

WSR 23-03-013
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed January 6, 2023, 11:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-21-113.

Title of Rule and Other Identifying Information: WAC

388-101D-0065 Background check—General, 388-825-020 Definitions, 388-825-0571 What services am I eligible to receive from DDA if I am under the age of 18, have been determined to meet DDA eligibility requirements, and I am a subject of a state court dependency proceeding pursuant to chapter 13.34 RCW or a similar proceeding in a tribal court?, 388-825-058 What services does DDA authorize?, 388-825-0581 What programs does DDA authorize services under?, 388-825-059 How will I know which paid services I will receive?, 388-825-067 What are medicaid state plan services?, 388-825-068 What medicaid state plan services can DDA authorize?, 388-825-072 Where do I find information on DDA's home and community-based services (HCBS), eligibility rules, and definitions?, 388-825-073 What is a "state-only funded" service?, 388-825-074 Am I eligible for state-only funded services?, 388-825-079 If I am not on a DDD HCBS waiver, can I receive services that are available through the DDD HCBS waivers with state-only funding?, 388-825-081 Can I receive state-only funded services that are not available in a DDD HCBS waiver?, 388-825-082 What state-only funded services may DDA authorize?, 388-825-120 When may I appeal a decision made by the developmental disabilities administration?, 388-825-150 When may the department proceed to take action during my appeal?, 388-825-300 What is the purpose of WAC 388-825-300 through 388-825-400?, 388-825-305 Who is governed by WAC 388-825-305 through 388-825-400?, 388-825-310 What are the provider qualifications, responsibilities, and training requirements for a home care agency provider?, 388-825-315 What is your responsibility when you hire an individual provider?, 388-825-325 What are the required skills and abilities for individuals and agencies contracted to provide community first choice services, medicaid personal care, respite care, or attendant care services?, 388-825-330 What is required for agencies to provide community first choice services, medicaid personal care, or respite services?, 388-825-340 Can a provider deliver respite services in the provider's home?, 388-825-375 When will the department deny payment for services?, 388-825-385 When may the department terminate an individual respite care, attendant care, or personal care provider's contract?, 388-825-395 What are the client's rights if the department denies, terminates, or summarily suspends an individual's contract to provide respite care, attendant care, or personal care?, 388-825-396 When does a home care agency have a right to an administrative hearing?, 388-825-600 What definitions apply to WAC 388-825-600 through 388-825-690 of this chapter?, 388-825-605 What background check requirements apply to providers?, 388-825-610 Who must have a background check and a background check renewal?, 388-825-615 What type of background check is required?, 388-825-620 How often must a background check be renewed?, 388-825-621 May a DDA-contracted agency applicant or employee have access to clients before the completion of the Washington state name and date of birth background checks?, 388-825-625 What happens if an individual receives a

disqualifying background check result?, 388-825-630 What does the background check cover?, 388-825-635 Who pays for the background check?, 388-825-650 What does a character, competence, and suitability review include?, 388-825-655 How will someone know if they have been disqualified by the background check?, 388-825-660 May a provider appeal DDA's decision to deny a contract or payment based on the results of the background check?, 388-825-670 May a person receive a copy of their criminal background check results?, and 388-845-1615 Who may be qualified providers of respite care?

Hearing Location(s): On March 7, 2023, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtually. Due to the COVID-19 pandemic, hearings are being held virtually. Please see the DSHS website for the most current information.

Date of Intended Adoption: Not earlier than March 8, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6085, by 5:00 p.m. on March 7, 2023.

Assistance for Persons with Disabilities: Contact Shelley Tencza, rules consultant, phone 360-664-6036, fax 360-664-6036, TTY 711 relay service, email tenczsa@dshs.wa.gov, by 5:00 p.m. on February 21, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amendments to WAC 388-101D-0065 replace details about background checks in WAC 388-101D-0065 with cross-references to chapter 388-113 and 388-825 WAC for consistency. Amendments to chapter 388-825 WAC: Replace inaccurate cross-references; add, remove, and amend definitions; clarify service eligibility for state-only funded services, medicaid state plan services, and developmental disabilities administration (DDA) services provided to children in foster care; update rules about home care agencies and individual providers to align with chapters 388-71, 388-113, and 388-115 WAC; amend appeal related rules; add exemptions allowable under statute for enrolled members of federally recognized Indian tribes; amend background check rules, particularly those for residential habilitation center (RHC) employees; and create comprehensive lists of DDA-authorized services.

Reasons Supporting Proposal: Amendments to these rules are necessary to: Align with the creation of the consumer-directed employer; require new background check processes for RHC employees; align with amendments to chapters 388-71, 388-113, and 388-115 WAC; and clarify processes for hearings, authorize state-only funded services, and correct outdated language and broken cross-references.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 43.43.837, 71A.12.015, 71A.12.020, 71A.12.040, 71A.12.050, 71A.12.110, 71A.12.161, 43.20A.710.

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

Name of Proponent: DSHS, DDA, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1500; Implementation and Enforcement: Jaime Bond, P.O. Box 45310, Olympia, WA 98504-5310, 360-688-6204.

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 360-407-1500, 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(5).

Explanation of exemptions: The proposed amendments impose no costs on small businesses; a small business economic impact statement is not required.

Scope of exemption for rule proposal:

Is fully exempt.

January 4, 2023
Katherine I. Vasquez
Rules Coordinator

SHS-4911.8

AMENDATORY SECTION (Amending WSR 16-14-058, filed 6/30/16, effective 8/1/16)

WAC 388-101D-0065 Background check—General. (1) ~~((The department is authorized to conduct))~~ A provider must follow background ~~((checks))~~ check requirements under ~~((the background check requirements of))~~ this chapter and ~~((of chapter))~~ chapters 388-113 and 388-825 WAC. ~~((Background checks include but are not limited to an inquiry into any of the following:~~

- ~~-(a) Department and department of health findings;~~
- ~~-(b) Administrative actions taken by the department or by other agencies;~~
- ~~-(c) Washington state criminal background check information from the Washington state patrol;~~
- ~~-(d) National fingerprint-based background check information from the Federal Bureau of Investigation, when required; and~~
- ~~-(e) Information from Washington state courts.))~~

(2) Nothing in this chapter ~~((should be interpreted as requiring))~~ requires the employment of a person against the better judgment of the ~~((service))~~ provider. ~~((In addition to chapter 71A.12 RCW, these rules are authorized by RCW 43.20A.710, RCW 43.43.830 through 43.43.842 and RCW 74.39A.056.))~~

[WSR 16-14-058, recodified as § 388-101D-0065, filed 6/30/16, effective 8/1/16. Statutory Authority: Chapter 71A.12 RCW. WSR 14-14-030, § 388-101-3245, filed 6/24/14, effective 7/25/14. Statutory Authority: RCW 71A.12.030 and [71A.12].080. WSR 12-02-048, § 388-101-3245, filed 12/30/11, effective 1/30/12. Statutory Authority: RCW 71A.12.080, chapter 74.39A RCW. WSR 10-16-084, § 388-101-3245, filed 7/30/10, effective 1/1/11.]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-825-020 Definitions. "Adult day care" is a service administered by DDA-contracted counties that provides a structured social program for adults.

"Authorization" means DDA approval of funding for a service as identified in the ((individual support)) person-centered service plan or evidence of payment for a service.

"Assistant secretary" means the assistant secretary of the developmental disabilities administration.

"Background check system" or "BCS" means an online system for processing background checks.

"Consumer-directed employer" is a private entity that contracts with the department to be the legal employer of individual providers for purposes of performing administrative functions.

"Client" ((or "person")) means a person who has a developmental disability as defined in RCW 71A.10.020(3) who also has been determined eligible to receive services by the administration under chapter 71A.16 RCW. "Client" may also refer to a child with a functional need for personal care services who does not have a developmental disability.

"Community first choice" or "CFC" is a medicaid state plan program defined in chapter 388-106 WAC.

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

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

"Enhanced respite services" means respite care for DDA enrolled children and youth, who meet specific criteria, in a DDA contracted and licensed staffed residential setting.

"Family" means one or more of the following relatives ((who live in the same home with the eligible client. Relatives include)): Spouse or registered domestic partner; natural, adoptive, or step((-))parent; grandparent; child; stepchild; sibling; stepsibling; uncle; aunt; first cousin; niece; or nephew.

"Individual provider" means an employee of a consumer-directed employer who provides personal care or respite care services.

((("ICF/IID" means a facility certified as an i)) "Intermediate care facility for individuals with intellectual disabilities" or "ICF/IID" means a facility certified ((by)) under ((title XIX to provide diagnosis, treatment and rehabilitation services to the individuals with intellectual disabilities or individuals with related conditions)) federal law to provide active treatment and rehabilitation services.

((("ICF/IID eligible" for admission to an ICF/IID means a person is determined by DDA as needing active treatment as defined in C.F.R. 483.440. Active treatment requires:

(1) Twenty-four hour supervision; and

(2) Continuous training and physical assistance in order to function on a daily basis due to deficits in the following areas: Toilet training, personal hygiene, dental hygiene, self-feeding, bathing, dressing, grooming, and communication.

"Individual support plan" or "ISP" is a document that authorizes and identifies the DDA paid services to meet a client's assessed needs.

~~"Medicaid personal care" or "MPC" is a medicaid state plan program defined in chapter 388-106 WAC.~~

~~"Overnight planned respite services" means services intended to provide short-term intermittent relief for persons who live with the DDA client as the primary care provider and are either a family member who is paid or unpaid or a nonfamily member who is not paid. These services provide person-centered support, care and planned activities for the client in the community.)~~

"Medicaid" means the federal medical aid program under title XIX of the Social Security Act that provides health care to eligible people.

"Person-centered service plan" or "PCSP" is a document that identifies a client's goals and assessed health and welfare needs. The PCSP also indicates the paid services and natural supports that will help a client achieve their goals and address their assessed needs.

"Residential habilitation center" or "RHC" means a state-operated facility under RCW 71A.20.020 ((certified to provide ICF/IID and/or nursing facility level of care for persons with developmental disabilities)).

~~("Residential programs" means provision of support for persons in community living situations. Residential programs include DDA certified community residential services and support, both facility-based such as licensed group homes, and nonfacility based, such as supported living and state-operated living alternatives (SOLA). Other residential programs include alternative living (as described in chapter 388-829A WAC, companion homes (as described in chapter 388-829C WAC), adult family homes, adult residential care services, children's foster homes, group care and staffed residential homes.)~~

~~"Respite care" means short-term intermittent care for DDA clients ((in order)) to provide relief for ((persons)) people who normally provide that care.~~

~~("Secretary" means the secretary of the department of social and health services or the secretary's designee.)~~

"State-only funded services" means those services paid entirely with state funds.

"State supplementary payment" or "SSP" is the state paid cash assistance program for certain DDA-eligible ((SSI)) clients.

"You" or "your" means the client.

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-825-020, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030, 44.04.280, 2011 1st sp.s. c 30 and further amended state law, and chapter 71A.20 RCW. WSR 12-22-037, § 388-825-020, filed 11/1/12, effective 12/2/12. Statutory Authority: RCW 71A.12.030 and 71A.12.040. WSR 10-02-101, § 388-825-020, filed 1/6/10, effective 2/6/10. Statutory Authority: RCW 71A.10.015, 71A.12.020, 71A.12.030, and Title 71A RCW. WSR 08-11-072, § 388-825-020, filed 5/19/08, effective 6/19/08. Statutory Authority: RCW 71A.12.030, 71A.10.020 and 2002 c 371. WSR 04-02-014, § 388-825-020, filed 12/29/03, effective 1/29/04. Statutory Authority: RCW 71A.16.010, 71A.16.030, 71A.12.030, chapter 71A.20 RCW, RCW 72.01.090, and 72.33.125. WSR 02-16-014, § 388-825-020, filed 7/25/02, effective 8/25/02. Statutory Authority: RCW 71A.12.030 and 71A.12.040. WSR 99-23-021, amended and recodified as § 388-825-020, filed 11/9/99, effective 12/10/99. Statutory Authority: RCW 71A.12.030. WSR 99-04-071, § 275-27-020, filed 2/1/99, effective 3/4/99. Statutory Authority: RCW 74.12A.030 and 71A.16.030. WSR

98-20-044, § 275-27-020, filed 9/30/98, effective 10/7/98. Statutory Authority: RCW 71A.14.030 and 71A.16.020. WSR 92-09-115 (Order 3373), § 275-27-020, filed 4/21/92, effective 5/22/92. Statutory Authority: RCW 71A.16.020. WSR 91-17-005 (Order 3230), § 275-27-020, filed 8/9/91, effective 9/9/91. Statutory Authority: RCW 71.20.070. WSR 89-06-049 (Order 2767), § 275-27-020, filed 2/28/89; WSR 84-15-058 (Order 2124), § 275-27-020, filed 7/18/84. Statutory Authority: RCW 72.01.090, 72.33.040, 72.33.125 and 72.33.165. WSR 78-04-033 (Order 1280), § 275-27-020, filed 3/16/78; Order 1143, § 275-27-020, filed 8/11/76.]

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-825-0571 What services am I eligible to receive from DDA if I am under the age of ((eighteen)) 18, have been determined to meet DDA eligibility requirements, and I am ((in a dependency guardianship or foster care with children's administration)) a subject of a state court dependency proceeding pursuant to chapter 13.34 RCW or a similar proceeding in a tribal court? Your services from DDA are limited to

CFC or medicaid personal care services and related case management if you meet the programmatic eligibility for CFC or medicaid personal care services as defined in chapters 388-106 and 388-71 WAC, and:

(1) You are under the age of eighteen;
 (2) You have been determined to meet DDA eligibility requirements; and

~~(3) You are in a dependency guardianship or foster care with children's administration.)~~

(3) You are the subject of a state court dependency proceeding pursuant to chapter 13.34 RCW or a similar proceeding in a tribal court.

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-825-0571, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.10.015, 71A.12.020, 71A.12.030, and Title 71A RCW. WSR 08-11-072, § 388-825-0571, filed 5/19/08, effective 6/19/08.]

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 15-17-094, filed 8/18/15, effective 9/18/15)

WAC 388-825-058 What services does DDA authorize? ((The department)) (1) DDA authorizes the following paid services: ((through programs that are designed to help you remain in the community. DDA may authorize the following services if you meet programmatic eligibility and funding is available:

- ~~(1) Medicaid state plan services;~~
- ~~(2) Home and community based services (HCBS) waiver services;~~
- ~~(3) Roads to community living services; and~~

~~(4) State-only funded services.~~

~~Participation in all DDA paid services is voluntary. Clients or their legal representatives have the right to decline or terminate services at any time.)~~

- ~~(a) Adult day care.~~
- ~~(b) Assistive technology.~~
- ~~(c) Attendant care.~~
- ~~(d) Bed bug extermination.~~
- ~~(e) Behavior support treatment team.~~
- ~~(f) Caregiver management.~~
- ~~(g) Child development services.~~
- ~~(h) Child placing agency.~~
- ~~(i) Community engagement.~~
- ~~(j) Community inclusion.~~
- ~~(k) Community transition or sustainability services.~~
- ~~(l) Community/recreational activities.~~
- ~~(m) Copays for medical and therapeutic services.~~
- ~~(n) County services.~~
- ~~(o) Crisis stabilization.~~
- ~~(p) Durable medical equipment.~~
- ~~(q) Employment technical assistance add-on.~~
- ~~(r) Environmental adaptations.~~
- ~~(s) Equine therapy.~~
- ~~(t) Excess medical costs not covered by another source.~~
- ~~(u) Family and provider support.~~
- ~~(v) Group supported employment.~~
- ~~(w) Individual employment.~~
- ~~(x) Music therapy.~~
- ~~(y) Nonmedical equipment.~~
- ~~(z) Nurse consultation.~~
- ~~(a) (a) Nurse delegation.~~
- ~~(b) (b) Occupational therapy.~~
- ~~(c) (c) Overnight planned respite for adults.~~
- ~~(d) (d) Parent and sibling education.~~
- ~~(e) (e) Peer mentoring.~~
- ~~(f) (f) Personal emergency response system.~~
- ~~(g) (g) Personal care.~~
- ~~(h) (h) Person-centered plan facilitation.~~
- ~~(i) (i) Physical therapy.~~
- ~~(j) (j) Plethysmograph.~~
- ~~(k) (k) Polygraph.~~
- ~~(l) (l) Positive behavior support.~~
- ~~(m) (m) Private duty nursing.~~
- ~~(n) (n) Recreational opportunities.~~
- ~~(o) (o) Reentry community safety program.~~
- ~~(p) (p) Relief care.~~
- ~~(q) (q) Residential habilitation.~~
- ~~(r) (r) Respite.~~
- ~~(s) (s) Risk assessment.~~
- ~~(t) (t) Service animal services.~~
- ~~(u) (u) Skilled nursing.~~
- ~~(v) (v) Skills acquisition.~~
- ~~(w) (w) Specialized clothing.~~
- ~~(x) (x) Specialized evaluation and consultation.~~
- ~~(y) (y) Specialized habilitation.~~
- ~~(z) (z) Specialized habilitation-stabilization.~~
- ~~(a) (a) (a) Specialized equipment and supplies.~~

- (b) (b) (b) Specialized nutrition.
- (c) (c) (c) Speech therapy.
- (d) (d) (d) Stabilization diversion bed.
- (e) (e) (e) Staff and family consultation.
- (f) (f) (f) Staff and family consultation-stabilization.
- (g) (g) (g) State supplementary payments.
- (h) (h) (h) Supported parenting.
- (i) (i) (i) Therapeutic adaptations.
- (j) (j) (j) Training and counseling.
- (k) (k) (k) Transition services.
- (l) (l) (l) Transportation.
- (m) (m) (m) Vehicle modifications.
- (n) (n) (n) Wellness education.

(2) This section does not include services directly provided by the department.

[Statutory Authority: RCW 71A.10.015, 71A.18.020, 71A.12.030, and Title 71A RCW. WSR 15-17-094, § 388-825-058, filed 8/18/15, effective 9/18/15. Statutory Authority: RCW 71A.10.015, 71A.12.020, 71A.12.030, and Title 71A RCW. WSR 08-11-072, § 388-825-058, filed 5/19/08, effective 6/19/08.]

NEW SECTION

WAC 388-825-0581 What programs does DDA authorize services under? DDA may authorize services under the following programs:

- (1) Medicaid state plan;
- (2) Home and community-based services (HCBS) waiver;
- (3) Roads to community living; and
- (4) State-only funded services.

(5) Participation in all DDA paid services is voluntary. Clients or their legal representatives have the right to decline or terminate services at any time.

[]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-825-059 How will I know which paid services I will receive? Your person-centered service plan (~~(/individual support plan (ISP))~~) identifies the services and the amount of service you can receive.

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-825-059, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.10.015, 71A.12.020, 71A.12.030, and Title 71A RCW. WSR 08-11-072, § 388-825-059, filed 5/19/08, effective 6/19/08.]

AMENDATORY SECTION (Amending WSR 08-11-072, filed 5/19/08, effective 6/19/08)

WAC 388-825-067 What are medicaid state plan services? (1) Medicaid state plan services are those services available to ~~((all persons))~~ people eligible for ~~((medicaid under the categorically needy program. See WAC 388-475-0100 for the categorically needy program requirements))~~ one of the following medicaid programs:

(a) The alternative benefits plan (ABP) medicaid;
(b) Categorically needy (CN) medicaid;
(c) Medically needy (MN) medicaid; or
(d) Medical care services (MCS) programs (includes capacity-based and aged, blind, and disabled medical care services), as described in WAC 182-508-0005.

(2) To receive the service, you must be assessed by ~~((DSHS))~~ DDA to have an unmet need for the service and meet the eligibility criteria for the program. ~~((See WAC 388-825-068 for services authorized by DDD.))~~

[Statutory Authority: RCW 71A.10.015, 71A.12.020, 71A.12.030, and Title 71A RCW. WSR 08-11-072, § 388-825-067, filed 5/19/08, effective 6/19/08.]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-825-068 What medicaid state plan services can DDA authorize? If eligible, DDA may authorize one or more of the following medicaid state plan services:

- (1) Community first choice ~~((per))~~ under chapter 388-106 WAC;
- (2) Medicaid personal care ~~((per))~~ under chapter 388-106 WAC;
- (3) Private duty nursing for adults age ~~((eighteen))~~ 18 and older ~~((per))~~ under chapter 388-106 WAC;
- (4) Private duty nursing for children under the age of ~~((eighteen, per))~~ 18 under WAC 182-551-3000;
- (5) ICF/IID services ~~((per))~~ under chapters 388-835 and 388-837 WAC;
- (6) Nursing facility services at residential habilitation centers (RHC) ~~((per))~~ under chapter 388-97 WAC; or
- (7) Preadmission screening and resident review (PASRR).

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-825-068, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030, 44.04.280, 2011 1st sp.s. c 30 and further amended state law, and chapter 71A.20 RCW. WSR 12-22-037, § 388-825-068, filed 11/1/12, effective 12/2/12. Statutory Authority: RCW 71A.12.030, 71A.12.040, 71A.14.030, 2009 c 564, section 205 (1)(j), and section 1915(i) of the Social Security Act. WSR 10-04-002, § 388-825-068, filed 1/21/10, effective 2/21/10. Statutory Authority: RCW 71A.10.015, 71A.12.020, 71A.12.030, and Title 71A RCW. WSR 08-11-072, § 388-825-068, filed 5/19/08, effective 6/19/08.]

AMENDATORY SECTION (Amending WSR 15-17-094, filed 8/18/15, effective 9/18/15)

WAC 388-825-072 Where do I find information on DDA's home and community-based services (HCBS) (~~waiver services~~), eligibility rules, and definitions? (1) Home and community-based services (HCBS) waiver eligibility, the scope of services provided by each waiver, the service definitions, (~~of the services, the limitations of the~~) service limits, and qualified providers for (~~the~~) each service are contained in chapter 388-845 WAC.

(2) Services available under the basic plus waiver are found in WAC 388-845-0210.

(3) Services available under the core waiver are found in WAC 388-845-0215.

(4) Services available under the community protection waiver are found in WAC 388-845-0220.

(5) Services available under the children's intensive in-home behavior support waiver are found in WAC 388-845-0225.

(6) Services available under the individual and family services waiver are found in WAC 388-845-0230.

[Statutory Authority: RCW 71A.10.015, 71A.18.020, 71A.12.030, and Title 71A RCW. WSR 15-17-094, § 388-825-072, filed 8/18/15, effective 9/18/15. Statutory Authority: RCW 71A.10.015, 71A.12.020, 71A.12.030, and Title 71A RCW. WSR 08-11-072, § 388-825-072, filed 5/19/08, effective 6/19/08.]

AMENDATORY SECTION (Amending WSR 15-17-094, filed 8/18/15, effective 9/18/15)

WAC 388-825-074 Am I eligible for state-only funded services?

(1) You are eligible to receive available state-only funded services if (~~you have been approved for funding for that service, and~~) all of the following conditions apply:

(~~(1)~~) (a) You have a current DDA assessment that identifies (~~the~~) your need for the service(~~+~~) and the amount of service you will receive.

(~~(2)~~) (b) You meet (~~the programmatic and financial~~) all eligibility requirements for the specific service (~~or program~~).

(~~(3)~~) Your need cannot be met through medicaid state plan services~~+~~

(~~(4)~~) (c) You are not enrolled in a DDA home and community-based services (HCBS) waiver(~~+~~).

(~~(5)~~) (d) You do not receive SSP as a replacement for the requested service(~~+~~).

(~~(6)~~) (e) The program or service is funded by the legislature.

(f) You are enrolled in medicaid or you have applied and been found ineligible for medicaid in Washington state in the past year.

(g) You have been approved for funding for a state-only funded service in WAC 388-825-082.

(2) Eligibility for state-only funded services under this section does not affect your eligibility for medicaid.

[Statutory Authority: RCW 71A.10.015, 71A.18.020, 71A.12.030, and Title 71A RCW. WSR 15-17-094, § 388-825-074, filed 8/18/15, effective

9/18/15. Statutory Authority: RCW 71A.10.015, 71A.12.020, 71A.12.030, and Title 71A RCW. WSR 08-11-072, § 388-825-074, filed 5/19/08, effective 6/19/08.]

AMENDATORY SECTION (Amending WSR 08-11-072, filed 5/19/08, effective 6/19/08)

WAC 388-825-082 What state-only funded services (~~(are authorized in DDD rules)~~) may DDA authorize? (~~The following~~) DDA may authorize state-only funded services (defined below are authorized only by DDD and are not contained in other rules governing DDD.) as follows:

(1) (~~"~~)Adult day care (~~" not covered by medicaid is a DDD county service providing a structured social program for adults and is limited to persons receiving the service prior to June 2005~~).

(2) (~~"~~)Attendant care (~~"~~), which provides respite care or personal care and is limited to persons who:

(a) Are not eligible for other (~~DDD~~) DDA services (~~(to)~~) that meet their (~~need~~) needs; and

(b) Were receiving attendant care in March 2004.

(3) (~~"Individual and family assistance" is a time limited county service available to individuals and families.~~

~~(a) Supports are provided to additional families and persons with developmental disabilities in need of services within existing resources;~~

~~(b) Individuals and families receiving services have more control and flexibility with the use of the resources; and~~

~~(c) The individual and family are assisted in connecting to and using natural and informal community supports)~~ Child development services.

(4) (~~"Information and education" is a county service that provides a variety of activities and strategies to assure that individuals with developmental disabilities and families have full access to current information about services and support that will assist them in becoming full participants in their communities~~) Crisis stabilization.

(5) (~~"~~)Individual and family services under chapter 388-832

WAC.

(6) Medical and dental services (~~" means those services which are~~) necessary for the health of the client (~~(and)~~) that are not covered by medicaid or private insurance.

~~((6) ")~~ (7) Medical insurance copays and costs exceeding other coverage.

(8) Offender re-entry community safety program services.

(9) Overnight planned respite services under chapter 388-829R

WAC.

(10) Parent training and counseling.

(11) PASRR services under chapter 388-834 WAC if you reside in a medicaid-certified home nursing facility but you do not qualify for medicaid.

(12) Psychological counseling (~~" may provide~~) which provides specialized cognitive counseling (~~(7)~~) and strategies for effectively relating to people or coping with situations and problems.

~~((7) ")~~ (13) State supplementary payments under chapter 388-827

WAC.

(14) Transportation reimbursement for an escort((u)), which is ((the)) a payment for someone other than the driver to provide one-on-one attention to the client being transported.

(15) Waiver services under chapter 388-845 WAC if prior approval is received by the assistant secretary or designee.

[Statutory Authority: RCW 71A.10.015, 71A.12.020, 71A.12.030, and Title 71A RCW. WSR 08-11-072, § 388-825-082, filed 5/19/08, effective 6/19/08.]

AMENDATORY SECTION (Amending WSR 15-17-094, filed 8/18/15, effective 9/18/15)

WAC 388-825-120 When ((can)) may I appeal ((department decisions through an administrative hearing process)) a decision made by the developmental disabilities administration? (1) ((Administrative hearings are governed by the Administrative Procedure Act (chapter 34.05 RCW), RCW 71A.10.050, the rules in this chapter and by chapters 388-02 and 182-526 WAC. If any provision in this chapter conflicts with chapters 388-02 or 182-526 WAC or WAC 388-440-0001(3), the provision in this chapter shall prevail)) You or your authorized representative may appeal a decision made by DDA if you are an applicant, a client, or a former client.

~~(2) ((A client, former client, or applicant acting on the applicant's own behalf or through an authorized representative has the right to an administrative hearing.~~

~~(3)) You have the right to an administrative hearing to dispute the following ((department)) DDA actions:~~

~~(a) ((Authorization)) Approval, denial, reduction, or termination of services;~~

~~(b) ((Reduction or termination of a service that was initially approved through an exception to rule;~~

~~(c)) ((Authorization)) Approval, denial, or termination of eligibility;~~

~~((d)) (c) ((Authorization)) Approval, denial, reduction, or termination of payment of SSP authorized by DDA set forth in chapter 388-827 WAC;~~

~~((e)) (d) Admission or readmission to, or discharge from, a residential habilitation center set forth in WAC 388-825-155;~~

~~((f)) (e) Refusal to abide by your request that we not send notices to any other person;~~

~~((g)) (f) Refusal to comply with your request to consult only with you;~~

~~((h) A decision to move you to a different type of residential service;~~

~~(i) Denial or termination of the provider of your choice or the denial of payment for any reason listed in WAC 388-825-375 through 388-825-395;))~~

(g) Denial of payment to your provider for any reason under WAC 388-825-375;

(h) Termination of your provider's contract for any reason under WAC 388-825-385 or 388-825-390;

~~((j)) (i) An unreasonable delay to act on an application for eligibility or service;~~

~~((k))~~ (j) A claim ~~((the client, former client, or applicant owes))~~ that you owe an overpayment debt;

(k) Action related to the community protection program under WAC 388-831-0300;

(l) An exception to rule decision if:

(i) The total number of service hours you are currently receiving includes hours approved as an exception to rule in addition to the number of hours available to you under program rule or DDA assessment; and

(ii) The total number of service hours you are currently receiving is reduced because of a reduction or termination in the number of hours approved as an exception to rule.

(3) Except as allowed under subsection (2)(m) of this section, you do not have a right to appeal the department's denial of an exception to rule request.

(4) If you appeal a decision made by the developmental disabilities administration, your appeal is governed by this chapter and:

(a) Chapter 34.05 RCW;

(b) Chapter 71A.10 RCW; and

(c) Chapters 388-02 or 182-526 WAC, as applicable.

(5) If any provision in this chapter conflicts with chapters 388-02 or 182-526 WAC or WAC 388-440-0001(3), the provision in this chapter prevails.

(6) If you receive personal care services under chapter 388-106 WAC that are authorized by DDA, the appeal provision in WAC 388-106-1315 applies.

~~((4))~~ (7) If you are not enrolled in a waiver and your request to be enrolled in a waiver is denied, your appeal rights are limited ~~((to those identified in))~~ under WAC 388-845-4005.

~~((5))~~ (8) If you are enrolled in a waiver and your request to be enrolled in a different waiver is denied, your appeal rights are limited ~~((to those identified in))~~ under WAC 388-845-4005.

[Statutory Authority: RCW 71A.10.015, 71A.18.020, 71A.12.030, and Title 71A RCW. WSR 15-17-094, § 388-825-120, filed 8/18/15, effective 9/18/15. Statutory Authority: RCW 71A.12.030, 44.04.280, 2011 1st sp.s. c 30 and further amended state law, and chapter 71A.20 RCW. WSR 12-22-037, § 388-825-120, filed 11/1/12, effective 12/2/12. Statutory Authority: RCW 71A.12.030 and 71A.12.040. WSR 10-02-101, § 388-825-120, filed 1/6/10, effective 2/6/10. Statutory Authority: RCW 71A.12.030. WSR 06-19-037, § 388-825-120, filed 9/13/06, effective 10/14/06. Statutory Authority: RCW 71A.12.030, 71A.12.120. WSR 05-17-135, § 388-825-120, filed 8/19/05, effective 9/19/05. Statutory Authority: RCW 71A.12.030, 71A.10.020 and 2002 c 371. WSR 04-02-014, § 388-825-120, filed 12/29/03, effective 1/29/04. Statutory Authority: RCW 71A.16.010, 71A.16.030, 71A.12.030, chapter 71A.20 RCW, RCW 72.01.090, and 72.33.125. WSR 02-16-014, § 388-825-120, filed 7/25/02, effective 8/25/02; WSR 99-19-104, recodified as § 388-825-120, filed 9/20/99, effective 9/20/99. Statutory Authority: RCW 71A.16.020. WSR 91-17-005 (Order 3230), § 275-27-500, filed 8/9/91, effective 9/9/91. Statutory Authority: RCW 34.05.220 (1)(a) and 71.12.030 [71A.12.030]. WSR 90-04-074 (Order 2997), § 275-27-500, filed 2/5/90, effective 3/1/90. Statutory Authority: RCW 71.20.070. WSR 86-18-049 (Order 2418), § 275-27-500, filed 8/29/86. Statutory Authority: RCW 72.33.161. WSR 84-15-038 (Order 2122), § 275-27-500, filed 7/13/84. Statutory Authority: RCW 72.01.090, 72.33.040, 72.33.125 and

72.33.165. WSR 78-04-033 (Order 1280), § 275-27-500, filed 3/16/78; Order 1143, § 275-27-500, filed 8/11/76.]

AMENDATORY SECTION (Amending WSR 15-17-094, filed 8/18/15, effective 9/18/15)

WAC 388-825-150 When ((ean)) may the department proceed to take action during my appeal? The department will proceed to take action during your appeal if:

(1) It is an eligibility denial and you are not currently an eligible client.

(2) Your DDA eligibility under chapter 388-823 WAC has expired (~~(per WAC 388-823-0010 and 388-823-1040)~~).

(3) There is no longer funding for the state-only funded service you have been receiving.

(4) Your current services are terminated or transferred (~~(in order)~~) to comply with state law.

(5) The state-only funded service no longer exists, or the medic-aid state plan, ~~((has been amended, or))~~ the HCBS waiver, or any other agreement with the federal Centers for Medicare and Medicaid Services has been amended or terminated.

(6) The administrative law judge or review judge rules that you have caused unreasonable delay in the proceedings.

(7) ~~((You are))~~ Your health, safety, or wellbeing is in imminent jeopardy.

(8) Your provider is no longer qualified to provide services due to:

(a) A lack of a contract;

(b) Decertification;

(c) Failure to complete training or certification requirements;

(d) Revocation or suspension of a license; or

(e) Lack of required registration, certification, or licensure.

(9) If you are under the age of ~~((eighteen))~~ 18 and your parent or legal representative approves the department's decision.

(10) You did not file your request for an administrative hearing within the ~~((ten-day))~~ applicable notice period (~~(as described in chapter 388-458 WAC)~~).

(11) You or your legal representative (~~(~~

~~(a))~~ tell us in writing that you do not want continued benefits. (~~(~~

~~(b) Withdraw your administrative hearing request in writing; or~~

~~((c) Do not follow through with the administrative hearing process.))~~

[Statutory Authority: RCW 71A.10.015, 71A.18.020, 71A.12.030, and Title 71A RCW. WSR 15-17-094, § 388-825-150, filed 8/18/15, effective 9/18/15. Statutory Authority: RCW 71A.12.030 and Title 71A RCW. WSR 07-06-055, § 388-825-150, filed 3/5/07, effective 4/5/07. Statutory Authority: RCW 71A.12.030, 71A.12.120. WSR 05-17-135, § 388-825-150, filed 8/19/05, effective 9/19/05.]

AMENDATORY SECTION (Amending WSR 15-17-094, filed 8/18/15, effective 9/18/15)

WAC 388-825-300 What is the purpose of WAC 388-825-300 through 388-825-400? A ~~((client/legal))~~ client or client's legal representative may choose a qualified individual, agency, or licensed provider. The intent of WAC 388-825-300 through 388-825-400 is to describe:

(1) Qualifications for ~~((individuals))~~ individual providers and home care agencies ~~((providing DDA services in the client's residence or the provider's residence or other setting));~~ and

(2) Conditions under which ~~((the department))~~ DDA will pay for the services of an individual provider or a home care agency provider, ~~((or other provider.))~~

[Statutory Authority: RCW 71A.10.015, 71A.18.020, 71A.12.030, and Title 71A RCW. WSR 15-17-094, § 388-825-300, filed 8/18/15, effective 9/18/15. Statutory Authority: RCW 71A.12.030, 71A.12.120. WSR 05-17-135, § 388-825-300, filed 8/19/05, effective 9/19/05.]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-825-305 ~~((What service providers are))~~ Who is governed by ~~((the qualifications in these rules))~~ WAC 388-825-305 through 388-825-400? ~~((These rules govern individuals and agencies contracted with to))~~ WAC 388-825-305 through 388-825-400 govern individual providers and home care agencies who provide one or more of the following:

- ~~(1) ((Respite care services;~~
- ~~(2) Personal care services through the basic plus waiver;~~
- ~~(3)) Community first choice services;~~
- ~~((4))~~ (2) Medicaid personal care; or
- ~~((5) Attendant))~~ (3) Respite care services.

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-825-305, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.30 [71A.12.030] and Title 71A RCW. WSR 07-23-062, § 388-825-305, filed 11/16/07, effective 12/17/07. Statutory Authority: RCW 71A.12.030, 71A.12.120. WSR 05-17-135, § 388-825-305, filed 8/19/05, effective 9/19/05.]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-825-310 What are the provider qualifications ~~((for respite care, community first choice, medicaid personal care, and attendant care service providers)), responsibilities, and training requirements for a home care agency provider?~~ (1) ~~((The providers of services in WAC 388-825-305))~~ A home care agency provider must meet the provider qualifications, responsibilities, and training requirements ~~((in))~~ under chapter 388-71 WAC.

(2) (~~Individuals and agencies providing state only individual and family services must meet the provider qualifications in chapter 388-832 WAC for the specific service.~~

(3) ~~Individuals and agencies providing HCBS waiver services must meet the provider qualifications in chapter 388-845 WAC for the specific service. In addition to meeting the provider qualifications in chapter 388-845 WAC, respite care providers must meet requirements in subsection (1) of this section.)~~ Individual providers must meet the provider qualifications, responsibilities, and training requirements under chapter 388-115 WAC.

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-825-310, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030, 71A.12.120. WSR 05-17-135, § 388-825-310, filed 8/19/05, effective 9/19/05.]

AMENDATORY SECTION (Amending WSR 05-17-135, filed 8/19/05, effective 9/19/05)

WAC 388-825-315 What is your responsibility when you hire an individual ((~~respite care, attendant care or personal care~~)) provider?
(~~You or your legal representative:~~

(1) ~~Have the primary responsibility for locating, screening, hiring, supervising, and terminating an individual respite care, attendant care or personal care provider.)~~ If you hire an individual provider, you or your legal representative must manage the individual provider according to chapter 388-115 WAC(~~(+~~

(2) ~~Establish an employer/employee relationship with the individual provider; and~~

(3) ~~May receive assistance from the social worker/case manager or other resources in this process).~~

[Statutory Authority: RCW 71A.12.030, 71A.12.120. WSR 05-17-135, § 388-825-315, filed 8/19/05, effective 9/19/05.]

AMENDATORY SECTION (Amending WSR 16-17-009, filed 8/4/16, effective 9/4/16)

WAC 388-825-330 What is required for agencies to provide ((~~care in the home of a person with developmental disabilities~~)) community first choice services, medicaid personal care, or respite services?

(1) (~~Agencies providing~~) To provide community first choice services, medicaid personal care, or respite services a home care agency must be: (~~licensed as a home care agency or a home health agency through the department of health per chapter 246-335 WAC~~)

(a) Contracted with DSHS to provide the service; and

(b) Licensed as a home care agency or home health agency through the department of health under chapter 246-335 WAC.

(2) If a residential agency certified (~~per~~) under chapter 388-101 WAC wants to provide medicaid personal care services, personal care services under the community first choice program, or respite

care ((in the client's home)), the agency must ((have a home care agency or home health license)) be:

(a) Contracted with DSHS to provide the service; and

(b) Licensed as a home care agency or home health agency through the department of health under chapter 246-335 WAC.

(3) If a residential agency certified ((per)) under chapter 388-101 WAC only wants to provide skills acquisition under the community first choice program, the agency must be contracted with ((the department)) DSHS to provide the service.

[Statutory Authority: 2014 c 139, 2014 c 166, 2015 3rd sp.s. c 4, RCW 71A.12.030, and 71A.12.120. WSR 16-17-009, § 388-825-330, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 71A.12.040. WSR 10-02-101, § 388-825-330, filed 1/6/10, effective 2/6/10. Statutory Authority: RCW 71A.12.030, 71A.12.120. WSR 05-17-135, § 388-825-330, filed 8/19/05, effective 9/19/05.]

AMENDATORY SECTION (Amending WSR 07-23-062, filed 11/16/07, effective 12/17/07)

WAC 388-825-340 ((What is required for)) Can a provider ((to provide)) deliver respite ((or residential service)) services in ((their)) the provider's home? ((Unless you are related to the client, respite or residential services must take place)) (1) A provider may deliver respite services in the provider's home if the provider is related to the client.

(2) If the provider is not related to the client, respite services must be delivered in an appropriately ((home)) licensed ((by DSHS)) home. ((Services are limited to those age-specific services contained in your license.))

[Statutory Authority: RCW 71A.12.30 [71A.12.030] and Title 71A RCW. WSR 07-23-062, § 388-825-340, filed 11/16/07, effective 12/17/07. Statutory Authority: RCW 71A.12.030, 71A.12.120. WSR 05-17-135, § 388-825-340, filed 8/19/05, effective 9/19/05.]

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

WAC 388-825-375 When will the department deny payment for services ((of an individual or home care agency providing respite care, attendant care, or personal care services))? (1) The department

((will deny payment for the services of an individual or home care agency providing respite care, attendant care, or personal care who:

(a) ~~Is the client's spouse, per 42 C.F.R. 441.360(g), except in the case of an individual provider for a chore services client. Note: For chore spousal providers, the department pays a rate not to exceed the amount of a one-person standard for a continuing general assistance grant;~~

(b) ~~Is providing services under this chapter to his or her natural/step/adoptive minor client aged seventeen or younger;~~

(c) ~~Has been convicted of, or has a pending charge that is a disqualifying crime, under chapter 388-113 WAC;~~

~~(d) Has been subject to a negative action described in WAC 388-825-0640;~~

~~(e) Does not successfully complete the training requirements within the time limits required in chapter 388-71 WAC; or~~

~~(f) Is terminated by the client (in the case of an individual provider) or by the home care agency (in the case of an agency provider)) will deny payment to the consumer-directed employer under WAC 388-115-05415.~~

(2) ~~((In addition,)) The department ((may)) will deny payment to ((or terminate the contract of an individual)) a home care agency provider ((as provided)) under WAC ((388-825-380 and)) 388-((825-385)) 71-05415.~~

(3) Under RCW 74.39A.326, the department will deny payment for the services of a home care agency providing respite or personal care if the provider is your family member unless:

(a) You are an enrolled member of a federally recognized Indian tribe; or

(b) You reside in the household of an enrolled member of a federally recognized Indian tribe.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-375, filed 6/24/14, effective 7/25/14. Statutory Authority: RCW 71A.12.030 and 71A.12.040. WSR 10-02-101, § 388-825-375, filed 1/6/10, effective 2/6/10. Statutory Authority: RCW 71A.12.30 [71A.12.030] and Title 71A RCW. WSR 07-23-062, § 388-825-375, filed 11/16/07, effective 12/17/07. Statutory Authority: RCW 71A.12.030, 71A.12.120. WSR 05-17-135, § 388-825-375, filed 8/19/05, effective 9/19/05.]

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

WAC 388-825-385 When may the department terminate an individual respite care, attendant care, or personal care provider's contract?

The department may take action to terminate an individual respite care, attendant care, or personal care provider's contract if the provider's inadequate performance or inability to deliver quality care is jeopardizing the client's health, safety, or well-being. Examples of circumstances indicating jeopardy to the client ~~((could)) include((, without limitation)):~~

(1) Evidence of a conviction, pending charges, or negative actions described in WAC 388-825-~~((θ))~~640;

(2) Using or being under the influence of alcohol or illegal drugs during working hours;

(3) Other behavior directed toward the client or other persons involved in the client's life that places the client at risk of harm;

(4) A report from the client's health care provider that the client's health is negatively affected by inadequate care;

(5) A complaint from the client or client's representative that the client is not receiving adequate care;

(6) The absence of essential interventions identified in the service plan, such as medications or medical supplies; and~~((/or))~~

(7) Failure to respond appropriately to emergencies.

(8) The department, AAA, or department designee may also terminate an individual provider's contract for reasons described under WAC ((388-71-0551)) 388-113-0050.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-385, filed 6/24/14, effective 7/25/14. Statutory Authority: RCW 71A.12.30 [71A.12.030] and Title 71A RCW. WSR 07-23-062, § 388-825-385, filed 11/16/07, effective 12/17/07. Statutory Authority: RCW 71A.12.030, 71A.12.120. WSR 05-17-135, § 388-825-385, filed 8/19/05, effective 9/19/05.]

AMENDATORY SECTION (Amending WSR 07-23-062, filed 11/16/07, effective 12/17/07)

WAC 388-825-396 ((D)) When does ((the provider of respite care, attendant care, or personal)) a home care agency have a right to ((a fair)) an administrative hearing? ((1) The hearing rights afforded under WAC ~~388-825-395(1)~~ are those of the client.

(2) ~~The provider of respite care, attendant care, or personal care services does not have)~~ A home care agency has a right to ((a fair)) an administrative hearing under WAC 388-71-0562.

[Statutory Authority: RCW 71A.12.30 [71A.12.030] and Title 71A RCW. WSR 07-23-062, § 388-825-396, filed 11/16/07, effective 12/17/07. Statutory Authority: RCW 71A.12.030, 71A.12.120. WSR 05-17-135, § 388-825-396, filed 8/19/05, effective 9/19/05.]

AMENDATORY SECTION (Amending WSR 15-09-068, filed 4/15/15, effective 5/16/15)

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.

((~~"Authorized" or "authorization" means not disqualified by the department to have unsupervised access to children and individuals with a developmental disability. This term applies to persons who are certified or contracted by the department, allowed to receive payments from department funded programs, or who volunteer with department funded programs.~~)

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

"Certification" means a process used by the department ((approval of an entity that does not legally need to be licensed indicating that the entity nevertheless meets minimum licensing requirements)) 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.

((~~"Civil adjudication proceeding" is a judicial or administrative adjudicative proceeding that results in a finding of, or upholds an~~

agency finding of, domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation or financial exploitation of a child or vulnerable adult under any provision of law, including but not limited to chapter 13.34, 26.44 or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative findings that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.)

"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" ((include all developmental disabilities administration supported living providers with the exception of supported living providers who are also licensed as an assisted living facility or adult family home. Community residential service providers also include DDA companion homes, DDA alternative living and licensed residential homes for children)) 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 ((an individual's)) a person's background check ((disqualifies him or her)) exclude the person from a position ((which)) that will or may involve unsupervised access to ((individuals with developmental disabilities)) DDA clients.

(("Entity" means, but is not limited to, a licensed facility, a corporation, a partnership, a sole proprietorship, or a contracted or certified service provider.

"Hire" means engagement by an agency, entity or a hiring individual to perform specific agreed duties as a paid employee, a contract employee, a volunteer, or a student intern.))

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

(("Individuals with a developmental disability" means individuals who meet eligibility requirements in Title 71A RCW as further defined in chapter 388-823 WAC.))

"Job class" means a level of work.

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

(("Permanent restraining order" means a restraining order/order of protection issued either following a hearing, or by stipulation of the parties. A "permanent" order may be in force for a specific time period (e.g. 1 year), after which it expires.))

"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 ((an individual)) a person can be hired into a position that includes unsupervised access to ((individuals with developmental disabilities)) DDA clients because the results of ((his or her)) 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) ~~((The licensee,))~~ 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 ~~((the individual with a developmental disability))~~ a DDA client to whom the applicant has access during the course of his or her employment or involvement with the business or organization ~~((RCW 43.43.080(9)))~~.

~~((("WSP" refers to the Washington state patrol.))~~)

[Statutory Authority: RCW 71A.12.030, 74.08.090. WSR 15-09-068, amended and recodified as § 388-825-600, filed 4/15/15, effective 5/16/15. Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-0600, filed 6/24/14, effective 7/25/14.]

AMENDATORY SECTION (Amending WSR 15-09-068, filed 4/15/15, effective 5/16/15)

WAC 388-825-605 ((Why are)) What background ((checks done)) check requirements apply to providers? ~~((The department requires background checks to be run to help safeguard the health, safety and well-being of individuals with a developmental disability and to comply with the law))~~ (1) All DDA-contracted providers must follow background check requirements under chapter 388-113 and 388-825 WAC and applicable, program-specific rules.

(2) Alternative living providers must follow background check requirements under chapters 388-113, 388-825, and 388-829A WAC.

(3) Companion home providers must follow background check requirements under chapters 388-113, 388-825, and 388-829C WAC.

(4) Group home providers licensed as adult family homes must follow background check requirements under chapters 388-76, 388-113, and 388-825 WAC.

(5) Group home providers licensed as assisted living facilities must follow background check requirements under chapters 388-78A, 388-113, and 388-825 WAC.

(6) Individual providers must follow background check requirements under chapter 388-115 WAC.

(7) Home care agency providers must follow background check requirements under chapter 388-71 WAC.

(8) Licensed staffed residential service providers must follow background check requirements under chapters 110-04, 388-113, and 388-825 WAC.

(9) Overnight planned respite service providers must follow background check requirements under chapters 388-113, 388-825, and 388-829R WAC.

(10) Supported living and group training home providers must follow background check requirements under chapters 388-101D, 388-113, and 388-825 WAC.

[Statutory Authority: RCW 71A.12.030, 74.08.090. WSR 15-09-068, recodified as § 388-825-605, filed 4/15/15, effective 5/16/15. Statutory

Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-0605, filed 6/24/14, effective 7/25/14.]

AMENDATORY SECTION (Amending WSR 15-09-068, filed 4/15/15, effective 5/16/15)

WAC 388-825-610 Who must have a ((Washington state and/or federal)) background check and a background check renewal? (1) DDA requires background checks ((on all contracted providers, individual providers, employees of contracted providers, and any other individual who needs to be qualified by DDA to have unsupervised access to individuals with developmental disabilities)) 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) ((Long-term care workers as defined in chapter 74.39A RCW hired after January 7, 2012 are subject to national fingerprint-based background checks)) 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, the employee must have a background check renewal.

[Statutory Authority: RCW 71A.12.030, 74.08.090. WSR 15-09-068, recodified as § 388-825-610, filed 4/15/15, effective 5/16/15. Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-0610, filed 6/24/14, effective 7/25/14.]

AMENDATORY SECTION (Amending WSR 15-09-068, filed 4/15/15, effective 5/16/15)

WAC 388-825-615 What ((is the process for obtaining a)) type of background check is required? (1) ((~~H~~)) Beginning January 7, 2012, long-term care workers, including parents and individual providers, undergoing a background check for initial hire or initial contract, ((after January 7, 2012, will)) must be screened through a Washington state name and date of birth check and a national fingerprint-based background check,; except that long-term care workers in community residential service businesses are subject to background checks as described in subsection (1)(a) and (b) in (2) of this section. Parents are not exempt from the long-term care background check requirements.)

((a) Prior to January 1, 2016, community residential service businesses as defined above will be screened as follows:

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

~~(ii) Individuals who have resided outside of Washington state within the past three years will be screened through a state name and date of birth and a national fingerprint-based background check.~~

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

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

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

~~((2)) (3) For adult family homes, refer to chapter 388-76 WAC (adult family home minimum licensing requirements). For assisted living facilities, refer to chapter 388-78A WAC (assisted living licensing rules).~~

~~(4) Beginning July 1, 2023, a residential habilitation center 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.~~

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

[Statutory Authority: RCW 71A.12.030, 74.08.090. WSR 15-09-068, amended and recodified as § 388-825-615, filed 4/15/15, effective 5/16/15. Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-0615, filed 6/24/14, effective 7/25/14.]

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 15-09-068, filed 4/15/15, effective 5/16/15)

WAC 388-825-620 ((Who must have)) How often must a background check ((renewals)) be renewed? (1) DDA requires ((rechecks for all DDA contracted providers and their employees)) a background check at least every three years, or more frequently if required by program rule. ((Rechecks))

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

~~((1)) (a) Individuals who have continuously resided in Washington ((S)) state for the past three consecutive years will be screened through a state name and date of birth background check.~~

~~((2)) (b) Individuals who have lived outside of Washington state within the past three years will be screened through a state name and date of birth check and a national fingerprint-based background check.~~

(c) Individuals who live outside of Washington state and provide services in Washington state will be screened through a Washington

state name and date of birth check and a national fingerprint-based background check.

[Statutory Authority: RCW 71A.12.030, 74.08.090. WSR 15-09-068, redefined as § 388-825-620, filed 4/15/15, effective 5/16/15. Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-0620, filed 6/24/14, effective 7/25/14.]

NEW SECTION

WAC 388-825-621 May a DDA-contracted agency applicant or employee have access to clients before the completion of the Washington state name and date of birth background checks? (1) A DDA-contracted agency may allow an employee to have access to clients before completion of the Washington state name and date of birth background check if:

- (a) The background check application has been submitted;
 - (b) The employee is directly supervised while around clients and their personal information; and
 - (c) The agency has a supervision plan in place for the employee.
- (2) A supervision plan must:
- (a) State who will supervise the employee; and
 - (b) Describe how the employee's breaks will be managed until the employee's background check has cleared.

[]

AMENDATORY SECTION (Amending WSR 15-09-068, filed 4/15/15, effective 5/16/15)

WAC 388-825-625 What happens if ~~((I do not comply with the))~~ an individual receives a disqualifying background check ~~((requirement))~~ result? ~~((The department will deny, suspend or revoke your license, contract, certification, or authorization to care for individuals with a developmental disability, if you or someone working within your program who has unsupervised access does not comply with the department's requirement for a background check))~~ (1) If an individual has a disqualifying background check result:

(a) The individual must not have access to clients or their personal information; and

(b) The department must not pay for services provided by the individual.

(2) If a provider or anyone the provider employs is required to complete a background check under WAC 388-825-610 and receives a disqualifying background check result, the department may deny, suspend, or revoke the provider's license, contract, or certification.

(3) If a provider or anyone the provider employs is required to complete a background check under WAC 388-825-610 and receives a disqualifying background check result, the provider must immediately notify DDA of the result.

[Statutory Authority: RCW 71A.12.030, 74.08.090. WSR 15-09-068, recodified as § 388-825-625, filed 4/15/15, effective 5/16/15. Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-0625, filed 6/24/14, effective 7/25/14.]

AMENDATORY SECTION (Amending WSR 15-09-068, filed 4/15/15, effective 5/16/15)

WAC 388-825-630 What does the background check cover? (1) The department must review criminal convictions and pending charges based on identifying information provided by you. The background check may include but is not limited to the following information sources:

- (a) Washington state patrol.
- (b) Washington courts.
- (c) Department of corrections.
- (d) Department of health.
- (e) Civil adjudication proceedings.
- (f) Applicant's self-disclosure.
- (g) Out-of-state law enforcement and court records.

(2) DDA requires fingerprint-based background checks as described in WAC 388-825-615. These background checks include a review of conviction records through the Washington state patrol, the Federal Bureau of Investigation, and the ((national)) Washington state sex offender registry.

[Statutory Authority: RCW 71A.12.030, 74.08.090. WSR 15-09-068, amended and recodified as § 388-825-630, filed 4/15/15, effective 5/16/15. Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-0630, filed 6/24/14, effective 7/25/14.]

AMENDATORY SECTION (Amending WSR 15-09-068, filed 4/15/15, effective 5/16/15)

WAC 388-825-635 Who pays for the background check? (1) DDA pays for background checks ((, including fingerprint-based background checks,)) for individuals seeking ((authorization)) to provide services to clients of DDA, if processed through the DSHS background check central unit (BCCU).

(2) DDA pays for fingerprint services if the fingerprinting entity is contracted with BCCU.

[Statutory Authority: RCW 71A.12.030, 74.08.090. WSR 15-09-068, recodified as § 388-825-635, filed 4/15/15, effective 5/16/15. Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-0635, filed 6/24/14, effective 7/25/14.]

AMENDATORY SECTION (Amending WSR 15-09-068, filed 4/15/15, effective 5/16/15)

WAC 388-825-650 What does a character, competence, and suitability review include? The contractor, entity, or hiring authority must review an individual's background to determine character, competence, and suitability to have unsupervised access to individuals with a developmental disability. In this review, the contractor, entity, or hiring authority must consider the following factors:

- (1) The amount of time that has passed since (~~you were~~) a person was convicted or (~~were~~) subject to a negative action;
- (2) The seriousness of the crime or action that led to the conviction or finding;
- (3) The number and types of other convictions in (~~your~~) the person's background;
- (4) (~~Your~~) The person's age at the time of conviction;
- (5) Documentation indicating (~~you have~~) the person has successfully completed all court-ordered programs and restitution;
- (6) (~~Your~~) The person's behavior since the conviction; and
- (7) The vulnerability of those that would be under (~~your~~) the person's care.

[Statutory Authority: RCW 71A.12.030, 74.08.090. WSR 15-09-068, recodified as § 388-825-650, filed 4/15/15, effective 5/16/15. Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-0650, filed 6/24/14, effective 7/25/14.]

AMENDATORY SECTION (Amending WSR 15-09-068, filed 4/15/15, effective 5/16/15)

WAC 388-825-655 How will (~~I~~) someone know if (~~I~~) they have been disqualified by the background check? (1) The department will notify (~~you~~) the person, and the care provider, the employer, or the licenser if (~~you have~~) the person has been disqualified by the background check. The notice will be in writing and will include any laws and rules that require disqualification.

(2) If the department sends (~~you~~) the person a notice of disqualification, (~~you~~) the person will not receive a license, contract, certification, or be authorized to have unsupervised access to individuals with a developmental disability.

[Statutory Authority: RCW 71A.12.030, 74.08.090. WSR 15-09-068, recodified as § 388-825-655, filed 4/15/15, effective 5/16/15. Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-0655, filed 6/24/14, effective 7/25/14.]

AMENDATORY SECTION (Amending WSR 15-09-068, filed 4/15/15, effective 5/16/15)

WAC 388-825-660 May (~~I appeal the department's~~) a provider appeal DDA's decision to deny (~~me~~) a contract or (~~authorization~~)

payment based on the results of the background check? (~~((1) No,~~) A provider or prospective (~~(volunteers, interns, contractors, or those seeking certification do)~~) provider does not have the right to appeal (~~(the department's)~~) DDA's decision to deny (~~(authorization for unsupervised access to individuals with a developmental disability.~~

~~(2) The employer or prospective employer cannot contest the department's decision on your behalf)~~ a contract or payment based on the results of a background check.

[Statutory Authority: RCW 71A.12.030, 74.08.090. WSR 15-09-068, redefined as § 388-825-660, filed 4/15/15, effective 5/16/15. Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-0660, filed 6/24/14, effective 7/25/14.]

AMENDATORY SECTION (Amending WSR 15-09-068, filed 4/15/15, effective 5/16/15)

WAC 388-825-670 May ((F)) a person receive a copy of ((my)) their criminal background check results? (1) The department will provide (~~(you)~~) a person a copy of (~~(your)~~) their criminal background check results if (~~(you)~~) the person:

(a) (~~(Make the)~~) Submits a written request (~~(in writing)~~) to the department; and

(b) (~~(Offer)~~) Offers proof of identity, such as picture identification.

(2) A copy of (~~(your)~~) a WSP criminal background check (~~(re-~~ sults)) result may also be obtained from the Washington state patrol (~~(+)~~)according to the Washington State Criminal Records Privacy Act under chapter 10.97 RCW(~~(+)~~).

[Statutory Authority: RCW 71A.12.030, 74.08.090. WSR 15-09-068, redefined as § 388-825-670, filed 4/15/15, effective 5/16/15. Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-0670, filed 6/24/14, effective 7/25/14.]

AMENDATORY SECTION (Amending WSR 19-04-090, filed 2/5/19, effective 3/8/19)

WAC 388-845-1615 Who may be qualified providers of respite care?

Providers of respite care may be any of the following individuals or agencies contracted with the developmental disabilities administration (DDA) for respite care:

(1) Individuals who meet the provider qualifications under chapter 388-825 WAC;

(2) The consumer-directed employer under chapter 388-115 WAC;

(3) Home health agencies licensed under chapter 246-335 WAC, Part 1;

~~((3))~~ (4) Homecare agencies licensed under chapter 246-335 WAC, Part 1 and contracted with the area agencies on aging (AAA);

~~((4))~~ (5) Licensed and contracted group homes, foster homes, child placing agencies, staffed residential homes, and foster group care homes;

~~((5))~~ (6) Licensed and contracted adult family homes;

~~((6))~~ (7) Licensed and contracted adult residential care facilities;

~~((7))~~ (8) Licensed and contracted adult residential treatment facilities under chapter 246-337 WAC;

~~((8))~~ (9) Licensed child care centers under chapter 110-300 ~~((A))~~ WAC;

~~((9))~~ (10) Licensed child day care centers under chapter 110-300 ~~((A))~~ WAC;

~~((10))~~ (11) Adult day care providers under chapter 388-71 WAC contracted with DDA;

~~((11))~~ (12) Certified providers under chapter 388-101 WAC when respite is provided within the DDA contract for certified residential services;

~~((12))~~ (13) A licensed practical nurse (LPN) or registered nurse (RN) acting within the scope of the standards of nursing conduct or practice under ~~((chapter))~~ title 246 ~~((700))~~ WAC and contracted with DDA to provide this service; or

~~((13))~~ (14) Other DDA contracted providers such as a community center, senior center, parks and recreation, and summer programs.

[Statutory Authority: RCW 71A.12.030, 71A.12.120 and 42 C.F.R. 302 (a)(2). WSR 19-04-090, § 388-845-1615, filed 2/5/19, effective 3/8/19. Statutory Authority: RCW 71A.12.030, 71A.12.120, 42 C.F.R. 441 Subpart G. WSR 18-14-001, § 388-845-1615, filed 6/20/18, effective 7/21/18. Statutory Authority: RCW 71A.12.030. WSR 17-12-011, § 388-845-1615, filed 5/26/17, effective 6/26/17. Statutory Authority: RCW 71A.12.030, 71A.12.120, and 2015 3rd sp.s. c 4. WSR 16-17-003, § 388-845-1615, filed 8/4/16, effective 9/4/16. Statutory Authority: RCW 71A.12.030 and 2012 c 49. WSR 13-24-045, § 388-845-1615, filed 11/26/13, effective 1/1/14. Statutory Authority: RCW 71A.12.030, 74.08.090 and 2012 c 49. WSR 13-04-005, § 388-845-1615, filed 1/24/13, effective 2/24/13. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. WSR 07-20-050, § 388-845-1615, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. WSR 06-01-024, § 388-845-1615, filed 12/13/05, effective 1/13/06.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-825-073	What is a "state-only funded" service?
WAC 388-825-079	If I am not on a DDD HCBS waiver, can I receive services that are available through the DDD HCBS waivers with state-only funding?
WAC 388-825-081	Can I receive state-only funded services that are not available in a DDA HCBS waiver?

WAC 388-825-325

What are the required skills and abilities for individuals and agencies contracted to provide community first choice services, medicaid personal care, respite care, or attendant care services?

WAC 388-825-395

What are the client's rights if the department denies, terminates, or summarily suspends an individual's contract to provide respite care, attendant care, or personal care?