

**WSR 23-03-013**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**SOCIAL AND HEALTH SERVICES**  
(Developmental Disabilities Administration)  
[Filed January 6, 2023, 11:19 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-21-113.

Title of Rule and Other Identifying Information: WAC

388-101D-0065 Background check—General, 388-825-020 Definitions, 388-825-0571 What services am I eligible to receive from DDA if I am under the age of 18, have been determined to meet DDA eligibility requirements, and I am a subject of a state court dependency proceeding pursuant to chapter 13.34 RCW or a similar proceeding in a tribal court?, 388-825-058 What services does DDA authorize?, 388-825-0581 What programs does DDA authorize services under?, 388-825-059 How will I know which paid services I will receive?, 388-825-067 What are medicaid state plan services?, 388-825-068 What medicaid state plan services can DDA authorize?, 388-825-072 Where do I find information on DDA's home and community-based services (HCBS), eligibility rules, and definitions?, 388-825-073 What is a "state-only funded" service?, 388-825-074 Am I eligible for state-only funded services?, 388-825-079 If I am not on a DDD HCBS waiver, can I receive services that are available through the DDD HCBS waivers with state-only funding?, 388-825-081 Can I receive state-only funded services that are not available in a DDD HCBS waiver?, 388-825-082 What state-only funded services may DDA authorize?, 388-825-120 When may I appeal a decision made by the developmental disabilities administration?, 388-825-150 When may the department proceed to take action during my appeal?, 388-825-300 What is the purpose of WAC 388-825-300 through 388-825-400?, 388-825-305 Who is governed by WAC 388-825-305 through 388-825-400?, 388-825-310 What are the provider qualifications, responsibilities, and training requirements for a home care agency provider?, 388-825-315 What is your responsibility when you hire an individual provider?, 388-825-325 What are the required skills and abilities for individuals and agencies contracted to provide community first choice services, medicaid personal care, respite care, or attendant care services?, 388-825-330 What is required for agencies to provide community first choice services, medicaid personal care, or respite services?, 388-825-340 Can a provider deliver respite services in the provider's home?, 388-825-375 When will the department deny payment for services?, 388-825-385 When may the department terminate an individual respite care, attendant care, or personal care provider's contract?, 388-825-395 What are the client's rights if the department denies, terminates, or summarily suspends an individual's contract to provide respite care, attendant care, or personal care?, 388-825-396 When does a home care agency have a right to an administrative hearing?, 388-825-600 What definitions apply to WAC 388-825-600 through 388-825-690 of this chapter?, 388-825-605 What background check requirements apply to providers?, 388-825-610 Who must have a background check and a background check renewal?, 388-825-615 What type of background check is required?, 388-825-620 How often must a background check be renewed?, 388-825-621 May a DDA-contracted agency applicant or employee have access to clients before the completion of the Washington state name and date of birth background checks?, 388-825-625 What happens if an individual receives a

disqualifying background check result?, 388-825-630 What does the background check cover?, 388-825-635 Who pays for the background check?, 388-825-650 What does a character, competence, and suitability review include?, 388-825-655 How will someone know if they have been disqualified by the background check?, 388-825-660 May a provider appeal DDA's decision to deny a contract or payment based on the results of the background check?, 388-825-670 May a person receive a copy of their criminal background check results?, and 388-845-1615 Who may be qualified providers of respite care?

Hearing Location(s): On March 7, 2023, 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 virtually. Due to the COVID-19 pandemic, hearings are being held virtually. Please see the DSHS website for the most current information.

Date of Intended Adoption: Not earlier than March 8, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov), fax 360-664-6085, by 5:00 p.m. on March 7, 2023.

Assistance for Persons with Disabilities: Contact Shelley Tencza, rules consultant, phone 360-664-6036, fax 360-664-6036, TTY 711 relay service, email [tenczsa@dshs.wa.gov](mailto:tenczsa@dshs.wa.gov), by 5:00 p.m. on February 21, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amendments to WAC 388-101D-0065 replace details about background checks in WAC 388-101D-0065 with cross-references to chapter 388-113 and 388-825 WAC for consistency. Amendments to chapter 388-825 WAC: Replace inaccurate cross-references; add, remove, and amend definitions; clarify service eligibility for state-only funded services, medicaid state plan services, and developmental disabilities administration (DDA) services provided to children in foster care; update rules about home care agencies and individual providers to align with chapters 388-71, 388-113, and 388-115 WAC; amend appeal related rules; add exemptions allowable under statute for enrolled members of federally recognized Indian tribes; amend background check rules, particularly those for residential habilitation center (RHC) employees; and create comprehensive lists of DDA-authorized services.

Reasons Supporting Proposal: Amendments to these rules are necessary to: Align with the creation of the consumer-directed employer; require new background check processes for RHC employees; align with amendments to chapters 388-71, 388-113, and 388-115 WAC; and clarify processes for hearings, authorize state-only funded services, and correct outdated language and broken cross-references.

Statutory Authority for Adoption: RCW 71A.12.030.

Statute Being Implemented: RCW 43.43.837, 71A.12.015, 71A.12.020, 71A.12.040, 71A.12.050, 71A.12.110, 71A.12.161, 43.20A.710.

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

Name of Proponent: DSHS, DDA, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-407-1500; Implementation and Enforcement: Jaime Bond, P.O. Box 45310, Olympia, WA 98504-5310, 360-688-6204.

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, phone 360-407-1500, 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 RCW 19.85.025(5).

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

Scope of exemption for rule proposal:

Is fully exempt.

January 4, 2023  
Katherine I. Vasquez  
Rules Coordinator

**Reviser's note:** The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the [23-04](#) issue of the Register.