

WSR 22-05-014
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed February 4, 2022, 9:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-01-024.

Title of Rule and Other Identifying Information: WAC

388-101D-0070 Background checks—National fingerprint background checks.

Hearing Location(s): On March 22, 2022, 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 virtual. Due to the impacts of COVID-19, hearings are being held virtually. Please see the DSHS website for the most current information.

Date of Intended Adoption: Not before March 23, 2022.

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., on March 22, 2022.

Assistance for Persons with Disabilities: Contact DSHS rules consultant, phone 360-664-6092, fax 360-664-6185, TTY 711 relay service, email tenczsa@dshs.wa.gov, by 5:00 p.m., on March 8, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The developmental disabilities administration (DDA) amended WAC 388-101D-0070 to align it with 28 C.F.R. Section 20.33(d).

Reasons Supporting Proposal: Subsection (3) was too broad in how long it allowed a fingerprint result to remain valid. Removing subsection (3) aligns this rule with federal regulations. Additionally, the FBI audit guide for noncriminal justice access to criminal history record information (CHRI), has determined that reuse of CHRI is permitted for the "same purpose" but only "within a relatively short period of time."

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 74.39A.056.

Rule is necessary because of federal law, 28 C.F.R. Section 20.33(d).

Name of Proponent: DSHS, DDA, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1575; Implementation and Enforcement: Heather Lum, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1526.

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

A cost-benefit analysis is required under RCW 34.05.328. A preliminary cost-benefit analysis may be obtained by contacting Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, fax 360-407-0955, TTY 1-800-833-6388, email Chantelle.Diaz@dshs.wa.gov.

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

Is exempt under RCW 19.85.025(4) because the rules do not affect small businesses.

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

February 4, 2022
Katherine I. Vasquez
Rules Coordinator

SHS-4910.1

AMENDATORY SECTION (Amending WSR 17-03-062, filed 1/10/17, effective 2/1/17)

WAC 388-101D-0070 Background checks—National fingerprint background checks. (1) ~~((Administrators and all caregivers who are))~~ An applicant as defined in WAC 388-113-0010 hired on or after January 1, 2016, ~~((and are))~~ who is not disqualified by the Washington state name and date of birth background check, must complete a national fingerprint background check and follow department procedures.

(2) After receiving the results of the national fingerprint background check the ~~((service))~~ provider must not employ, directly or by contract, an administrator, employee, volunteer, student or subcontractor who has a:

(a) Disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113 ~~((7))~~ WAC; or ~~((that is a))~~

(b) Disqualifying negative action under WAC 388-78A-2470 or WAC 388-76-10180.

~~((3) The service provider may accept a copy of the national fingerprint background check results letter and any additional information from the department's background check central unit from an individual who previously completed a national fingerprint check through the department's background check central unit, provided the national fingerprint background check was completed after January 7, 2012.))~~

[WSR 17-03-062, recodified as § 388-101D-0070, filed 1/10/17, effective 2/1/17. Statutory Authority: Chapters 71A.12, 74.34, and 74.39A RCW. WSR 16-18-040, § 388-101-3202, filed 8/30/16, effective 9/30/16.]