

WSR 21-10-094
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed May 4, 2021, 3:08 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-08-093.

Title of Rule and Other Identifying Information: The department is proposing to amend chapter 388-71 WAC, Home and community services and programs; chapter 388-106 WAC, Long-term care services; and chapter 388-113 WAC, Disqualifying crimes and negative actions. The department is also proposing to create a new chapter 388-115 WAC, Consumer directed employer.

Hearing Location(s): On July 6, 2021, 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 by Skype. Due to the COVID-19 pandemic, hearing may be held via Skype, see DSHS website for most up-to-date information.

Date of Intended Adoption: Not earlier than July 7, 2021.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m., July 7, 2021.

Assistance for Persons with Disabilities: Contact Jeff Kildahl, DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email Kildaja@dshs.wa.gov, by May 22, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to amend, repeal, and create new sections in chapters 388-71, 388-106, and 388-113 WAC, and create new chapter 388-115 WAC, Consumer directed employer, as a reference for the individual providers employed by the consumer directed employer (CDE).

The purpose for making changes is to clarify and consolidate rules related to background checks, disqualifying convictions, and negative actions; and character, competence, and suitability determinations for home and community services, residential care services, and the developmental disabilities administration. These changes will provide better clarity and understanding for the public and contracted entities, reduce the amount of WAC language across programs, and help preserve the health and safety of our clients. Other provisions related to long-term care worker qualifications and a client's choice of provider will also be clarified and consolidated.

Reasons Supporting Proposal: The department is making these changes based on the implementation of CDE and the change from individual providers contracted with the department to individual providers employed by CDE as a result of the passage of ESSB 6199 (chapter 278, Laws of 2018) in 2018.

Statutory Authority for Adoption: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, and 43.43.837.

Statute Being Implemented: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, and 43.43.837.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Carson Crepeaux, P.O. Box 45600, Olympia, WA 98504-5600, 360-725-3714; and Enforcement: Karen Fitzharris, P.O. Box 45600, Olympia, WA 98504-5600, 360-725-2536.

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 Angel Sullivan, P.O. Box 45600, Olympia, WA 98504-5600, phone 360-725-2495, fax 360-407-7582, TTY 360-493-2637, email Angel.Sullivan@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(4) because the proposed amendments impose no new or disproportionate costs on small businesses so a small business economic impact statement is not required.

April 29, 2021
Katherine I. Vasquez
Rules Coordinator

SHS-4861.3

AMENDATORY SECTION (Amending WSR 14-14-025, filed 6/24/14, effective 7/25/14)

WAC 388-71-0500 What is the purpose of this section of the chapter? The purpose of ~~((this chapter))~~ WAC 388-71-0500 through WAC 388-71-05640 is to describe ~~((the))~~:

~~(1) ((Qualifications of an individual provider, as defined in WAC 388-106-0010))~~ The role of the client as the employer;

~~(2) Individual provider and agency provider qualifications ((of a long-term care worker employed by a home care agency, as defined in WAC 388-106-0010 and chapter 246-335 WAC))~~ and responsibilities;

~~(3) ((Conditions under which))~~ When the department ~~((or the area agency on aging (AAA) will pay for the services of an individual))~~ must or may reject a client's choice of provider ~~((or a home care agency long-term care worker)); and~~

~~(4) ((Training requirements for an))~~ When a client, individual provider, and medicaid contracted home care agency ~~((long-term care worker;~~

~~(5) Client's options for obtaining a long-term care worker. A client, as described in WAC 388-71-0836, eligible to receive long-term care services, or his/her legal representative acting on the client's behalf, may choose to receive personal care services in the client's home from an individual provider or a long-term care worker from a home care agency. If the client chooses to receive services from a home care agency, the agency will assign a long-term care worker employed by the agency to provide services to the client. Individual providers and home care agency long-term care workers are "long-term~~

~~care workers" as defined in RCW 74.39A.009 and are subject to back-ground checks under RCW 74.39A.056 and 43.20A.710; and~~

~~(6) Contracting requirements)) has the right to appeal a department decision.~~

[Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.056. WSR 14-14-025, § 388-71-0500, filed 6/24/14, effective 7/25/14. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0500, filed 12/20/12, effective 1/20/13; WSR 05-11-082, § 388-71-0500, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520, and 74.39A.090. WSR 02-21-098, § 388-71-0500, filed 10/21/02, effective 11/21/02. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. WSR 02-10-117, § 388-71-0500, filed 4/30/02, effective 5/31/02. Statutory Authority: RCW 74.08.090, 74.09.520, 43.20A.050, 43.43.842, 74.39A.090, 43.20A.710, 74.39.050, 43.43.830, 74.39.095. WSR 01-11-019, § 388-71-0500, filed 5/4/01, effective 6/4/01. Statutory Authority: RCW 74.08.090, 74.09.520, 43.20A.050, 43.43.842, 74.39A.090, 43.20A.710, 74.39.050, 43.43.830. WSR 00-03-043, § 388-71-0500, filed 1/13/00, effective 2/13/00.]

NEW SECTION

WAC 388-71-0503 What definitions apply to WAC 388-71-0500 through WAC 388-71-05640? "Agency provider" means a long-term care worker who works for a home care agency.

"Area agencies on aging (AAA)" means a contracted entity that aging and long-term support administration (AL TSA) grants funds to in order to carry out the functions of the Older Americans Act, general-fund state programs and to provide case management services and supports to individuals eighteen and older who receive medicaid-funded LTC in their own homes.

"Applicant" means a person who is in the process of becoming an in-home long-term care worker.

"Negative actions" are listed in WAC 388-113-0030.

"Background check" means a name and date of birth check or a fingerprint-based background check, or both.

"Background check result" is defined in WAC 388-113-0010.

"Background check central unit (BCCU)" means the DSHS entity responsible for conducting background checks for the department.

"Character, competence, and suitability determination (CC&S)" is defined in WAC 388-113-0050.

"Client" means an individual receiving medicaid-funded in-home long term services from the department.

"Department" means the department of social and health services or its designees.

"Family member" includes, but is not limited to a parent, child, sibling, aunt, uncle, niece, nephew, cousin, grandparent, grandchild, grandniece, grandnephew, or such relatives when related by marriage.

"Fingerprint-based background check" means a search of in-state criminal history records through the Washington state patrol and national criminal history records through the Federal Bureau of Investigation.

"Home care agency (HCA)" means an entity that is licensed by the department of health to provide home care services through a contract

arrangement with the department to clients in places of permanent or temporary residence.

"Home care agency long-term care worker" means a long-term care worker who works for a home care agency.

"Individual provider (IP)" as defined in RCW 74.39A.240 limited to individual providers contracted with the department.

"Long-term care worker" as defined in RCW 74.39A.009 (17) but limited to individual providers contracted with the department or hired by the home care agency.

"Name and date of birth check" is a search conducted by the background check central unit (BCCU) of Washington state criminal history and negative action records using the applicant's name and date of birth.

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AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0505 (~~(How does a client hire)~~) Who hires and supervises an individual provider? The client or (~~(legal)~~) representative:

(1) Has the primary responsibility for locating, screening, hiring, supervising, and terminating an individual provider, except that this responsibility must not limit the department's authority to reject, terminate the contract of, or deny or terminate payment to an individual provider under this chapter;

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

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

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0505, filed 12/20/12, effective 1/20/13. Statutory Authority: RCW 74.08.090, 74.09.520, 43.20A.050, 43.43.842, 74.39A.090, 43.20A.710, 74.39.050, 43.43.830, 74.39.095. WSR 01-11-019, § 388-71-0505, filed 5/4/01, effective 6/4/01. Statutory Authority: RCW 74.08.090, 74.09.520, 43.20A.050, 43.43.842, 74.39A.090, 43.20A.710, 74.39.050, 43.43.830. WSR 00-03-043, § 388-71-0505, filed 1/13/00, effective 2/13/00.]

AMENDATORY SECTION (Amending WSR 14-14-025, filed 6/24/14, effective 7/25/14)

WAC 388-71-0510 (~~(How does a person become an individual provider)~~) What are the qualifications of a LTC worker providing in-home services? In order to (~~(become an individual provider, a person)~~) be qualified as a long-term care worker, an applicant must:

(1) (~~(Be eighteen years of age or older)~~) Not have a disqualifying crime or negative action under chapter 388-113 WAC based on a completed background check;

(2) (~~(Provide the social worker/case manager/designee with:~~

~~(a) A valid Washington state driver's license or other valid picture identification; and either~~
~~(b) A Social Security card; or~~
~~(c) Proof of authorization to work in the United States.~~
~~(3) Complete the required DSHS form authorizing a background check.) Not be disqualified based on a character, competence, and suitability determination;~~

~~((4) Disclose any criminal convictions and pending charges, and also disclose civil adjudication proceedings and negative actions as those terms are defined in WAC 388-71-0512;~~

~~(5) Effective January 8, 2012, be screened through Washington state's name and date of birth background check. Preliminary results may require a thumb print for identification purposes.~~

~~(6) Effective January 8, 2012, be screened through the Washington state and national fingerprint-based background check, as required by RCW 74.39A.056.~~

~~(7) Results of background checks are provided to the department and the employer or potential employer unless otherwise prohibited by law or regulation 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 WAC 388-113-0020, civil adjudication proceeding, or negative action as defined in WAC 388-71-0512 and 388-71-0540; or~~

~~(b) Should or should not be employed as an individual provider based on his or her character, competence, and/or suitability.~~

~~(8) For those providers listed in RCW 43.43.837(1), a second Washington state and 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.~~

~~(9) The department may require an individual provider 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.~~

~~(10) Sign a home and community-based service provider contract/ agreement to provide personal care services to a person under a medic-aid state plan or federal waiver such as COPES or other waiver programs.) (3) Complete training and certification requirements listed in WAC 388-71-0520 and WAC 388-71-0523;~~

~~(4) If required, have an active home care aide certification or other qualifying credential by the department of health;~~

~~(5) In addition to the qualifications listed in subsections (1) through (4) of this section, an individual provider must:~~

~~(a) Have a current and valid individual provider services contract with DSHS to provide personal care services;~~

~~(b) Pass the federal exclusion list screening;~~

~~(c) Not have credible allegations of fraud which are pending investigation, unless they fit within the exceptions listed in 42 C.F.R. 455.23;~~

~~(d) Be eighteen years of age or older;~~

~~(e) Provide the department with a valid: Social Security card and picture ID, as determined by DSHS.~~

[Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.056. WSR 14-14-025, § 388-71-0510, filed 6/24/14, effective 7/25/14. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0510, filed 12/20/12, effective 1/20/13. Statutory Authority: 2004 c 276 § 206 (6) (b) and *Townsend vs. DSHS*, U.S. District Court, Western District

of Washington, No. C 00-0944Z. WSR 04-16-029, § 388-71-0510, filed 7/26/04, effective 8/26/04. Statutory Authority: RCW 74.08.090, 74.09.520, 43.20A.050, 43.43.842, 74.39A.090, 43.20A.710, 74.39.050, 43.43.830, 74.39.095. WSR 01-11-019, § 388-71-0510, filed 5/4/01, effective 6/4/01. Statutory Authority: RCW 74.08.090, 74.09.520, 43.20A.050, 43.43.842, 74.39A.090, 43.20A.710, 74.39.050, 43.43.830. WSR 00-03-043, § 388-71-0510, filed 1/13/00, effective 2/13/00.]

NEW SECTION

WAC 388-71-0511 When is a background check required of an individual provider or agency provider? (1) Individual providers are required to complete and pass a name and date of birth background check before initial contracting with the department.

(2) Agency providers are required to complete and pass a name and date of birth background check prior to working with a client.

(3) Individual providers and agency provider workers are required to complete and pass a name and date of birth background check:

(a) Every two years; and

(b) Any time the department or the home care agency employer requests a new check.

(4) In addition to the name and date of birth background check, individual providers and agency providers are required to complete and pass a fingerprint-based background check:

(a) If hired after January 7, 2012, and in accordance with provisional hire rules in WAC 388-113-0109;

(b) If they have lived out of state since the last fingerprint-based background check was completed; or

(c) Any time the department or home care agency requests a new check.

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AMENDATORY SECTION (Amending WSR 14-14-025, filed 6/24/14, effective 7/25/14)

WAC 388-71-0513 ((Is)) How does an individual provider or agency provider complete a background check ((required of a long-term care worker employed by a home care agency licensed by the department of health))? ((In order to be a long-term care worker employed by a home care agency, a person must:))

(1) The individual provider or agency provider must:

(a) Complete the ((required DSHS form authorizing a)) background check authorization form;

(b) Answer all questions on the background check authorization form truthfully;

(c) Obtain a fingerprint-based background check result;

(d) Not have any automatically disqualifying conviction(s), pending charge(s), or negative action(s) as described in chapter 388-113 WAC;

(e) Review the background check results and if necessary provide documents or other information to BCCU to correct the background check results; and

(f) When requested by BCCU, provide additional information in order to complete a background check as mandated by statute.

~~(2) ((Disclose any disqualifying criminal convictions and pending charges as listed in WAC 388-113-0020, and also disclose civil adjudication proceedings and negative actions as those terms are defined in WAC 388-71-0512.~~

~~(3) Effective January 8, 2012, be screened through Washington state's name and date of birth background check. Preliminary results may require a thumb print for identification purposes.~~

~~(4) Effective January 8, 2012, be screened through the Washington state and national fingerprint-based background check, as required by RCW 74.39A.056.~~

~~(5) 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 WAC 388-113-0020, civil adjudication proceeding, or negative action as defined in WAC 388-71-0512 and listed in WAC 388-71-0540; or~~

~~(b) Should or should not be employed based on his or her character, competence, and/or suitability.~~

~~(6) For those providers 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.~~

~~(7) 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)) It is the responsibility of the home care agency to ensure compliance with subsection (1) of this section for its agency providers.~~

[Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.056. WSR 14-14-025, § 388-71-0513, filed 6/24/14, effective 7/25/14. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0513, filed 12/20/12, effective 1/20/13. Statutory Authority: RCW 74.08.090, 74.09.520, 43.20A.050, 43.43.842, 74.39A.090, 43.20A.710, 74.39.050, 43.43.830, 74.39.095. WSR 01-11-019, § 388-71-0513, filed 5/4/01, effective 6/4/01.]

AMENDATORY SECTION (Amending WSR 21-04-037, filed 1/26/21, effective 3/1/21)

WAC 388-71-0515 What are the responsibilities of an individual provider when providing services to a client? An individual provider (IP) must:

(1) Take direction from the client, who is the IP's employer, or when appropriate, from the client's ((legal)) representative;

(2) Understand the client's plan of care that has been signed by the client or ((legal)) representative, which may be translated or interpreted, as necessary, and as requested by the client;

(3) Provide the services as outlined on the client's plan of care, as described in WAC 388-106-0010, according to the client's direction, supervision, and prioritization of tasks within the number of hours authorized;

- (4) Accommodate the client's individual preferences and unique needs in providing care;
- (5) Contact the client, client's representative and case manager when there are changes that affect the personal care and other tasks listed on the plan of care;
- (6) Observe and consult with the client or client's representative, regarding change(s) in health, take appropriate action, and respond to emergencies;
- (7) Notify the case manager immediately when the client enters a hospital, or moves to another setting, or when the client has an emergent health and safety need that requires the IP to provide services in excess of the client's authorization or the IP's work week limit;
- (8) Notify the case manager immediately in the event of the client's death;
- (9) Notify the department or AAA immediately when unable to staff/serve the client;
- (10) Notify the department/AAA when the individual provider will no longer provide services. The individual provider must:
- (a) Give at least two weeks' notice ~~((-))~~; and
- (b) Notify the client or the client's representative in writing ~~((+))~~; and
- (c) Notify the client's case manager ~~((-))~~;
- (11) Complete and ~~((keep))~~ submit accurate time ~~((sheets of authorized/paid hours that are accessible to the social worker/case manager; under WAC 388-106-0130, the department does not pay for informal support provided to the client by anyone, including the IP))~~ records, in IPOne, of authorized hours for each day worked; ~~((and))~~
- (12) Comply with all applicable laws, regulations, and the individual provider contract;
- (13) Have a current background check as described in WAC 388-71-0511 and a current DSHS contract;
- (14) Provide services only when the department has approved and authorized payment for services to be provided, except in circumstances where there is an emergent health and safety need; and
- (15) Comply with electronic visit verification requirements, when required.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 21-04-037, § 388-71-0515, filed 1/26/21, effective 3/1/21; WSR 13-02-023, § 388-71-0515, filed 12/20/12, effective 1/20/13. Statutory Authority: RCW 74.08.090, 74.09.520, 2009 c 571, and Washington state 2009-11 budget, section 206(17). WSR 10-06-112, § 388-71-0515, filed 3/3/10, effective 4/3/10. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 05-11-082, § 388-71-0515, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.08.090, 74.09.520, and 74.39A.090. WSR 02-21-098, § 388-71-0515, filed 10/21/02, effective 11/21/02. Statutory Authority: RCW 74.08.090, 74.09.520, 43.20A.050, 43.43.842, 74.39A.090, 43.20A.710, 74.39.050, 43.43.830, 74.39.095. WSR 01-11-019, § 388-71-0515, filed 5/4/01, effective 6/4/01. Statutory Authority: RCW 74.08.090, 74.09.520, 43.20A.050, 43.43.842, 74.39A.090, 43.20A.710, 74.39.050, 43.43.830. WSR 00-03-043, § 388-71-0515, filed 1/13/00, effective 2/13/00.]

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0517 What are the responsibilities of a home care agency when the home care agency long-term care worker is a family member of the client and the client is receiving in-home medicaid-funded personal care or ((DDD)) respite services? A home care agency must not bill the department for in-home medicaid-funded personal care or ((DDD)) respite services when the agency employee providing care is a family member of the client served, unless approved to do so ((through an exception to rule under WAC 388-440-0001. For purposes of this section, family member means related by blood, marriage, adoption, or registered domestic partnership)) by the department or exempt as provided in RCW 74.39A.326.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0517, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0523 What are the training(=/) and certification requirements for individual providers and home care agency long-term care workers? The following chart provides a summary of the training and certification requirements for individual providers and home care agency long-term care workers, including criteria for those providers working limited hours for one person, caring for only one's child or parent, and providing respite services only.

| Who | Status | Orientation training | Safety training | Basic training | Continuing education | Credential such as certification ((HCA-C)) as a home care aide (HCA) |
|---|--|----------------------|-----------------|----------------|--|---|
| (1) An individual provider or home care agency long-term care worker who is a licensed, certified health care professional in good standing through the Washington state department of health, or an individual provider or home care agency long-term care worker with special education training who meets the criteria in RCW 18.88B.041 (1)(a)(i)(A). | ARNP, RN, LPN, HCA, CN-A, ((and allied health)) or other professionals listed in WAC 388-71-0839 | Not required. | Not required. | Not required. | Not required of ARNPs, RNs, or LPNs in chapter 388-71 WAC. ((Ten hours through June 30, 2012)) Required twelve hours ((from July 1, 2012 forward per)) under WAC 388-71-0990 and 388-71-0991 of NA-Cs, HCAs, and other professionals listed in WAC 388-71-0839, such as an individual with special education training with an endorsement granted by the superintendent of public instruction under RCW 28A.300.010. | ((Not required)) Must maintain in good standing the certification or credential or other professional role listed in WAC 388-71-0839. |

| Who | Status | Orientation training | Safety training | Basic training | Continuing education | Credential such as certification ((HCA-C)) as a home care aide (HCA) |
|---|---|--|---|--|---|--|
| (2) An individual provider or home care agency long-term care worker with specific employment history. | ((Employed as)) <u>A</u> long-term care worker <u>employed</u> at some point between January 1, 2011 and January 6, 2012 and ((who)) <u>has</u> completed the basic training requirements in effect on date of his or her hire. WAC ((388-71-0840)) <u>388-71-0839.</u> | Not required. | Not required. | Not required. | Required. ((Ten hours through June 30, 2012.)) Twelve hours from July 1, 2012 ((forward per)) <u>under WAC 388-71-0990 and 388-71-0991.</u> | Not required. |
| (3) <u>An individual provider</u> ((s)) or home care agency long-term care worker. | Contracted with the department or hired by a licensed home care agency to provide personal care service as defined in WAC 388-71-0836 and is not exempt under subsection (1) or (2) of this ((table)) <u>section.</u> | Required. Two hours ((per)) <u>under WAC 388-71-0860.</u> | Required. Three hours per WAC 388-71-0860. | Required. Seventy hours ((per)) <u>under WAC 388-71-0870 and 388-71-0875.</u> | Required. Twelve hours ((per)) <u>under WAC 388-71-0990 and 388-71-0991.</u> | <u>Home care aide certification required ((per)) under WAC 388-71-0975. Home care aide certification required under WAC 388-71-0975 within two hundred days of the date of hire as provided in WAC 246-980-050 (unless the department of health issues a provisional certification under WAC 246-980-065).</u> |
| (4) An individual provider ((with)) <u>who works limited hours for one person.</u> | Contracted individual providing twenty hours or less of care for one person per calendar month and does not meet the criteria in (1) or (2) of this ((table)) <u>section.</u> | Required. Two hours ((per)) <u>under WAC 388-71-0860.</u> | Required. Three hours ((per)) <u>under WAC 388-71-0860.</u> | Required. Thirty hours ((per)) <u>under WAC 388-71-0880.</u> | Not required ((prior to June 30, 2014)). | Not required. |
| (6) <u>An individual who provides only respite services and works three hundred hours or less in any calendar year.</u> | Contracted individual providing only respite care and works no more than three hundred hours in the calendar year, is not exempt in subsection (1) or (2) of this section, and does not meet criteria in subsection (7) of this section. | Required. Two hours under WAC 388-71-0860. | <u>An individual who provides only respite services and works three hundred or less in any calendar year.</u> | Contracted individual providing only respite care and works no more than three hundred hours in the calendar year, is not exempt in subsection (1) or (2) of this section, and does not meet the criteria in subsection (7) of this section. | Required. Two hours under WAC 388-71-0860. | <u>An individual who provides only respite services and works three hundred hours or less in any calendar year.</u> |

| Who | Status | Orientation training | Safety training | Basic training | Continuing education | Credential such as certification ((HCA-C)) as a home care aide (HCA) |
|---|---|--|--|---|--|--|
| ((5) Parent, step-parent, or adoptive parent as individual provider)) (6) An individual provider caring only for his or her biological, step, or adoptive adult child. | ((Department paid)) Contracted individual providing care only for his or her adult child ((ONLY and receiving)) that receives services through the ((division of)) developmental disabilities administration and not exempt under (1) or (2) of this ((table)) section. | Required. Two hours per WAC 388-71-0895. | Required. Three hours ((per)) under WAC 388-71-0895. | Required. Seven hours ((per)) under WAC 388-71-0890. | Not required. | Not required. |
| ((6) Biological, step, or adoptive parent/adult child as individual provider)) (7) An individual provider caring only for his or her biological, step, or adoptive child, or parent. | ((Who is a department paid)) Contracted individual providing care only to his or her child or parent, who is not exempt in subsection (1) or (2) of this section, and does not meet criteria in ((5) and is not exempt under (1) or (2) of this table)) (6) of this section. | Required. Two hours ((per)) under WAC 388-71-0860. | Required. Three hours ((per)) under WAC 388-71-0860. | Required. Thirty hours ((per)) under WAC 388-71-0880. | Required ((for adult)). An individual provider caring only for his or her biological, step, or adoptive child ((per)) or parent under WAC 388-71-0990 and 388-71-0991. Not required for ((parent provider per)) an individual provider caring only for his or her biological, step, or adoptive child under WAC 388-71-1001. | Not required. |

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0523f, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 14-14-025, filed 6/24/14, effective 7/25/14)

WAC 388-71-0540 ~~When will the department ((, AAA, or department designee deny payment for services of an)) reject your choice of individual provider ((or home care agency long-term care worker))?~~ (1) ~~The department ((, AAA, or department designee)) will ((deny payment for the services of)) reject an individual provider ((or home care agency provider)) who:~~

~~((1) When the services are provided by an employee of the home care agency who is related by blood, marriage, adoption, or registered domestic partnership to the client)) (a) Is the client's spouse, except in the case of an individual provider for a chore services client;~~

~~(b) Is the natural, step, or adoptive parent of a minor client aged seventeen or younger;~~

~~(c) Is the foster parent providing personal care or skills acquisition training to a child residing in their licensed foster home;~~
~~(d) Does not meet the qualifications under WAC 388-71-0510; or~~
~~(e) Has had a contract terminated within the last ninety days for not complying with the work week limits of chapter 388-114 WAC.~~

~~(2) ((When he or she is the client's spouse, 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, per WAC 388-478-0020;~~

~~(3) When he or she is the natural/step/adoptive parent of a minor client aged seventeen or younger receiving services under medicaid personal care;~~

~~(4) When he or she is a foster parent providing personal care to a child residing in their licensed foster home;~~

~~(5) When he or she has had any of the following:~~

~~(a) A history of noncompliance with federal or state laws or regulations in the provision of care or services to children or vulnerable adults;~~

~~(b) When he or she has a conviction or pending charge for a disqualifying crime listed in WAC 388-113-0020 (1), (2) or equivalent conviction or pending charge as described in WAC 388-113-0020(3).~~

~~(c) Been found to have abused, neglected, financially exploited, or abandoned a minor or vulnerable adult by court of law or a disciplining authority, including the department of health. Examples of legal proceedings in which such findings could be made include juvenile court proceedings under chapter 13.34 RCW, domestic relations proceeding under Title 26 RCW, or proceedings involving a court ordered permanent restraining order or order of protection, either active or expired, against the individual that was based upon abuse, neglect, financial exploitation or mistreatment of a minor or vulnerable adult;~~

~~(d) A finding of abuse or neglect of a child under RCW 24.44.020 and chapter 388-15 WAC that is:~~

~~(i) Listed on the department's background check central unit (BCCU) report; or~~

~~(ii) Disclosed by the individual, except for findings made before December, 1998. Findings made before December 1998 require a character, competence, and suitability determination.~~

~~(e) A finding of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult that is:~~

~~(i) Listed on any registry, including the department's registry;~~

~~(ii) Listed on the department's background check central unit (BCCU) report; or~~

~~(iii) Disclosed by the individual, except for adult protective services findings made before October 2003. Findings made before October 2003 require a character, competence, and suitability determination.~~

~~(6) Who has registered sex offender status;~~

~~(7) Who has had a license, certification, medicaid or medicare provider agreement, or a contract for the care of children or vulnerable adults denied, suspended, revoked, not renewed, or terminated, for noncompliance with state and/or federal regulations;~~

~~(8) Who obtained or attempted to obtain a license, certification or contract by fraudulent means or misrepresentation;~~

~~(9) Who knowingly, or with reason to know, made a false statement of material fact on his or her application for a license, certifica-~~

tion, contract or any data attached to the application, or in any matter involving the department;

~~(10) Who willfully prevented or interfered with or failed to cooperate with any inspection, investigation, or monitoring visit made by the department, including refusal to permit authorized department representatives to interview clients or have access to their records;~~

~~(11) When the client's assessment or reassessment does not identify an unmet need;~~

~~(12) Who 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);~~

~~(13) Who does not successfully complete applicable training requirements, within the timeframes described in WAC 388-71-0875, 388-71-0880, 388-71-0890 and 388-71-0991. If an individual provider or long-term care worker employed by a home care agency does not complete required training within the required timeframe, and:~~

~~(a) If the worker is not required to be a certified home care aide, then the long-term care worker may not provide care until the training is completed; or~~

~~(b) If the worker is required to be a certified home care aide, then the long-term care worker may not provide care until the certification has been granted.~~

~~(14) Who does not successfully complete the certification or recertification requirements as described under WAC 388-71-0975; or~~

~~(15) Who has had a home care aide certification denied, suspended, or revoked. If the individual is otherwise qualified, payment for services may resume when his or her certification has been reissued.~~

~~In addition,)) The department ((, AAA, or department designee may deny payment to or terminate the contract of)) will also reject an individual provider ((as provided under WAC 388-71-0543, 388-71-0546, and 388-71-0551)) when the department believes the individual will be unable to appropriately meet the care needs of the client, including health and safety.~~

[Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.056. WSR 14-14-025, § 388-71-0540, filed 6/24/14, effective 7/25/14. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0540, filed 12/20/12, effective 1/20/13. Statutory Authority: RCW 74.08.090, 74.09.520, 2009 c 571, and Washington state 2009-11 budget, section 206(17). WSR 10-06-112, § 388-71-0540, filed 3/3/10, effective 4/3/10. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 07-24-026, § 388-71-0540, filed 11/28/07, effective 1/1/08. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.010 and 74.39A.020. WSR 06-05-022, § 388-71-0540, filed 2/6/06, effective 3/9/06. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 05-11-082, § 388-71-0540, filed 5/17/05, effective 6/17/05. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. WSR 02-10-117, § 388-71-0540, filed 4/30/02, effective 5/31/02. Statutory Authority: RCW 74.08.090, 74.09.520, 43.20A.050, 43.43.842, 74.39A.090, 43.20A.710, 74.39.050, 43.43.830, 74.39.095. WSR 01-11-019, § 388-71-0540, filed 5/4/01, effective 6/4/01. Statutory Authority: RCW 74.08.090, 74.09.520, 43.20A.050, 43.43.842, 74.39A.090, 43.20A.710, 74.39.050, 43.43.830. WSR 00-03-043, § 388-71-0540, filed 1/13/00, effective 2/13/00.]

Reviser's note: The unnecessary underscoring 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.

NEW SECTION

WAC 388-71-05410 What are the client's rights if the department rejects their choice of individual provider? (1) If the department rejects the client's choice of individual provider, the client has a right to:

(a) An administrative hearing to appeal the decision, as described in chapter 388-02 WAC and Title 182 WAC; and

(b) Receive services from another currently contracted qualified individual provider or home care agency provider, or to receive services through other settings the client is eligible for.

(2) The hearing rights provided under this section are rights of the client and not the individual provider.

(3) Denying a request for increased work week limits for an individual provider is not a denial of choice of provider.

(4) For the purpose of an administrative hearing, a "DISQUALIFY" background check result on a Notification of Background Check Result letter from the department's background check central unit indicates a department background check showed a disqualifying crime or negative action under chapter 388-113 WAC. A "DISQUALIFY" result, if admitted into evidence, meets the department's burden to show the applicant has a disqualifying crime or negative action under chapter 388-113 WAC. A party appealing the department's decision to deny their choice of provider can rebut a "DISQUALIFY" result by introducing clear and convincing evidence that the Notification of Background Check Result letter is erroneous. This section does not grant a long-term care worker a right to an administrative hearing to contest the results of a background check or the denial or termination of a contract.

[]

NEW SECTION

WAC 388-71-05415 When will the department deny payment to the home care agency? The department will deny payment to the home care agency for services provided to a department client by an agency provider that it employs who:

(1) Does not meet the qualifications in WAC 388-71-0510; or

(2) Is a family member of the client served, except as provided by 74.39A.326.

[]

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0543 When may the department (~~(, AAA, or department designee deny payment for the services)~~) reject your choice of an individual provider? In addition to (~~(mandatory denials of payment under WAC 388-71-0540, the department, AAA, or department designee may deny payment for the services of an individual provider who:~~

~~(1) Has been convicted of:~~

- ~~(a) Any crime that the department determines is reasonably related to the competency of the person to provide care to a client; or~~
- ~~(b) A crime involving a firearm used in commission of a felony or in any act of violence against a person.~~
- ~~(2) Is engaged in the misuse of alcohol, controlled substances, or legend drugs;~~
- ~~(3) Has committed an act of domestic violence toward a family or household member;~~
- ~~(4) Has been found in any final decision of a federal or state agency to have abandoned, neglected, abused or financially exploited a vulnerable adult, unless the department is required to deny payment under WAC 388-71-0540;~~
- ~~(5) Has had a license for the care of children or vulnerable adults denied, suspended, revoked, terminated, or not renewed unless the department is required to deny payment under WAC 388-71-0540;~~
- ~~(6) Has had any health care provider license, certification or contract denied, suspended, revoked, terminated, even though the license was later reinstated after satisfactory completion of conditions or other requirements. This provision also applies to a long-term care worker who voluntarily relinquished a license, certification or contract in lieu of revocation or termination;~~
- ~~(7) Has had any residential care facility or health care facility license, certification, contract denied, suspended, revoked, terminated, even though the license, certification or contract was later reinstated after satisfactory completion of conditions or other requirements. This provision also applies to a long-term care worker who voluntarily relinquished a license, certification or contract in lieu of revocation or termination;~~
- ~~(8) Has been enjoined from operating a facility for the care and services of children or adults; or~~
- ~~(9) Has been the subject of a sanction or corrective or remedial action taken by federal, state, county, or municipal officials or safety officials related to the care or treatment of children or vulnerable adults, unless the department is required to deny payment under WAC 388-71-0540)) the reasons the department must reject your choice of provider under WAC 388-71-0540, the department may also reject your choice of an individual provider under the conditions listed in WAC 388-113-0050, 388-113-0060, and 388-113-0070 and when the individual provider fails to meet the requirements under WAC 388-71-0515 or the terms of the contract or the employment reference guide.~~

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0543, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0561 When does an individual provider have the right to an administrative hearing and how can a hearing be requested? (1) An individual provider has the right to an administrative hearing when the department denies payment to the individual provider because:

- (a) He or she has not been certified by the department of health as a home care aide within the required timeframe; or
- (b) If exempted from certification, he or she has not completed required training within the required timeframe.

(2) An individual provider has the right to an administrative hearing when the department terminates the individual provider's contract, or takes other enforcement measures against the individual provider because:

(a) He or she has not completed required training within the required timeframe; or

(b) His or her certification as a home care aide has been revoked by the department of health.

(3) In an administrative hearing challenging an action under subsection (1) or (2) above, the individual provider may not challenge an action by the department of health that affects the individual provider's certification. Actions by the department of health must be challenged through an appeal to the department of health, as provided in department of health rules.

(4) To request an administrative hearing, an individual provider must send, deliver, or fax a written request to the office of administrative hearings (OAH). OAH must receive the written request within thirty calendar days of the effective date on the department's notice letter that is served (~~upon~~) to the individual provider.

(5) The individual provider should keep a copy of the request.

(6) The appeal process will be governed by the Administrative Procedure Act (chapter 34.05 RCW), RCW 74.39A.085, chapter 388-02 WAC, Title 182 WAC and this chapter. If there is a conflict between chapter 388-02 WAC, Title 182 WAC and this chapter, this chapter will govern.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0561, filed 12/20/12, effective 1/20/13.]

TRAINING

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0836 What definitions apply to the long-term care worker training requirements? The following definitions apply to the long-term care worker training requirements:

(1) **"Activities of daily living,"** (~~in the context of this chapter,~~) means self-care abilities related to personal care such as bathing, eating, using the toilet, medication assistance, dressing, and transfer. Instrumental activities of daily living may also be used to assess a person's functional abilities in the home and the community such as cooking, shopping, house cleaning, doing laundry, working, and managing personal finances.

(2) **"Care team"** (~~includes~~) means the client and everyone involved in his or her care. The care team (~~can~~) may include family, friends, doctors, nurses, long-term care workers, social workers, and case managers. The role of the care team is to support the client's well-being (~~of the client,~~). However, the client directs the care plan.

~~(("Certified home care aide" means a long-term care worker who has obtained and maintains a home care aide certification through the department of health.))~~

(3) **"Challenge test"** means a ~~((challenge))~~ competency test taken for specialty training~~((7))~~ without first taking the class for which the test is designed and ~~((ean))~~ may only be used when basic training is not required.

(4) **"Client"** means an individual receiving in-home services.

(5) **"Competency"** ~~((defines))~~ means the integrated knowledge, skills, or behavior expected of a long-term care worker after completing training in a required topic area. Learning objectives are associated with each competency.

(6) **"Competency testing"** ~~((is))~~ means evaluating a student to determine if he or she can demonstrate the required level of skill, knowledge, ~~((and/or))~~ and behavior with respect to the identified learning objectives of a particular course. The department only requires competency testing for nurse delegation core and specialized diabetes training, and the specialty and expanded specialty trainings. Training programs may integrate competency testing within their approved curricula.

(7) **"Core basic training"** means the portion of the seventy-hour long-term care worker basic training that covers the core competencies and skills that long-term care workers need in order to provide personal care services efficiently and safely. The core basic training hours also includes hours devoted to student practice and demonstration of skills.

(8) **"Date of hire"** for determining timeframes related to training and certification, means the date of hire as described in WAC 246-980-010.

~~(("DDD"))~~ (9) **"DDA"** refers to the ~~((division of))~~ developmental disabilities administration.

(10) **"Direct care worker"** means a paid individual who provides direct, personal care services to persons with disabilities or the elderly requiring long-term care (see also the definition of long-term care worker, which includes client care workers).

(11) **"Department"** or **"DSHS"** ~~((refers to))~~ means the department of social and health services.

(12) **"Enhancement"** ~~((is))~~ means additional time provided for skills practice and additional training materials or classroom activities that help a long-term care worker to thoroughly learn the course content and skills. Enhancements can include new student materials, videos or DVDs, online materials, ~~((and/or))~~ and additional student activities.

(13) **"Expanded specialty training"** means optional curricula that provide caregivers with advanced knowledge and skills to provide person-centered care to clients or residents living with conditions other than developmental disabilities, dementia, and mental health. The optional expanded specialty training may include such topics as traumatic brain injury, diabetes care, and bariatric care. The optional expanded specialty training curricula must be DSHS developed and based on competencies and learning objectives established by the department.

(14) **"Guardian"** means an individual as defined in chapter 11.88 RCW.

(15) **"Home care aide"** or **"certified home care aide"** means a long-term care worker who has obtained and maintains a home care aide certification through the department of health.

(16) **"Individual provider" or "IP"** means a person who has contracted with the department to provide personal care or respite care services to persons with functional disabilities under a medicaid state plan program, such as the medicaid personal care or community first choice programs or under a federal medicaid waiver ((such as community options)) program ((entry system (COPEs), or other waiver programs)).

(17) **"Learning objectives"** ((are)) means measurable, written statements that clearly describe what a long-term care worker must minimally learn to meet each competency. Learning objectives are identified for each competency. Learning objectives provide consistent, common language and a framework for curriculum designers, the curriculum approval process, and testing. Curriculum developers have the flexibility to determine how learning objectives are met and may include additional content deemed necessary to best meet the competency in a particular setting.

(18) **"Long-term care worker"** ((includes)) means:

(a) All persons ((providing)) who provide paid, personal care services for the elderly or persons with disabilities, including but not limited to individual providers of home care services, direct care ((employees of)) workers employed by home care agencies, providers of home care services to persons with developmental disabilities under Title 71A RCW, all direct care workers in state-licensed ((boarding homes)) assisted living facilities, adult family homes, respite care providers, community residential service providers, and any other direct care staff ((providing)) who provide home or community-based services to the elderly or persons with functional disabilities or developmental disabilities ((, and supported living providers)).

((The following persons are not)) (b) Long-term care workers do not include:

((1) Persons who are:

(a) Providing personal care services to individuals who are not receiving state-funded services; and

(b) The person is not employed by an agency or facility that is licensed by the state.

(2) Persons employed by:

(a) Nursing homes licensed under chapter 18.51 RCW;

(b) Facilities certified under 42 C.F.R. Part 483;

(c) Residential habilitation centers under chapter 71A.20 RCW;

(d) Hospitals or other acute care settings;

(e) Hospice agencies licensed under chapter 70.127 RCW;

(f) Adult day care centers or adult day health centers.

(3) Persons whose services are exclusively limited to assistance with "instrumental activities of daily living," as that term is defined in WAC 388-106-0010)) (i) Persons employed by the following facilities or agencies: Nursing homes subject to chapter 18.51 RCW, hospitals or other acute care settings, residential habilitation centers under chapter 71A.20 RCW, facilities certified under 42 C.F.R., Part 483, hospice agencies subject to chapter 70.127 RCW, adult day care centers; or

(ii) Persons who are not paid by the state, by a private agency, or facility licensed by the state to provide personal care services.

(19) **"Personal care services"** means physical or verbal assistance with activities of daily living, or activities of daily living and instrumental activities of daily living ((which)) that are provided to the client.

(20) "**Seventy-hour long-term care worker training**" means the seventy-hours of required training that a new long-term care worker must complete within one hundred and twenty days of hire. It has three components: Core competencies, practice of skills, and population specific topics, which may include specialty and nurse delegation training.

(21) "**Specialty training**" means curricula that meets the requirements of RCW 18.20.270 and 70.128.230 to provide basic core knowledge and skills that caregivers need to learn and understand to effectively and safely provide care to residents living with mental illness, dementia, or developmental disabilities. The specialty training curricula may be DSHS developed or DSHS approved and must be based on the competencies and learning objectives in WAC 388-112A-0430, 388-112A-0440, or 388-112A-0450.

(22) "**Training entity**" means an organization, including an independent contractor, who (~~is providing~~) provides or may provide training under this (~~section~~) chapter using approved curriculum. Training entities may only deliver approved curriculum.

(23) "**Training partnership**" means a joint partnership or trust that includes the office of the governor, and the exclusive bargaining representative of individual providers under RCW 74.39A.270 with the capacity to provide training, peer mentoring, and workforce development, or other services to individual providers.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0836, filed 12/20/12, effective 1/20/13.]

NEW SECTION

WAC 388-71-0837 How does DSHS determine a long-term care worker's date of hire? (1) The department determines a long-term care worker's date of hire according to WAC 246-980-010.

(2) The date of hire is specific to each long-term care worker. It does not change when a long-term care worker changes clients or employers unless the long-term care worker meets the criteria in WAC 388-71-0980.

(3) This section does not apply to background check requirements under this chapter.

[]

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0839 ((What)) Which long-term care workers are exempt from the seventy hour, thirty hour or twelve hour basic training ((requirement)) requirements? The following long-term care workers are exempt from the seventy-hour long-term care worker basic training requirement:

(1) (~~A person already~~) An individual employed as a long-term care worker on January 6, 2012, who (~~completed~~) complied with the basic training requirements in effect on the date of his or her hire;

~~(2) ((A person employed as a long term care worker on January 6, 2012, who completes within one hundred twenty days of hire the basic training requirements in effect on the date of his or her hire;~~

~~(3) A person)) An individual previously employed as a long-term care worker who completed the basic training requirements in effect on the date of his or her hire, and was employed as a long-term care worker at some point between January 1, 2011 and January 6, 2012 (~~(, this exemption will be verified at time of hire or service begin date))~~);~~

~~((4) An individual provider who worked as a respite provider or who provided care to a minor between January 1, 2011 and January 6, 2012, and who completed the training requirements in effect on the date of his or her hire;~~

~~(5)) (3) Registered nurses, licensed practical nurses, ((nurse technicians, or)) and advanced registered nurse practitioner licensed under chapter 18.79 RCW;~~

~~((6)) (4) Nursing assistants certified under chapter 18.88A RCW and persons in an approved training program for certified nursing assistants under chapter 18.88A RCW provided that they complete the training program within one hundred twenty days of the date of hire and the department of health has issued them their nursing assistant certified credential within two hundred days of the date of hire;~~

~~((7) Certified counselors under chapter 18.19 RCW;~~

~~(8) Speech language pathologists or audiologists under chapter 18.35 RCW;~~

~~(9) Occupational therapists under chapter 18.59 RCW;~~

~~(10) Physical therapists under chapter 18.74 RCW;~~

~~(11)) (5) A home health aide who ((is)) was employed by a medicare certified home health agency within the year before being hired as a long-term care worker and has met the requirements of 42 C.F.R., ((Part 483.35)) Sec. 484.36;~~

~~((12)) (6) An individual with special education training ((and)) who has an endorsement granted by the Washington state superintendent of public instruction as described in RCW 28A.300.010; and~~

~~((13) Individuals who are in a training program to become credentialed in a category listed from subsection (5) through (10) must complete this training program within one hundred twenty days of hire or service begin date to meet this exemption)) (7) Home care aides (HCAs) certified under chapter 18.88B RCW.~~

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0839, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0860 Who must complete orientation and safety training and by when? Unless exempted in WAC 388-71-0839 (1) through ~~((12))~~ (7), all long-term care workers must complete orientation and safety training prior to providing care to a client.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0860, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0870 What is the seventy hour basic training? (1)

~~The seventy-hour long-term care worker basic training ((of seventy hours is training that))~~ includes:

(a) ~~The core competencies and skills that long-term care workers need in order to provide personal care services effectively and safely; ((and))~~

(b) Practice and demonstration of skills; and

(c) Population specific competencies.

(2) ~~((All seventy hour basic training curriculum must be))~~ DSHS approved ((by the department and provided by qualified instructors)) seventy-hour basic training curricula.

(3) On-the-job training, as described in WAC 388-71-0932, may be applied to seventy-hour long-term care worker basic training for an amount that must be approved by the department.

(4) ~~The DSHS developed ((revised))~~ fundamentals of caregiving ((-RFOC-)) (FOC) or another department approved training may be used to teach core basic training but it must include enhancements. Additional student materials are required to ensure the enhancements are well planned and documented for students. Materials must be submitted for approval and approved per WAC 388-71-1026. Examples of enhancements ~~((are))~~ include, but are not limited to:

(a) ~~((Adding))~~ More time for workers to practice skills including:

(i) The mechanics of completing the skill correctly((-));

(ii) Client centered communication and problem solving associated with performing the skill((-));

(iii) The different levels of care required for each skill ((+)) including independent, supervision, limited, extensive, and total((+-));

(iv) Working with assistive devices associated with a skill.

(v) Helpful tips or best practices in working through common client challenges associated with a skill((-)); and

(vi) Disease specific concerns or challenges associated with a skill.

~~((In most of these examples, additional student materials would be required to ensure the skill enhancements are well planned and documented for students. Materials must be submitted for approval and approved per WAC 388-71-1026.))~~

(b) Augmenting or adding additional materials, student activities, videos or guest speakers that:

(i) More deeply reinforce and fortify the learning outcomes required for basic training((-));

(ii) Ensure each student integrates and retains the knowledge and skills needed to provide quality basic personal care((-)); and

(iii) Prepares workers for the certification testing environment and process.

(c) Enhancements are NOT materials ((and/or)) or activities that are one or more of the following:

(i) Are out of the scope of practice for a ((LTC)) long-term care worker such as content clearly written for registered nurses((-));

(ii) Are identical to, or a direct replacement of, those already included in ((RFOC-)) FOC;

(iii) Do not reinforce Washington state laws associated with client rights and client directed care((-));

- (iv) Long-term care workers are not paid to provide ~~((-))~~; and
 (v) Are written above a high school reading level.

~~((4))~~ (5) The delivery mode of the seventy-hour long-term care worker basic training may be either in-person instruction or a hybrid of online and in-person modules. One hour of completed classroom instruction or other form of training (such as a video or online course) equals one hour of training.

(a) Online modules must be an instructor led class, such as a webinar, or an online interactive self-paced class that provides clear instructions on how students get questions answered during the course and adheres to the DSHS online class standards posted on DSHS's website.

(b) The in-person portion of hybrid modules must be no less than twelve hours of the total basic training hours and include in-person instruction on the personal care assistance tasks supporting activities of daily living, commonly referred to as skills training.

~~((5))~~ (6) The training entity must establish a way for the long-term care worker to ask the instructor questions. An instructor or representative must be available within twenty-four hours during the business week.

~~((6))~~ (7) There is no challenge test for basic training.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0870, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0875 Who must complete the seventy hour basic training and by when? Unless exempt from training in WAC 388-71-0839 (1) through ~~((12))~~ (7), all long-term care workers must complete core and population specific competencies within one hundred twenty days of ~~((~~

~~(1))~~ the date of hire ~~((for home care agency long-term care workers; or~~

~~(2) From the begin date of the authorization to provide department-paid in-home services for a client for individual providers)) as described in WAC 246-980-010.~~

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0875, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0880 Who must take the thirty hour basic training ((instead of the seventy hour basic training)) and by when must it be completed? Unless exempt from the basic training requirements under WAC 388-71-0839 (1) through ~~((12))~~ (7), the following individuals must take the thirty hour basic training under WAC 388-71-0885 ~~((, must be completed within one hundred twenty days from the begin date of the authorization for provision to provide department paid, in-home services by an individual provider, who is caring only for))~~:

~~((1))~~ (1) An individual provider who only:

(i) Cares for his or her biological, step, or adoptive child, or parent ~~((-)); or~~

~~((2) An individual provider who:~~

~~(a) Provides care to only one person; and~~

~~(b))~~ (ii) Provides no more than twenty hours of care ((in any calendar month)) for one person who is not the individual provider's biological, step, or adoptive child, or parent.

(2) An individual who provides only respite services to clients not covered under title 71A RCW, works three hundred hours or less in any calendar year and is not exempt from basic training under WAC 388-71-0839.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0880, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0888 ((What are the)) When do the seventy-hour basic training and certification requirements ((for)) apply to an individual ((provider who is initially hired to provide care for one person, if the authorized monthly hours fluctuate or individual provider begins working for more than one department client)) whose required basic training was previously less than seventy hours? (1) ~~((If an))~~ Individual ((provider is initially hired to provide care for one client and the authorized hours are for more than twenty hours he or she will have to)) providers eligible for limited training under WAC

388-71-0880 and 388-71-0893, who begin to work for a second client who is not their biological, step, or adoptive child or parent, or continue to work for one client whose authorized monthly hours fluctuate above twenty hours per month must:

(a) Complete the seventy hours of basic training((, become certified and complete continuing education even if the authorized monthly hours are later reduced to twenty hours or fewer.

(2) If the individual provider initially starts working for one client and the authorized monthly hours are twenty or fewer, he or she will have to complete the seventy hours of basic training, become certified, and complete continuing education whenever:

(a) The authorized hours increase to more than twenty hours)); ~~((or))~~ and

(b) ((He or she begins to work for a second department client)) Become a certified home care aide under WAC 388-71-095.

((3) Under these circumstances from the point of this change, the individual provider will:

(a) Have an additional one hundred twenty days to complete the seventy hours of training and additional one hundred fifty days to become certified;

(b) Be required to complete continuing education under WAC 388-71-0990; and

(c) Be required to continue to comply with the higher level of training requirements, even if the monthly authorized hours are later reduced to twenty or fewer hours)) (2) Individual providers who provide only respite services and worked more than three hundred hours in

any calendar year must complete the seventy hours of basic training and become a certified home care aide.

(3) Individual providers who previously only provided personal care to their biological, step, or adoptive child or parent through DDA or HCS who begin working for an unrelated client must complete the seventy hour basic training and become a certified home care aide.

(4) When an IP described in subsections (1), (2), or (3) of this section is required to complete the seventy hour basic training and become a certified home care aide, the IP will:

(a) Have one hundred twenty days from the date of the change to complete the seventy hour basic training and two hundred days from the date of the change to become certified; and

(b) Be required to complete continuing education under WAC 388-71-0990.

(5) For the purpose of this section, the date of the change means the date on which the IP:

(a) Began working for a client that is not his or her biological, step or adoptive child or parent;

(b) Exceeded twenty hours of work in one month; or

(c) Exceeded more than three hundred respite hours in one calendar year.

(6) If an IP is required to or chooses to become a certified home care aide and completes the seventy hour training requirements under this section, the individual will be required to continue to comply with these requirements to maintain his or her credential and complete continuing education requirements even if:

(a) The monthly authorized hours are later reduced to twenty or fewer hours;

(b) He or she no longer works for a second unrelated client; or

(c) The individual works less than three hundred respite hours in a calendar year.

(7) The training and certification requirements for an individual that met the above criteria in subsection (6) does not apply if the individual returns to work only for his or her biological, step, or adoptive parent or adult child.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0888, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0890 What are the training requirements for parent providers who are individual providers for their adult children through ~~((DDD))~~ DDA? Unless exempt from the basic training requirements as defined in WAC 388-71-0839 (1) through ~~((+12+))~~ (7), a ~~((nat-ural))~~ biological, step, or adoptive parent who is the individual provider for his or her adult child receiving services through the DSHS ~~((division of))~~ developmental disabilities administration must complete the twelve hour parent provider training, as described in WAC 388-71-0895, within one hundred twenty days from the begin date of the authorization to provide department paid, in-home services.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0890, filed 12/20/12, effective 1/20/13.]

NEW SECTION

WAC 388-71-0893 Who must take the nine hour basic training and by when must it be completed? (1) Unless exempt from the basic training requirements under WAC 388-71-0839 (1) through (7), an individual provider must take orientation and safety training and nine hours of training if he or she meets the following criteria:

(a) Provides only respite services for individuals with developmental disabilities receiving services under title 71A RCW; and

(b) Works three hundred hours or less in any calendar year.

(2) The individual provider must complete the orientation and safety training before providing care.

(3) The training partnership identified in RCW 74.39A.360 must offer at least twelve of the fourteen total hours online and five of these online hours must be individually selected from elective courses.

(4) An individual must complete the nine hours basic training required under this section within one hundred twenty days of the long-term care worker's date of hire.

[]

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0911 What are the competencies and learning objectives for the core competencies of basic training? ~~((The))~~ Long-term care worker basic training includes core competencies that describe the behavior and skills that a long-term care worker ~~((should))~~ must exhibit when working with clients ~~((-))~~ and the learning objectives ~~((are))~~ associated with each competency ~~((-))~~ as follows:

(1) Regarding communication ~~((7))~~

(a) Communicate effectively and in a respectful and appropriate manner with clients, family members, and care team members ~~((+))~~ ;

~~((a))~~ (b) Recognize how verbal and nonverbal cues impact communication with the client and care team;

~~((b))~~ (c) Engage and respect the client through verbal and non-verbal communication;

~~((e))~~ (d) Listen attentively and determine that the client, when able, understands what has been communicated;

~~((d))~~ (e) Recognize and acknowledge clients' communication including indicators of pain, confusion, or misunderstanding;

~~((e))~~ (f) Utilize communication strategies to deal with difficult situations; and

~~((f))~~ (g) Recognize common barriers to effective communication and identify how to eliminate them ~~((-))~~ ;

(2) Regarding long-term care worker self-care ~~((, take appropriate action to reduce stress and avoid burnout))~~ :

(a) Identify behaviors, practices, and resources to reduce stress and avoid burnout;

(b) Recognize common barriers to self-care and ways to overcome them; and

(c) Recognize aspects of a long-term care worker's job that can lead to stress and burnout, common signs and symptoms of stress and

burnout; and the importance of taking action to practice self-care to avoid burnout((-));

(3) Regarding the competency of effective problem solving, use effective problem solving skills to:

(a) Explain why it is necessary to understand and utilize a problem solving method;

(b) Implement a problem solving process/method; and

(c) Identify obstacles to effective problem solving and ways to overcome them((-));

(4) Regarding the competency of client rights and dignity, take appropriate action to promote and protect a client's legal and human rights as protected by federal and Washington state laws including:

(a) Protect a client's confidentiality, including what is considered confidential information, to whom a long-term care worker is allowed or not allowed to give confidential information, and how to respond if a non-care team member asks for confidential information;

(b) Promote client's dignity((-)) and privacy, and encourage, and support a client's maximum independence when providing care; ((and))

(c) Maintain a restraint-free environment, including physical, chemical, and environmental restraints. Use common, safe alternatives to restraint use; and

(d) Protect and promote the client's right to live free of abuse, neglect, abandonment, and financial exploitation((-));

(5) Regarding the competency of recognizing indicators of abuse and understanding the mandatory reporting requirements, recognize the signs of abuse and report suspected abuse, abandonment, neglect, and financial exploitation:

(a) Describe long-term care ((~~workers'~~)) worker's responsibilities as a mandatory reporter as defined in RCW 74.34.020 through 74.34.053; and

(b) Identify common indications of abuse, abandonment, neglect, and financial exploitation((-));

(6) Regarding the competency of client directed care, take appropriate action when following a client's direction regarding his or her care:

(a) Describe a long-term care worker's role in client directed care including determining, understanding, and supporting a client's choices;

(b) Describe the importance and impact of client directed care on a client's independence, self-determination, and quality of life;

(c) Identify effective problem solving strategies that help balance a client's choice with personal safety; and

(d) Report concerns when a client refuses care or makes choices that present a possible safety concern((-));

(7) Regarding the competency of cultural sensitivity, provide culturally appropriate care:

(a) Describe how cultural background, lifestyle practices, and traditions can impact care; and

(b) Use methods to determine and ensure that these are respected and considered when providing care((-));

(8) Regarding the competency of body mechanics, utilize current best practices and evidence-based methods of proper body mechanics while performing tasks as outlined in the care plan((-));

(9) Regarding the competency on fall prevention(~~(, prevent or reduce the risk of falls)~~):

(a) Identify fall risk factors and take action to reduce fall risks for a client; and

(b) Take proper steps to assist when a client is falling or has fallen~~((-))~~;

(10) Regarding the competency of skin and body care, use personal care practices that promote and maintain skin integrity:

(a) Explain the importance of observing a client's skin, when to observe it, and what to look for including common signs and symptoms of skin breakdown;

(b) Identify risk factors of skin breakdown;

(c) Observe skin at pressure point locations and report any concerns;

(d) Describe what a pressure ulcer is, what it looks like, and what actions to take if a client appears to be developing or develops a pressure ulcer;

(e) Describe current best practices that protect and maintain a client's skin integrity including position changes when sitting or lying for extended periods, and proper positioning and transfer techniques;

(f) Implement current best practices that promote healthy skin including hygiene, nutrition, hydration, and mobility; and

(g) Identify when to report skin changes and ~~((to whom))~~ who to report them to;

(11) Regarding the competency on long-term care worker roles and boundaries, adhere to basic job standards, expectations, and requirements and maintain professional boundaries:

(a) Identify when, how, and why to obtain information from appropriate sources about a client's condition or disease for which they are receiving services~~((-))~~, and describe how to use this information to provide appropriate, individualized care;

(b) Describe a client's baseline based on information provided in the care plan and explain why it is important to know a client's baseline;

(c) Identify changes in a client's physical, mental, and emotional state through observation;

(d) Report changes from baseline ~~((and/or))~~ and concerns to the appropriate care team member(s);

(e) Identify basic job standards and requirements ~~((e.g.))~~ such as coming to work on time) and describe how maintaining these standards are critical to a client's safety and well-being;

(f) Explain the purpose of a care plan and describe how it is created, used and modified;

(g) Use a client's care plan to direct a long-term care worker's job tasks and any client directed care tasks;

(h) Identify what is required of a long-term care worker, as described in WAC 388-71-0946, prior to performing a nurse-delegated task;

(i) Describe the role of a care team and a long-term care worker's role in ~~((it))~~ the care team;

(j) Describe professional boundaries and the importance of maintaining them; and

(k) Identify signs of unhealthy professional boundaries, barriers to keeping clear professional boundaries, and ways to avoid or eliminate them~~((-))~~;

(12) Regarding the competency on supporting activities of daily living, perform required personal care tasks to the level of assistance needed and according to current best practices and evidence-based guidelines:

(a) Demonstrate, in the presence of a qualified instructor, all critical steps required for personal care tasks including but not limited to:

- (i) Helping an individual walk;
- (ii) Transferring an individual from bed to wheelchair;
- (iii) Turning and repositioning an individual in bed;
- (iv) Providing (~~mouth~~) oral care;
- (v) Cleaning and storing dentures;
- (vi) Shaving a face;
- (vii) Providing fingernail care;
- (viii) Providing foot care;
- (ix) Providing a bed bath;
- (x) Assisting an individual with a weak arm to dress;
- (xi) Putting knee-high elastic stockings on an individual;
- (xii) Providing passive range of motion for one shoulder;
- (xiii) Providing passive range of motion for one knee and ankle;
- (xiv) Assisting an individual to eat;
- (xv) Assisting with peri-care;
- (xvi) Assisting with the use of a bedpan;
- (xvii) Assisting with catheter care;
- (xviii) Assisting with condom catheter care; and
- (xix) Providing medication assistance(~~(-)~~);

(b) In the process of performing the personal care tasks, use proper body mechanics, listen attentively, speak clearly and respectfully while explaining what the long-term care worker is doing, incorporate client preferences, maintain privacy and dignity, support the client's level of ability, and assure (~~(their)~~) his or her comfort and safety;

(c) Appropriately utilize assistive device(s) specified in the care plan;

(d) Describe any safety concerns related to each task and how to address the concerns;

(e) Demonstrate an understanding of bowel and bladder functioning, including factors that promote healthy bowel and bladder functioning, and the signs, symptoms, and common causes of abnormal bowel and bladder function; and

(f) Identify the importance of knowing a client's bowel and bladder functioning baseline and when to report changes(~~(-)~~);

(13) Regarding the competency on food preparation and handling, plan and prepare meals using a basic knowledge of nutrition and hydration, incorporating any diet restrictions or modifications, and prevent food borne illness by preparing and handling food in a safe manner:

(a) Describe how nutrition and hydration can impact a client's health;

(b) Plan, shop, and prepare meals for a client according to the guidelines of good nutrition and hydration, incorporating any dietary requirements and restrictions (~~(per)~~) from the care plan and client preferences;

(c) Describe common signs of poor nutrition and hydration, and when to report concerns and (~~(to whom)~~) who to report concerns to;

(d) Understand that diet modification is required for certain health conditions, including dysphagia, and describe how to identify diet modifications required for a client;

(e) Recognize when a client's food choices vary from specifications on the care plan, describe when (~~(and)~~) to (~~(whom)~~) report concerns and who to report (~~(concerns)~~) them to;

- (f) Describe what causes food borne illness, the risks associated with food borne illness and examples of potentially hazardous foods;
- (g) Describe appropriate food handling practices, including:
- (i) Avoiding cross contamination from one food to another((τ));
 - (ii) Safe storage requirements for cooling of leftover foods, including:
 - (A) Depth((τ));
 - (B) Types of containers((τ)) and temperatures((τ));
 - (C) The need to maintain food at proper temperatures to limit bacterial growth; and ((what are the))
 - (D) Safe food storage and holding temperatures for both cold and hot foods((τ));
 - (iii) Best practices for thawing and re-heating food((τ)); and
 - (iv) Using clean gloves (if possible), and clean utensils when preparing food;
 - (h) Describe the importance and correct procedure for cleaning and disinfecting food contact surfaces; and
 - (i) Describe why a long-term care worker with certain types of illnesses ((and/or)), symptoms, or both must not prepare food((τ));
- ~~((Long term care workers who complete DSHS approved basic training meet the training requirements for adult family homes in RCW 70.128.250.))~~
- (14) Regarding the competency of medication assistance, appropriately assist with medications:
- (a) Identify what a long-term care worker is allowed and not allowed to do when assisting with medications as described in chapter 246-888 WAC;
 - (b) Define terms related to medication assistance including prescription drugs, over the counter medications, and as needed (PRN) medications, medication side effects, and drug interactions;
 - (c) Identify common symptoms of medication side effects and when and to whom to report concerns;
 - (d) Store medications according to safe practices and the label instructions;
 - (e) Describe, in the proper sequence, each of the five rights of medication assistance; and
 - (f) Identify what to do for medication-related concerns, including describing ways to work with a client who refuses to take medications, identifying when and to whom to report when a client refuses medication or there are other medication-related concerns, and identifying what is considered a medication error ((and when and to whom it must be reported.)), when to report a medication error, and who to report it to;
- (15) Regarding the competency of infection control and blood-borne pathogens including HIV/AIDS, implement best practices to prevent and control the spread of infections:
- (a) Identify commonly occurring infections, ways that infections are spread, and symptoms of infections;
 - (b) Describe the purpose, benefit, and proper implementation of standard precautions in infection control;
 - (c) Implement current best practices for controlling the spread of infection, including the use of hand washing and gloves;
 - (d) Demonstrate proper hand washing and putting on and taking off gloves;
 - (e) Identify immunizations that are recommended for adults to reduce the spread of virus and bacteria;

- (f) Describe laundry and housekeeping measures that help in controlling the spread of infection;
 - (g) Describe proper use of cleaning agents that destroy micro-organisms on surfaces;
 - (h) Describe what blood-borne (BB) pathogens are and how they are transmitted;
 - (i) Identify the major BB pathogens, diseases, and high-risk behaviors for BB diseases;
 - (j) Identify measures to take to prevent BB diseases;
 - (k) Describe what to do if exposed to BB pathogens and how to report an exposure;
 - (l) Describe how HIV works in the body;
 - (m) Explain that testing and counseling for HIV/AIDS is available;
 - (n) Describe the common symptoms of HIV/AIDS;
 - (o) Explain the legal and ethical issues related to HIV including required reporting, confidentiality and nondiscrimination; and
 - (p) Explain the importance of emotional issues and support for clients and long-term care workers (-);
- ~~(Long-term care workers who complete DSHS-approved basic training meet the four hours of AIDS education as required by the department of health in WAC 246-980-040.)~~
- (16) Regarding the competency on grief and loss, support yourself and the client in the grieving process:
 - (a) Define grief and loss;
 - (b) Describe common losses a client and long-term care worker may experience;
 - (c) Identify common symptoms associated with grief and loss;
 - (d) Describe why self-care is important during the grieving process; and
 - (e) Identify beneficial ways and resources to work through feelings of grief and loss;
 - (17) Long-term care workers who complete DSHS approved basic training meet the training requirements for adult family homes in RCW 70.128.250;
 - (18) Long-term care workers who complete DSHS-approved basic training meet the four hours of AIDS education as required by the department of health for the home care aide requirement in WAC 246-980-040; and
 - (19) Regarding the competency on identifying indicators of hearing loss, which may be part of the basic training or population specific hours:
 - (a) Identify common symptoms associated with hearing loss; and
 - (b) Identify what to do for hearing loss related concerns, including describing ways to communicate with a client who is experiencing hearing loss and identifying when and to whom to report when a client's hearing ability changes.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0911, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0932 What is on-the-job training? (1) Effective July 1, 2012, ~~on-the-job~~ training is a method of training (~~(when)~~) where the long-term care worker successfully demonstrates in the seventy-hour long-term care worker basic training, any or all of the core competencies for personal care or infection control skills (~~(included in the core basic training)~~) while working with a client (~~(versus)~~) on the job, instead of in a practice training setting.

(2) On-the-job training (~~(is)~~) must be provided by a qualified instructor as described in WAC 388-71-1055, who directly observes, coaches, and reinforces skills training for up to two long-term care workers at a time. The instructor providing the on-the-job training:

(a) Does not have to be the instructor who has taught the core competency training;

(b) (~~(Cannot)~~) Must not be someone whose primary job duty is providing direct care to clients; (~~(or)~~) and

(c) (~~(Cannot)~~) May be the immediate supervisor in a home care agency of the long-term care worker receiving (~~(the on-the-job)~~) this training.

(3) The (~~(person)~~) instructor overseeing (~~(on-the-job)~~) this training must:

(a) Submit DSHS required forms and become an approved instructor for the core competency of basic training; and

(b) Verify on a DSHS approved skills checklist or other department approved form, the long-term care worker's successful completion of the demonstrated skills.

(4) For the person receiving on-the-job training, the hours spent in on the job training may count (~~(for up to twelve hours)~~) toward the completion of basic training requirements.

(5) The training program (~~(shall offer)~~) must get department (~~(approved)~~) approval for the on-the-job training hours as part of the seventy hour training.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0932, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0936 What is nurse delegation core training? (1) Nurse delegation core training is the required course a nursing assistant, certified or registered, or certified home care aide must successfully complete before being delegated a nursing task.

(2) Only the curriculum developed by DSHS, "Nurse Delegation for Nursing Assistants and Home Care Aides" meets the training requirement for nurse delegation core training.

(3) DSHS must approve the instructors for nurse delegation core training prior to an instructor offering a course.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0936, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0953 ((Can)) May nurse delegation core and specialized diabetes training occur in the same year as the seventy-hour long-term care worker basic training? Nurse delegation core and specialized diabetes training ~~((can occur))~~ may be required in the same year as basic training if ~~((required to be able to perform))~~ delegated tasks need to be performed. If ~~((this occurs, the maximum of twelve hours for this training can be applied towards the continuing education requirement for the following year. Nurse delegation core and specialized diabetes trainings do not apply towards))~~ completed within one hundred and twenty days of hire, the nurse delegation core and specialized diabetes training hours may be applied towards the population specific component of the seventy-hour long-term care worker basic training.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0953, filed 12/20/12, effective 1/20/13.]

NEW SECTION

WAC 388-71-0971 Prior to hiring a long-term care worker, what training and certification requirements must be reviewed by the home care agency or department? Before hiring a long-term care worker, the home care agency or the department acting on behalf of the client, as defined under RCW 74.39A.009; or the consumer directed employer under chapter 74.39A RCW; must review and verify the highest level of training or certification achieved by the individual.

(1) When the individual is a home care aide certified under chapter 18.88B RCW, the home care agency, CDE, or department must:

(a) Verify that the individual's home care aide certification is current and in good standing; and

(b) Confirm that the individual has completed continuing education as required under WACs 388-71-0990 and 388-71-0991.

(2) When the individual is exempt from the seventy-hour long-term care worker training and certification requirements under WAC 388-71-0839, the home care agency, CDE, or department must review and verify the following:

(a) Documents demonstrating the individual's exemption status from training and certification which may include:

(i) Washington state provider active credential number, showing that the individual's license or certification is current and in good standing;

(ii) Letter from a former or current employer documenting work history during the exemption period described in WAC 388-71-0839;

(iii) Employment history records from the Washington state employment security department documenting work history information during the exemption period;

(iv) Federal tax statements documenting work history information during the exemption period; or

(v) Documentation showing completion of the basic training as required under WAC 388-71-0839;

(b) For the year in which they are hired, documentation of completion of twelve hours of continuing education, or information on

when the continuing education must be completed, that complies with WAC 388-71-0990 and WAC 388-71-0991.

(3) Individuals who have worked as long-term care workers in the past, but who did not complete the basic training or certification required at the time, may be eligible to have their date of hire reset in accordance with this section and WAC 388-71-0980.

(a) Individuals who are eligible to reset their date of hire as provided in WAC 388-71-0980 must submit a new application and fee to the department of health and adhere to the training or certification requirement under this chapter.

(b) Individuals who are not eligible to reset their date of hire as provided in WAC 388-71-0980 must not be paid to provide personal care assistance until they complete required training and become certified as a long term care worker.

(4) The home care agency, or the department acting on behalf of the client, as defined under RCW 74.39A.009; or the consumer directed employer under chapter 74.39A RCW must comply with continuing education documentation requirements under WAC 388-71-0970.

(a) Individuals who worked in the previous year in a long term care setting during the previous calendar year, are held accountable for their continuing education completion by their new employer on the date of hire and shall provide at new hire documentation of their continuing education compliance during the calendar year in which they are hired; or

(b) Individuals who work for multiple employers or move between employers shall on the date of hire, provide documentation of continuing education compliance for year in which they are hired, if hired after their birthdate.

[]

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0975 Who is required to obtain certification as a home care aide, and by when? In order to be authorized to provide department paid in-home services, all long-term care workers (~~(, who do not fall within the exemptions under the department of health WAC 246-980-070,)~~) must obtain home care aide certification (~~(within one hundred and fifty days of hire or begin date of the authorization to provide department paid in-home services effective January 7, 2012)~~) as provided in chapter 246-980 WAC.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0975, filed 12/20/12, effective 1/20/13.]

NEW SECTION

WAC 388-71-0977 Once an individual is required to obtain certification as a home care aide, may that individual revert to exempt status? (1) If an individual is required to or chooses to become a certified home care aide and completes the seventy hour training requirements under this section, the individual will be required to continue

to comply with these requirements to maintain his or her credential and complete continuing education requirements even if:

- (a) The monthly authorized hours are later reduced to twenty or fewer hours;
 - (b) He or she no longer works for a second unrelated client; or
 - (c) The individual works less than three hundred respite hours in a calendar year.
- (2) The training and certification requirements for an individual that met the above criteria in subsection (1) of this section does not apply when the individual returns to work only for his or her biological, step, or adoptive parent, or adult child.

[]

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0980 ((Can)) May a home care agency or client employ a long-term care worker who has not completed the seventy hour basic training ((and/or)) or certification requirements? (1) If an individual has previously worked as a long-term care worker, but did not complete the training or certification requirements under RCW 18.88B.041, RCW 74.39A074, and RCW 74.39A.096, or this chapter, a home care agency or client ((cannot)) must not employ ((an)) the individual to work as a long-term care worker ((if)) until the individual has ((previously worked as a long-term care worker and has not completed applicable training and/or certification requirements within the required time-frame. Such individual may be employed by a home care agency or client to work as a long-term care worker only after applicable training and/or certification requirements are met. The department is authorized by RCW 74.39A.086 to take enforcement action for noncompliance related to training and/or certification requirements)) completed the required training certification unless the date of hire has been reset as described under subsection (2) of this section.

(2) The date of hire may be reset once for each home care applicant after a minimum of one year has passed since the initial date of hire.

(3) Individuals who meet the criteria in subsection (2) of this section are allowed a new one hundred twenty days to complete the seventy-hour long-term care worker basic training and a new two hundred days to become certified as a home care aide, if required by WAC 246-980-020.

(4) Individuals who meet the criteria in subsection (3) of this section must submit a new application and fee to the department of health.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0980, filed 12/20/12, effective 1/20/13.]

NEW SECTION

WAC 388-71-0981 Is the department authorized by RCW 74.39A.086 to take enforcement action for noncompliance related to training and

certification requirements? The department is authorized under RCW 74.39A.086 to take enforcement action for noncompliance related to training and certification requirements.

[]

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0985 What is continuing education? (1) Continuing education is ((additional-relevant)) annual training designed to ((keep-current)) promote professional development and increase a person's knowledge, expertise, and skills. DSHS must approve continuing education curricula and instructors. The same continuing education course may not be repeated for credit unless it is a new or more advanced training on the same topic, or there is a demonstrated or documented need for retraining. Exceptions to this ((are first aid, CPR, and blood borne pathogens. Nurse delegation core and nurse delegation specialized diabetes training may be used to count towards continuing education)) include the following topics:

- (a) Blood-borne pathogens and infection control;
- (b) CPR training;
- (c) First aid training;
- (d) Food handling training;
- (e) Health Insurance Portability and Accountability Act (HIPAA);
- (f) Medication assistance;
- (h) Aging sensitivity;
- (i) Client rights;
- (j) Clients safety; and
- (k) Abuse and neglect identification and mandatory reporting.

(2) Nurse delegation core and nurse delegation specialized diabetes training hours when not applied to basic training may count towards continuing education.

(3) Successful completion of a department of health approved home care aide certified alternative bridge program may be applied for up to twelve hours of continuing education in the year it was completed.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0985, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0990 Who is required to complete continuing education training, how many hours ((of continuing education)) are required each year, and under what circumstances may the long-term care worker not be paid? (1) ((From January 1, 2012 through June 30, 2012, individual providers and home care agency long-term care workers whose birth date occurs January 1 through June 30, and the required basic training was previously completed must complete ten hours of continuing education. If ten hours of continuing education were completed between January 1, 2012 through June 30, 2012 for an individual provider or home care

agency long term care worker, regardless of their birth date, then the continuing education requirements have been met for 2012.

~~(2) Effective July 1, 2012,))~~ The following long-term care workers must complete twelve hours of continuing education by their birthday each year:

~~(a) Certified home care aides ((must complete twelve hours of continuing education each year after obtaining certification as described in department of health WAC 246-980-110 and 246-12-020(3).));~~

~~((3)) (b) If exempt from home care aide certification as described in RCW 18.88B.041, ((all)) long-term care workers must complete twelve hours of continuing education each year worked unless exempt from continuing education as described in WAC 388-71-1001.~~

~~((4)) (2) A long-term care worker or certified home care aide who did not complete the continuing education requirements by the timeframe described in ((1) above) this section or in WAC 388-71-0991 ((cannot)) must not be paid to provide care after that date and ((cannot)) must not be reinstated as a long-term care worker until ((they complete)) the worker has completed the continuing education requirements.~~

~~((5)) (3) One hour of completed classroom instruction or other form of training (such as a video or online course) equals one hour of continuing education. The training entity must establish a way for the long-term care worker to ask the instructor questions.~~

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0990, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0991 When must a long-term care worker or certified home care aide complete continuing education? (1) ~~((Effective July 1, 2012,))~~ All long-term care workers ((and)) who are certified home care aides must ((complete)) comply with the continuing education requirements ((described in WAC 388-71-0990 by their birthday)) under chapter 246-980 WAC.

~~(2) ((For)) Long-term care workers, who are ((required to be certified, if the first renewal period is less than a full year from the date of certification, no continuing education will be due for the first renewal period)) exempt from home care aide certification as described in RCW 18.88B.041, unless exempt from continuing education as described under WAC 388-71-1001 must complete the annual continuing education requirements for each calendar year in which they performed any work as a long-term care worker.~~

~~(3) ((For)) Long-term care workers, who are ((biological, step, or adoptive adult child, continuing education is to be completed by their birthday in the year following completion of basic training)) exempt from home care aide certification as described in RCW 18.88B.041, unless exempt from continuing education as described under WAC 388-71-1001 and who have not worked in long-term care for a calendar year or longer, are eligible to return to work as a long-term care worker when the continuing education hours required under this section are completed within the following timeframes:~~

~~(a) On or before their birthday, if their birthday will occur after the date they return to work; or~~

(b) Within forty-five calendar days of the date they returned to work, if their birthday occurred took place on or before the day they returned to work.

(i) If this forty-five calendar day time period allows workers to complete their continuing education in January or February of the following year, the hours of credit earned will be applied to the year in which they were hired.

(ii) Continuing education requirements for the calendar year after the year they were hired must be completed as required under WAC 388-71-0990, even if the long-term care worker must complete twenty-four hours of classes within a very short time.

(4) If the renewal period following initial certification as a home care aide or nursing assistant (NA-C), is less than a full year from the date of certification, no continuing education will be due for the first renewal period. The long-term care worker must complete continuing education requirement for the second renewal period on or before their birthdays.

(5) For long-term care workers who are caring for a biological, step, or adoptive parent, continuing education must be completed on or before by their birthday in the year after basic training was completed. If these long-term care workers have not worked in long-term care for a calendar year or longer they can complete their continuing education requirement as provided in subsection (3) of this section.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0991, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-1001 ((What)) Which long-term care workers are exempt from the continuing education requirement? Unless voluntarily certified as a home care aide, continuing education is not required for any of the following:

(1) Individual providers caring only for ((his or her)) their biological, step, or adoptive ((son or daughter)) child; ((and))

(2) ((Before June 30, 2014, an)) Individual ((provider who)) providers that:

(a) ((Provides)) Provide care to only one person((+)) and ((b) Provides)) provide no more than twenty hours of care in any calendar month; or

(b) Individual providers who only provide respite services and work three hundred hours or less in any calendar year;

(3) Before January 1, 2016, a long-term care worker employed by a community residential service business; and

(4) Registered nurses and licensed practical nurse licensed under chapter 18.79 RCW.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-1001, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-1026 What must be submitted to DSHS for curriculum approval? DSHS developed curricula are not required to be submitted to the department for approval unless the curriculum is being modified in any manner by the training entity.

(1) If a training entity modifies a department developed curricula in any manner, the training entity must submit the curriculum to the department for approval.

(2) Training must not be offered before receiving department curriculum and instructor approved.

(3) Online classes when applicable, must adhere to the DSHS online class standards in effect at the time of approval. These online standards are posted on the DSHS's website.

~~((1))~~ **(4) For orientation and/or safety training:**

~~(a) ((Effective January 7, 2012,))~~ Submit an outline of what will be covered in each training offered ((for example,)) including a table of contents ((or a class syllabus) showing) that shows where the required introductory topics as listed in WAC 388-71-0846 for orientation and WAC 388-71-0855 for safety training are covered in the training.

(b) Department required orientation and safety training application forms must be submitted to the department at least forty-five days in advance of when the training is expected to be offered.

~~((Training cannot be offered before receiving department curriculum and instructor approval.))~~

~~((2))~~ **(5) For continuing education:**

~~(a) ((Effective July 1, 2012, for))~~ Continuing education curriculum delivery models must only include instructor led ((and)), online ((learning, submit a summary that includes the topic, a brief description of what it will cover, and a course outline. Also include the number of training hours. For online training courses, submit a description of how the instructor or training entity will assess that the students have completed the materials and integrated the information being taught. Department required continuing education training application forms must be submitted at least forty-five days in advance of when the training is expected to be offered. The trainings cannot be offered before receiving department curriculum and instructor approval as well as the unique code assigned by the department for each curriculum)) instructor led (such as a webinar), or an online interactive self-paced class that provides clear instructions on how students get questions answered during the course.

(b) For continuing education classes, submit on a department developed form, a summary that includes the topic, a brief description of what it will cover, a course outline, and the number of training hours.

(c) For online training courses, submit the information requested in (b) of this subsection and submit a description of how the instructor or training entity will assess that the students have completed the materials and integrated the information being taught.

(d) Department required continuing education training application forms must be submitted at least forty-five days in advance of when the training is expected to be offered.

~~((3))~~ **(6) For seventy-hour long-term care worker basic training, the thirty hour basic training, and the twelve hour parent provider training:**

(a) If the instructor or training entity (~~((wants to use))~~) uses the DSHS developed (~~((revised))~~) fundamentals of caregiving learner's guide or its substitute with enhancements, they must submit the DSHS required form with all required information. (~~((Curricula must be submitted to DSHS for approval of one or both sections (core competencies and population specific competencies) of the seventy hours required for basic training, for the thirty hour basic training, and for the twelve hour parent provider training. When submitting one or both sections of the basic training curriculum for DSHS approval, it must at a minimum include:))~~)

(b) If the instructor or training entity does not use a DSHS developed revised fundamentals of caregiving learner's guide or its substitute with enhancements to teach the seventy-hour long-term care worker basic training, thirty hour basic training, and for the twelve hour parent provider training, they must submit to DSHS the following for approval:

(i) A completed DSHS curriculum checklist indicating where all of the competencies and learning objectives, described in this chapter, are located in the long-term care worker materials from the proposed curriculum for that course;

(ii) Any materials long-term care workers will receive, such as a textbook or long-term care worker manual, learning activities, audio-visual materials, handouts and books;

(iii) The table of contents or outline of the curriculum including the allotted time for each section;

(iv) Demonstration skills checklists for the personal care tasks described in WAC 388-71-0911 (12)(a) and (b), and infection control skills (hand washing and putting on and taking off gloves);

(v) The teacher's guide or manual that includes for each section of the curriculum:

(A) The goals and objectives;

(B) (~~((How that section will be taught including))~~) Methods of teaching (~~((methods and))~~), including learning activities that incorporate adult learning principles;

(C) Methods instructors will use to determine whether each long-term care worker understands the material covered and can demonstrate all skills;

(D) A list of sources or references(~~((r))~~) that were used to develop the curriculum(~~((r))~~) and if the primary source or reference is not a published citation, the instructor must provide detail on how the content was established as evidence based(~~((r))~~);

(E) Description of how the curriculum was designed to accommodate long-term care workers with either limited English proficiency (~~((and/or))~~), learning disabilities or both; and

(F) Description and proof of how input was obtained from consumers and long-term care worker representatives in the development of the curriculum.

~~((vi))~~ In addition, ~~((for))~~ (c) Curricula (~~((being))~~) submitted for the core competency section of the basic training as described in WAC 388-71-0911 (~~((r, the curriculum))~~) must include how much time long-term care workers will be given to practice skills and how instructors will evaluate and ensure each long-term care worker can proficiently complete each skill.

~~((vii))~~ (d) Entities submitting curriculum for population specific basic training must submit their own list of competencies and learning objectives used to develop the population specific basic training curriculum.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-1026, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-1055 ~~What are the minimum qualifications for an instructor ((of the seventy hour)) for basic ((training (core and population specific training))) (including thirty hour and twelve hour DDA parent providers), ((thirty hour training, twelve hour DDA parent provider training)) population specific, on-the-job ((training)), nurse delegation core ((training)), and nurse delegation specialized diabetes training?~~ An instructor for basic ((training (core and population specific training))) (including thirty hour and twelve hour DDA parent providers), population specific, on-the-job ((training)), nurse delegation core ((training)), and nurse delegation specialized diabetes training must meet the following minimum qualifications:

(1) ~~((General qualifications:~~

~~(a))~~ Twenty-one years of age; ~~((and~~

~~(b))~~ (2) Has not had a professional health care, adult family home, ((boarding home)) enhanced services facility, assisted living facility, or social services license or certification revoked in Washington state((-)); and

~~((2))~~ (3) Meets one or more of the following education ((and)) or work experience((+)

~~(a))~~ requirements upon initial approval or hire((, an instructor must))):

~~((i) Be))~~ (a) Is a registered nurse with work experience within the last five years with the elderly or persons with disabilities requiring long-term care in a community setting; ~~((or~~

~~(ii) Have))~~ (b) Has an associate degree or higher degree in the field of health or human services and six months of professional or caregiving experience within the last five years in an adult family home, ~~((boarding home)) enhanced services facility, assisted living facility, supported living through ((DDD)) DDA, or home care setting; or~~

~~((iii) Have))~~ (c) Has a high school diploma, or equivalent, and one year of professional or caregiving experience within the last five years in an adult family home, ~~((boarding home)) enhanced services facility, assisted living facility, supported living through ((DDD)) DDA, or home care setting((-));~~

~~((3))~~ (4) Meets the following teaching experience requirements:

~~(a) ((Must have))~~ One hundred hours of teaching adults in an appropriate setting on topics directly related to the basic training for basic training topics that may be offered as continuing education; or

~~(b) ((Must have))~~ Forty hours of teaching basic training while being mentored by an instructor who ((meets these qualifications, and must attend)) is approved to teach basic training;

(5) Except for instructors for nurse delegation core and diabetes training, completion of a class on adult education that meets the requirements in WAC 388-71-1066((-));

~~((4) The instructor must be))~~ (6) Experienced in caregiving practices and ((capable of demonstrating)) demonstrates competency with respect to teaching the course content or units being taught;

~~((5))~~ (7) Instructors who will administer tests must have experience or training in assessment and competency testing; and
~~((6) An instructor)~~ (8) Community instructors for nurse delegation core and specialized diabetes trainings must have a current Washington state ~~((RN))~~ registered nurse (RN) license in good standing without practice restrictions.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-1055, filed 12/20/12, effective 1/20/13.]

Reviser's note: The unnecessary underscoring 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.

NEW SECTION

WAC 388-71-1064 What are the minimum qualifications for community instructors for adult education training using DSHS curriculum?

(1) The minimum qualifications for community instructors of adult education training using DSHS curriculum, in addition to the general qualifications in WAC 388-71-1055 (1) and (2), include:

(a) The instructor must be experienced in adult education practices and capable of demonstrating competency in the entire course content;

(b) Education:

(i) Has a bachelor's degree or is a registered nurse with at least one year of education in seminars, conferences, continuing education, or in college classes in subjects directly related to adult education, such as, but not limited to English as a second language (ESL), adult basic education, and adult secondary education (one year of education equals twenty-four semester credits in a semester system, thirty-six quarter credits in a quarter system, or at least eighty hours of seminars, conferences, and continuing education); and

(ii) Successful completion of the DSHS adult education training curriculum prior to beginning to train others;

(c) Meets one or more of the following teaching experience requirements:

(i) Two years of experience teaching long-term care workers; or

(ii) Two hundred hours of experience teaching adult education or closely related subjects;

(d) Successful completion of the DSHS instructor qualification/demonstration process; and

(e) Instructor approved and contracted by the department as a community instructor.

(2) Instructors that administer tests must have experience or training in assessment and competency testing.

[]

AMENDATORY SECTION (Amending WSR 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-1066 What must be included in a class on adult education and which instructors must complete it? (1) A class on adult ed-

ucation must include content, student practice, and evaluation of student skills by the instructor in:

- ~~((1))~~ (a) Adult education theory and practice principles;
- ~~((2))~~ (b) Instructor facilitation techniques;
- ~~((3))~~ (c) Facilitating learning activities for adults;
- ~~((4))~~ (d) Administering competency testing; and
- ~~((5))~~ (e) Working with adults with special training needs ~~((for example,))~~ like limited English as a second language ~~((or))~~ proficiency, learning ~~((or literacy issues))~~ disabilities, or both.

(2) Instructors who request approval to teach either core basic training, specialty training as described in chapter 388-112A, or both, must complete the DSHS adult education class or an adult education class that meets the criteria in subsection (1) of this section and provide a copy of the certificate of completion.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-1066, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 06-05-022, filed 2/6/06, effective 3/9/06)

WAC 388-106-0035 May I receive personal care services through any of the long-term care programs when I am out of the state of Washington?

(1) You may receive personal care assistance through any long-term care programs in WAC 388-106-0015 subsections (1) through (5) when temporarily traveling out of state for less than thirty days, as long as you:

(a) Individual provider is contracted with the state of Washington or an employee of the consumer directed employer;

(b) Travel plans are coordinated with your case manager prior to departure;

(c) Services are authorized on your plan of care prior to departure; and

(d) Services are strictly for your personal care and do not include your provider's travel time, expenses.

(2) You may not receive personal care services outside of the United States.

[Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.010 and 74.39A.020. WSR 06-05-022, § 388-106-0035, filed 2/6/06, effective 3/9/06. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 05-11-082, § 388-106-0035, filed 5/17/05, effective 6/17/05.]

AMENDATORY SECTION (Amending WSR 15-01-085, filed 12/16/14, effective 1/16/15)

WAC 388-106-0040 Who can provide long-term care services? The following types of providers can provide long-term care services:

(1) Individual providers (IPs), who provide services to clients in their own home. ~~((IPs must meet the requirements outlined in WAC 388-71-0500 through 388-71-05640.))~~

(2) Home care agencies that provide services to clients in their own home. Home care agencies must be licensed under chapter 70.127 RCW and chapter 246-335 WAC and contracted with area agency on aging.

(3) Residential providers, which include licensed adult family homes, enhanced services facilities, and assisted living facilities, that contract with the department to provide assisted living, adult residential care, and enhanced adult residential care services (which may also include specialized dementia care).

(4) Providers who have contracted with the department to perform other services.

(5) In the case of new freedom consumer directed services (NFCDS), additional providers meeting NFCDS HCBS waiver requirements contracting with a department approved provider of fiscal management services.

[Statutory Authority: RCW 74.08.090 and 74.09.520. WSR 15-01-085, § 388-106-0040, filed 12/16/14, effective 1/16/15; WSR 14-15-092, § 388-106-0040, filed 7/18/14, effective 8/18/14; WSR 13-18-039 and 13-17-125, § 388-106-0040, filed 8/29/13 and 8/21/13, effective 10/1/13. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.030. WSR 06-16-035, § 388-106-0040, filed 7/25/06, effective 8/25/06. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 05-11-082, § 388-106-0040, filed 5/17/05, effective 6/17/05.]

AMENDATORY SECTION (Amending WSR 13-18-039 and 13-17-125, filed 8/29/13 and 8/21/13, effective 10/1/13)

WAC 388-106-1445 How is the amount of the individual budget determined? The department will calculate your individual budget amount after you are assigned a number of monthly hours resulting from completion of the comprehensive assessment reporting and evaluation tool, CARE. The calculation will be based on the average wage, including a mileage allowance, as determined by the collective bargaining agreement for individual provider personal care (~~paid by the department~~) multiplied by the number of units generated by the assessment, multiplied by a factor of .93, plus an amount equal to the average per participant expenditures for nonpersonal care supports purchased in the COPES waiver.

[Statutory Authority: RCW 74.08.090 and 74.09.520. WSR 13-18-039 and 13-17-125, § 388-106-1445, filed 8/29/13 and 8/21/13, effective 10/1/13; WSR 10-08-074, § 388-106-1445, filed 4/6/10, effective 5/7/10. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.030. WSR 06-16-035, § 388-106-1445, filed 7/25/06, effective 8/25/06.]

AMENDATORY SECTION (Amending WSR 17-08-065, filed 3/31/17, effective 5/1/17)

WAC 388-106-1458 How do I create and use my spending plan? (1) You create your spending plan with the assistance of the care consultant using the new freedom self-assessment and the CARE assessment.

(2) The spending plan must be approved by both you and the care consultant.

(3) You and your care consultant must identify how many personal care service units you intend to purchase prior to the month you plan to use them (service month).

(4) The value of those units is deducted from your new freedom budget.

(5) The rest of the funds can be used for other covered goods and services or saved.

(6) Once a service month begins, the number of personal care units may not be altered during that month.

(7) The maximum number of personal care units that can be purchased from the monthly budget is calculated from the individual budget as described in WAC 388-106-1445, divided by the individual provider average wage including mileage.

(8) Prior to the service month, you may elect to use savings funds to buy additional personal care.

(9) You may choose to have your personal care provided by an individual provider (IP) or a home care agency.

(10) Each unit will be deducted from your new freedom budget at the average IP wage rate including mileage.

(11) The balance of your individual new freedom budget will be available in your NFSP to save or purchase other goods and services up to the limit described in WAC 388-106-1455(2).

(12) If you have a change of condition or situation and your new freedom budget increases due to a new assessment or exception to rule, you may purchase additional personal care from an IP or home care agency mid-month at the average IP rate, including mileage during the month your budget changed.

(13) You may assign your predetermined personal care units to a different provider during the month of service.

(14) Under chapter 388-114 WAC, individual providers for one or more department clients who work more than forty hours in a work week, are entitled to overtime and the responsibility for paying the extra cost as follows:

(a) If the (~~department approves the~~) individual provider is contracted with the department and approved to work more than forty hours per week as described in WAC 388-114-0080, the department will pay the extra cost for overtime up to the number of service hours the individual provider is approved to work and the payment for these extra costs will not be charged to your budget; and

(b) If you assign more overtime hours to your individual provider than the department approved, you must pay the extra costs for the unapproved overtime hours and the additional cost will impact your monthly budget and may reduce the number of service hours you are able to purchase from it.

[Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.270, and 2016 1st sp.s. c 30. WSR 17-08-065, § 388-106-1458, filed 3/31/17, effective 5/1/17. Statutory Authority: RCW 74.08.090 and 74.09.520. WSR 13-18-039 and 13-17-125, § 388-106-1458, filed 8/29/13 and 8/21/13, effective 10/1/13.]

AMENDATORY SECTION (Amending WSR 14-14-025, filed 6/24/14, effective 7/25/14)

WAC 388-113-0005 What is the purpose of this chapter and to whom does it apply? (1) The purpose of this chapter is to describe the following:

~~((1))~~ (a) Criminal convictions, pending charges, and negative actions that automatically disqualify an ~~(individual)~~ applicant from having unsupervised access to vulnerable adults or minors who are receiving services from a program or facility under subsection (2) of this section;

(b) Exceptions to automatic disqualifications that may apply to certain criminal convictions and pending charges;

(c) Character, competence, and suitability review;

(d) Circumstances in which providers may share background check results and criminal history record information;

(e) One hundred and twenty day provisional hire while fingerprints are pending; and

(f) Confidentiality and retention for background checks.

(2) This chapter applies to the following programs or facilities:

~~(a) (Chapter 388-71 WAC, Home and community services and programs, including individual providers and employees of home care agencies)~~ Long-term care workers providing in-home care under chapter 388-106 WAC, Long-term care services;

~~(b) (Chapter 388-101 WAC, Certified community residential services and supports;~~

~~(e)) Chapter 388-76 WAC, Licensed adult family homes;~~

~~((d))~~ (c) Chapter 388-78A WAC, Licensed assisted living facilities;

~~((e))~~ (d) Chapter 388-97 WAC, Licensed nursing homes and medicare and medicaid certified nursing facilities;

~~((f) Chapter 388-825 WAC, Developmental disabilities administration programs)~~ (e) Certified community residential services and supports under chapter 388-101 and 388-101D WAC; (and)

~~((g))~~ (f) Chapter 388-107 WAC, Licensed enhanced services facilities under chapter 388-107 WAC; and

(g) Developmental disabilities administration programs under chapter 388-825 WAC.

~~((2) Exceptions to automatic disqualifications that may apply to certain criminal convictions and pending charges.))~~

[Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.056. WSR 14-14-025, § 388-113-0005, filed 6/24/14, effective 7/25/14.]

AMENDATORY SECTION (Amending WSR 14-14-025, filed 6/24/14, effective 7/25/14)

WAC 388-113-0010 What definitions apply to this chapter? "Applicant" means an employee, volunteer, student, intern, licensee, service provider, contractor, or other individual who is the subject of the background check and who will work in a position that may have unsupervised access, as defined in RCW 43.43.830 to minors or vulnerable adults.

"Authorized entity" means a service provider, licensee, contractor, or other public or private agency that:

(1) Is required to conduct background checks under the rules listed in WAC 388-113-0005; and

(2) Is authorized to conduct the background checks through the background check central unit.

"Background check" means a name and date of birth check or a fingerprint-based background check, or both.

"Background check central unit (BCCU)" means a division within the department that processes background checks for department authorized service providers and department programs who serve vulnerable individuals across Washington state.

"Background check result" means a notification letter produced by the BCCU that describes the outcome of the background check, as described in WAC 388-113-0101, but does not, by itself, include criminal history record information (CHRI).

"Criminal history record information" means the information found in the Records of Arrests and Prosecutions (RAP) sheet about a person's arrests and convictions.

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

"Drug" means a:

- ((a)) (1) Controlled substance as defined in RCW 69.50.101;
- ((b)) (2) Legend drug, as defined in RCW 69.41.010;
- ((c)) (3) Precursor drug under Chapter 69.43 RCW; or
- ((d)) (4) Imitation controlled substance, as defined in RCW 69.52.020.

"Final finding" is described in WAC 388-71-0105.

"Founded" is defined in WAC 110-30-0020.

"Fingerprint-based background check" means a search of in-state criminal history records through the Washington state patrol and national criminal history records through the Federal Bureau of Investigation (FBI).

"Individual provider (IP)" as defined in RCW 74.39A.240.

"Minor" means any person under the age of eighteen who is receiving services from a program or facility under chapter 388-71 WAC, Home and community services and programs, chapter 388-76 WAC, Adult family home minimum licensing requirements, chapter 388-78A WAC, Assisted living facility licensing rules, chapter 388-97 WAC, Nursing homes, chapter 388-101 WAC, Certified community residential services and supports, chapter 388-107 WAC, Licensing requirements for enhanced service facilities, or chapter 388-825 WAC, Developmental disabilities administration service rules.

"Name and date of birth check" is a search conducted by the background check central unit (BCCU) of Washington state criminal history and negative action records using the applicant's name and date of birth.

"Negative Action" means actions as described in WAC 388-113-0030.

"Pending charge" means a criminal charge for a ((disqualifying)) crime has been filed in a court of law for which the department has not received documentation showing the disposition of the charge.

"Record of Arrest and Prosecution (RAP sheet)" means a record kept by law-enforcement authorities of a person's arrests and convictions.

"Requesting entity" means the person or entity that requested the background check from the background check central unit (BCCU).

"Unsupervised access" ((means not in the presence of:

(a) Another employee or volunteer from the same business or organization as the applicant; or

~~(b) Any relative or guardian of any of the minors or vulnerable adults to which the applicant has access during the course of his or her employment or involvement with the business or organization)) is described in RCW 43.43.830(13).~~

"Vulnerable adult" is defined in RCW 74.34.020(17).

[Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.056. WSR 14-14-025, § 388-113-0010, filed 6/24/14, effective 7/25/14.]

AMENDATORY SECTION (Amending WSR 14-14-025, filed 6/24/14, effective 7/25/14)

WAC 388-113-0030 ((Where do I find what)) Which negative actions ((are disqualifying)) automatically disqualify an applicant from having unsupervised access to minors and vulnerable adults who are receiving services?

~~((In addition to disqualifying convictions and pending charges for disqualifying crimes, individuals are disqualified from working in positions involving unsupervised access to minors or vulnerable adults under chapters 388-71, 388-101, 388-76, 388-78A, 388-97, 388-825 and 388-107 WAC if certain findings have been made or certain actions have been taken against them. These disqualifying findings and actions are referred to as "negative actions" and they are listed in the following program rules:~~

~~(a) Chapter 388-71 WAC, Home and community services and programs, including individual providers and employees of home care agencies;~~

~~(b) Chapter 388-101 WAC, Certified community residential services and supports;~~

~~(c) Chapter 388-76 WAC, Licensed adult family homes;~~

~~(d) Chapter 388-78A WAC, Licensed assisted living facilities;~~

~~(e) Chapter 388-97 WAC, Licensed nursing homes;~~

~~(f) Chapter 388-825 WAC, Developmental disabilities administration programs; and~~

~~(g) Chapter 388-107 WAC, Licensed enhanced services facilities))~~

Applicants who must satisfy background checks requirements under a program or facility listed in WAC 388-113-0005 may not work in a position that may involve unsupervised access to minors or vulnerable adults if he or she has one or more of the following automatically disqualifying negative actions:

(1) A court of law has issued a final order finding or concluding the applicant abused, neglected, financially exploited, or abandoned a minor or vulnerable adult;

(2) The department has made a final finding of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult against the applicant or the applicant is listed on any state's registry as having a final finding of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult, and if the finding was made by adult protective services, it was after October 2003;

(3) A founded finding of abuse, neglect, sexual exploitation, or abandonment of a minor against the applicant, or the applicant was found by a court in a dependency proceeding, a title 26 RCW domestic relations proceeding, or other court proceeding to have sexually abused or exploited any minor, or to have physically abused any minor and the finding was made by child protective services after October 1, 1998. Such a finding is not disqualifying if it is accompanied by a Certificate of Parental Improvement (CPI);

(4) The applicant is a registered sex offender, or is required by law to register as a sex offender; or

(5) The department of health or another disciplining authority has issued a final order finding or concluding the applicant abused, neglected, financially exploited, or abandoned a minor or vulnerable adult.

[Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.056. WSR 14-14-025, § 388-113-0030, filed 6/24/14, effective 7/25/14.]

NEW SECTION

WAC 388-113-0050 What is a character, competence, and suitability determination? (1) A character, competence, and suitability determination is a review process that the department, or an authorized entity uses to decide whether an applicant has the character, competence, and suitability to have unsupervised access to minors or vulnerable adults.

(2) The department or authorized entity may also conduct a character, competence, and suitability determination for the purpose of deciding whether or not an applicant has the character, competence, and suitability to work with a particular department client when the applicant is or intends to be an individual provider.

(3) The department or an authorized entity may consider any information that may be relevant to an applicant's character, competence, and suitability, to maintain and promote the health and safety of the client including but not limited to:

(a) The ability of the applicant to appropriately meet the care needs of persons who would be under his or her care;

(b) A history of behaviors that may put persons who would be under the applicant's care at risk; or

(c) The vulnerability of persons who would be under the applicant's care.

(4) Additional factors that may be considered in a character, competence, and suitability determination include, but are not limited to, whether the applicant has had any of the following:

(a) Findings made or actions taken, including settlements or stipulations, by the department, the department of health, or other federal or state agencies;

(b) Sanctions imposed or corrective or remedial actions taken by federal, state, county, or municipal officials;

(c) A license, certification, or contract that is denied, suspended, revoked, or terminated, including a license or certification relinquished in lieu of discipline;

(d) Injunctions against operating a facility for the care of minors or vulnerable adults;

(e) Issuance of a final restraining order or order of protection, either active or expired;

(f) Convictions, or pending charges, for crimes not automatically disqualifying under WAC 388-113-0020, including:

(i) The amount of time that has passed since any of the applicant's convictions, pending charges;

(ii) The seriousness of any convictions or pending charges; and

(iii) The number and types of convictions or pending charges in the applicant's background;

(g) History of failure to comply with the department's billing requirements;

(h) Evidence the applicant has obtained or attempted to obtain a license, certification, department contract, or payment by fraudulent means or misrepresentation; or

(i) Evidence the applicant refused to permit authorized department representatives to interview clients, to have access to client records, or to have access to any care setting.

A character, competence, and suitability determination is only appropriate where the applicant has not been automatically disqualified.

[]

NEW SECTION

WAC 388-113-0060 How and when must a character, competence, and suitability determination be conducted by the department or an authorized entity? (1) The department or an authorized entity must conduct a character, competence, and suitability determination of an employee, prospective employee, or other individual who is required to undergo a background check when the applicant has received a "review required" result as defined in WAC 388-113-0101(b).

(2) If the department or an authorized entity is required to conduct a character, competence, and suitability determination under this section, the person or entity responsible must document in writing the following information:

(a) Reason for the decision;

(b) Whether or not the applicant may have unsupervised access to minors and vulnerable adults;

(c) The date the character, competence, and suitability determination was completed; and

(d) The name and signature of the person or persons who performed the determination.

(3) If an applicant is required to have a character, competence, and suitability determination under this section, the applicant may not have unsupervised access to minors or vulnerable adults unless the character, competence, and suitability determination has:

(a) Been completed and documented in writing.

(b) Concluded the applicant may have unsupervised access to minors or vulnerable adults.

(4) A character, competence, and suitability determination may not be conducted if an applicant has an automatically disqualifying conviction or pending charge under WAC 388-113-0020 or has an automatically disqualifying negative action under WAC 388-113-0030.

[]

NEW SECTION

WAC 388-113-0070 When may a character, competence, and suitability determination be conducted? The department or an authorized enti-

ty may choose to conduct a character, competence, and suitability determination at any time.

[]

NEW SECTION

WAC 388-113-0100 What information sources are searched when the background check central unit (BCCU) conducts a background check? (1)

The BCCU searches multiple information sources when completing state and federal background checks, including state and federal law enforcement records, state court records, and agency databases.

These sources include:

- (a) Washington state:
 - (i) Court criminal history and judicial information system records;
 - (ii) DSHS adult protective services findings;
 - (iii) DSHS residential client protection program findings;
 - (iv) DSHS child protective services findings;
 - (v) Department of health findings; and
 - (vi) Department of corrections;
 - (b) Washington state patrol (WSP) fingerprint rap sheets for fingerprint-based search;
 - (c) WSP criminal history records;
 - (d) Applicant self-disclosures;
 - (e) Federal Bureau of Investigation fingerprint rap sheets for fingerprint based search;
 - (f) Western identification network (WIN) state search (Alaska, Oregon, Idaho, Montana, Nevada, Utah, and Wyoming); and
 - (g) Stored WSP & FBI fingerprint rap sheets and WIN state rap sheets (unless prohibited by federal law).
- (2) For more information, BCCU can be contacted at BCCUInquiry@dshs.wa.gov.

[]

NEW SECTION

WAC 388-113-0101 What are the possible results of a background check? (1) The requesting entity will receive a background check result. The background check result by itself does not include criminal history record information but identifies the source of any criminal or negative action records. The possible types of results are:

- (a) A "no record" letter, which means none of the background check data sources reported criminal or negative action records and there are no background check records to be reviewed;
- (b) A "review required" letter, which means the applicant or one or more data sources reported a background issue that requires a character, competence, and suitability review by the department or authorized entity to determine whether or not the applicant can work in a position that may have unsupervised access to minors or vulnerable adults; or

(c) A "disqualify" letter, which means the applicant or one or more data sources reported a background issue that automatically disqualifies the applicant from a position that has unsupervised access to minors or vulnerable adults.

(2) The requesting entity may receive an "additional information" letter, which means the applicant or one or more data sources reported information in a manner that is unclear and BCCU requires clarifying information from the applicant before the background check can be completed. An additional information letter is not a result. If the individual receives an "additional information" letter:

(a) The individual may not be contracted or begin working in a position that has unsupervised access until the requesting entity has a non-disqualifying result from the name and date of birth check; or

(b) If the additional information letter is the result of a pending fingerprint check, the individual is not automatically disqualified, and may work as described in 388-113-0109.

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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.

NEW SECTION

WAC 388-113-0103 What does the requesting entity receive from the background check central unit? (1) The background check central unit (BCCU) provides the entity who requested the name and date of birth background check with:

(a) Background check result; and

(b) Any criminal history record information and negative actions reported from the background check data sources including the Washington state record of arrests and prosecutions (RAP) sheets; and may include prior fingerprint RAP sheets from the Federal Bureau of Investigation (FBI) if one was used to complete the background check. The FBI RAP sheets will only be distributed as described in subsection (2)(c) below.

(2) BCCU provides the entity who requested the fingerprint background check with:

(a) Background check result;

(b) Any criminal history record information and negative actions reported from the background check data sources, including Washington state RAP sheets; and

(c) Authorized governmental entities will also receive the FBI RAP sheets.

(3) In cases where the requesting entity is not authorized to receive the FBI RAP sheet, the applicant may request those records directly from BCCU.

[]

NEW SECTION

WAC 388-113-0105 When must background check results and criminal history information be shared with the applicant? The requesting entity must:

- (1) Notify the applicant of the background check result;
- (2) Inform the applicant they may have a copy of their results and criminal history record information when the entity has it; and
- (3) Provide a copy of results and criminal history record information when the entity has it, if requested. The applicant may also contact BCCU at BCCUInquiry@dshs.wa.gov.

[]

NEW SECTION

WAC 388-113-0107 When can background check results and criminal history record information be shared? (1) The requesting entity may only disclose the background check result and criminal history record information in the Washington state record of arrests and prosecutions (RAP) sheets from the background check central unit to the following:

- (a) The applicant;
 - (b) The client, or client's representative, when the client has elected to receive services from an IP; and
 - (c) Other persons or entities as allowed by federal and state law, including the department of health (DOH).
- (2) A requesting entity that receives criminal history record information from the Federal Bureau of Investigations (FBI) may only disclose the FBI RAP sheets to the following:
- (a) The applicant; and
 - (b) A governmental entity as allowed by federal and state law, including DOH.
- (3) The applicant may choose to provide a copy of the background check result and FBI RAP sheets to the requesting entity or employer.
- (4) For additional information sharing related to health care facilities as defined in RCW 43.43.830, refer to individual program WACs under title chapter 388-76 WAC, Adult family home minimum licensing requirements, chapter 388-97 WAC, Nursing Homes, chapter 388-78A WAC, Assisted living facility licensing rules.
- (5) The applicant may contact BCCU at BCCUInquiry@dshs.wa.gov for a copy of their results.

[]

NEW SECTION

WAC 388-113-0108 When will the client of an individual provider receive the result and criminal history record information from the state background check? A client who has elected to receive services from an individual provider will be notified of the result of a background check. When the result of a background check is "review required" the client, who is the managing employer of the individual provider, will be provided with a copy of the background check result

and the Washington State record of arrests and prosecutions (RAP) sheets if requested by the client. The individual provider may choose to provide a copy of the FBI RAP sheet to the client.

[]

NEW SECTION

WAC 388-113-0109 May an individual have unsupervised access to minors or vulnerable adults pending the outcome of the fingerprint check? (1) Individuals who are required to complete a fingerprint-based background check may have unsupervised access for a one hundred twenty-day provisional period when both:

(a) The individual is not disqualified by the name and date of birth background check which is also known as the interim result letter; and

(b) A fingerprint-based background check is pending, which means fingerprint appointment has been scheduled.

(2) If this section conflicts with any other provision of the WAC, this section takes precedence.

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**Chapter 388-115 WAC
Consumer directed employer**

NEW SECTION

WAC 388-115-0500 What is the purpose of this section of the chapter? The purpose of WAC 388-115-0500 through WAC 388-115-05640 is to describe:

(1) The role of the client as the managing employer of individual providers;

(2) Individual provider qualifications and responsibilities;

(3) When the consumer directed employer must or may reject a client's selected individual provider; and

(4) When the consumer directed employer has a right to an administrative hearing.

[]

NEW SECTION

WAC 388-115-0503 What definitions apply to WAC 388-115-0500 through 388-115-05640? "Area agencies on aging (AAA)" means a contracted entity that aging and long-term support administration (ALTSA) grants funds to in order to carry out the functions of the Older Americans Act, general-fund state programs and to provide case management

services and supports to individuals 18 and older who receive medic-aid-funded LTC in their own homes.

"Applicant" means a person who is in the process of becoming an in-home long-term care worker.

"Negative actions" are listed in WAC 388-113-0030.

"Background check" means a name and date of birth check or a fingerprint-based background check, or both.

"Background check result" is defined in Chapter 388-113-0101.

"Background check central unit" (BCCU) means the DSHS entity responsible for conducting background checks for the department.

"Character, competence and suitability determination (CC&S)" is defined in WAC 388-113-0050.

"Client" means an individual receiving medicaid-funded in-home long term services from the department.

"Consumer directed employer (CDE)" is a private entity that contracts with the department to be the legal employer of individual providers for purposes of performing administrative functions. The consumer directed employer is patterned after the agency with choice model, recognized by the federal centers for medicare and medicaid services for financial management in consumer directed programs. The entity's responsibilities are described in RCW 74.39A.515 and throughout this chapter 74.39A RCW and include:

(1) Coordination with the consumer, who is the individual provider's managing employer;

(2) Withholding, filing, and paying income and employment taxes, including workers' compensation premiums and unemployment taxes, for individual providers;

(3) Verifying an individual provider's qualifications; and

(4) Providing other administrative and employment-related supports. The consumer directed employer is a social service agency and its employees are mandated reporters as defined in RCW 74.34.020.

"Department" means the department of social and health services (DSHS).

"Fingerprint-based background check" means an in-state criminal history records through the Washington state patrol and national criminal history records through the Federal Bureau of Investigation.

"Individual provider (IP)" as defined in RCW 74.39A.240 limited to Individual Providers employed by the consumer directed employer.

"Managing employer" means a consumer who employs one or more individual providers and whose responsibilities include:

(1) Choosing potential individual providers and referring them to the consumer directed employer;

(2) Selecting an individual provider(s);

(3) Overseeing the day-to-day management and scheduling of the individual provider's tasks consistent with the plan of care; and

(4) Dismissing the individual provider when desired.

"Name and date of birth check" is a search, conducted by the background check central unit (BCCU), of Washington state check criminal history and negative action records using the applicant's name and date of birth.

[]

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.

NEW SECTION

WAC 388-115-0505 What is the client's role as managing employer of an individual provider? The client, or their representative, is the managing employer and:

- (1) Has the primary responsibility to select, dismiss, assign hours, and supervise the work of one or more individual providers; and
- (2) May receive assistance from the consumer directed employer or other resources in identifying potential providers.

[]

NEW SECTION

WAC 388-115-0510 What are the qualifications of an individual provider? In order to be qualified as an individual provider, an applicant must:

- (1) Be eighteen years of age or older;
- (2) Not have a disqualifying crime or negative action under chapter 388-113 WAC based on a completed background check;
- (3) Not be disqualified based on a character, competence, and suitability determination;
- (4) Complete training and certification requirements as required by WAC 388-71-0520 and WAC 388-71-0523;
- (5) If required, have a home care aide certification or other qualifying credential by the DOH that is both active and in good standing;
- (6) Be an employee of the consumer directed employer to provide personal care services;
- (7) Pass the federal exclusion list screening; and
- (8) Not have credible allegations of fraud which are pending investigation, unless they fit within the exceptions listed in 42 C.F.R. 455.23.

[]

NEW SECTION

WAC 388-115-0511 When is a background check required of an individual provider? (1) Individual providers are required to complete and pass a name and date of birth background check prior to working with a client.

(2) Individual providers are required to complete and pass a name and date of birth background check:

- (a) Every two years; and
- (b) Any time the consumer directed employer requests a new background check from an individual provider.

(3) In addition to the name and date of birth background check, individual providers must complete and pass a fingerprint-based background check as required in RCW 43.43.837 and RCW 74.39A.056.

[]

NEW SECTION**WAC 388-115-0513 How does an individual provider complete a background check?**

- (1) The individual provider must:
- (a) Complete the background check authorization form;
 - (b) Answer all questions on the background check authorization form truthfully;
 - (c) Obtain a fingerprint-based background check result;
 - (d) Not have any automatically disqualifying conviction(s), pending charge(s), or negative action(s) as described in chapter 388-113 WAC;
 - (e) Review the background check results and if necessary provide documents or other information to BCCU to correct the background check results; and
 - (f) When requested by BCCU, provide additional information in order to complete a background check as mandated by statute.
- (2) It is the responsibility of the consumer directed employer to ensure compliance with subsection (1) of this section for individual providers it employs.

[]

NEW SECTION**WAC 388-115-0516 What are the responsibilities of the consumer directed employer when providing care to a client?** In providing care to a client, the consumer directed employer must:

- (1) Be responsible that the assigned individual provider(s) understands the client's plan of care;
- (2) Assign tasks from services outlined in a client's plan of care, as described in WAC 388-106-0010;
- (3) Accommodate the client's individual preferences and unique needs in providing care;
- (4) Contact the client, client's representative and case manager when there are changes observed by the individual provider that affect the personal care and other tasks listed on the plan of care;
- (5) Be responsible that the individual provider(s) observes the client for and consults with the client or representative, regarding change(s) in health, takes appropriate action, and responds to emergencies;
- (6) Notify the case manager immediately when the client enters a hospital or moves to another setting;
- (7) Notify the case manager immediately in the event of the client's death;
- (8) Notify the department or AAA immediately when unable to staff/serve the client;
- (9) Comply with time keeping requirements, and keep accurate records of time of authorized/paid hours that are accessible to the appropriate department or designee staff; and
- (10) Comply with all applicable laws and regulations.

[]

NEW SECTION

WAC 388-115-0520 What are the training requirements for an individual provider? An individual hired on or after January 7, 2012, must meet the training requirements described in WAC 388-71-0836 through 388-71-1006. These training requirements also apply to individual providers who were hired before January 7, 2012, if they did not complete prior training requirements within one hundred twenty days of hire and they want to be reinstated to work. These training requirements and certification if required must be met prior to reinstating these individuals to work.

[]

NEW SECTION

WAC 388-115-0523 What are the training and certification requirements for individual providers? The following chart provides a summary of the training and certification requirements for individual providers, including criteria for those providers working limited hours for one person, caring only for one's child or parent, and providing respite services only:

| Who | Status | Orientation training | Safety training | Basic training | Continuing education (CE) | Required credential |
|---|--|----------------------|-----------------|----------------|---|--|
| (1) An individual provider who is a licensed, certified health care professional in good standing through the Washington state department of health, or an individual provider or home care agency long-term care worker with special education training who meets the criteria in RCW 18.88B.041 (1)(a)(i)(A). | ARNP, RN, LPN, HCA, NA-C, or other professionals listed in WAC 388-71-0839 | Not required. | Not required. | Not required. | Not required of ARNPs, RNs, or LPNs in chapter 388-71 WAC. Required twelve hours under WAC 388-71-0990 and 388-71-0991 of NA-Cs, HCAs, and other professionals listed in WAC 388-71-0839, such as an individual with special education training with an endorsement granted by the superintendent of public instruction under RCW 28A.300.010. | Not required. Must maintain in good standing the certification or credential or other professional role listed in WAC 388-71-0839. |
| (2) An individual provider with specific employment history. | A long-term care worker employed at some point between January 1, 2011 and January 6, 2012, and has completed the basic training requirements in effect on his or her date of hire. WAC 388-71-0839. | Not required. | Not required. | Not required. | Required. Twelve hours under WAC 388-71-0990 and 388-71-0991. | Not required. |

| Who | Status | Orientation training | Safety training | Basic training | Continuing education (CE) | Required credential |
|--|--|--|--|--|---|--|
| (3) An individual provider. | Hired by the consumer directed employer to provide personal care service as defined in WAC 388-71-0836, and is not exempt under subsection (1) or (2) of this section. | Required. Two hours under WAC 388-71-0860. | Required. Three hours under WAC 388-71-0860. | Required. Seventy hours under WAC 388-71-0870 and 388-71-0875. | Required. Twelve hours under WAC 388-71-0990 and 388-71-0991. | Home care aide certification required per under WAC 388-71-0975 within two hundred days of the date of hire as provided in WAC 246-980-050 (unless the department of health issues a provisional certification under WAC 246-980-065). |
| (4) An individual provider who works limited hours for one person. | Individual providing twenty hours or less of care for one person per calendar month, and does not meet the criteria in (1) or (2) of this section. | Required. Two hours under WAC 388-71-0860. | Required. Three hours under WAC 388-71-0860. | Required. Thirty hours under WAC 388-71-0880. | Not required. | Not required. |
| (6) An individual who provides only respite services and works three hundred hours or less in any calendar year. | (a) Individual providing only respite care and works no more than three hundred hours in the calendar year, is not exempt in subsection (1) or (2) of this section, and does not meet criteria in subsection (7) of this section. (b) Individual providing only respite services for individuals with developmental disabilities that receive services under Title 71A RCW and for individuals that receive services under chapter 74.39A, that is working three hundred hours or less in any calendar year, and that is not exempt in subsection (1) or (2) of this section. | Required. Two hours under WAC 388-71-0860. | Required. Three hours under WAC 388-71-0860. | Required. Thirty hours under WAC 388-71-0880. | Not required. | Not required. |

| Who | Status | Orientation training | Safety training | Basic training | Continuing education (CE) | Required credential |
|---|--|--|--|---|--|---------------------|
| (6) An individual provider caring only for his or her biological, step, or adoptive adult child. | Individual providing care only for his or her adult child that receives services through the developmental disabilities administration and not exempt under (1) or (2) of this section. | Required. Two hours per WAC 388-71-0895. | Required. Three hours under WAC 388-71-0895. | Required. Seven hours under WAC 388-71-0890. | Not required. | Not required. |
| (7) An individual provider caring only for his or her biological, step, or adoptive child, or parent. | Individual providing care only to his or her child or parent, who is not exempt in subsection (1) or (2) of this section, and does not meet criteria in subsection (6) of this section. | Required. Two hours under WAC 388-71-0860. | Required. Three hours under WAC 388-71-0860. | Required. Thirty hours under WAC 388-71-0880. | Required for an individual provider caring only for his or her biological, step, or adoptive parent under WAC 388-71-0990 and 388-71-0991. Not required for an individual provider caring only for his or her biological, step, or adoptive child under WAC 388-71-1001. | Not required. |

[]

NEW SECTION

WAC 388-115-0540 When will the consumer directed employer reject your selected individual provider? (1) The CDE will reject an individual provider who:

(a) Is the client's spouse, except in the case of an individual provider for a chore services client;

(b) Is the natural, step, or adoptive parent of a minor client aged seventeen or younger;

(c) Is the foster parent providing personal care or skills acquisition training to a child residing in their licensed foster home; or

(d) Does not meet the qualifications under WAC 388-115-0510.

(2) The CDE will also reject an individual provider when the CDE believes that the individual will be unable to appropriately meet the care needs of the consumer, including health and safety.

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

NEW SECTION

WAC 388-115-05410 What are the client's rights if the consumer directed employer rejects their selection of a person to serve as

their individual provider or discontinues their current individual provider's assignment? (1) The client may choose to receive services from a different individual provider or another qualified provider.

(2) The client has the right to dispute the decision under the consumer directed employer's dispute resolution process.

(3) The client does not have a right to a hearing under chapter 34.05 RCW.

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NEW SECTION

WAC 388-115-05415 When will the department deny payment to the CDE? The department will deny payment to the CDE for services provided to a department client:

(1) By an individual provider who does not meet the qualifications in WAC 388-115-0510;

(2) In excess of the client's authorized number of hours, except when necessary to respond to an emergent situation that poses a serious risk to the client's health and safety; or

(3) As provided in the contract with the consumer directed employer.

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NEW SECTION

WAC 388-115-0562 When does the consumer directed employer have the right to an administrative hearing and how can a hearing be requested? (1) The consumer directed employer has the right to an administrative hearing when the department or a department designee terminates its contract or takes other enforcement action related to its contract because the consumer directed employer:

(a) Employs an individual provider who has not completed training within the required timeframe; or

(b) Employs an individual provider who does not meet the certification or recertification requirements or whose certification has been revoked by the department of health (DOH).

(2) In an administrative hearing under subsection (1) of this section, the consumer directed employer may not challenge an action taken by the DOH that affects an individual provider's certification.

(3) To request an administrative hearing, the consumer directed employer must send, deliver, or fax a written request to the office of administrative hearings (OAH). OAH must receive the written request within thirty calendar days of the date the department's notice letter is served upon the consumer directed employer.

(4) The consumer directed employer should keep a copy of the request.

(5) The appeal process will be governed by the Administrative Procedure Act (chapter 34.05 RCW), RCW 74.39A.085, chapter 388-02 WAC, title 182 WAC, and this chapter. If there is a conflict between chapter 388-02 WAC, title 182 WAC, and this chapter, this chapter will govern.

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NEW SECTION

WAC 388-115-05640 Self-directed care—Who must direct self-directed care? Self-directed care under chapter 74.39 RCW must be directed by an adult client for whom the health-related tasks are provided. The adult client is responsible to train the individual provider in the health-related tasks which the client self-directs.

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NEW SECTION

The following section of the Washington Administrative Code is decodified and recodified as follows:

| Old WAC Number | New WAC Number |
|----------------|----------------|
| 388-113-0040 | 388-113-0025 |

REPEALER

The following sections of the Washington Administrative Code are repealed:

| | |
|-----------------|--|
| WAC 388-71-0512 | What is included in Washington state's name and date of birth background check and the Washington state and national fingerprint-based background check? |
| WAC 388-71-0514 | Can an individual provider or licensed home care agency long-term care worker work pending the outcome of the national fingerprint-based background check? |
| WAC 388-71-0544 | When may the department, AAA, or department designee deny payment to a home care agency for the services of a long-term care worker that it employs? |
| WAC 388-71-0546 | When may the department, AAA, or department designee reject your choice of an individual provider? |
| WAC 388-71-0551 | When may the department, AAA, or department designee terminate an individual provider's contract? |
| WAC 388-71-0553 | When may the department summarily suspend an individual provider's contract? |

- WAC 388-71-0556 When can the department, AAA, or managed care entity otherwise terminate an individual provider's contract?
- WAC 388-71-0560 What are the client's rights if the department denies, terminates, or summarily suspends an individual provider's contract?