



# 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: February 17, 2023  
TIME: 10:45 AM

WSR 23-06-019

**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 22-14-027 ; 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 388-454-0006, The department makes background checks on adults who are acting in place of a parent without court-ordered custody.

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
April 4, 2023	10:00 am	Office Building 2 DSHS Headquarters 1115 Washington Olympia, WA 98504  Or virtually	Public parking at 11th and Jefferson. A map is available at: <a href="https://www.dshs.wa.gov/office-of-the-secretary/drivingdirections-office-bldg-2">https://www.dshs.wa.gov/office-of-the-secretary/drivingdirections-office-bldg-2</a>  Due to the COVID pandemic, hearings are being held virtually. Please see the DSHS website for the most up to date information

**Date of intended adoption:** No earlier than April 5, 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) April 4, 2023, 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: [Tencza@dshs.wa.gov](mailto:Tencza@dshs.wa.gov)  
 Other:  
 By (date) March 21, 2023, at 5:00 p.m.

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** These amendments clarify eligibility requirements for TANF and State Family Assistance "in loco parentis" households and outline DSHS responsibilities when supporting these families.

**Reasons supporting proposal:** See above

**Statutory authority for adoption:** RCW 43.43.832, 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.12.290.

**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:	Sarah Mintzer	PO Box 45470, Olympia, WA 98504-5770	360-764-0050
Implementation:	Sarah Mintzer	PO Box 45470, Olympia, WA 98504-5770	360-764-0050
Enforcement:	Sarah Mintzer	PO Box 45470, Olympia, WA 98504-5770	360-764-0050

**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: This amendment is exempt as allowed under RCW 34.05.328(5)(b)(vii) which states in part, “this section does not apply 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 rules 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> February 15, 2023	<b>Signature:</b> 
<b>Name:</b> Katherine I. Vasquez	
<b>Title:</b> DSHS Rules Coordinator	

**WAC 388-454-0006** (~~The department makes background checks on adults who are acting in place of a parent without court-ordered custody. How can I receive TANF/SFA as an In Loco Parentis caregiver?~~)

~~(1) We check your background when you ask for temporary assistance for needy families (TANF) or state family assistance (SFA) benefits for a child who:~~

~~(a) Is not related to you; and~~

~~(b) Lives with you but you do not have a court order that gives you legal custody of the child.~~

~~(2) A child who is not related to you cannot receive TANF/SFA benefits while living with you until we have completed a background check and the results of the background check meet the criteria in subsection (3) through (5) of this section.~~

~~(3) A child who is not related to you cannot receive benefits while living with you if:~~

~~(a) You have been convicted of a crime listed in WAC 110-04-0100 (1)(a) through (e); or~~

~~(b) You have been convicted of a crime listed in WAC 110-04-0110 (1) through (3) within the last five years; or~~

~~(c) You have a pending criminal charge for a disqualifying crime listed in WAC 110-04-0130 (1)(a) through (b); or~~

~~(d) You are determined by the department to not have the character, suitability, and competence necessary to receive benefits for a child not related to you, as described in subsection (4) and (5) of this section.~~

~~(4) We review your background when you have been convicted of a crime listed in WAC 110-04-0110 (1) through (3), more than five years ago to determine your character, suitability, and competence to receive benefits for a child not related to you. We consider the following factors:~~

~~(a) The amount of time that has passed since you were convicted;~~

~~(b) The seriousness of the crime that led to the conviction;~~

~~(c) The number and types of convictions in your background; and~~

~~(d) Your age at the time of the conviction.~~

~~(5) When you have a conviction for a crime other than those listed in WAC 110-04-0100 (1)(a) through (e), or 110-04-0110 (1) through (3) or have a founded finding of child abuse or neglect, as defined in WAC 110-03-0020, we review your background as described in subsection (4) of this section.~~

~~(6) If you disclose to us that you have received a certificate of parental improvement, as described in WAC 110-05-0001, and we verify it, then the related founded finding of child abuse or neglect, or dependency finding will not be considered in our determination under this section.~~

~~(7) Expunged, pardoned, sealed, or vacated conviction records, or those convictions for which you received a certificate of rehabilitation, do not count against you.))~~

(1) In Loco Parentis caregiver means:

(a) You are acting as a parent for a child living with you;

(b) The child is not related to you; and

(c) You do not have a court order that gives you legal custody or guardianship of the child.

(2) You are required to complete a financial interview to determine eligibility of the child in your care, per WAC 388-400-0005.

(3) You are eligible to receive a TANF/SFA grant for the child in your care as long as:

(a) The child meets all of the criteria under WAC 388-400-0005;

(b) You, and all adults 18 years of age or older, residing in the household must complete, sign, and provide the department a background check authorization form.

(4) In addition to the cash grant, you will be offered a voluntary assessment from the department to discuss the child's needs. The assessment may include a home visit. During the assessment, you will receive a referral to resources in your local community to provide support for the child in your care.

(5) If the background check or the assessment with the department raises concerns of child abuse or neglect, per RCW 26.44.030 the department will make a report to the department of children, youth, and families for the safety of the child.

(6) With regard to *In Loco Parentis* applicants, the department must do the following:

(a) Determine financial eligibility;

(b) Notify the child's parents of the approval of the TANF/SFA assistance per WAC 388-454-0025;

(c) Provide the caregiver information of exemptions under WAC 388-422-0020 from the requirement to cooperate with the division of child support on collection of child support from the non-custodial parents, where there are safety concerns for the caregiver or the child;

(d) Process the background check of all adults 18 years of age or older residing in the household and evaluate the findings for suitability and competency to care for the child in your home;

(e) Accept a certificate of parental improvement, from the *In Loco Parentis* applicant, as described in WAC 110-05-0001, and not considering the related finding of child abuse or neglect in the background check;

(f) Provide a voluntary assessment, voluntary home visit, and offer resources to the child in the home of the *In Loco Parentis* caregiver.