

Chapter 388-06B WAC
DSHS EMPLOYEE BACKGROUND CHECKS

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WAC

388-06B-0010	What is the purpose of this chapter?
388-06B-0020	What definitions apply to this chapter?
388-06B-0100	Must the DSHS secretary or designee conduct background checks on all employees in department-covered positions and applicants under consideration for a covered position?
388-06B-0200	What are the DSHS secretary's responsibilities in carrying out the requirements to conduct background checks?
388-06B-0300	What information is considered in a background check conducted by DSHS and how are the results of the background check used?
388-06B-0400	Must an employee or applicant authorize the secretary of the department of social and health services or designee to conduct a background check and what happens if the employee or applicant does not provide authorization?

WAC 388-06B-0010 What is the purpose of this chapter? The purpose of this chapter is to establish standards for the department of social and health services to conduct background checks for department employees, applicants for employment, volunteers and student interns.

[Statutory Authority: RCW 43.43.832, 43.20A.710 and 43.43.837. WSR 15-05-030, § 388-06B-0010, filed 2/10/15, effective 3/13/15.]

WAC 388-06B-0020 What definitions apply to this chapter? "Applicant" means a person who has applied for work in a department-covered position, including current employees, volunteers, students, or interns serving or working in a similarly situated position or any person who must meet state and federal background check requirements to work in a department-covered position.

"Background check central unit" means the program responsible for conducting background checks for the department of social and health services.

"Child or children" means any person under eighteen years of age.

"Department" means the department of social and health services.

"Department-covered position" means a position that has:

(1) Unsupervised access to vulnerable adults, juveniles, or children; or

(2) Access to the internal databases in the background check central unit and the division of disability determination services.

"Division of disability determination services" means the DSHS program contracted to perform medical determinations for the Social Security Administration in accordance with Social Security Administration regulations and requirements.

"DSHS" means the department of social and health services.

"Employee" means a permanent or nonpermanent department of social and health services employee who is appointed to a department-covered position for any reason including but not limited to: Transfer, promotion, demotion, elevation, layoff, reassignment, reallocation, and reversion.

"Juvenile" means a person under the age of twenty-one under the juvenile rehabilitation administration's (JRA) jurisdiction, or under the department of corrections' jurisdiction while placed in a JRA facility.

"Pending charge or pending action" means a charge or action awaiting a decision by a court or a civil adjudication proceeding. The term pending charge also includes specific types of court action where the defendant has agreed to certain conditions. Examples include a de-

ferred prosecution or a stipulated order of continuance on an agreed condition. The department considers these types of cases on an individual case-by-case basis.

"Permanent employee" means a department employee who has successfully completed a Washington general service probationary period or Washington management service review period after appointment to a permanent position.

"Sensitive positions" means positions in the division of disability determination services and the background check central unit with access to federal databases or databases containing background check information.

"Unsupervised access" means a DSHS employee, volunteer or student intern who:

(1) Works, volunteers or serves in a setting, such as an institution, that provides residential services to vulnerable adults, juveniles and children;

(2) Works, volunteers or serves in a position where, during the course of his or her employment, the employee may transport, or visit the residence of, a vulnerable adult, juvenile or child; or

(3) Works, volunteers or serves in a position, other than one described in subsection (1) and (2) in this section, where the employee may be left alone with a vulnerable adult, juvenile or child. "Left alone" does not include the possibility of a public encounter, or public interaction.

"Vulnerable adult" means a person who is a client of the department who is:

(1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(2) Found incapacitated under chapter 11.88 RCW; or

(3) Developmentally disabled as defined under RCW 71A.10.020; or

(4) Admitted to any facility that is operated by the department;

or

(5) Receiving services from a department contracted, authorized, certified, licensed, or individual provider, including those certified under chapter 70.96A RCW; or

(6) Receiving services through home health, hospice, or home care agencies required to be licensed under chapter 70.127 RCW; or

(7) Admitted for detoxification in a certified chemical dependency treatment facility in accordance with chapter 70.96A RCW; or

(8) A vulnerable adult as defined in chapter 74.34 RCW.

[Statutory Authority: RCW 43.43.832, 43.20A.710 and 43.43.837. WSR 15-05-030, § 388-06B-0020, filed 2/10/15, effective 3/13/15.]

WAC 388-06B-0100 Must the DSHS secretary or designee conduct background checks on all employees in department-covered positions and applicants under consideration for a covered position? (1) The secretary of the department of social and health services or designee must conduct a background check, as authorized by statute, on all employees in covered positions; employees in sensitive positions, and applicants under final consideration for a covered position.

(2) A national fingerprint-based background check will be conducted if required by state law, federal regulations, or presidential directive.

[Statutory Authority: RCW 43.43.832, 43.20A.710 and 43.43.837. WSR 15-05-030, § 388-06B-0100, filed 2/10/15, effective 3/13/15.]

WAC 388-06B-0200 What are the DSHS secretary's responsibilities in carrying out the requirements to conduct background checks? The DSHS secretary or designee will:

(1) Develop policies and guidelines pertaining to background checks. The department's background check policies and guidelines must minimally address the following:

(a) Process for identifying department-covered positions;
(b) Notification to employees and applicants that a background check is required for covered positions;

(c) When employees and applicants may be hired on a conditional basis pending the results of a background check;

(d) When a character, competence, and suitability review will be required to determine if the applicant and/or employee may have unsupervised access to vulnerable adults, juveniles and children;

(e) When rechecks may be initiated;

(f) What happens when a permanent DSHS employee is denied a department-covered position because of a background check or failure to authorize a background check to include:

(i) Employment options available when a permanent employee is disqualified from holding a department covered position;

(ii) Interim measures available while exploring employment options;

(iii) Process that will be used to identify noncovered department positions; and

(iv) Specific time frame allowed for exploration of employment options prior to separation of a permanent employee.

(g) When an employee may request a review of a disqualification for employment in a covered position;

(2) Not further disseminate background check information unless authorized or required by law to do so; and

(3) Comply with public disclosure requirements and the rules of civil discovery when applicable.

[Statutory Authority: RCW 43.43.832, 43.20A.710 and 43.43.837. WSR 15-05-030, § 388-06B-0200, filed 2/10/15, effective 3/13/15.]

WAC 388-06B-0300 What information is considered in a background check conducted by DSHS and how are the results of the background check used? (1) The background check information considered by the DSHS secretary or designee will include but is not limited to conviction records, pending charges, and civil adjudications as defined in RCW 43.43.830.

(2) The background information must be used by DSHS to determine the character, competence, and suitability of the applicant and/or employee to have unsupervised access to vulnerable adults, juveniles and children.

(3) If the applicant or employee's criminal history was reviewed in 2002 by DSHS through its background assessment review team (BART) process, and if DSHS determined the employee could remain in a covered position, the applicant or employee will not be disqualified based

upon criminal history, including his or her conviction record, that was known and considered during the BART process.

(4) Background information that was the subject of a pardon, annulment, or other equivalent procedure will not disqualify an applicant and/or employee from having unsupervised access to vulnerable adults, juveniles and children.

(5) Results of a background check may be discoverable pursuant to the rules of civil discovery, or subject to disclosure pursuant to a public records request.

[Statutory Authority: RCW 43.43.832, 43.20A.710 and 43.43.837. WSR 15-05-030, § 388-06B-0300, filed 2/10/15, effective 3/13/15.]

WAC 388-06B-0400 Must an employee or applicant authorize the secretary of the department of social and health services or designee to conduct a background check and what happens if the employee or applicant does not provide authorization?

(1) An employee and/or applicant applying for or being considered for retention in a department-covered position must authorize the secretary of DSHS or designee to conduct a background check which may include fingerprinting when required by state or federal law or regulations.

(2) Failure to authorize the DSHS secretary or designee to conduct a background check shall disqualify an employee or applicant from consideration for any covered position including their current covered position.

[Statutory Authority: RCW 43.43.832, 43.20A.710 and 43.43.837. WSR 15-05-030, § 388-06B-0400, filed 2/10/15, effective 3/13/15.]