

WSR 22-14-039
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Long-Term Support Administration)
[Filed June 27, 2022, 1:29 p.m.]

Supplemental Notice to WSR 22-12-079.

Preproposal statement of inquiry was filed as WSR 22-06-011.

Title of Rule and Other Identifying Information: The department is proposing to repeal and amend sections of chapter 388-71 WAC, Home and community services and programs; and chapter 388-113 WAC, Disqualifying crimes and negative actions.

Hearing Location(s): On August 9, 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 COVID-19 pandemic, hearings are held virtually, see the DSHS website for the most current information.

Date of Intended Adoption: Not earlier than August 10, 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 August 9, 2022.

Assistance for Persons with Disabilities: Contact DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email tenczsa@dshs.wa.gov [tencza@dshs.wa.gov], by 5:00 p.m. on July 26, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is filing this supplemental CR-102 to include the repeal of WAC 388-71-0515 What are the responsibilities of an individual provider when providing services to a client? This section was inadvertently missed when filing the CR-102 proposal under WSR 22-12-079.

The department is proposing to repeal and amend sections of chapters 388-71 and 388-113 WAC, because of the implementation of the consumer directed employer (CDE) with the passage of SB 6199 in 2018, and the change from individuals providers contracted with the department to individual providers employed by the CDE. The current rules will no longer be applicable once all individual providers have been hired by the CDE.

Reasons Supporting Proposal: One section was inadvertently missed when the department filed the CR-102 proposal under WSR 22-12-079.

Statutory Authority for Adoption: RCW 74.08.090 and 74.39A.250.

Statute Being Implemented: RCW 74.08.090 and 74.39A.250.

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

Name of Proponent: [Not provided by agency], governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Stacy Graff, P.O. Box 45600, Olympia, WA 98504-5600, 360-742-2071.

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

A cost-benefit analysis is not required under RCW 34.05.328. This rule is not a significant legislative rule and is exempt pursuant to RCW 34.05.328 (5) (b) (iv) (rules that only correct typographical er-

rors, make address or name changes, or clarify language of a rule without changing its effect).

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

Is exempt under RCW 34.05.328 (5)(b)(iv) (rules that only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect).

June 27, 2022
Katherine I. Vasquez
Rules Coordinator

SHS-4923.4

AMENDATORY SECTION (Amending WSR 22-06-088, filed 3/1/22, effective 4/1/22)

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)~~) 18 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.

"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))~~ caregivers 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.

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

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074. WSR 22-06-088, § 388-71-0503, filed 3/1/22, effective 4/1/22. Statutory Authority: 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, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-71-0503, filed 8/30/21, effective 10/1/21.]

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

WAC 388-71-0510 What are the qualifications of a LTC worker ~~((providing in-home services))~~ under this chapter? In order to be qualified as a long-term care worker, an applicant must:

(1) Not have a disqualifying crime or negative action under chapter 388-113 WAC based on a completed background check;

(2) Not be disqualified based on a character, competence, and suitability determination;

(3) Complete training and certification requirements listed in WAC 388-71-0520 and WAC 388-71-0523; and

(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, 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, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-71-0510, filed 8/30/21, effective 10/1/21. 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.]

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

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

((3)) (2) ((Individual providers and a)) 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)) (3) 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.

[Statutory Authority: 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, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-71-0511, filed 8/30/21, effective 10/1/21.]

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

WAC 388-71-0513 How does an ((individual provider or)) agency provider complete a background check? (1) The ((individual provider or)) agency 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 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, 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, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-71-0513, filed 8/30/21, effective 10/1/21. 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 13-02-023, filed 12/20/12, effective 1/20/13)

WAC 388-71-0520 What are the training requirements for ((an individual provider or)) a home care agency long-term care worker? ((An individual provider or a)) A home care agency long-term care worker, 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 or)) home care agency long-term care workers who were hired before January 7, 2012, if they did not complete prior training requirements within ((one hundred twenty)) 120 days of hire and they want to be reinstated to work as a long term care worker. These training requirements and certification, if required, must be met prior to reinstating these individuals to work as a long term care worker.

[Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0520, filed 12/20/12, effective 1/20/13. Statutory Authority: 2008 c 146, RCW 18.20.090, 74.08.090, chapter 70.128 RCW. WSR 09-03-066, § 388-71-0520, filed 1/14/09, effective 2/14/09. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 05-11-082, § 388-71-0520, filed 5/17/05, effective 6/17/05. Statutory Authority: RCW 74.39A.050, 2003 c 140, chapters 18.79, 18.88A RCW. WSR 04-02-001, § 388-71-0520, filed 12/24/03, effective 1/24/04. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. WSR 02-10-117, § 388-71-0520, 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. WSR 00-03-043, § 388-71-0520, filed 1/13/00, effective 2/13/00.]

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

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))~~ only for one's child or parent, and providing respite services ~~only((-))~~:

Who	Status	Orientation training	Safety training	Basic training	Continuing education	((Credential such as certification as a home care aide (HCA))) <u>Required credential</u>
(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, 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)) 12 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.	<u>Not required.</u> Must maintain in good standing the certification or credential or other professional role listed in WAC 388-71-0839.
(2) An individual provider or home care agency long-term care worker 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 date of his or her hire. WAC 388-71-0839.	Not required.	Not required.	Not required.	Required. ((Twelve)) 12 hours ((from July 1, 2012)) under WAC 388-71-0990 and 388-71-0991.	Not required.

Who	Status	Orientation training	Safety training	Basic training	Continuing education	((Credential such as certification as a home care aide (HCA))) Required credential
(3) An individual provider or home care agency long-term care worker.	((Contracted with the department or hired)) <u>Hired</u> by a licensed home care agency or 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 ((per)) under WAC 388-71-0860.	Required. ((Seventy)) <u>70</u> hours under WAC 388-71-0870 and 388-71-0875.	Required. ((Twelve)) <u>12</u> hours under WAC 388-71-0990 and 388-71-0991.	Home care aide certification required under WAC 388-71-0975. Home care aide certification required under WAC 388-71-0975 within ((two hundred)) <u>200</u> 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.	Contracted individual providing ((twenty)) <u>20</u> 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)) <u>30</u> hours under WAC 388-71-0880.	Not required.	Not required.

Who	Status	Orientation training	Safety training	Basic training	Continuing education	((Credential such as certification as a home care aide (HCA))) Required credential
<p>(((6) WAC 388-71-0523 REGISTER NO.: WSR 21-10-001, filed 8/30/21 PROBLEM: filed new text should (5))) (5) An individual who provides only respite services and works ((three hundred)) 300 hours or less in any calendar year.</p>	<p>(a) ((Contracted)) <u>An individual providing only respite care and works no more than ((three hundred)) 300 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.</u> (b) <u>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 300 hours or less in any calendar year, and that is not exempt in subsection (1) or (2) of this section.</u></p>	<p>Required. Two hours under WAC 388-71-0860.</p>	<p>((An individual who provides only respite services and works three hundred or less in any calendar year.)) <u>Required. Three hours under WAC 388-71-0860.</u></p>	<p>((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.)) <u>Required. Seven hours under WAC 388-71-0890.</u></p>	<p>((Required. Two hours under WAC 388-71-0860.)) <u>Not required.</u></p>	<p>((An individual who provides only respite services and works three hundred hours or less in any calendar year.)) <u>Not required.</u></p>
<p>(6) An individual provider caring only for his or her biological, step, or adoptive adult child.</p>	<p>((Contracted)) <u>An 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.</u></p>	<p>Required. Two hours per WAC 388-71-0895.</p>	<p>Required. Three hours under WAC 388-71-0895.</p>	<p>Required. Seven hours under WAC 388-71-0890.</p>	<p>Not required.</p>	<p>Not required.</p>

Who	Status	Orientation training	Safety training	Basic training	Continuing education	((Credential such as certification as a home care aide (HCA))) Required credential
(7) An individual provider caring only for his or her biological, step, or adoptive child, or parent.	((Contracted)) An 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 (6) of this section.	Required. Two hours under WAC 388-71-0860.	Required. Three hours under WAC 388-71-0860.	Required. ((Thirty)) 30 hours under WAC 388-71-0880.	Required. ((An)) for an individual provider caring only for his or her biological, step, or adoptive child or 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.

[Statutory Authority: 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, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-71-0523, filed 8/30/21, effective 10/1/21. Statutory Authority: RCW 74.08.090, 74.09.520. WSR 13-02-023, § 388-71-0523, filed 12/20/12, effective 1/20/13.]

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

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:

- (1) Controlled substance as defined in RCW 69.50.101;
- (2) Legend drug, as defined in RCW 69.41.010;
- (3) Precursor drug under Chapter 69.43 RCW; or
- (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)) 18 who is receiving services from a program or facility under chapter 388-71 WAC, Home and community services and programs, chapter 388-106 WAC, Long-term care services, 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 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" 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, 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, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-113-0010, filed 8/30/21, effective 10/1/21. 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 21-23-014, filed 11/4/21, effective 12/5/21)

WAC 388-113-0020 Which criminal convictions and pending charges automatically disqualify an individual from having unsupervised access

to adults or minors who are receiving services in a program under chapters 388-71, 388-101, 388-106, 388-76, 388-78A, 388-97, 388-825, 388-115, and 388-107 WAC? (1) Individuals who must satisfy background checks requirements under chapters 388-71, 388-101, 388-106, 388-76, 388-78A, 388-97, 388-825, 388-115, and 388-107 WAC must not work in a position that may involve unsupervised access to minors or vulnerable adults if the individual has been convicted of or has a pending charge for any of the following crimes:

- (a) Abandonment of a child;
- (b) Abandonment of a dependent person;
- (c) Abuse or neglect of a child;
- (d) Arson 1;
- (e) Assault 1;
- (f) Assault 2 (less than five years);
- (g) Assault 3 (less than five years);
- (h) Assault 4/simple assault (less than three years);
- (i) Assault 4 domestic violence felony;
- (j) Assault of a child;
- (k) Burglary 1;
- (l) Child buying or selling;
- (m) Child molestation;
- (n) Coercion (less than five years);
- (o) Commercial sexual abuse of a minor/patronizing a juvenile prostitute;
- (p) Communication with a minor for immoral purposes;
- (q) Controlled substance homicide;
- (r) Criminal mistreatment;
- (s) Custodial assault;
- (t) Custodial interference;
- (u) Custodial sexual misconduct;
- (v) Dealing in depictions of minor engaged in sexually explicit conduct;
- (w) Drive-by shooting;
- (x) Drug crimes involving one or more of the following:
- (i) Manufacturing or possession with the intent to manufacture a drug;
- (ii) Delivery or possession with the intent to deliver a drug other than marijuana;
- (iii) Delivery of marijuana (less than three years).
- (y) Endangerment with a controlled substance;
- (z) Extortion 1;
- (aa) Extortion 2 (less than five years);
- (bb) Forgery (less than five years);
- (cc) Homicide by abuse, watercraft, vehicular homicide (negligent homicide);
- (dd) Identity theft (less than five years);
- (ee) Incendiary devices (possess, manufacture, dispose);
- (ff) Incest;
- (gg) Indecent exposure/public indecency (felony);
- (hh) Indecent liberties;
- (ii) Kidnapping;
- (jj) Luring;
- (kk) Malicious explosion 1;
- (ll) Malicious explosion 2;
- (mm) Malicious harassment;
- (nn) Malicious placement of an explosive 1;

- (oo) Malicious placement of an explosive 2 (less than five years);
- (pp) Malicious placement of imitation device 1 (less than five years);
- (qq) Manslaughter;
- (rr) Murder/aggravated murder;
- (ss) Possess depictions minor engaged in sexual conduct;
- (tt) Promoting pornography;
- (uu) Promoting prostitution 1;
- (vv) Promoting suicide attempt (less than five years);
- (ww) Prostitution (less than three years);
- (xx) Rape;
- (yy) Rape of child;
- (zz) Residential burglary;
- (aaa) Robbery 1;
- (bbb) Robbery 2 (less than five years);
- (ccc) Selling or distributing erotic material to a minor;
- (ddd) Sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;
- (eee) Sexual exploitation of minors;
- (fff) Sexual misconduct with a minor;
- (ggg) Sexually violating human remains;
- (hhh) Stalking (less than five years);
- (iii) Theft 1 (less than (~~ten~~) 10 years);
- (jjj) Theft from a vulnerable adult 1;
- (kkk) Theft 2 (less than five years);
- (lll) Theft from a vulnerable adult 2 (less than (~~ten~~) 10 years);
- (mmm) Theft 3 (less than three years);
- (nnn) Unlawful imprisonment;
- (ooo) Unlawful use of building for drug purposes (less than five years);
- (ppp) Use of machine gun in a felony;
- (qqq) Vehicular assault;
- (rrr) Violation of temporary restraining order or preliminary injunction involving sexual or physical abuse to a child;
- (sss) Violation of a temporary or permanent vulnerable adult protection order (VAPO) that was based upon abandonment, abuse, financial exploitation, or neglect; and
- (ttt) Voyeurism.

(2) If "(less than (~~ten~~) 10 years)," "(less than five years)," or "(less than three years)" appears after a crime listed in subsection (1) of this section, the individual is not automatically disqualified if the required number of years has passed since the date of the conviction. This will result in a letter from the background check central unit indicating a character, competence, and suitability review is required before allowing unsupervised access to children or vulnerable adults. This provision applies to convictions that the department has determined under subsection (3) of this section as equivalent to a crime listed in subsection (1) of this section once the period of time listed in subsection (1) of this section has passed.

(3) When the department determines that a conviction or pending charge in federal court or in any other court, including state court is equivalent to a Washington state crime that is disqualifying under this section, the equivalent conviction or pending charge is also disqualifying.

(4) In instances where a court has issued a certificate of restoration of opportunity of one of the crimes listed above, according to the procedure in RCW 9.97.020, the conviction is not automatically disqualifying but is subject to a character, competence, and suitability review.

[Statutory Authority: RCW 74.08.090, 43.43.842, and 74.39A.056. WSR 21-23-014, § 388-113-0020, filed 11/4/21, effective 12/5/21; WSR 18-08-066, § 388-113-0020, filed 4/2/18, effective 5/3/18. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.056. WSR 14-14-025, § 388-113-0020, filed 6/24/14, effective 7/25/14.]

AMENDATORY SECTION (Amending WSR 21-18-081, filed 8/30/21, effective 10/1/21)

WAC 388-113-0025 Are there any exceptions to the automatic disqualification under WAC 388-113-0020?

(1) Under the conditions described in this section, an individual is not automatically disqualified from having unsupervised access to minors and vulnerable adults if he or she:

(a) Has worked continuously for the same employer for whom he or she was working on July 24, 2014; and

(b) Does not have a conviction or pending charge that was automatically disqualifying under rules that were in effect on July 24, 2014; and

(c) Works for a program or facility that operates under chapters 388-71 WAC, (~~Individual providers and~~) home care agencies; 388-115 WAC, individual providers; 388-106 WAC, long-term care services; 388-76 WAC, Adult family ((home)) homes; 388-78A WAC, Assisted living ((facility)) facilities; or 388-97 WAC, Nursing homes and was convicted of, or has a pending charge for:

(i) Residential burglary;

(ii) Unlawful use of building for drug purposes (five or more years);

(iii) Vehicular assault; or

(d) Works for a program or facility that operates under chapter 388-825 WAC (developmental disabilities administration programs) or supported living and was convicted of, or has a pending charge for:

(i) Assault 3;

(ii) Manufacture of a controlled substance;

(iii) Delivery of a controlled substance; or

(iv) Possession of a controlled substance with the intent to manufacture or deliver.

(2) In addition to the requirements under subsection (1) (~~(7)~~) of this section, in order for an individual to be eligible for an exception under this section, the following conditions must also be satisfied:

(a) The conviction date for the crimes listed in (1)(c) and (d) must be before July 25, 2014;

(b) The individual has to continue to work for the same employer; and

(c) The employer or hiring entity must:

(i) Review the individual's character, competence, and suitability to have unsupervised access to minors or to vulnerable adults, and;

(ii) Have documentation on file demonstrating the results of the character, competence, and suitability review; and

(iii) Have documentation on file demonstrating that the individual meets all of the conditions in subsection (2) of this section, including a copy of a background check result letter dated prior to July 25, 2014, indicating the individual was not disqualified from having unsupervised access to minors or vulnerable adults.

[Statutory Authority: 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, 43.43.837 and 2018 c 278. WSR 21-18-081, recodified as § 388-113-0025, filed 8/30/21, effective 10/1/21. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.056. WSR 14-14-025, § 388-113-0040, filed 6/24/14, effective 7/25/14.]

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-71-0500	What is the purpose of this section of the chapter?
WAC 388-71-0505	Who hires and supervises an individual provider?
WAC 388-71-0507	What responsibilities do clients have related to individual provider work week limits?
WAC 388-71-0515	What are the responsibilities of an individual provider when providing services to a client?
WAC 388-71-0518	What responsibilities do individual providers have related to work week limitation?
WAC 388-71-0540	When will the department reject your choice of individual provider?
WAC 388-71-05410	What are the client's rights if the department rejects their choice of individual provider?
WAC 388-71-0543	When may the department reject your choice of an individual provider?
WAC 388-71-0561	When does an individual provider have the right to an administrative hearing and how can a hearing be requested?
WAC 388-71-05640	Self-directed care—Who must direct self-directed care?
WAC 388-71-06020	What is the purpose of WAC 388-71-06020 through 388-71-06165?
WAC 388-71-06040	What definitions apply to WAC 388-71-06020 through 388-71-06165?
WAC 388-71-06060	What is the purpose of the referral registry?

- WAC 388-71-06080 Who is eligible to request a list of providers from the referral registry?
- WAC 388-71-06125 Who hires an IP or prospective IP?
- WAC 388-71-06145 What requirements must an applicant satisfy to be placed on the referral registry as a provider?
- WAC 388-71-06150 What requirements does an IP or prospective IP have to meet in order to continue to be listed on the referral registry?
- WAC 388-71-06155 When will an IP or prospective IP be removed from the referral registry?
- WAC 388-71-06165 Can the removal of an IP or prospective IP from the referral registry be contested?