

## WSR 24-15-041

## PERMANENT RULES

## DEPARTMENT OF

## SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed July 11, 2024, 4:12 p.m., effective August 11, 2024]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The developmental disabilities administration (DDA) amended 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.

Citation of Rules Affected by this Order: Amending WAC 388-825-335, 388-825-600, 388-825-610, 388-825-615, and 388-825-620.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 43.43.837 and 74.39A.056.

Adopted under notice filed as WSR 24-11-101 on May 17, 2024.

A final cost-benefit analysis is available 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.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 4, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 5, Repealed 0.

Date Adopted: July 11, 2024.

Lisa N.H. Yanagida  
Chief of Staff

**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 ~~((r))~~ (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 ~~((r))~~ 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 ~~((r))~~ 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.