



RULE-MAKING ORDER PERMANENT RULE ONLY

CR-103P (December 2017) (Implements RCW 34.05.360)

CODE REVISER USE ONLY

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STATE OF WASHINGTON
FILED

DATE: July 11, 2024

TIME: 4:12 PM

WSR 24-15-041

Agency: Department of Social and Health Services, Developmental Disabilities Administration (DDA)

Effective date of rule:

Permanent Rules

- 31 days after filing.
- Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes No If Yes, explain:

Purpose: DDA amended 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.

Citation of rules affected by this order:

New:
 Repealed:
 Amended: WAC 388-825-335, 388-825-600, 388-825-610, 388-825-615, and 388-825-620
 Suspended:

Statutory authority for adoption: RCW 71A.12.030

Other authority: RCW 43.43.837 and 74.39A.056

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 24-11-101 on 5/17/2024 (date).
Describe any changes other than editing from proposed to adopted version: none.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: Chantelle Diaz
 Address: PO 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
 Web site:
 Other:

**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Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	4	Repealed	___

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

New	___	Amended	___	Repealed	___
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The number of sections adopted on the agency's own initiative:

New	___	Amended	___	Repealed	___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

New	___	Amended	___	Repealed	___
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The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	5	Repealed	___

Date Adopted: July 11, 2024

Name: Lisa Yanagida

Title: DSHS Chief of Staff

Signature:



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.