent (NCP) to determine the fixed dollar amount of the support debt, the fixed dollar amount of the current and future support obligation, or both.

(2) DCS may serve a notice of support owed on the NCP to determine the fixed dollar amount of the current and future support obligation when a support order provides that the NCP's support obligation is:

(a) A certain percentage of the NCP's gross or net earnings;

(b) Set as a sum-certain amount, but the amount is to be paid other than monthly; or

(c) To be determined by some other formula or method requiring the use of information that is not contained in the order, including currency conversion when DCS is enforcing a support order which sets the support amount in a foreign currency.

(3) DCS may serve a notice of support owed Daycare establishment on the NCP to determine the amount of the NCP's share of daycare or child care expenses for the children when the support order sets the NCP's obligation as a percentage or proportion of those expenses. A custodial parent (CP) seeking reimbursement for daycare or childcare expenses for the (~~child(ren)~~) child or children must:

(a) Apply for full collection services at the time of the request, unless the CP already has an open full collection case with DCS;

(b) Have paid the daycare or child care expenses before seeking reimbursement through DCS;

(c) Provide proof of payment of those expenses;

(d) Complete the forms provided by DCS for the claim, or at a minimum present the required information and documentation in a format similar to that in the DCS forms; and

(e) Declare under penalty of perjury that he or she has asked the NCP to pay his or her share of the daycare or child care expenses or provide good cause for not asking the NCP for payment.

(4) DCS' denial of a request from either the CP or the NCP to serve a notice of support owed under this section does not affect either party's ability to bring an action in another tribunal to enforce a claim for the other party's proportionate share of expenses paid for the children. Either party may file an action in court to:

(a) Make a claim for reimbursement of daycare or childcare expenses;

(b) Make a claim for reimbursement of any other child rearing expenses; or

(c) Seek any other kind of relief against the other party.

(5) DCS may serve a notice of support owed under this section on the NCP to implement an escalation clause or adjustment provision for which additional information not contained in the support order is needed to determine the fixed dollar amount of the support debt or the fixed dollar amount of the current and future support obligation.

(6) Whenever DCS serves a notice of support owed on the NCP under subsections (2), (3) or (5) above, that notice may also include a determination of the fixed dollar amount of:

(a) Any support debt owing;

(b) Any amount paid by the NCP that exceeds his or her actual current and future support obligation; and

(c) Any amount paid by the NCP that exceeds his or her actual share of day care or child care expenses.

(7) If DCS is preparing a notice of support owed as part of an annual review, the notice may also include a determination of the fixed dollar amount of:

(a) Any support debt owed by the NCP; and

(b) Any amounts calculated under an order resulting from a previous notice of support owed that exceed the NCP's actual obligation after actual income or expenses are considered.

(8) If the notice of support owed contains a determination that the amount owed by the NCP under the previous notice of support owed (if any) is more than his or her actual current and future support obligation or his or her actual share of expenses, the notice addresses how the difference may be credited or repaid, in the absence of an agreement between the parties.

(a) Any overpayment may be applied as an offset to nonassistance child support arrears owed by the NCP on that case only.

(b) 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:

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

(ii) In a case where the underlying order provides that the NCP's support obligation will end in less than twelve months, spread equally over the remaining life of the order.

(9) In a notice of support owed under this section, DCS includes:

(a) The information required by RCW 26.23.110 and WAC 388-14A-3110;

(b) A description of any provisions or factors contained in the underlying order regarding how to calculate the monthly support obligation or the amounts claimed for nonmedical expenses; and

(c) Any other information not contained in the order that DCS used to calculate the amounts in the notice.

(10) See WAC 388-14A-3330 for additional procedures used by DCS for an annual review of the amounts established by a notice of support owed.

AMENDATORY SECTION (Amending WSR 19-02-017, filed 12/21/18, effective 1/21/19)

WAC 388-14A-3312 The division of child support serves a notice of support owed to establish a fixed dollar amount owed by either parent for medical support. (1) Depending on the specific requirements of the child support order, and only if the case meets the criteria set out in WAC ((~~388-14A-4111~~)) 388-14A-4100, the division of child support (DCS) may serve a notice of support owed under RCW 26.23.110, WAC 388-14A-3310 and this section:

(a) On either the noncustodial parent (NCP) or the custodial parent (CP), as appropriate, in order to:

(i) Establish as a sum certain and collect the obligated parent's proportionate share of uninsured medical expenses owed to the parent seeking reimbursement. This process is called reimbursement of uninsured medical expenses;

(ii) Establish as a sum certain and collect the obligated parent's monthly payment toward the premium currently being paid by the other parent for health care coverage for a child named in the support order; or

(iii) Establish and collect amounts owed under both subsections (a)(i) and (a)(ii) of this section.

(b) On the NCP in order to establish as a sum certain and collect the NCP's monthly payment toward the premium paid by the state for managed care coverage for a child named in the support order, if the child receives public health care coverage in the state of Washington, whether or not there is an assignment of rights.

(2) Unless otherwise specified in the order, each parent's proportionate share of uninsured medical expenses and health care premiums is the same as the proportionate share of income shown on the Washington state child support schedule worksheet that was completed as part of the support order.

(a) On occasion, a tribunal may specify that medical support obligations are to be shared between the parents at a different percentage than the one on the worksheet.

(b) DCS follows the terms of the underlying order when serving a notice of support owed under this section.

(3) WAC 388-14A-4111 and 388-14A-4112 set out some of the reasons why DCS may decline a party's request to enforce a medical support obligation.

(4) Only a CP who is both a parent of the child and a party to the support order may ask DCS to serve a notice of support owed on the NCP under subsection (1)(a) of this section. If the CP is not both a parent of the child and a party to the support order, DCS' denial of the request does not affect the CP's ability to bring an action in another tribunal to enforce the CP's claim against the NCP for medical support. The CP may file an action in court to:

(a) Make a claim for reimbursement of uninsured medical expenses;

(b) Make a claim for a monthly contribution toward any health care coverage provided by the CP; or

(c) Seek both kinds of relief against the NCP.

(5) DCS may serve a notice of support owed on the NCP under subsection (1)(b) of this section without regard to the CP's status as a parent or party to the order, if the child receives public health care coverage in the state of Washington, whether or not there is an assignment of rights.

(6) Except as limited in subsection (4) above, either the NCP or the CP may ask DCS to serve a notice of support owed on the other party to the support order in order to establish the obligated parent's proportionate share of uninsured medical expenses as a sum certain amount if the support order establishes such an obligation. The parent seeking reimbursement for uninsured medical expenses must:

(a) Apply for full collection services at the time of the request, unless the parent already has an open full collection case with DCS;

(b) Have paid the uninsured medical expenses before seeking reimbursement through DCS;

(c) Provide proof of payment of at least five hundred dollars in uninsured medical expenses;

(d) Complete the forms provided by DCS for the claim, or at a minimum present the required information and documentation in a format similar to that in the DCS forms; and

(e) Declare under penalty of perjury that he or she has asked the obligated parent to pay his or her share of the uninsured medical expenses or provide good cause for not asking the obligated parent.

(i) If the uninsured medical expenses have been incurred within the last twelve months, this requirement is waived; and

(ii) If the obligated party denies having received notice that the other party was seeking reimbursement for uninsured medical expenses or support, the service of the notice of support owed constitutes the required notice.

(7) A party's request that DCS serve a notice of support owed to establish the other parent's obligation for medical support, including reimbursement for uninsured medical expenses:

(a) May be for a period of up to twenty-four consecutive months;

(b) May include only medical services provided after July 21, 2007;

(c) May not include months which were included in a prior notice of support owed for medical support or a prior judgment;

(d) Need not be for the twenty-four month period immediately following the period included in the prior notice of support owed for medical support;

(e) May include a claim for the obligated parent's proportionate share of any health care coverage premiums paid by the requesting parent after July 21, 2007, but this type of claim is limited as provided in subsections (11) and (12) of this section; and

(f) May include a request that DCS establish a monthly payment toward the premium representing the obligated parent's proportionate share of the premium paid by the requesting parent only for premiums paid for health care coverage provided after September 30, 2009.

(8) The party seeking reimbursement must ask DCS to serve a notice of support owed for medical support within two years of the date that the uninsured medical expense or premium was incurred.

(a) The fact that a request that DCS serve a notice of support owed for medical support is denied, either in whole or in part, does not mean that the party cannot pursue reimbursement of those uninsured medical expenses by proceeding in court.

(b) If a party obtains a judgment for reimbursement of uninsured medical expenses or other type of medical support, DCS enforces the judgment.

(9) When either party asks DCS to serve a notice of support owed under this section to establish the other party's proportionate share of uninsured medical expenses as a sum certain amount and the medical expenses include premiums for health care coverage for the children covered by the order, DCS reviews the order to determine whether it provides for a monthly payment toward the premium when the obligated parent does not have insurance available through his or her employer or union.

(a) If the order does not have such a requirement, DCS includes the health care coverage premiums in the claim for reimbursement of uninsured medical expenses, but limits the obligated parent's obligation as provided in subsections (11) and (12) of this section.

(b) If the order does have such a requirement, DCS serves a notice of support owed which:

(i) Includes the health care coverage premiums in the claim for reimbursement of uninsured medical expenses; and

(ii) If appropriate, includes the provisions necessary to establish a monthly contribution which represents the obligated parent's proportionate share of the premium paid by the other parent (not to exceed twenty-five percent of the obligated parent's basic support obligation), if the obligated parent is not already providing health care coverage for the children.

(10) There are two circumstances under which DCS may serve a notice of support owed to establish the amount owed by an obligated parent as a monthly payment toward the premium paid for coverage by the other parent or the state. DCS may serve the notice of support owed when the support order:

(a) Specifically provides that the obligated parent's medical support obligation under RCW 26.09.105 (1)(c) is to pay a monthly payment toward the premium instead of providing health care coverage, but does not set that obligation as a sum certain; or

(b) Provides that, if health insurance is not available through the obligated parent's employer or union at a cost not to exceed twenty-five percent of the obligated parent's basic support obligation, the obligated parent must pay a monthly payment toward the premium but does not set that obligation as a sum certain. In this situation, DCS serves the notice of support owed to establish a monthly payment toward the premium paid only if the obligated parent is not already providing coverage for the children.

(11) DCS may collect a maximum of twenty-five percent of the obligated parent's basic support obligation for medical premium costs claimed by the requesting party.

(12) DCS may not collect for medical premium costs claimed by the requesting party through either the monthly payment toward the premium or the reimbursement of uninsured medical expenses if the obligated parent is providing accessible health care coverage for the child. The obligated parent is only required to pay those costs if he or she is not providing accessible health care coverage for the child.

(13) Once DCS serves a notice of support owed under this section that establishes a medical support obligation representing the obligated parent's proportionate share of the premium paid by the other parent, the obligated parent is not required to reimburse the other parent for any amounts of that proportionate share of the premium which are not paid because those amounts exceed twenty-five percent of the obligated parent's basic support obligation.

(a) That portion of the obligated parent's proportionate share of the premium for a month that is not included in the obligated parent's monthly payment toward the premium may not be recovered by a later claim for unreimbursed medical expenses; and

(b) The obligation to contribute a proportionate share of other uninsured medical expenses is not affected by the establishment of a medical support obligation for medical premiums paid by the requesting parent under this section.

(14) Once DCS serves a notice of support owed under this section that establishes a monthly payment toward the premium which represents the NCP's proportionate share of the premium paid by the state, the NCP is not required to reimburse the state for any amounts of that proportionate share of the premium which are not paid because those amounts exceed twenty-five percent of the NCP's basic support obligation.

- (15) An NCP who wants DCS to enforce the CP's medical support obligation must first apply for full child support enforcement services.
- (a) DCS enforces a CP's medical support obligation only as provided under WAC 388-14A-4112.
- (b) If the parties already have an open full enforcement case with DCS, DCS opens up a new case which is called the medical support case, and the previously existing case is called the main case.
- (c) If the parties do not already have an open full enforcement case with DCS, DCS opens two cases:
- (i) The case where DCS is acting on NCP's request to enforce CP's medical support obligation is called the medical support case; and
- (ii) The case where DCS is enforcing the underlying support order and collecting from the NCP is called the main case.
- (16) In a notice of support owed under this section, DCS includes the information required by RCW 26.23.110, and:
- (a) The factors stated in the order regarding medical support;
- (b) A statement of uninsured medical expenses and a declaration by the parent seeking reimbursement; and
- (c) Any other information not contained in the order that DCS used to calculate the amounts in the notice.
- (17) Whenever DCS serves a notice of support owed under this section, that notice may also include a determination of the fixed dollar amount of:
- (a) Any medical support debt owed by the obligated parent;
- (b) Any amounts owed by the obligated parent under a previous notice of support owed that exceed the obligated parent's actual monthly obligation to pay a proportionate share of the premium after actual expenses or updated proportionate shares owed are considered, but not to exceed twenty-five percent of the obligated parent's basic support obligation; and
- (c) Any amounts owed by the obligated parent under a previous notice of support owed that are less than the obligated parent's actual monthly obligation to pay a proportionate share of the premium after actual expenses or updated proportionate shares owed are considered, but not to exceed twenty-five percent of the obligated parent's basic support obligation.
- (18) If the notice of support owed contains a determination that the order resulting from a previous notice of support owed calculated a medical support obligation that differed from the obligated parent's actual obligation after actual expenses or updated proportionate shares owed are considered, the notice may address how any difference may be credited or repaid in the absence of any agreement between the parties.
- (19) If the obligated parent is the NCP, any amounts owed under a previous notice of support owed exceeding the actual obligation after actual expenses or updated proportionate shares owed are considered in the final administrative order are added to the NCP's support debt.
- (a) Amounts owed to the CP are added to the unassigned arrears on the case.
- (b) Amounts owed to reimburse the state for medicaid or other public health care coverage in the state of Washington are added to the main case as permanently assigned arrears.
- (20) If the obligated parent is the CP, any amounts owed under a previous notice of support owed exceeding the actual obligation after actual expenses are considered in the final administrative order are paid in the following order:

(a) Any amount owed by the CP to the NCP is applied as an offset to any nonassistance child support arrears owed by the NCP on the main case only; or

(b) If there is no debt owed to the CP on the main case, payment of the amount owed by the CP is in the form of a credit against the NCP's future child support obligation:

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

(ii) When the future support obligation will end under the terms of the order in less than twelve months, spread equally over the life of the order.

(c) If the amount owed by the CP exceeds the amount that can be paid off using the methods specified in subsections (a) and (b) of this section, DCS uses the medical support case to collect the remaining amounts owed using the remedies available to DCS for collecting child support debts.

(21) If both the CP and the NCP request that DCS serve a notice of support owed under this section on the other party, those notices remain separate and may not be combined.

(a) The office of administrative hearings (OAH) may schedule consecutive hearings but may not combine the matters under the same docket number.

(b) The administrative law judge (ALJ) must issue two separate administrative orders, one for each obligated parent.

(22) (~~DCS does not serve a second or subsequent notice of support owed under this section on an obligated parent until the party seeking reimbursement once again meets the conditions set forth in~~) See WAC 388-14A-3330 for additional procedures used by DCS for an annual review of the amounts established by a notice of support owed.

AMENDATORY SECTION (Amending WSR 11-12-006, filed 5/19/11, effective 6/19/11)

WAC 388-14A-3316 When can a notice of support owed become a final order? (1) The division of child support (DCS) may serve a notice of support owed on either the noncustodial parent (NCP) or the custodial parent (CP), as described in WAC 388-14A-3310, 388-14A-3311, and 388-14A-3312.

(2) The notice of support owed becomes a final administrative order subject to immediate income withholding and enforcement without further notice under chapters 26.18, 26.23, 74.20, and 74.20A RCW unless one of the parties, no matter which one was served with the notice, contacts DCS within the time limits provided in this section and:

(a) Objects to the notice;

(b) Requests a hearing;

(c) Negotiates and signs an agreed settlement as provided in WAC 388-14A-3600; or

(d) Obtains a stay from the superior court.

(3) DCS treats any objection to the notice of support owed as a request for hearing on the notice.

(4) If a timely objection is filed, DCS cannot enforce the contested amounts claimed in the notice of support owed until a final order as defined in this section is entered.

(a) WAC 388-14A-3317 discusses what happens if a party makes a timely objection or request for hearing on a notice of support owed.

(b) Even after a timely objection, DCS may still enforce those parts of the support obligation listed in WAC 388-14A-3310(10).

(5) To be timely, the party must object within the following time limits:

(a) Within twenty days of service, if the notice was served in Washington state.

(b) Within sixty days of service, if the notice was served outside of Washington state.

(6) The effective date of an objection or hearing request is the date that DCS receives the objection or request for hearing.

(7) After a timely request for hearing, the final order is one of the following, whichever occurs latest:

(a) An agreed settlement or consent order under WAC 388-14A-3600; or

(b) A final order as defined in WAC 388-14A-6105 and further described in WAC 388-14A-6115.

(8) WAC 388-14A-3318 describes what happens when a party makes an untimely request for hearing on a notice of support owed.

(9) RCW 26.23.110 provides that if a party who receives a notice of support owed does not initiate an action in superior court and serve notice on DCS and on the other party to the support order within twenty days after service of the notice, that party is considered to have made an election of remedies. This means that the party (either the CP or the NCP) must exhaust the administrative remedies under chapter 26.23 RCW before bringing a court action to challenge the notice.

AMENDATORY SECTION (Amending WSR 11-12-006, filed 5/19/11, effective 6/19/11)

WAC 388-14A-3330 What are the procedures for the annual review of a notice of support owed? (1) RCW 26.23.110 provides for an annual review of the support order which was previously the subject of a notice of support owed under that statute if the division of child support (DCS), the noncustodial parent (NCP), or the custodial parent (CP) requests a review.

(a) Either the CP or the NCP may request an annual review of the support order (~~(, even though RCW 26.23.110 mentions only the NCP)~~).

(b) DCS may request an annual review of the support order but has no duty to do so.

(2) For purposes of chapter 388-14A WAC, an "annual review of a support order" is defined as:

(a) The collection by DCS of necessary information from CP and NCP;

(b) The service of a notice of support owed under WAC 388-14A-3310, 388-14A-3311, or 388-14A-3312; and

(c) The determination of arrears and current support amount with an effective date which is at least twelve months after the date the last notice of support owed, or the last administrative order or decision based on a notice of support owed, became a final administrative order.

(3) A notice of support owed may be prepared and served sooner than twelve months after the date the last notice of support owed, or the last administrative order or decision based on a notice of support owed, became a final administrative order, but the amounts determined under the notice of support owed may not be effective sooner than twelve months after that date unless the notice of support owed resulted from an accelerated review under WAC 388-14A-3331.

(4) For the purpose of this section, the terms "payee" and "CP" are interchangeable, and can mean either the payee under the order or the person with whom the child resides the majority of the time.

(5) For purposes of chapter 388-14A WAC, the following rules apply to an "annual review of a support order" for a notice of support owed served under WAC 388-14A-3312:

(a) Either the CP or the NCP may be the party seeking reimbursement, so long as the CP is both a party to the order and a parent of the (~~child~~) child or children for whom the expenses were incurred.

(b) The party seeking reimbursement must provide proof of payment of at least five hundred dollars in uninsured medical expenses for services provided in the last twenty-four months.

(c) At least twelve months must have passed since:

(i) The date the last notice of support owed for unreimbursed medical expenses on behalf of the party seeking reimbursement became a final order; or

(ii) The last administrative order or decision based on a notice of support owed for unreimbursed medical expenses on behalf of that party became a final administrative order.

(6) WAC 388-14A-3310(1) describes the different types of notice of support owed which are served by DCS. In the event that DCS has served more than one type of notice of support owed on the same case, each notice of support owed has its own twelve-month cycle for annual review.

(7) For purposes of this section, the twelve-month cycle for annual review runs separately for the NCP and for the CP, depending on which one is the party seeking reimbursement.

(8) DCS serves the notice for an annual review on both parties by regular mail to each party's last known address if the order resulting from the prior notice of support owed included a statement that subsequent notices of support owed to review the amounts will be served by regular mail.

NEW SECTION

WAC 388-14A-3331 What are the procedures for the accelerated review of a notice of support owed for daycare expenses? (1) RCW 26.23.110 provides for an accelerated review of the amounts established by a prior notice of support owed if the division of child support (DCS), the noncustodial parent (NCP), or the custodial parent (CP) requests a review.

(a) Either the CP or the NCP may request an accelerated review of the support order.

(b) DCS may request an accelerated review of the support order but has no duty to do so.

(2) For purposes of chapter 388-14A WAC, an "accelerated review of a support order" is defined as:

(a) A review of the daycare expenses established under a prior notice of support owed;

(b) The collection by DCS of necessary information from CP and NCP;

(c) The service of a notice of support owed to review the amounts determined under a previous notice of support owed; and

(d) The service of a notice of support owed less than twelve months after the effective date of the last notice of support owed or the last administrative based on a notice of support owed.

(3) DCS may accelerate the review of a notice of support owed for daycare expenses if:

(a) The CP informs DCS in writing that daycare expenses have terminated and are not expected to resume;

(b) The NCP alleges that daycare expenses have terminated and not expected to resume and the CP fails to provide documentation to indicate continuing daycare expenses;

(c) A new child support order modifies the proportionate shares of the parties' obligations that may change the NCP's daycare obligation;

(d) A child emancipates who is the subject of a current notice of support owed.

(4) A notice of support owed on an accelerated review includes a determination of the fixed dollar amount of:

(a) Any support debt owed by the NCP; and

(b) Any amounts calculated under an order resulting from the prior notice of support owed that exceed the NCP's actual obligation after actual income or expenses are considered.

(5) If the notice of support owed contains a determination that the amount owed by the NCP under the prior notice of support owed is more than his or her actual current and future support obligation or his or her actual share of expenses, the notice addresses how the difference may be credited or repaid.

(a) Any overpayment may be applied as an offset to nonassistance child support arrears owed by the NCP on that case only.

(b) 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:

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

(ii) In a case where the underlying order provides that the NCP's support obligation will end in less than twelve months, spread equally over the remaining life of the order.

(6) In a notice of support owed under this section, DCS includes:

(a) The information required by RCW 26.23.110 and WAC 388-14A-3110;

(b) A description of any provisions or factors contained in the underlying order regarding how to calculate the monthly support obligation or the amounts claimed for daycare expenses; and

(c) Any other information not contained in the order that DCS used to calculate the amounts in the notice.

(7) An order resulting from an accelerated review of a notice of support owed is subject to the rules in chapter 388-14A WAC regarding annual review of notices of support owed.

WAC 388-14A-6300 Duty of the administrative law judge in a hearing to determine the amount of a support obligation. (1) A support order entered under this chapter must conform to the requirements set forth in RCW 26.09.105, 26.18.170, ~~((and))~~ 26.23.050, and 26.23.110. The administrative law judge (ALJ) must comply with the DSHS rules on child support and include a Washington state child support schedule worksheet when entering a support order.

(2) In hearings held under this chapter to contest a notice and finding of financial responsibility or a notice and finding of parental responsibility or other notice or petition, the ALJ must determine:

(a) The noncustodial parent's obligation to provide support under RCW 74.20A.057;

(b) The names and dates of birth of the children covered by the support order;

(c) The net monthly income of the noncustodial parent (NCP) and the other parent of the children;

(d) The NCP's share of the basic support obligation and any adjustments to that share, according to his or her circumstances;

(e) Each parent's proportionate share of costs such as uninsured medical expenses, day care and special child rearing expenses;

(f) If requested by a party, the NCP's proportionate share of costs such as uninsured medical expenses or day care expenses in a sum certain amount per month;

(g) A statement that either or both parents are obligated to provide medical support under RCW 26.09.105 and 26.18.170, as provided in subsection (3) of this section, including but not limited to notice that if proof of health care coverage or proof that the coverage is unavailable is not provided to DCS within twenty days, DCS may seek direct enforcement through the obligated parent's employer or union without further notice to the parent;

(h) The NCP's accrued debt and order payments toward the debt in a monthly amount to be determined by the division of child support (DCS);

(i) The NCP's current and future monthly support obligation as a sum certain amount per month, and also as a "per month per child" amount if appropriate under WAC 388-14A-3200(4) and 388-14A-4800, and order payments in that amount.

(3) In determining the medical support obligation of the parents, the ALJ must:

(a) Require both parents to provide medical support for the children covered by the order. Medical support includes both:

(i) The obligation to provide health care coverage for the children:

(A) If coverage that can be extended to cover the children is or becomes available through the obligated parent's employer or union:

(B) If the obligated parent can enroll the children in public health care coverage; or

(C) ~~((To make a monthly contribution toward the premium paid for coverage by the other parent or the state))~~ When coverage is not available, to make a monthly contribution toward the premium paid for coverage by the other parent or the state; and

- (ii) The obligation to pay his or her proportionate share of uninsured medical expenses.
- (b) Determine whether one (but not both) of the parents should be excused from the obligation to provide coverage or contribute to a premium.
- (i) The ALJ must state the reasons for excusing a parent from the coverage obligation.
- (ii) The ALJ may not excuse that parent from the obligation to contribute his or her proportionate share of uninsured medical expenses.
- (4) Having made the determinations required in subsection (2) above, the ALJ must order the NCP to make payments to the Washington state support registry (WSSR).
- (5) The ALJ must allow DCS to orally amend the notice at the hearing to conform to the evidence. The ALJ may grant a continuance, when necessary, to allow the NCP or the CP additional time to present rebutting evidence or argument as to the amendment.
- (6) The ALJ may not require DCS to produce or obtain information, documents, or witnesses to assist the NCP or CP in proof of defenses to liability. However, this rule does not apply to relevant, nonconfidential information or documents that DCS has in its possession.
- (7) In a hearing held on a notice of support owed served on the NCP under WAC 388-14A-3310 or 388-14A-3311, the ALJ must comply with WAC 388-14A-3323 and 388-14A-3325 to determine, depending on what was requested in the notice:
- (a) Whether a condition precedent in the order to begin or adjust the support obligation was met;
- (b) The amount of monthly support as a fixed dollar amount;
- (c) Any accrued arrears;
- (d) Any difference between the amount calculated in the order resulting from a previous notice of support owed and the actual amount of the NCP's obligation for the period covered by the order; and
- (e) The amount of the NCP's share of daycare or child care expenses for the children, including:
- (i) The amount that the NCP must pay each month as his or her ongoing share of daycare or child care expenses for the children; and
- (ii) The amount of NCP's accrued debt for daycare or child care expenses.
- (8) In a hearing held on a notice of support owed served on either the NCP or the CP issued under WAC 388-14A-3312, the ALJ must determine either or both of the following, depending on what was requested in the notice:
- (a) The amount owed by the obligated parent to the other for unreimbursed medical expenses;
- (b) The monthly amount to be paid by the obligated parent as his or her proportionate share of the health care coverage premium paid by the other parent or the state.
- (9) Except as provided in WAC 388-14A-3324, the ALJ does not specify how the amounts owed by the obligated parent should be paid.
- (10) In the event that DCS has served a notice of support owed under WAC 388-14A-3312 on both the NCP and the CP, the ALJ must issue a separate administrative order for each notice issued, and may not set off the debts against each other.
- (11) An administrative final order on a notice of support owed must include a provision that any subsequent notice of support owed created for the purposes of reviewing the amounts established by the

final order may be served on any party to the order by regular mail to their last known address.