

WSR 22-20-088

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed October 4, 2022, 9:20 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-07-064.

Title of Rule and Other Identifying Information: Amending WAC 388-06-0030, 388-06-0500, 388-06-0510, 388-06-0525 and 388-06-0530; new WAC 388-06-0550; and repealing WAC 388-06-0520, 388-06-0535, and 388-06-0540 in chapter 388-06 WAC, One hundred twenty-day provisional hire—Pending FBI background check results.

Hearing Location(s): On November 8, 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 virtually. Due to the COVID-19 pandemic, hearings are held virtually. See the DSHS website <https://www.dshs.wa.gov/office-of-the-secretary/filings-and-rules> for the most current information.

Date of Intended Adoption: No earlier than November 9, 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 November 8, 2022.

Assistance for Persons with Disabilities: Contact DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email shelley.tencza@dshs.wa.gov, by 5:00 p.m. on October 25, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposal grants the department rule-making authority in ESHB 1120 (chapter 203, Laws of 2021) to allow a long-term care worker or service provider to work on a conditional basis pending the completion of a background check. The long-term care worker or service provider may have unsupervised access to vulnerable adults pending the results of a fingerprint-based background check required under RCW 74.39A.056 or 43.43.837.

The department filed two emergency rules, one on March 1, 2022, as WSR 22-06-074, and a second one on June 27, 2022, as WSR 22-14-038 that reinstate the fingerprinting requirement for providers that were temporarily suspended by the governor's proclamation due to the public health emergency (PHE). The proposal also amends other rules in chapter 388-06 WAC to ensure they are consistent with one another and do not conflict with current background check rules in chapter 388-113 WAC. The governor's proclamation temporarily waived fingerprinting and will be in place until the PHE end date.

Reasons Supporting Proposal: The reason for supporting this proposal is to reinstate state fingerprinting rules for applicants, long-term care workers, and service providers.

Statutory Authority for Adoption: RCW 43.20A.710, 43.43.837, 74.08.090, 74.09.520, 74.39A.056; ESHB 1120, chapter 203, Laws of 2021.

Statute Being Implemented: RCW 43.43.837 and 74.39A.056.

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

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: 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. Even though long-term care workers, applicants, and service providers are subject to these rules, this proposal reinstates rules that had been suspended and adds clarifying language. Additionally, a cost-benefit analysis is not necessary because a substantially similar rule was in place and suspended temporarily due to the governor's proclamation during a PHE. This rule making does not impose any new costs; it reinstates requirements previously in rule and adds clarifying language.

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(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; rule content is explicitly and specifically dictated by statute; and rules adopt, amend, or repeal a procedure, practice, or requirement relating to agency hearings; or a filing or related process requirement for applying to an agency for a license or permit.

Explanation of exemptions: RCW 34.05.310 (4)(d) correct or clarify language, 34.05.310 (4)(e), and 34.05.310 (4)(g) because it reinstates rules that already exist and were suspended due to governor's proclamation in a PHE.

Scope of exemption for rule proposal:

Is fully exempt.

October 3, 2022
Katherine I. Vasquez
Rules Coordinator

SHS-4874.7

AMENDATORY SECTION (Amending WSR 15-05-030, filed 2/10/15, effective 3/13/15)

WAC 388-06-0030 What is the purpose of this chapter? (1) WAC 388-06-500 through ((388-06-0540 defines)) 388-06-0550 define when ((the one hundred twenty-day provisional hire is allowed by DSHS)) an applicant, long-term care worker, or service provider may have unsupervised access to vulnerable adults and children pending the results of a fingerprint-based background check required by RCW 74.39A.056 or RCW 43.43.837.

(2) WAC 388-06-0700 through 388-06-0720 ((describes)) describe the responsibilities of the background check central unit.

[Statutory Authority: RCW 43.43.832, 43.20A.710, and 43.43.837. WSR 15-05-030, § 388-06-0030, filed 2/10/15, effective 3/13/15.]

AMENDATORY SECTION (Amending WSR 01-15-019, filed 7/10/01, effective 8/10/01)

WAC 388-06-0500 ~~What is the purpose of the ((one hundred twenty)) 120-day provisional ((hire)) period?~~ The ~~((one hundred and twenty))~~ 120-day provisional ((hire)) period allows ~~((an employee))~~ applicants, long-term care workers, and service providers to have unsupervised access to vulnerable adults and children ~~((, juveniles and vulnerable adults on a provisional basis))~~ pending the results of ~~((their Federal Bureau of Investigation (FBI))~~) a fingerprint-based background check.

[Statutory Authority: Chapter 43.20A RCW, RCW 72.05.440 and 74.15.030. WSR 01-15-019, § 388-06-0500, filed 7/10/01, effective 8/10/01.]

AMENDATORY SECTION (Amending WSR 01-15-019, filed 7/10/01, effective 8/10/01)

WAC 388-06-0510 ~~What definitions apply to ((one hundred twenty)) 120-day provisional ((hires)) period rules?~~ ~~((("Agency" means any agency of the state or any private agency providing services to children, juveniles, and vulnerable adults.~~

~~"Background check central unit (BCCU)" means the DSHS program responsible for conducting background checks for DSHS administrations.~~

~~"Disqualified" means the results of an individual's background check disqualifies them from a position which will or may provide unsupervised access to children, juveniles, and vulnerable adults.~~

~~"Entity" means, but is not limited to, a licensed facility, a corporation, a partnership, a sole proprietorship, or a contracted or certified service provider.~~

~~"Hire" means engagement by an agency, entity or a hiring individual to perform specific agreed duties as a paid employee, a contract employee, a volunteer, or a student intern.~~

~~"Hiring individual" means a DSHS client who is eligible to hire an individual to provide in-home service with state funding.~~

~~"Individual" means an employee, a contract employee, a volunteer, or a student intern.~~

~~"Qualified" means an individual can be hired into a position that includes unsupervised access to children, juveniles, and vulnerable adults because the results of their background check are not disqualifying.~~

~~"Unsupervised access" means that:~~

~~(1) An individual will or may have the opportunity to be alone with a child, juvenile, or a vulnerable adult; and~~

~~(2) Neither a qualified employee, contract employee, volunteer, or student intern of the agency, or entity nor a relative or guardian of the child, juvenile or vulnerable adult is present))~~ "Applicant" has the same meaning as defined in RCW 43.43.830.

"Completed fingerprint check" means the applicant has a final fingerprint notification from the background check central unit that is not disqualifying.

"Long-term care worker" has the same meaning as defined in RCW 74.39A.009.

"Service provider" means entities, facilities, agencies, businesses, or individuals who are licensed, certified, authorized, or

regulated by, receive payment from, or have contracts or agreements with, the department of social and health services or its designee, to provide services to vulnerable adults or children.

[Statutory Authority: Chapter 43.20A RCW, RCW 72.05.440 and 74.15.030. WSR 01-15-019, § 388-06-0510, filed 7/10/01, effective 8/10/01.]

AMENDATORY SECTION (Amending WSR 14-14-026, filed 6/24/14, effective 7/25/14)

WAC 388-06-0525 When are ~~((individuals))~~ applicants, long-term care workers, and service providers eligible for the ~~((one hundred twenty))~~ 120-day provisional ((hire)) period? ~~((Individuals))~~ Applicants, long-term care workers, and service providers are eligible for the ~~((one hundred twenty))~~ 120-day provisional ((hire immediately. The signed)) period once they have passed a state name and date of birth background check ((application and fingerprinting process must be completed as required by the applicable DSHS program)) and have scheduled their appointment to have their fingerprints taken for the fingerprint-based background check.

[Statutory Authority: RCW 43.43.832, 74.15.030 and 43.43.837. WSR 14-14-026, § 388-06-0525, filed 6/24/14, effective 7/25/14. Statutory Authority: RCW 43.43.832 and 74.39A.056 as amended by 2012 c 164 and 2012 c 1. WSR 12-21-053, § 388-06-0525, filed 10/15/12, effective 12/25/12. Statutory Authority: RCW 43.43.832, 74.39A.055, 74.39A.050, 74.39A.095, 74.39A.260, 43.20A.710, and 43.43.837. WSR 10-16-083, § 388-06-0525, filed 7/30/10, effective 8/30/10. Statutory Authority: Chapter 43.20A RCW, RCW 72.05.440 and 74.15.030. WSR 01-15-019, § 388-06-0525, filed 7/10/01, effective 8/10/01.]

AMENDATORY SECTION (Amending WSR 01-15-019, filed 7/10/01, effective 8/10/01)

**WAC 388-06-0530 When does the ~~((one hundred twenty))~~ 120-day provisional ((hire)) period begin? The ~~((one hundred twenty))~~ 120-day provisional ((hire may begin from either:
~~(1))~~ period begins on the date ((of hire of an individual; or
~~(2) After completion of a state background check on an individual.
 The agency, entity, or hiring individual makes this decision)) an applicant, long-term care worker, or service provider begins providing care to a vulnerable adult or child.~~**

[Statutory Authority: Chapter 43.20A RCW, RCW 72.05.440 and 74.15.030. WSR 01-15-019, § 388-06-0530, filed 7/10/01, effective 8/10/01.]

NEW SECTION

WAC 388-06-0550 How does the state of emergency declared in response to the COVID-19 pandemic affect the provisional period for ap-

plicants, long-term care workers, and service providers? Notwithstanding WAC 388-06-0530, applicants, long-term care workers, and service providers who began providing care to vulnerable adults between November 1, 2019, and April 30, 2022, will have until August 28, 2022, to complete the fingerprint background check. Providers who begin providing care on or after May 1, 2022, are subject to the rules set forth in WAC 388-06-0525 and WAC 388-06-0530.

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REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-06-0520 Who is responsible for approving the one hundred twenty-day provisional hire?
- WAC 388-06-0535 Who approves one hundred twenty-day provisional hire extensions?
- WAC 388-06-0540 Are there instances when the one hundred twenty-day provisional hire is not available?