



PROPOSED RULE MAKING

CR-102 (July 2022)
(Implements RCW 34.05.320)
Do **NOT** use for expedited rule making

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: May 17, 2024

TIME: 9:14 AM

WSR 24-11-101

Agency: Department of Social and Health Services' Developmental Disabilities Administration

Original Notice

Supplemental Notice to WSR 23-20-108

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 23-14-038 ; 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) DDA is proposing to amend, WAC 388-825-335, Is a background check required of a long-term care worker employed by a home care agency licensed by the department of health?, 388-825-600, What definitions apply to WAC 388-825-600 through 388-825-690 of this chapter?, 388-825-610, Who must have a background check and a background check renewal?, 388-825-615, What type of background check is required?, and 388-825-620, How often must a background check be renewed?

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
June 25, 2024	10:00 a.m.	Virtually via Teams or call in	Hearings are held virtually, see the DSHS website at https://www.dshs.wa.gov/sesa/rpau/proposed-rules-and-public-hearings for the most current information.

Date of intended adoption: Not earlier than June 26, 2024 (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
Fax: 360-664-6185
Other:
By (date) June 25, 2024, at 5:00 p.m.

Assistance for persons with disabilities:

Contact Shelley Tencza, Rules Consultant
Phone: 360-664-6036
Fax: 360-664-6185
TTY: 711 Relay Service
Email: shelley.tencza@dshs.wa.gov
Other:
By (date) June 11, 2024, at 5:00 p.m.

Purpose of the proposal and its anticipated effects, including any changes in existing rules: DDA is amending these rules primarily to comply with federal background check requirements; align rules with recent amendments to state law passed under Senate Bill 5252; and clarify when an employee at a residential habilitation center (RHC) is required to complete a background check or background check renewal. Instead of requiring a renewal for a job class change, DDA will require an RHC employee to complete a renewal when there is a change in job class series. After the public hearing on the proposed amendments under WSR 23-20-108, the department determined additional changes were needed and is filing this supplemental CR-102, opening an additional public comment period, and holding a second hearing.

Reasons supporting proposal: See purpose

Statutory authority for adoption: RCW 71A.12.030

Statute being implemented: RCW 43.43.837 and 74.39A.056

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)

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Chantelle Diaz	P.O. Box 45310, Olympia, WA 98504-5310	360-790-4732
Implementation:	Heather Lum	P.O. Box 45310, Olympia, WA 98504-5310	360-407-1526
Enforcement:	Heather Lum	P.O. Box 45310, Olympia, WA 98504-5310	360-407-1526

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: Chantelle Diaz

Address: P.O. Box 45310, Olympia WA 98504-5310

Phone: 360-790-4732

Fax: 360-407-0955

TTY: 1-800-833-6388

Email: chantelle.diaz@dshs.wa.gov

Other:

No: Please explain:

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"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input checked="" type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input checked="" type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> RCW 34.05.310 (4)(g)
(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 .

Explanation of how the above exemption(s) applies to the proposed rule: These amendments impose no costs – regardless of whether a business meets the definition of a small business – because DDA pays for the cost of all provider background checks.

(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.

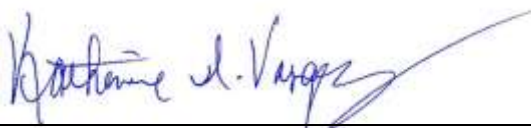
(3) Small business economic impact statement: *Complete this section if any portion is not exempt.*

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:

Date: May 16, 2024	Signature: 
Name: Katherine I. Vasquez	
Title: DSHS Rules Coordinator	

AMENDATORY SECTION (Amending WSR 14-14-029, filed 6/24/14, effective 7/25/14)

WAC 388-825-335 Is a background check required of a long-term care worker employed by a home care agency licensed by the department of health? (1) In order to be a long-term care worker employed by a home care agency, a person must:

(a) Complete the required DSHS form online authorizing a background check ~~((-))~~;

(b) Disclose any disqualifying criminal convictions and pending charges as listed in chapter 388-113 WAC, and also disclose civil adjudication proceedings and negative actions as those terms are defined in WAC ~~((388-71-0512))~~ 388-113-0030 ~~((-))~~;

(c) ~~((Effective January 8, 2012, be))~~ Be screened through a Washington ~~((state's))~~ state name and date of birth background check ~~((-))~~ (Preliminary results may require a thumb print for identification purposes); and

(d) ~~((Effective January 8, 2012, be))~~ Be screened through ~~((the))~~ a Washington state and national fingerprint-based background check ~~((-))~~ as required by RCW 74.39A.056.

(2) Results of background checks are provided to the department and the employer or potential employer for the purpose of determining whether the person:

(a) Is disqualified based on a disqualifying criminal conviction or a pending charge for a disqualifying crime ~~((as listed in))~~ under WAC 388-113-0020, civil adjudication proceeding ~~((-))~~ or negative action ~~((as defined in))~~ under WAC ~~((388-71-0512 and listed in WAC 388-71-0540))~~ 388-113-0030; or

(b) Should or should not be employed based on his or her character, competence, ~~((and/))~~ or suitability.

(3) For ~~((those providers))~~ an applicant or service provider listed in RCW 43.43.837(1), ((a second national fingerprint-based background check is required if they have lived out of the state of Washington since the first national fingerprint-based background check was completed)) a national fingerprint-based background check is required if the person lived out of the state of Washington in the past 36 months or is a new hire.

(4) The department may require a long-term care worker to have a Washington state name and date of birth background check ~~((or a Washington state and national fingerprint-based background check, or both, at any time.))~~ if information is disclosed or found regarding a new:

(a) Pending charge;

(b) Conviction; or

(c) Negative action.

AMENDATORY SECTION (Amending WSR 23-07-130, filed 3/22/23, effective 4/22/23)

WAC 388-825-600 What definitions apply to WAC 388-825-600 through 388-825-690 of this chapter? The following definitions apply to WAC 388-825-600 through 388-825-690 of this chapter:

"Agency" means any agency of the state or any private agency providing services to individuals with developmental disabilities.

"Background check central unit (BCCU)" means a division within the department that processes background checks for department-authorized providers and department programs.

"Certification" means a process used by the department to determine if an applicant or service provider complies with chapter 388-101 WAC and is eligible to provide certified community residential services and supports to clients.

"Client" means a person who has a developmental disability as defined in RCW 71A.10.020(6) and has been determined eligible to receive services by DDA under chapter 388-823 WAC.

"Community residential service businesses" has the same meaning as under RCW 74.39A.009.

"DDA" means the developmental disabilities administration within the department of social and health services (DSHS).

"Department" means the department of social and health services (DSHS).

"Disqualified" means that the results of a person's background check exclude the person from a position that will or may involve unsupervised access to DDA clients.

"Individual provider" has the same meaning as defined in RCW 74.39A.240.

"Job class" means a level of work.

"Job class series" means a grouping of job functions having similar purpose and knowledge requirements but different levels of difficulty and responsibility. Where there is a professional structure that includes a job family and a job level, different job levels within one job family constitutes a class series (WAC 357- 01-080).

"Long-term care worker" has the same meaning as defined in RCW 74.39A.009.

"Personal information" means any individually identifiable information that could be used to identify or contact a person and includes protected health information and financial information.

"Provider" means an individual or agency who meets the provider qualifications and is contracted with a county or DSHS to provide services to a DDA client.

"Qualified" means a person can be hired into a position that includes unsupervised access to DDA clients because the results of the person's background check are not disqualifying.

"Temporary restraining order" means a restraining order or order of protection that expired without a hearing, was dismissed following an initial hearing, or was dismissed by stipulation of the parties in lieu of an initial hearing.

"Unsupervised," under RCW 43.43.830, means not in the presence of:

(1) Another employee or volunteer from the same business or organization as the applicant who has not been disqualified by the background check.

(2) Any relative or guardian of a DDA client to whom the applicant has access during the course of his or her employment or involvement with the business or organization.

AMENDATORY SECTION (Amending WSR 23-07-130, filed 3/22/23, effective 4/22/23)

WAC 388-825-610 Who must have a background check and a background check renewal? (1) DDA requires background checks under WAC 388-825-615 and background check renewals under WAC 388-825-320 for all contracted providers, agency employees, owner-operators, administrators, subcontractors, and volunteers who may have:

- (a) Unsupervised access to a DDA client; or
- (b) Access to a DDA client's personal information.

(2) For community residential service businesses, any person who provides instruction and support services (ISS), including volunteers, must have a background check and background check renewal and follow background check requirements under this chapter.

(3) All residential habilitation center employees and volunteers must have a background check. If a residential habilitation center employee changes job class series, the employee must have a background check renewal as required by RCW 43.43.837.

AMENDATORY SECTION (Amending WSR 23-07-130, filed 3/22/23, effective 4/22/23)

WAC 388-825-615 What type of background check is required? (1) ~~((Beginning January 7, 2012, long))~~ Long-term care workers and providers ~~((, including parents and individual providers,))~~ undergoing a background check for initial hire or initial contract ~~((,))~~ must be screened through a Washington state name and date of birth check and a national fingerprint-based background check as required by RCW 43.43.837.

~~((2))~~ ~~Beginning January 1, 2016, a newly hired long-term care worker employed by a community residential service business must be screened through a Washington state name and date of birth check and a national fingerprint-based background check.~~

~~((a))~~ (2) For a renewal, a person who has continuously resided in Washington state for the past ~~((three consecutive years))~~ 36 months must be screened through a Washington state name and date of birth check.

~~((b))~~ (3) For a renewal, a person who has resided outside of Washington state in the past ~~((three years))~~ 36 months must be screened through a Washington state name and date of birth check and a national fingerprint-based background check as required by RCW 43.43.837.

~~((3))~~ (4) For adult family homes, refer to chapter 388-76 WAC. For assisted living facilities, refer to chapter 388-78A WAC.

~~((4))~~ (5) Beginning July ~~((4))~~ 23, 2023, a residential habilitation center (RHC) applicant undergoing a background check for initial hire must be screened through a Washington state name and date of birth check and a national fingerprint-based background check. An RHC employee must complete a background check renewal, which includes a fingerprint check, when applying for a change in job class series or transferring from one RHC to another, as required by RCW 43.43.837.

~~((5))~~ (6) All background checks must be completed through the online background check system.

WAC 388-825-620 How often must a background check be renewed?

(1) DDA requires a background check at least every ~~((three years))~~ 36 months, or more frequently if required by program rule.

(2) A background check renewal will be conducted as follows:

(a) ~~((Individuals who have))~~ A person who has continuously resided in Washington state for the past ~~((three consecutive years will))~~ 36 months must be screened through a state name and date of birth background check.

(b) ~~((Individuals who have))~~ A person who has lived outside of Washington state within the past ~~((three years will))~~ 36 months must be screened through a state name and date of birth check and a national fingerprint-based background check as required by RCW 43.43.837.

(c) ~~((Individuals who live))~~ A person who lives outside of Washington state and ~~((provide))~~ provides DDA services in Washington state ~~((will))~~ must be screened through a Washington state name and date of birth check and a national fingerprint-based background check.

(3) The department may require a long-term care worker or residential habilitation center employee to have a renewed Washington state name and date of birth background check if information is disclosed or found regarding a new:

(a) Pending charge;

(b) Conviction; or

(c) Negative action.