



RULE-MAKING ORDER

(RCW 34.05.360)

CR-103 (7/22/01)

Agency: Department of Services for the Blind

- Permanent Rule
- Emergency Rule
- Expedited Rule Making

(1) Date of adoption: May 25, 2004

(2) Purpose: The Department of Service for the Blind (DSB) plans to institute a new chapter in its WAC which will authorize criminal background checks for employees, interns, volunteers, employment applicants, contractors, and service providers who have or may have unsupervised access to vulnerable clients or potnetional clients.

(3) Citation of existing rules affected by this order:

- Repealed:
- Amended:
- Suspended:

(4) Statutory authority for adoption: RCW 74.18

Other Authority:

PERMANENT RULE ONLY (Including Expedited Rule Making)

Adopted under notice filed as WSR 04-07-110 on March 18, 2004 (date).

Describe any changes other than editing from proposed to adopted version: Changed section reference under WAC 67-16-040, (2) (C), Changed wording in WAC 67-16-040 section (5) and deleted (5) (a) and (b). Deleted section (10) under WAC 67-16-040.

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

- (a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- (b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding:

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

- Yes
 - No
- If Yes, explain:

(6) Effective date of rule:

Permanent Rules

- 31 days after filing
- Other (specify) 7/01/2004

Emergency Rules

- Immediately
- Later (specify) _____

*(If less than 31 days after filing, specific finding in 5.3 under RCW 34.05.380(3) is required)

Name (Type or Print)

Ellen Drumheller

Signature

Title
Rules Coordinator

Date
May 25, 2004

CODE REVISER USE ONLY

COMMUNICATIONS OFFICE
STATE OF WASHINGTON

MAY 26 2004

TIME 1:13

WSR 04-12-029

ASL
PLU

(COMPLETE REVERSE SIDE)

**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	_____	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 in the agency's own initiative:

New	<u>3</u>	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	<u>3</u>	Amended	_____	Repealed	_____

NEW SECTION

WAC 67-16-020 Purpose and definition. The authority for conducting background checks on contractors and service providers is established in Chapter 74.18 RCW. The purpose for background checks is to ensure the suitability, character and competence of contractors and service providers to work with clients with a visual disability defined in WAC 67-75-040(3)(a).

NEW SECTION

WAC 67-16-030 Background check process. (1) The director of the department of services for the blind (DSB) shall investigate the conviction records, pending charges and disciplinary board final decisions for contractors and service providers who will or may have unsupervised access to DSB clients.

(2) The investigation shall consist of a background check as allowed under the Washington State Criminal Records Privacy Act, RCW 10.97.050; the Washington state patrol criminal identification system under RCW 43.43.832 through 43.43.834, and the Federal Bureau of Investigation. The background check shall include a fingerprint check using a complete Washington state criminal identification fingerprint card.

(3) The director may waive the requirement for a background check if the contractor or service provider has been cleared in a background check within the previous two years.

(4) When necessary, the director may engage a service provider or contractor on a conditional basis, pending completion of the background check.

(5) The investigation shall include an examination of state and national criminal identification data. The Director shall use the information solely for the purpose of determining the character, suitability and competence of the individual contractor or service provider to work with the department of services for the blind clients.

(6) The director shall provide the results of the background check in writing to the contractor or service provider within ten working days from receipt of the finding.

(7) The office of the director shall maintain confidential records of all background check information. Such

information shall be limited to only those individuals processing the information within the department.

(8) The fingerprint criminal history records checks will be at the expense of the contractor or service provider.

(9) Current contractors or service providers for whom disqualifying crimes are discovered in the background check process will be notified in writing within ten working days from receipt of the finding. The written notification shall include notice of termination of the contract or service provider agreement and give the individual the right to request a review by the director of the department of services for the blind.

NEW SECTION

WAC 67-16-040 Department of services for the blind- Background check requirements for employees, applicants, volunteers and student interns.

(1) The executive director of the department of services for the blind shall conduct background checks on all employees in covered positions and applicants under final consideration for a covered position. A covered position is one in which a person will or may have unsupervised access to vulnerable clients or potential clients with vision disability. These clients or potential clients may also have other disabilities, such as developmental disabilities or mental health disabilities. Employees and applicants shall authorize the executive director of the department of services for the blind to conduct a background check.

(2) The requirement for background checks shall include the following:

(a) Current employees as of July 1, 2004.

(b) Any employee seeking a covered position because of a reduction in force, reallocation, transfer, promotion or demotion.

(c) Any applicant prior to appointment into a covered position, except when appointment is made on a conditional basis under subsection ~~(6)~~ (7) b).

(3) A background check will be conducted on the final preferred candidate prior to appointment.

(4) The executive director of the department of services for the blind shall use the results of a background check solely to determine the character, competence and suitability of a person for a covered

position. The background check information shall consist of:

(a) A fingerprint check using a complete Washington State criminal identification fingerprint card.

(b) Conviction records, pending charges, and disciplinary board final decisions (if applicable).

(c) Evidence that substantiates or mitigates convictions, pending charges, and disciplinary board final decisions including, but not limited to:

(i) The employee or applicant's background check authorization and disclosure form;

(ii) The employee or applicant's age at the time of conviction, charge, or disciplinary board final decision;

(iii) The nature and severity of the conviction, charge, or disciplinary board final decision;

(iv) The length of time since the conviction, charge, or disciplinary board final decisions;

(v) The nature and number of previous offenses; and

(vi) The relationship between the nature of the conviction, pending charge, or disciplinary board final decision and the duties of the employee or applicant.

~~(5) A permanent employee with a background check disqualification may voluntarily resign, or be subject to any of the following:~~

~~(a) Nondisciplinary separation. The employee shall be separated by the executive director after fifteen calendar days written notice unless the employee requests a shorter notice period;~~

~~(b) Disciplinary action for any of the causes listed in WAC 356-34-010; and/or~~

(5) A permanent employee with a background check disqualification may voluntarily resign, or be subject to disciplinary action for any of the causes listed in WAC 356-34-010.

(6) Interim measures that may be used while the executive director explores availability of actions (not to exceed 30 calendar days except in cases where there are investigations of pending charges):

(a) Voluntary use of accrued vacation, exchange, and/or compensatory time.

(b) Authorized leave without pay, if there is no paid leave available, or if the employee chooses not to use paid leave.

When considering the above actions, the agency will consider the least restrictive means necessary to prevent unsupervised access.

(7) The executive director of the department of services for the blind shall:

- (a) Notify employees and applicants that a background check is required for covered positions;
- (b) Develop procedures specifying when employees and applicants may be hired on a conditional basis pending the results of a background check; and
- (c) Develop policies and procedures pertaining to background checks;
- (d) Provide the employee/applicant with the results of the background check in writing;
- (e) Notify employees of their promotional register rights when they have been separated from their position, either voluntarily or involuntarily due to a background disqualification.

(8) Failure to authorize the executive director of the department of services for the blind to conduct a background check disqualifies an employee or applicant from consideration for any covered position including an employee's current covered position.

(9) An applicant for a covered position who is denied employment due to a disqualifying finding, shall be given the right to request a review of the decision by the executive director.

(a) Requests for review must be in writing and received by the executive director within fifteen calendar days of the postmark date of the notification or date of hand-delivery.

~~(10) A separation under subsection (5) (a) shall not be considered a disciplinary action as set forth in WAC 356-34-010.~~

~~(11)~~ (10) Permanent employees may appeal to the personnel appeals board in accordance with RCW 41.06.170 and rules promulgated thereunder including WAC 358-20-101 and 358-20-020.

~~(12)~~ (11) Nothing in this rule shall limit the department of services for the blind executive director's use of other authorities to conduct background checks.

~~(13)~~ (12) Information pertaining to background checks is confidential and shall be used solely for the purpose of determining the character, suitability and competence of the applicant and/or employee. Access to background check information shall be limited to only those individuals processing the information for the department. Misuse of background check information is a criminal offense and may result in prosecution and/or disciplinary action as provided under WAC 356-34-010.

~~(14)~~ (13) The department of services for the blind will pay the costs associated with the background checks for current employees, applicants, volunteers, and student interns.