

Washington State Cares Fund Program Hearing

WA Cares - Implementation of SHB 2467, appeal
procedures, and qualified individuals

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Wednesday, January 22, 2025

1 APPEARANCES:

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3 FOR WASHINGTON STATE EMPLOYMENT SECURITY DEPARTMENT
4 LEAVE AND CARE DIVISION:

5 MR. BRETT CAIN, Policy Analyst
6 MR. JASON BARRETT, Lead Policy Analyst
7 MS. JANETTE BENHAM, Rules Coordinator
8 Employment Security Department
9 212 Maple Park Avenue SE
10 Olympia, Washington 98501
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1 BE IT REMEMBERED that on Wednesday, January
2 22, 2025, via Microsoft Teams, Washington State Family
3 and Paid Leave, Washington Paid Family Medical Leave
4 Hearing, taken before Bethan Williams, Certified Court
5 Reporter in and for the State of Washington.

6 The following proceedings took place:

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9 MS. BENHAM: Okay. Good morning. My name is
10 Janette Benham, and I'm the rules coordinator for
11 the Leave and Care Division of the Washington State
12 Employment Security Department. Thank you for
13 joining us today for this rulemaking hearing, and
14 I'd like to discuss a few housekeeping items before
15 we begin the hearing.

16 Just a reminder that this meeting concerns
17 proposed regulations regarding the WA Cares
18 program. This meeting will not feature discussion
19 of any specific application, and attendance is
20 completely optional. If you have questions
21 regarding your own application for exemption or
22 weekly claim for Paid Family and Medical Leave or
23 if you have other general questions, please call
24 our customer care team at (833) 717-2273. We won't
25 be able to answer any questions during today's

1 meeting.

2 Today's hearing is regarding the proposal that
3 adds and revises sections of Washington
4 Administrative Code regarding the implementation of
5 portions of Substitute House Bill 2467,
6 definitions, appeals, and qualified individuals.

7 If you would like to provide written comments
8 related to these rules, you may do so by e-mail at
9 rules, R-U-L-E-S, @esd.wa.gov. We'll continue to
10 accept written comments through the close of
11 business today.

12 To view the electronic version of the proposed
13 rules, you can go to
14 esd.wa.gov/newsroom/rulemaking/ltss. Under the
15 "Rules Under Development" heading, the proposed
16 rules are listed under the "Documents" title in the
17 CR-102 section.

18 The rules for today's hearing are listed after
19 the "Proposed Rules" title. Clicking on each of
20 the topics will bring up the proposed rules for
21 each individual chapter. As we progress through
22 the hearing, you may have to use your browser's
23 back button to view the next chapter of rules we'll
24 be discussing.

25 And before we begin, are there any questions

1 about the purpose of today's meeting or where to
2 find the proposed rules? You can unmute yourselves
3 using your Teams window or by hitting star six if
4 you're joining by phone. And if you're not
5 providing testimony, please remember to keep
6 yourself muted throughout the hearing. If you're
7 calling in for the hearing, please do not place
8 this meeting on hold to take another call because
9 the hearing cannot proceed if there is hold music
10 or messages played while the call is on hold.

11 Do we have any questions before we begin?

12 (No Response.)

13 MS. BENHAM: We'll go ahead and start the
14 hearing. Pursuant to the authority given under
15 Washington State Law RCW 50B.04.020, RCW
16 50B.04.050, RCW 50B.04.120, RCW 50B.04.180, Chapter
17 42.30 RCW of the Open Public Meetings Act, and
18 Chapter 34.05 of the Administrative Procedure Act,
19 this hearing is hereby convened.

20 For the record, this hearing is beginning at
21 9:08 a.m. on January 22nd, 2005 [sic] online and by
22 conference call.

23 This hearing is convened to consider testimony
24 concerning rulemaking for the Long-Term Services
25 and Supports Trust Program, also known as WA Cares

1 Fund. At a high level, this rulemaking amends
2 existing rules and creates new rules to implement a
3 portion of Substitute House Bill 2467 which passed
4 during the 2024 legislative session, adds new
5 definitions, addresses appeal procedures, and adds
6 new rules related to qualified individuals.

7 Notice of this hearing was filed on
8 December 18th, 2024, and published in Washington
9 State Register as WSR number 25-01-166, was sent to
10 interested parties, and was posted on the
11 department's web page.

12 My name is Janette Benham, and I'm the rules
13 coordinator for the Leave and Care Division of the
14 Washington State Employment Security Department.

15 I represent Commissioner Cami Feek as the
16 hearing officer presiding at this public rulemaking
17 hearing.

18 There are other members of the Leave and Care
19 Policy team attending this hearing. Please
20 introduce yourselves by name and title.

21 MR. CAIN: Good morning, I'm Brett Cain. I'm
22 a policy analyst for the Employment Security
23 Department.

24 MR. BARRETT: Good morning, my name is Jason
25 Barrett. I'm the lead policy analyst for the Leave

1 and Care division.

2 MS. BENHAM: Thank you, Jason and Brett.

3 Please be advised that this hearing is
4 recorded by the Microsoft Teams platform. The
5 recording will become a part of the official
6 rulemaking file. To facilitate the recording,
7 please state and then spell your name before your
8 testimony. If you are here in a representative
9 capacity, please include who you are providing
10 testimony on behalf of.

11 Please also note that this hearing is convened
12 to consider comments on the proposed rules.
13 Because of the formal nature of this hearing, we
14 are unlikely to answer any questions you may ask.
15 If you do pose a question, I will ask you to
16 rephrase your question as a comment. Questions can
17 be e-mailed to us at paidleave@esd.wa.gov or
18 wacaresexemptions@esd.wa.gov where our customer
19 support staff will respond to your question.

20 Written comments on the proposed rules will be
21 accepted through today by e-mail at
22 rules@esd.wa.gov, and a concise explanatory
23 statement of the agency's reasons for adoption of
24 the rules including a summary and response to all
25 comments received after the publication of the

1 proposed rules will be placed in the permanent
2 rulemaking file and posted online. This document
3 will be sent to all interested parties who have
4 signed up to receive WA Cares Fund rules e-mails.

5 We will begin with Brett Cain who will provide
6 a brief explanation of the proposal.

7 MR. CAIN: Thanks, Janette. Substitute House
8 Bill 2467 passed during the 2024 legislative
9 session. The bill allowed individuals who move out
10 of the state to elect to continue their WA Cares
11 coverage. The proposed rules implement a portion
12 of the bill that was codified in RCW 50B.04.180 by
13 defining "out-of-state participant." The proposed
14 rules also add program definitions of "qualified
15 individual" and "year," outline qualified
16 individual requirements and determinations, and
17 further align the WA Cares Fund and Paid Family and
18 Medical Leave appeals processes.

19 I encourage you all to read the text of the
20 rules along with the supporting documents for a
21 more robust understanding.

22 Thank you for your interest and participation
23 in our rulemaking efforts, and we look forward to
24 hearing your comments today.

25 MS. BENHAM: Thank you, Brett.

1 We will now hear testimony from those in
2 attendance. I'll go through each rule
3 individually, outline the proposed amendments to
4 each rule, and accept comment on each rule.

5 All attendees are currently muted, and if you
6 wish to speak, you can unmute yourselves through
7 your Teams window or by pressing star six if you're
8 joining by phone. If you are double muted when
9 using your phone to call in, please remember to
10 press star six, and then unmute your phone using
11 your phone's mute/unmute button.

12 When you testify, please speak clearly, state
13 your name, spell your last name, and state who you
14 represent if you are here in a representative
15 capacity.

16 When you finish testifying, please mute
17 yourself through your Teams window or press star
18 six again on your phone.

19 We'll start with Chapter 192-900 WAC -
20 definitions. There are three new rules added to
21 this chapter.

22 The first rule is WAC 192-900-040 out-of-state
23 participant. This rule defines an out-of-state
24 participant as an individual who has elected
25 coverage under RCW 50B.04.180. It refers to people

1 who move outside of Washington and elect to
2 continue WA Cares coverage.

3 Are there any questions or comments on this
4 rule?

5 (No Response.)

6 MS. BENHAM: The next rule is WAC 192-900-045
7 qualified individual. This rule defines a
8 qualified individual as someone who has met the
9 requirements under RCW 50B.04.050 and Chapter
10 192-940 WAC. Both of these references outline the
11 details of contribution requirements to qualify for
12 the benefit.

13 Are there any comments on this rule?

14 (No Response.)

15 MS. BENHAM: The next rule and the last of the
16 definitions chapter is WAC 192-900-050 year. This
17 rule defines a year as a calendar year, beginning
18 on January 1st and ending on December 31st.

19 Are there any comments on this rule?

20 (No Response.)

21 MS. BENHAM: The next rule is WAC 192-925-015
22 sections of general procedural rules for appeal
23 under Chapter 192-800 WAC apply. This amendment
24 adds a reference to a Paid Family and Medical Leave
25 rule to ensure the processes and procedures for the

1 department to address appeals align between both
2 programs the Leave and Care division manages.
3 Alignment is required under RCW 50B.04.120. The
4 referenced section, WAC 192-800-155, specifically
5 outlines what proceedings are open to the public
6 and what information is publicly disclosable.

7 Are there any comments on this rule?

8 (No Response.)

9 MS. BENHAM: The next two rules are in a new
10 chapter of administrative code, Chapter 192-940 WAC
11 qualified individuals. There are two new rules in
12 this chapter.

13 The first is WAC 192-940-005 earning years to
14 become a qualified individual. This rule outlines
15 what wages and hours will be used in the
16 determination of years earned toward qualified
17 individual status, how the hours will be determined
18 in a year, and specifies that wages and hours
19 reported when an individual had an approved
20 exemption don't count toward qualifying for the
21 benefit.

22 Are there any comments on this rule?

23 (No Response.)

24 MS. BENHAM: The final rule for today's
25 hearing is WAC 192-940-010 how will the department

1 determine if someone is a qualified individual?
2 This rule outlines the three different options
3 available for someone to become a qualified
4 individual, outlines the circumstances in which
5 someone could continue to earn years toward
6 becoming a qualified individual, clarifies that
7 people may not exceed the maximum lifetime benefit
8 amount, and that people who have approved
9 exemptions cannot become qualified individuals.

10 Are there any comments on this rule?

11 Hello, are you asking for the comment of
12 192-949 at this point or . . .

13 MS. BENHAM: This final rule that is -- that
14 we're asking for comment is 192-940-010.

15 MR. FORMAN: Yes, I do have a comment on that
16 actually.

17 MS. BENHAM: Okay. Can you please state your
18 name and spell it? And if you're here in a
19 representative capacity, state who you are
20 representing, and then we will be happy to accept
21 your comment.

22 MR. FORMAN: Sure can. This is Stephen
23 Forman, S-T-E-P-H-E-N, F-O-R-M-A-N, not here on
24 behalf of any particular organization; just my
25 company, Long Term Care Associates, Inc.

1 I'm just reading this rule here for the second
2 time, and my comment would be -- since I know I
3 can't ask this in the form of a question, my
4 comment would be that something the department will
5 want to take a look at -- and I'm looking at
6 section A in particular -- if someone does have a
7 break of five years and they have not earned ten
8 years, I don't think it's clear whether or not they
9 will have to start the entire ten-year period over
10 again or whether they just have to accrue the
11 remaining years that they might have not hit. I
12 hope that makes sense.

13 If you've done nine years and then you have a
14 break of five years and you go back to work, the
15 question would be do you only have to accrue one
16 more year to hit your ten-year total, or do you
17 have to then -- has the break occurred and then are
18 you back at scratch and then you have to earn a
19 whole ten years of consecutive work without that
20 break?

21 I don't think that's entirely clear. Maybe
22 it's just me, maybe it's clear to everyone else,
23 but that would be my comment pretty much.

24 MS. BENHAM: Thank you, Stephen. We
25 appreciate your comment and we'll consider that.

1 Are there any other comments on this rule?

2 (No Response.)

3 MS. BENHAM: Okay. I'd like to take a moment
4 and ask if there is any additional testimony on any
5 of the rules proposed today.

6 Is there any additional testimony? If there
7 is, please feel free to provide that comment now
8 and indicate which rule you're providing comment
9 on.

10 (No Response.)

11 MS. BENHAM: Is there any further testimony
12 from anyone on the phone before I conclude this
13 hearing?

14 (No Response.)

15 MS. BENHAM: Okay. In conclusion, this
16 hearing was convened to consider testimony on WA
17 Cares Fund rulemaking.

18 All oral testimony presented at this hearing
19 and any written submissions will become part of the
20 official record.

21 The deadline for submission of written
22 comments is today, January 22, 2025. You may
23 submit written comments by e-mailing
24 rules@esd.wa.gov. Comments must be received by the
25 end of the day to be considered part of this

1 rulemaking.

2 A final decision regarding adoption of the
3 proposed rules will be made after all testimony and
4 written comments have been fully considered, which
5 will be on or after January 29th, 2025.

6 On behalf of Acting Commissioner Cami Feek,
7 thank you for participating in this hearing.

8 This hearing is adjourned at 9:22 a.m. on
9 January 22nd, 2025.

10 (Hearing concluded at 9:22 a.m.)

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CERTIFICATE

I, BETHAN WILLIAMS, a Certified Court Reporter in and for the State of Washington, residing at Vancouver, do hereby certify;

That the foregoing proceedings were taken before me and thereafter reduced to a typed format under my direction; that the transcript is a full, true, and complete transcript of said proceedings;

That as a CCR in this state, I am bound by the Rules of Conduct as Codified in WAC 308-14-130; that court reporting arrangements and fees in this case are offered to all parties on equal terms.

That I am not a relative, employee, attorney or counsel of any party to this action, or relative or employee of any such attorney or counsel, and I am not financially interested in the said action or the outcome thereof;

That upon completion of signature, if required, the original transcript will be securely sealed and the same served upon the appropriate party.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of January, 2025.



Bethan Williams, RSR, WA CCR #8344