RULE-MAKING ORDER
EMERGENCY RULE ONLY

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

CODE REVISER USE ONLY

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STATE OF WASHINGTON
FILED

DATE: July 25, 2019
TIME: 9:23 AM

WSR 19-16-011

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

Effective date of rule:
Emergency Rules
☐ Immediately upon filing.
☒ Later (specify) July 28, 2019

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 amending WAC 388-310-1600 "WorkFirst – Sanctions", WAC 388-400-0005 "Who is eligible for temporary assistance for needy families?", and WAC 388-484-0006 "TANF/SFA time limit extensions."

These changes are necessary to implement 2SHB 1603 (Chapter 343, Laws of 2019), effective July 28, 2019, removing permanent disqualification after three WorkFirst noncompliance sanction terminations and adding homelessness to the criteria for hardship time limit extensions beyond the 60-month TANF lifetime limit.

The department is concurrently proceeding with the permanent rule-making process.

Citation of rules affected by this order:
New: None
Repealed: None
Amended: WAC 388-310-1600, WAC 388-400-0005, WAC 388-484-0006
Suspended: None

Statutory authority for adoption: RCW 41.05.021, RCW 74.04.050, RCW 74.04.055, RCW 74.04.057, RCW 74.08.025, RCW 74.08.090, chapter 74.08A RCW , RCW 74.09.035, RCW 74.09.530, chapter 74.12 RCW, RCW 74.62.030, 2SHB 1603 (Chapter 343, Laws of 2019)

Other authority:

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: These changes are required by state law (Chapter 343, Laws of 2019), effective July 28, 2019.

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	____	Amended	3	Repealed	____

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

	New	____	Amended	____	Repealed	____

The number of sections adopted on the agency's own initiative:

	New	____	Amended	____	Repealed	____

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

	New	____	Amended	____	Repealed	____

The number of sections adopted using:

Negotiated rule making:	New	____	Amended	____	Repealed	____
Pilot rule making:	New	____	Amended	____	Repealed	____
Other alternative rule making:	New	____	Amended	3	Repealed	____

Date Adopted: July 22, 2019	**Signature:**
Name: Katherine I. Vasquez	
Title: DSHS Rules Coordinator	

AMENDATORY SECTION (Amending WSR 14-20-104, filed 9/30/14, effective 11/1/14)

WAC 388-310-1600 WorkFirst—Sanctions. ((~~Effective November 1, 2014.~~))

(1) **What WorkFirst requirements do I have to meet?**

You must do the following when you are a mandatory WorkFirst participant:

(a) Give the department the information we need to develop your individual responsibility plan (IRP) (see WAC 388-310-0500);

(b) Show that you are participating fully to meet all of the requirements listed on your individual responsibility plan;

(c) Go to scheduled appointments listed in your individual responsibility plan;

(d) Follow the participation and attendance rules of the people who provide your assigned WorkFirst services or activities; and

(e) Accept available paid employment when it meets the criteria in WAC 388-310-1500.

(2) **What happens if I don't meet WorkFirst requirements?**

(a) If you do not meet WorkFirst requirements, we will send you a letter telling you what you did not do, and inviting you to a noncompliance case staffing. The letter will also schedule a home visit that will happen if you don't attend your noncompliance case staffing. We may schedule an alternative meeting, instead of a home visit, when there are safety or access issues.

(i) A noncompliance case staffing is a meeting with you, your case manager, and other people who are working with your family, such as representatives from tribes, community or technical colleges, employment security, the children's administration, family violence advocacy providers or limited-English proficient (LEP) pathway providers to review your situation and compliance with your participation requirements.

(ii) You will be notified when your noncompliance case staffing is scheduled so you can attend.

(iii) You may invite anyone you want to come with you to your noncompliance case staffing.

(b) You will have ten days to contact us so we can talk with you about your situation. You can contact us in writing, by phone, by going to the noncompliance case staffing appointment described in the letter, or by asking for an individual appointment.

(c) If you do not contact us within ten days, we will make sure you have been screened for family violence and other barriers to participation and that we provided necessary supplemental accommodations as required by chapter 388-472 WAC. We will use existing information to decide whether:

(i) You were unable to do what was required; or

(ii) You were able, but refused, to do what was required.

(d) If you had a good reason not to do a required activity we will work with you and may change the requirements in your individual responsibility plan if a different WorkFirst activity would help you move towards independence and employment sooner. If you have been unable to meet your WorkFirst requirements because of family violence, you and your case manager will develop an individual responsibility plan to help you with your situation, including referrals to appropriate services.

(e) If you do not attend your noncompliance case staffing, and we determine you did not have a good reason, we will conduct the home visit (or alternative meeting) to review your circumstances and discuss next steps and options.

(3) **What is considered a good reason for not doing what WorkFirst requires?**

You have a good reason if you were not able to do what WorkFirst requires (or get an excused absence, described in WAC 388-310-0500(5)) due to a significant problem or event outside your control. Some examples of good reasons include, but are not limited to:

(a) You had an emergent or severe physical, mental or emotional condition, confirmed by a licensed health care professional that interfered with your ability to participate;

(b) You were threatened with or subjected to family violence;

(c) You could not locate child care for your children under thirteen years that was:

(i) Affordable (did not cost you more than your copayment would under the working connections child care program in chapter 170-290 WAC);

(ii) Appropriate (licensed, certified or approved under federal, state or tribal law and regulations for the type of care you use and you were able to choose, within locally available options, who would provide it); and

(iii) Within a reasonable distance (within reach without traveling farther than is normally expected in your community).

(d) You could not locate other care services for an incapacitated person who lives with you and your children.

(e) You had an immediate legal problem, such as an eviction notice; or

(f) You are a person who gets necessary supplemental accommodation (NSA) services under chapter 388-472 WAC and your limitation kept you from participating. If you have a good reason because you need NSA services, we will review your accommodation plan.

(4) **What happens in my noncompliance case staffing?**

(a) At your noncompliance case staffing we will ensure you were offered the opportunity to participate and discuss with you:

(i) Whether you had a good reason for not meeting WorkFirst requirements.

(ii) What happens if you are sanctioned;

(iii) How you can participate and get out of sanction status;

(iv) How you and your family benefit when you participate in WorkFirst activities;

(v) That your case may be closed after you have been in sanction status for two months in a row;

(vi) How you plan to care for and support your children if your case is closed. We will also discuss the safety of your family, as needed, using the guidelines under RCW 26.44.030; <u>and</u>

(vii) How to reapply if your case is closed((~~; and~~

~~(viii) That upon your third sanction case closure after March 1, 2007, you may be permanently disqualified from receiving TANF/SFA. If you are permanently disqualified, your entire household is ineligible for TANF/SFA~~)).

(b) If you do not come to your noncompliance case staffing, we will make a decision based on the information we have and send you a letter letting you know whether we found that you had a good reason for not meeting WorkFirst requirements.

(5) **What happens if we do a home visit because you didn't attend your noncompliance case staffing?**

If you didn't attend your noncompliance case staffing, and we determined you did not have a good reason for failure to meet WorkFirst requirements, we will attempt to contact you during your scheduled home visit (or alternative meeting).

(a) If we are able to contact you, we will review the information that we planned to discuss at your noncompliance case staffing, including whether you had a good reason for failing to meet WorkFirst requirements and how you can participate and get out of sanction status. If you don't have a good reason, we will follow the process to place you in sanction status.

(b) If we are unable to contact you, we will follow the process to place you in sanction status based on the determination we made at your noncompliance case staffing.

(6) **What if we decide that you did not have a good reason for not meeting WorkFirst requirements?**

(a) Before you are placed in sanction, a supervisory level employee will review your case to make sure:

(i) You knew what was required;

(ii) You were told how to end your sanction;

(iii) We tried to talk to you and encourage you to participate; and

(iv) You were given a chance to tell us if you were unable to do what we required.

(b) If we decide that you did not have a good reason for not meeting WorkFirst requirements, and a supervisory level employee approves the sanction and sanction penalties, we will send you a letter that tells you:

(i) What you failed to do;

(ii) That you are in sanction status;

(iii) Penalties that will be applied to your grant;

(iv) When the penalties will be applied;

(v) How to request an administrative hearing if you disagree with this decision; and

(vi) How to end the penalties and get out of sanction status.

(c) If your case is closed because you failed to attend your noncompliance case staffing and home visit (or alternative meeting), this information will be included in your termination letter.

(d) We will also provide you with information about resources you may need if your case is closed. If you are sanctioned, then we will actively attempt to contact you another way so we can talk to you about the benefits of participation and how to end your sanction.

(7) **What is sanction status?**

When you are a mandatory WorkFirst participant, you must follow WorkFirst requirements to qualify for your full grant. If you or someone else on your grant doesn't do what is required and you can't prove that you had a good reason, you are placed in WorkFirst sanction status.

(8) **Are there penalties when you or someone in your household goes into sanction status?**

When you or someone in your household is in sanction status, we impose penalties. The penalties last until you or the household member meet WorkFirst requirements. There are different penalties depending on if you attended your noncompliance case staffing or home visit (or alternative meeting). Your household will only enter sanction status

if we determine that you or someone else in your household did not have a good reason for failing to meet the WorkFirst requirements.

(a) If you attended your noncompliance case staffing or home visit (or alternative meeting) and entered sanction status, you will receive a grant reduction sanction penalty.

(i) Your grant is reduced by one person's share or forty percent, whichever is more.

(ii) The reduction is effective the first of the month following ten-day notice from the department; and

(iii) Your case may be closed effective the first of the month after your grant has been reduced for two months in a row.

(b) If you did not attend your noncompliance case staffing or home visit (or alternative meeting) and entered sanction status you will receive a case closure sanction penalty.

(i) Your case may be closed the first of the month following the ten-day notice from the department.

(ii) If your case is reopened under subsection (14)(b), you will remain in sanction status and receive a grant reduction sanction penalty.

(A) Your grant is reduced by one person's share or forty percent, whichever is more.

(B) The reduction is effective the first of the month that your grant is reopened; and

(C) Your case may be closed effective the first of the month after your grant has been reduced for two months in a row.

(9) **What happens before your case is closed due to sanction?**

Before we close your case due to sanction status, we will send you a letter to tell you:

(a) What you failed to do;

(b) When your case will be closed;

(c) How you can request an administrative hearing if you disagree with this decision;

(d) How you can end your penalties and keep your case open (if you are able to participate for four weeks in a row before we close your case); and

(e) How your participation before your case is closed can be used to meet the participation requirement in subsection (13).

(10) **What happens if my sanction grant reduction penalty started before November 1, 2014?**

If you are in sanction and entered sanction before November 1, 2014, your case may be closed after you have been in sanction for four months in a row.

(11) **How do I end the penalties and get out of sanction status?**

To end the penalties and get out of sanction status:

(a) You must provide the information we requested to develop your individual responsibility plan; and/or

(b) Start and continue to do your required WorkFirst activities for four weeks in a row (that is, twenty-eight calendar days). The four weeks starts on the day you complete your comprehensive evaluation and you agree to your individual responsibility plan activities.

(12) **What happens when I get out of sanction status before my case is closed?**

When you get out of sanction status before your case is closed, your grant will be restored to the level you are eligible for beginning the first of the month following your four weeks of participation. For example, if you finished your four weeks of participation on June 15, your grant would be restored on July 1.

(13) **What if I reapply for TANF or SFA and I was in sanction status when my case closed?**

If your case closed due to sanction, you will need to follow the sanction reapplication process in subsection (14). If your case closed for another reason while you were in sanction status and is reopened, you will reopen in month two of sanction status.

(14) **What if I reapply for TANF or SFA after my case is closed due to sanction?**

(a) Except as specified in subsection (14)(b) if you reapply for TANF or SFA after your case is closed due to sanction, you must participate for four weeks in a row before you can receive cash. Once you have met your four week participation requirement, your cash benefits will start, going back to the date we had all the other information we needed to make an eligibility decision.

(b) We will take the actions below if you received the sanction penalty in subsection (8)(b), you reapply for TANF or SFA after your case is closed due to sanction and you complete the interview required under WAC 388-452-0005 by the end of the month that your benefits stopped. For example, if your benefits stop effective July 1, you must reapply and complete the interview by July 31. If you meet this timeframe:

(i) We will undo your case closure sanction penalty((~~, and we will not count the closure toward permanent disqualification under subsection (15)~~)); and((~~,~~))

(ii) If you are determined eligible, we will reopen your grant in sanction status with a grant reduction sanction penalty, going back to the effective date of your case closure.

((~~(15) **What happens if a supervisory level employee approves case closure for the third time?**~~

~~If we close your case for sanction at least three times after March 1, 2007, you will be permanently disqualified from receiving TANF/SFA. If you are permanently disqualified, any household you are in will also be ineligible for TANF/SFA.~~))

AMENDATORY SECTION (Amending WSR 14-10-046, filed 4/30/14, effective 6/1/14)

WAC 388-400-0005 Who is eligible for temporary assistance for needy families? (1) You can get temporary assistance for needy families (TANF), if you:

(a) Can be in a TANF/SFA assistance unit as allowed under WAC 388-408-0015 through 388-408-0030;

(b) Meet the citizenship/alien status requirements of WAC 388-424-0010;

(c) Live in the state of Washington. A child must live with a caretaker relative, guardian, or custodian who meets the state residency requirements of WAC 388-468-0005;

(d) Do not live in a public institution unless specifically allowed under RCW 74.08.025;

(e) Meet TANF/SFA:

(i) Income requirements under chapter 388-450 WAC;

(ii) Resource requirements under chapter 388-470 WAC; and

(iii) Transfer of property requirements under chapter 388-488 WAC.

(f) Assign your rights to child support as required under WAC 388-422-0005;

(g) Cooperate with the division of child support (DCS) as required under WAC 388-422-0010 by helping them:

(i) Prove who is the father of children applying for or getting TANF or SFA; and

(ii) Collect child support.

(h) Tell us your Social Security number as required under WAC 388-476-0005;

(i) Cooperate in a review of your eligibility as required under WAC 388-434-0005;

(j) Cooperate in a quality assurance review as required under WAC 388-464-0001;

(k) Participate in the WorkFirst program as required under chapter 388-310 WAC;

(l) Report changes of circumstances as required under WAC 388-418-0005; and

(m) Complete a mid-certification review and provide proof of any changes as required under WAC 388-418-0011.

(2) If you apply for TANF, have not received TANF or SFA within the past thirty days, and will be a mandatory WorkFirst participant as described in WAC 388-310-0200 once approved, you must complete a WorkFirst orientation before we approve your application.

(3) If you are an adult, you must have an eligible child living with you or you must be pregnant and meet the requirements of WAC 388-462-0010.

(4) If you are an unmarried pregnant teen or teen parent:

(a) Your living arrangements must meet the requirements of WAC 388-486-0005; and

(b) You must attend school as required under WAC 388-486-0010.

(5) In addition to rules listed in subsection (1) of this section, a child must meet the following rules to get TANF:

(a) Meet the age requirements under WAC 388-404-0005; and

(b) Live in the home of a relative, court-ordered guardian, court-ordered custodian, or other adult acting *in loco parentis* as required under WAC 388-454-0005; or

(c) If the child lives with a parent or other adult relative that provides care for the child, that adult cannot have used up their sixty-month lifetime limit of TANF or SFA cash benefits as defined in WAC 388-484-0005((~~; or~~

~~(d) If the child lives with a parent who provides care for the child, that adult cannot have been permanently disqualified from receiving TANF/SFA due to noncompliance sanction as defined in WAC 388-310-1600~~)).

(6) You cannot get TANF if you have been:

(a) Convicted of certain felonies and other crimes under WAC 388-442-0010; or

(b) Convicted of unlawful practices to get public assistance under WAC 388-446-0005 or 388-446-0010.

(7) If you are a client in a household which is eligible for a tribal TANF program, you cannot receive state and tribal TANF in the same month.

AMENDATORY SECTION (Amending WSR 15-24-056, filed 11/24/15, effective 1/1/16)

WAC 388-484-0006 TANF/SFA time limit extensions. (1) **What happens after I receive sixty or more months of TANF/SFA cash assistance?**

After you receive sixty or more months of TANF/SFA cash assistance according to WAC 388-484-0005, you may qualify for additional months of cash assistance. We call these additional months of TANF/SFA cash assistance a hardship TANF/SFA time limit extension.

(2) **Who is eligible for a hardship TANF/SFA time limit extension?**

You are eligible for a hardship TANF/SFA time limit extension if you are on TANF, are otherwise eligible for TANF, or are an ineligible parent, and you have received sixty cumulative months of TANF and:

(a) You are approved for one of the exemptions from mandatory participation according to WAC 388-310-0350 (1)(a) through (d) or you are an ineligible parent who meets the criteria for an exemption from mandatory WorkFirst participation; or

(b) You:

(i) Are a supplemental security income recipient or a Social Security disability insurance recipient; or

(ii) Are at least sixty-five years old, blind as defined by the Social Security Administration or disabled as determined under chapter 388-449 WAC; or

(iii) Have an open child welfare case with a state or tribal government and this is the first time you have had a child dependent under RCW 13.34.030 in this or another state or had a child a ward of a tribal court; or

(iv) Are working in unsubsidized employment for thirty-two hours or more per week; or

(v) Document that you meet the family violence option criteria in WAC 388-61-001 and are participating satisfactorily in specialized activities needed to address your family violence according to a service plan developed by a person trained in family violence or have a good reason, as described in WAC 388-310-1600(3) for failure to participate satisfactorily in specialized activities; or

(vi) Are homeless as described in RCW 43.185C.010(12).

(3) **Who reviews and approves a hardship time limit extension?**

(a) Your case manager or social worker will review your case and determine whether a hardship time limit extension type will be approved.

(b) This review will not happen until after you have received at least fifty-two months of assistance but before you reach your time limit or lose cash assistance due to the time limit.

(c) Before you reach your time limit or lose cash assistance due to the time limit, the department will send you a notice that tells you whether a hardship time limit extension will be approved when your time limit expires and how to request an administrative hearing if you disagree with the decision.

(4) **When I have an individual responsibility plan, do my WorkFirst participation requirements change when I receive a hardship TANF/SFA time limit extension?**

(a) Even if you qualify for a hardship TANF/SFA time limit extension you will still be required to participate as required in your individual responsibility plan (WAC 388-310-0500). You must still meet all of the WorkFirst participation requirements listed in chapter

388-310 WAC while you receive a hardship TANF/SFA time limit extension.

(b) If you do not participate in the WorkFirst activities required by your individual responsibility plan, and you do not have a good reason under WAC 388-310-1600, the department will follow the sanction rules in WAC 388-310-1600.

(5) **Do my benefits change if I receive a hardship TANF/SFA time limit extension?**

(a) You are still a TANF/SFA recipient or an ineligible parent who is receiving TANF/SFA cash assistance on behalf of your child and your cash assistance, services, or supports will not change as long as you continue to meet all other TANF/SFA eligibility requirements.

(b) During the hardship TANF/SFA time limit extension, you must continue to meet all other TANF/SFA eligibility requirements. If you no longer meet TANF/SFA eligibility criteria during your hardship time limit extension, your benefits will end.

(6) **How long will a hardship TANF/SFA time limit extension last?**

(a) We will review your hardship TANF/SFA time limit extension and your case periodically for changes in family circumstances:

(i) If you are extended under WAC 388-484-0006 (2)(a), (b)(i) or (ii) then we will review your extension at least every twelve months;

(ii) If you are extended under WAC 388-484-0006 (2)(b)(iii), (iv), or (v) then we will review your extension at least every six months.

(b) Your hardship TANF/SFA time limit extension may be renewed for as long as you continue to meet the criteria to qualify for a hardship time limit extension.

(c) If during the extension period we get proof that your circumstances have changed, we may review your case and determine if you continue to qualify for a hardship TANF/SFA time limit extension. When you no longer qualify for a hardship TANF/SFA time limit extension we will stop your TANF/SFA cash assistance. You will be notified of your case closing and will be given the opportunity to request an administrative hearing before your benefits will stop.