

RCW 26.23.110 Procedures when amount of support obligation needs to be determined—Notice—Adjudicative proceeding—Rules. (1) The department may serve a notice of support owed when a child support order:

(a) Does not state the current and future support obligation as a fixed dollar amount;

(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 person required by the order to make the transfer payment must pay a portion of child care or day care expenses for a child or children covered by the order; or

(d) Provides that either the person required to pay support or the person entitled to receive support, or both, are obligated to pay for a portion of uninsured medical costs, copayments, and/or deductibles incurred on behalf of the child or children covered by the order, but does not reduce the costs to a fixed dollar amount.

(2) The department may serve a notice of support owed for day care or child care on the person required by the order to make the transfer payment when:

(a) The underlying support order requires that person to pay his or her proportionate share of day care or child care costs directly to the person entitled to receive support; or

(b) The person entitled to receive support is seeking reimbursement because he or she has paid the share of day care or child care costs owed by the person required by the order to make the transfer payment.

(3) The department may serve a notice of support owed for medical support on any person obligated by a child support order to provide medical support for the child or children covered by the order. There are two different types of medical support obligations:

(a) Health care coverage: The department may serve a notice of support owed to determine an obligated person's monthly payment toward the premium as defined in RCW 26.09.105, if the support order does not set a fixed dollar amount for the monthly payment toward the premium.

(b) Uninsured medical expenses: The department may serve a notice of support owed on any person who is obligated to pay a portion of uninsured medical costs, copayments, or deductibles incurred on behalf of the child or children covered by the order, when the support order does not reduce the costs to a fixed dollar amount.

(i) The notice of support owed may be served for purposes of reimbursing a person who has paid the share of uninsured medical expenses owed by any person obligated to contribute to those costs;

(ii) The notice of support owed may be served to establish a monthly amount to be paid by a person obligated to contribute to uninsured medical expenses when the underlying support order requires that person to pay his or her proportionate share of uninsured medical expenses directly to another party to the order; or

(iii) The notice of support owed may be served for both purposes listed in this subsection.

(4) The notice of support owed is intended to facilitate enforcement of the support order and implement and effectuate the terms of the support order, rather than modify those terms. When the

department issues a notice of support owed, the department must inform the payee under the support order.

(5) Service of the notice of support owed must be as follows:

(a) An initial notice of support owed must be served on the person required by the order to pay support or contribute to costs by personal service or any form of mailing requiring a return receipt. The initial notice may be served on the person who is entitled to receive the support covered by the notice, as well as the payee under the order if appropriate, by regular mail.

(b) A notice of support owed created for purposes of reviewing an ongoing support obligation established by a prior notice of support owed may be served on the person required by the order to pay support or contribute to costs by regular mail to that person's last known address.

(c) An initial notice of support owed, as well as any notice created for purposes of reviewing an ongoing support obligation established by a prior notice of support owed may be served on the person entitled to receive the support by regular mail to that person's last known address.

(6) The notice of support owed must contain:

(a) An initial finding of the fixed dollar amount of current and future support obligation that should be paid or the fixed dollar amount of the support debt owed under the support order, or both; and

(b) A statement that any subsequent notice of support owed created for purposes of reviewing the amounts established by the current notice may be served on any party to the order by regular mail to that person's last known address.

(7) A person who objects to the fixed dollar amounts stated in the notice of support owed has twenty days from the date of the service of the notice of support owed to file an application for an adjudicative proceeding or initiate an action in superior court.

(8) The notice of support owed must state that the person may:

(a) File an application for an adjudicative proceeding governed by chapter 34.05 RCW, the administrative procedure act, in which the person will be required to appear and show cause why the fixed dollar amount of support debt or current and future support obligation, or both, stated in the notice of support owed is incorrect and should not be ordered; or

(b) Initiate an action in superior court.

(9) If no person included in the notice files an application for an adjudicative proceeding or initiates an action in superior court, the fixed dollar amount of current and future support obligation or support debt, or both, stated in the notice of support owed becomes final and subject to collection action.

(10) If an adjudicative proceeding is requested, the office of administrative hearings must schedule a hearing. All persons included in the notice are entitled to participate in the hearing with full party rights.

(11) If no person included in the notice initiates an action in superior court, and serves notice of the action on the department and the other party to the support order within the twenty-day period, all persons included in the notice must be deemed to have made an election of remedies and must exhaust administrative remedies under this chapter with judicial review available as provided for in RCW 34.05.510 through 34.05.598.

(12) An administrative order entered in accordance with this section must state:

(a) The basis, rationale, or formula upon which the fixed dollar amounts established in the order were based;

(b) The fixed dollar amount of current and future support obligation or the amount of the support debt, or both, determined under this section is subject to collection under this chapter and other applicable state statutes; and

(c) That any subsequent notice of support owed created for purposes of reviewing the amounts established by the current notice may be served on any party to the order by regular mail to that person's last known address.

(13) The department must also provide for:

(a) An annual review of the support order if the department, the person required to pay support, the payee under the order, or the person entitled to receive support requests such a review; and

(b) A late hearing if a person included in the notice fails to file an application for an adjudicative proceeding in a timely manner under this section.

(14) If an annual review is requested under subsection (13) of this section, the department may serve the notice of annual review of the administrative order based on the prior notice of support owed by mailing a copy of the notice by regular mail to the last known address of all parties to the order.

(15) If one of the parties requests a late hearing under subsection (13) of this section, the office of administrative hearings must schedule an adjudicative proceeding.

(16) An annual review under subsection (13) of this section is used to determine whether the expense remained the same, increased[,] or decreased, and whether there is a discrepancy between the actual expense and the amount determined under the prior notice of support owed.

(a) If a change in the actual expense which was the basis for the most recent notice of support owed occurs before twelve months pass, any party to the order may request that the department accelerate the annual review described in subsection (13) of this section.

(b) The department may review any evidence presented by the person claiming that the expense has occurred and determine whether the change is likely to create a significant overpayment or underpayment if the department does not serve a new notice of support owed.

(c) Under appropriate circumstances, the department may accelerate the time for the review and serve a notice of support owed even if twelve months have not passed.

(17) The department has rule-making authority to:

(a) Enact rules consistent with 42 U.S.C. Sec. 652(f) and 42 U.S.C. Sec. 666(a)(19) as amended by section 7307 of the deficit reduction act of 2005;

(b) Implement regulations required under 45 C.F.R. Parts 302, 303, 304, 305, and 308; and

(c) Implement the provisions of this section. [2020 c 227 § 15; 2009 c 476 § 5; 2007 c 143 § 4; 1993 c 12 § 1. Prior: 1989 c 360 § 16; 1989 c 175 § 77; 1987 c 435 § 11.]

Findings—Intent—2020 c 227: See note following RCW 26.09.320.

Rule-making authority—2020 c 227: See RCW 26.09.916.

Effective date—2009 c 476: See note following RCW 26.09.105.

Severability—2007 c 143: See note following RCW 26.18.170.

Effective dates—1989 c 360 §§ 9, 10, 16, and 39: See note following RCW 74.20A.060.

Effective date—1989 c 175: See note following RCW 34.05.010.