

1 WASHINGTON STATE EMPLOYMENT SECURITY DEPARTMENT
2 BEFORE THE RULES COORDINATOR
3 LEAVE AND CARE DIVISION
4
5
6
7

8
9 VERBATIM RECORD OF PROCEEDINGS
10 RE WASHINGTON CARES FUND RULEMAKING

11 Tuesday, May 26, 2026

12 Olympia, Washington

13
14 APPEARANCES:

15 PRESIDING OFFICER: JANETTE BENHAM
16 Rules Coordinator

17 ALSO PRESENT: BRETT CAIN
18
19
20
21

22 REPORTED BY: REBECCA E. DONLEY, CCR 3184
23 Casey & Donley, Inc.
24 1053 NE Rindall Court
25 Poulsbo, WA 98301
(509) 539-6153
rdonley@caseydonley.com

1 MS. JANETTE BENHAM: Good morning, everyone. My
2 name is Janette Benham, and I am the Rules Coordinator for
3 the Leave and Care Division of the Washington State
4 Employment Security Department.

5 If someone just joined, can you please keep
6 yourself on mute? Thank you.

7 Thank you for joining us today for this rulemaking
8 hearing. I'd like to discuss a few housekeeping items
9 before we begin the hearing. Just a reminder that this
10 meeting concerns proposed regulations regarding the WA Cares
11 Fund program. This meeting will not include discussion of
12 any specific application, and attendance is completely
13 optional.

14 If you have questions about your own WA Cares Fund
15 or Paid Family and Medical Leave application, or if you have
16 other questions, please call our customer care team at (833)
17 717-2273. We won't be able to answer any questions during
18 this meeting.

19 Today's hearing is regarding the proposal that
20 adds and revises sections of Washington Administrative Code
21 regarding program administration, self-employed elective
22 coverage, out-of-state participation, designated
23 representatives, audit procedures, and qualified
24 individuals. If you would like to provide written comments
25 related to these rules, you may do so by email at

1 rules@esd.wa.gov. It's R-U-L-E-S at esd.wa.gov. We will
2 continue to accept written comments through the close of
3 business today. To view the electronic version of the
4 proposed rules, you can go to esd.wa.gov. Click on "About
5 Us" in the right corner and then choose "Rulemaking." The
6 rules we are reviewing today are under "Long-Term Services
7 and Supports rulemaking." And when you see "Rules Under
8 Development," click on the proposed rules for each topic to
9 read the text of the rule. After clicking on the hyperlink
10 for each topic, you can use your browser's back button to
11 return to the page.

12 Before we begin, are there any questions about the
13 purpose of today's hearing or where to find the proposed
14 rules? You can unmute yourselves using your Teams window or
15 by hitting *6 if you are joining by phone. If you're not
16 providing testimony, please remember to keep yourself muted
17 throughout the hearing. If you're calling in for the
18 hearing, please do not place this meeting on hold to take
19 another call. The hearing cannot proceed if there's old
20 music or messages played while your phone is on hold.

21 Are there any questions?

22 (No response)

23 Okay, we'll go ahead and start the hearing.

24 Pursuant to the authority given under Washington State Law
25 RCW 50B.04.020, RCW 50B.04.050, RCW 50B.04.090, RCW

1 50B.04.180, Chapter 42.30 RCW of the Open Public Meetings
2 Act, and Chapter 34.05 of the Administrative Procedure Act,
3 this hearing is hereby convened.

4 For the record, this hearing is beginning at 9:05
5 a.m. on May 26th, 2026, online and by conference call. This
6 hearing is convened to consider testimony regarding
7 rulemaking for the Long-Term Services and Supports Trust
8 Program also known as WA Cares Fund. At a high level, this
9 rulemaking outlines requirements for out-of-state
10 participation, provides an index of rules for agencies
11 responsible for program administration, updates requirements
12 for self-employed elective coverage, audits and qualified
13 individual determinations, and adds requirements for
14 designating a representative to act on an individual's
15 behalf.

16 Notice of this hearing was filed on April 22nd,
17 2026 and published in the Washington State Register as WSR
18 number 26-09-141, was sent to interested parties and was
19 posted on the department's webpage. My name is Janette
20 Benham, and I am the Rules Coordinator for the Leave and
21 Care Division of the Washington State Employment Security
22 Department. I represent Commissioner Cami Feek as the
23 hearing officer presiding at this public rulemaking hearing.

24 There are other members of the Leave and Care
25 Policy Team attending this hearing. Please introduce

1 yourselves by name and title.

2 MR. BRETT CAIN: Good morning. My name is Brett
3 Cain, and I work with Janette to do rules. And I'm a policy
4 analyst for the Leave and Care programs at the Employment
5 Security Department.

6 MS. JANETTE BENHAM: Thank you, Brett.

7 Please be advised that this hearing is being
8 transcribed by a court reporter and is also being recorded
9 by the Microsoft Teams platform. The transcript and
10 recording will become a part of the official rulemaking
11 file. To facilitate the transcription, please state and
12 then spell your name before your testimony. If you are here
13 in a representative capacity, please include who you are
14 providing testimony on behalf of.

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

23 Written comments on the proposed rules will be
24 accepted through today by email at rules@esd.wa.gov.

25 A concise explanatory statement of the agency's

1 reasons for adoption of the rules, including a summary and
2 response to all comments received after the publication of
3 the proposed rules will be placed in the permanent
4 rulemaking file and posted online. This document will be
5 sent to all interested parties who have signed up to receive
6 WA Cares Fund rules emails. We will begin with Brett Cain,
7 who will provide a brief explanation of the proposed rules.

8 MR. BRETT CAIN: Thank you, Janette. The proposed
9 rules for this hearing implement and clarify several program
10 requirements and provide direction to the public. The rules
11 implement out-of-state participation for individuals who
12 relocate outside of Washington. For a little background
13 regarding out-of-state participation, the legislature passed
14 Substitute House Bill 2467 in 2024, which allowed
15 individuals who meet certain requirements to continue
16 participation in the program if they establish a permanent
17 residence outside of Washington.

18 In 2025, the legislature made additional changes
19 to out-of-state participation requirements by passing
20 Engrossed Substitute Senate Bill 5291. An individual who
21 meets the requirements outlined in the law may elect to
22 become an out-of-state participant beginning July 1, 2026.
23 Out-of-state benefits will be available for eligible
24 participants beginning July 1, 2030.

25 The proposed rules also provide an index of where

1 to find other agency rules for their respective program
2 responsibilities, update requirements for self-employed
3 elective coverage, audits, and qualified individual
4 determinations, and add requirements for designating a
5 representative to act on an individual's behalf. I
6 encourage you all to read the text of the rules along with
7 the supporting documents for a more robust understanding.

8 Thank you for your interest and participation in
9 our rulemaking efforts, and we look forward to hearing your
10 comments today. Back to Janette.

11 MS. JANETTE BENHAM: Thank you, Brett. We will
12 now hear testimony from those in attendance. I'll go
13 through each rule individually, outline the proposed new
14 rule or amendments to an existing rule, and then accept
15 comment on each rule. All attendees are currently muted,
16 and if you wish to speak, you can unmute yourselves through
17 your Teams window or by pressing *6 if you're joining by
18 phone. When you testify, please speak clearly, state your
19 name, spell your name, and state who you represent if you
20 are here in a representative capacity.

21 When you finish testifying, please mute yourself
22 through your Teams window or press *6 again on your phone.
23 I'll go through the proposed rules in the order they are
24 listed on the rulemaking website.

25 The first rule is in the new chapter regarding

1 program administration. The new section is WAC 192-901-001,
2 Purpose and scope. Since the Wa Cares Fund is administered
3 by more than one state agency, each with different program
4 responsibilities, this proposed rule provides an index to
5 Employment Security Department rules, Department of Social
6 and Health Services rules, and Health Care Authority rules.

7 Department of Social and Health Services and
8 Health Care Authority both have adopted similar rules that
9 reference program responsibilities of other agencies. Are
10 there any comments on this rule?

11 (No response)

12 The next rule is WAC 192-915-005, election of
13 coverage for self-employed persons. Proposed amendments to
14 this rule clarify that self-employed elective coverage must
15 be elected before July 1st, 2026, or within three years of
16 becoming self-employed in Washington for the first time.
17 Proposed amendments also include the addition of language
18 regarding cancellation of coverage for failing to make
19 required payments or file reports.

20 Are there any comments on this rule?

21 (No response)

22 The next four rules are in a new chapter regarding
23 out-of-state participation. The first new rule is WAC
24 192-916-005, How can an individual continue participating if
25 they move out of Washington State? This proposed rule

1 outlines that an individual who has met requirements under
2 RCW 50B.04.180 may elect to continue participating when
3 establishing a primary residence outside of Washington. The
4 rule references that participation must be elected within
5 one year of establishing a primary residence outside of
6 Washington.

7 The rule also references that an individual who
8 has retired from the workforce must elect out-of-state
9 participation to become an eligible beneficiary. This
10 requirement is based on the definition of eligible
11 beneficiary in RCW 50B.04.010. The rule requires
12 individuals to apply for out-of-state participation and
13 states that individuals with active exemptions may not elect
14 out-of-state participation.

15 Are there any comments on this rule?

16 (No response)

17 The next new rule in this chapter is WAC
18 192-916-010, What happens after an individual applies for
19 out-of-state participation? This proposed rule outlines
20 that the department will determine if the individual is
21 eligible to be an out-of-state participant based on
22 requirements in RCW 50B.04.180. The rule also references
23 that any wages earned and hours worked when an individual
24 had an approved exemption do not count toward meeting the
25 requirements for out-of-state participation.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Are there any comments on this rule?

(No response)

The next new rule in this chapter is WAC 192-916-015, Reporting and premium payment requirements for out-of-state participants. This proposed rule outlines that any wages earned and hours worked that are not already reported by an employer must be reported to the department annually. This rule is written so that people who move out of state and continue to have work localized in Washington that is already reported by their employer don't double report.

The rule references the requirement in RCW 50B.04.180 that if an individual had no work or earnings, acceptable documentation of that must be reported until the age of 67. The rule clarifies that premiums, if assessed, must be paid to the department. The rule clarifies that hours reported and premiums paid as an out-of-state participant count toward qualifying for the benefit.

Finally, the rule references that the department may request additional information to verify or determine compliance with RCW 50B.04.180.

Are there any comments on this rule?

(No response)

The last new rule in the out-of-state participant chapter is WAC 192-916-020, Cancellation of coverage for

1 out-of-state participants. This proposed rule references
2 the requirement in RCW 50B.04.180 that out-of-state
3 participants may not withdraw from program coverage and
4 requires the department to cancel coverage for failure to
5 make required payments or submit required reports. The rule
6 also clarifies that individuals whose coverage is canceled
7 cannot participate in the program and are not entitled to
8 receive benefits.

9 Are there any comments on this rule?

10 (No response)

11 The next rule is a new rule, WAC 192-925-020, Can
12 an individual designate a representative to act on their
13 behalf? This proposed rule outlines the circumstances under
14 which an individual may designate another individual to act
15 on their behalf for the purposes of applications,
16 determinations and appeals under the department's authority.
17 The rule aligns with the rule currently in place for the
18 Paid Family and Medical Leave program.

19 Are there any comments on this rule?

20 (No response)

21 The next rule is WAC 192-930-005, Audit
22 procedures. Proposed amendments to this rule add that the
23 department may inspect and audit self-employed and out-
24 of-state participant elective coverage documentation at
25 intervals determined by the department. Proposed amendments

1 also clarify that reporting periods can either be quarterly
2 for employers or annual leave for out-of-state participants.

3 Are there any comments on this rule?

4 (No response)

5 Okay, the last two rules for today's hearing are
6 regarding qualified individuals. The first is WAC
7 192-940-005, Earning years to become a qualified individual.
8 Proposed amendments to this rule add that out-of-state
9 participants may earn years toward qualified individual
10 status.

11 Are there any comments on this rule?

12 (No response)

13 The last rule in this chapter and the last rule
14 for today's hearing is WAC 192-940-010, How will the
15 department determine if someone is a qualified individual?
16 The proposed amendment to this rule adds that an out-of-
17 state participant who continues to work may be eligible to
18 earn additional years toward becoming a qualified individual
19 if they previously qualified under a temporary or prorated
20 pathway.

21 Are there any comments on this rule?

22 (No response)

23 Okay, I'd like to take a moment and ask if there
24 is any testimony on any of the proposed rules included in
25 today's hearing. And if anyone has any comments, please

1 feel free to provide comment now and indicate which rule
2 you're providing comment on. I'll leave just a little bit
3 of time if anyone would like to review any of the rules and
4 provide any comment on any of the rules.

5 (No response)

6 Okay. Hearing no comments, we will proceed. In
7 conclusion, this hearing was convened to consider testimony
8 on WA Cares Fund rulemaking. Any oral testimony presented
9 at this hearing and any written submissions that we receive
10 will become part of the official record. The deadline for
11 submission of any written comments is today, May 26th, 2026.
12 You may submit written comments by emailing
13 rules@esd.wa.gov. Comments must be received by the end of
14 the day today to be considered part of this rulemaking.

15 A final decision regarding adoption of the
16 proposed rules will be made after all comments have been
17 fully considered, which will be on or after June 1st, 2026.
18 These rules will be effective July 1st, 2026. On behalf of
19 Commissioner Cami Feek, thank you for participating in this
20 hearing, and this hearing is adjourned at 9:24 a.m. on May
21 26th, 2026.

22 *****

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

STATE OF WASHINGTON)
) ss.
)

I, Rebecca Donley, a Washington Certified Court Reporter, pursuant to RCW 5.28.010 authorized to administer oaths and affirmations in and for the State of Washington and pursuant to the Rules of Conduct governing court reporters as codified in WAC 308-14-130, do hereby certify:

That the foregoing proceedings were held before me at the time and place therein set forth;

That the foregoing transcript is a true and complete record of the hearing and of all testimony given at the time of the hearing, to the best of my ability.

I further certify that I am in no way related to any party to this matter nor to any counsel, nor do I have any interest in this matter.

Witness my hand this 28th day of May, 2026.

Rebecca E. Donley
REBECCA E. DONLEY, CCR
CCR License #3184
Certified Court Reporter in and
for the State of Washington,
residing in Poulsbo.