

WSR 21-11-068
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Economic Services Administration)
[Filed May 17, 2021, 10:04 a.m.]

Supplemental Notice to WSR 21-08-072.

Preproposal statement of inquiry was filed as WSR 20-13-047.

Title of Rule and Other Identifying Information: The department is proposing additional amendments to WAC 388-454-0006 The department makes background checks on adults who are acting in place of a parent without court-ordered custody.

Hearing Location(s): On June 22, 2021, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington, 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, rule hearings may be virtual. Please see DSHS website for the most current information.

Date of Intended Adoption: Not earlier than June 23, 2021.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., June 22, 2021.

Assistance for Persons with Disabilities: Contact Katherine Vasquez, DSHS rules coordinator, phone 360-664-6097, fax 360-664-6185, TTY 711 relay service, email vasquki@dshs.wa.gov, by June 15, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Additional proposed amendments add language around how pardons, vacated convictions, and certificates of rehabilitation are treated for purposes of background checks conducted as part of the temporary assistance for needy families (TANF) and state family assistance (SFA) in loco parentis eligibility process.

Reasons Supporting Proposal: The additional proposed language is in response to comments received during the rule-making process from an external advocacy organization. This organization requested clarity in rule for how pardons, vacated convictions and certificates of rehabilitation are handled for these specific types of background checks.

Statutory Authority for Adoption: RCW 43.43.832, 74.04.050, 74.04.055, 74.04.057, 74.08.090, and 74.12.290.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Melissa Kenney, P.O. Box 45470, Olympia, WA 98504-5470, 360-764-3272.

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

A cost-benefit analysis is not required under RCW 34.05.328. This amendment is exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents ..."

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

Is exempt under RCW 34.05.328 (5)(b)(vii).

Explanation of exemptions: These amendments do not impact small businesses. They only impact DSHS clients.

May 14, 2021
Katherine I. Vasquez
Rules Coordinator

SHS-4834.5

AMENDATORY SECTION (Amending WSR 16-24-037, filed 11/30/16, effective 1/1/17)

WAC 388-454-0006 The department makes background checks on adults who are acting in place of a parent without court-ordered custody. (1) We check your background when you ask for temporary assistance for needy families (TANF) or state family assistance (SFA) benefits for a child who:

(a) Is not related to you; and

(b) Lives with you but you do not have a court order that gives you legal custody of the child.

(2) A child who is not related to you cannot receive TANF/SFA benefits while living with you until we have completed a background check and the results of the background check meet the criteria in subsection (3) through (5) of this section.

(3) A child who is not related to you cannot receive benefits while living with you if:

(a) You have been convicted of a crime listed in WAC

~~((388-06A-0170))~~ 110-04-0100 (1)(a) through (e); or

(b) You have been convicted of a crime listed in WAC

~~((388-06A-0180))~~ 110-04-0110 (1) through (3) within the last five years; or

(c) You have a pending criminal charge for a disqualifying crime listed in WAC 110-04-0130 (1)(a) through (b); or

(d) You are determined by the department to not have the character, suitability, and competence necessary to receive benefits for a child not related to you, as described in subsection (4) and (5) of this section.

(4) We review your background when you have been convicted of a crime listed in WAC ~~((388-06A-0180))~~ 110-04-0110 (1) through (3), more than five years ago to determine your character, suitability, and competence to receive benefits for a child not related to you. We consider the following factors:

(a) The amount of time that has passed since you were convicted;

(b) The seriousness of the crime that led to the conviction;

(c) The number and types of convictions in your background; and

(d) Your age at the time of the conviction.

(5) When you have a conviction for a crime other than those listed in WAC ~~((388-06A-0170))~~ 110-04-0100 (1)(a) through (e), or ~~((388-06A-0180))~~ 110-04-0110 (1) through (3) or have a founded finding of child abuse or neglect, as defined in WAC 110-03-0020, we review your background as described in subsection (4) of this section.

(6) If you disclose to us that you have received a certificate of parental improvement, as described in WAC 110-05-0001, and we verify

it, then the related founded finding of child abuse or neglect, or dependency finding will not be considered in our determination under this section.

(7) Expunged ((~~or~~)), sealed, or vacated conviction records do not count against you. Convictions for which you received a pardon or certificate of rehabilitation are reviewed in accordance with subsection (4) of this section.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.770, and 74.08.090. WSR 16-24-037, § 388-454-0006, filed 11/30/16, effective 1/1/17. Statutory Authority: RCW 13.32A.080, 13.32A.082, 74.04.050, 74.08.090, 74.12.290, 74.12.450, 74.12.460. WSR 02-01-011, § 388-454-0006, filed 12/7/01, effective 1/7/02.]