

WSR 24-11-101
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed May 17, 2024, 9:14 a.m.]

Supplemental Notice to WSR 23-20-108.

Preproposal statement of inquiry was filed as WSR 23-14-038.

Title of Rule and Other Identifying Information: The developmental disabilities administration (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): On June 25, 2024, at 10:00 a.m., virtually via Microsoft Teams or call in. See the department of social and health services (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.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 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, by 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 SB 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.

Rule is not necessitated by federal law, federal or state court decision.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-790-4732; Implementation and Enforcement: Heather Lum, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1526.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Chantelle Diaz, 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.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

Explanation of exemptions: These amendments impose no costs, regardless of whether or not a business meets the definition of a small business, because DDA pays for the cost of all provider background checks.

Scope of exemption for rule proposal:

Is fully exempt.

May 16, 2024
Katherine I. Vasquez
Rules Coordinator

SHS-4986.5

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 ~~((1))~~ 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.

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

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.