

WSR 22-23-022

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed November 4, 2022, 2:49 p.m., effective December 5, 2022]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amendments to WAC 388-101D-0030 align with the education qualifications for direct support professionals in Chapter 388-112A WAC and chapter 74.39A RCW, which do not require a GED or high school diploma.

Amendments to WAC 388-101D-0070 align it with WAC 388-101D-0075 and 28 C.F.R. Section 20.33(d). WAC 388-101D-0070(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." Amendments to WAC 388-101D-0080 correct broken cross-references. On the effective date, these permanent rules supersede emergency rules currently enacted on these sections.

Citation of Rules Affected by this Order: Amending WAC 388-101D-0030, 388-101D-0070, 388-101D-0075, and 388-101D-0080.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: 28 C.F.R. Section 20.33(d); RCW 74.39A.056, 71A.12.040, 71A.12.110.

Adopted under notice filed as WSR 22-18-010 on August 25, 2022.

A final cost-benefit analysis is available 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.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 1, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 4, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 4, Repealed 0.

Date Adopted: November 4, 2022.

Katherine I. Vasquez
Rules Coordinator

SHS-4931.1

AMENDATORY SECTION (Amending WSR 16-14-058, filed 6/30/16, effective 8/1/16)

WAC 388-101D-0030 Staffing requirements. (1) The ((service)) provider must ensure each ((staff meets the following minimum requirements)) of its employees:

((1) Have) (a) Has a high school diploma or GED equivalent, unless the ((employees were)) employee was hired before September 1, 1991 or is exempt under subsection (2) of this section;

((2) Be at least eighteen years of) (b) Is age 18 or older when employed as a direct ((care staff, or at least twenty-one years of age or older when employed as an administrator)) support professional who provides support services to a client;

(c) Is age 21 or older when employed as an administrator;

((3) Have) (d) Has a clear understanding of job responsibilities and knowledge of individual support plans and client needs; and

((4) Passed the department background check as required by WAC 388-101-3250) (e) Satisfies department background check requirements under chapter 388-825-WAC.

(2) The provider may hire a person without a high school diploma or GED if while working directly with clients the employee has access to another employee or a volunteer who:

(a) Has a high school diploma or GED; or

(b) Was hired before September 1, 1991.

(3) If the provider hires a person under subsection (2) of this section, the provider must have a written plan that states when and how the person must contact another employee for assistance.

[WSR 16-14-058, recodified as § 388-101D-0030, filed 6/30/16, effective 8/1/16. Statutory Authority: Chapter 71A.12 RCW. WSR 08-02-022, § 388-101-3200, filed 12/21/07, effective 2/1/08.]

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,)) prevent an administrator, employee, volunteer, student, or subcontractor ((who has a disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113, or that is a disqualifying negative action under WAC 388-78A-2470 or WAC 388-76-10180.)) from having unsupervised access to a client if the person has a:

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

(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.]

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

WAC 388-101D-0075 Background checks—Requirements for service providers. (1) Service providers must follow the background check requirements described in chapter 388-113 WAC and in this chapter. In the event of an inconsistency, this chapter applies.

(2) The service provider must obtain background checks from the department for all administrators, employees, volunteers, students, and subcontractors who may have unsupervised access to clients.

(3) The service provider must not allow the following persons to have unsupervised access to clients until the service provider receives the department's background check results:

- (a) Administrators;
- (b) Employees;
- (c) Volunteers or students; and
- (d) Subcontractors.

(4) If the department's background check results show that an administrator, employee, volunteer, student, or subcontractor has any of the following, then the service provider must prevent that person from having unsupervised access to clients:

- (a) A disqualifying conviction or pending criminal charge under chapter 388-113 WAC; or
- (b) A disqualifying negative action under chapter 388-113 WAC (~~(388-101-3090)~~).

(5) If the background check results show any of the following, then the service provider must conduct a character, suitability, and competence review before allowing the person unsupervised access to clients:

(a) The person has a conviction or pending criminal charge, but the conviction or criminal charge is not disqualifying under chapter 388-113 WAC (~~(388-113-0020)~~);

(b) The person has a conviction or pending criminal charge that meets one of the exceptions listed in WAC (~~(388-113-0040)~~) 388-113-0025; or

(c) Any of the circumstances described in WAC 388-101-3080 apply to the individual.

(6) When a service provider receives the results of a person's background check, the service provider must:

- (a) Inform the person of the results of the background check;
- (b) Inform the person that they may request a copy in writing of the results of the background check. If requested, a copy of the back-

ground check results must be provided within (~~ten~~) 10 working days of the request; and

(c) Notify the department and other appropriate licensing or certification agency of any person resigning or terminated as a result of having a conviction record.

(7) The service provider must renew the Washington state background check for each administrator, employee, volunteer, student, or subcontractor of a service provider. The service provider must at least every (~~thirty-six~~) 36 months keep current background check results for each administrator, employee, volunteer, student, or subcontractor of a service provider.

(8) Licensed assisted living facilities or adult family homes must adhere to the current regulations in this chapter and in the applicable licensing laws.

(9) All applicants for certification must have a background check.

[WSR 17-03-062, recodified as § 388-101D-0075, filed 1/10/17, effective 2/1/17. Statutory Authority: Chapter 71A.12 RCW. WSR 14-14-030, § 388-101-3250, filed 6/24/14, effective 7/25/14. Statutory Authority: RCW 71A.12.030 and [71A.12].080. WSR 12-02-048, § 388-101-3250, filed 12/30/11, effective 1/30/12. Statutory Authority: RCW 71A.12.080, chapter 74.39A RCW. WSR 10-16-084, § 388-101-3250, filed 7/30/10, effective 1/1/11. Statutory Authority: RCW 71A.12.080. WSR 10-03-065, § 388-101-3250, filed 1/15/10, effective 2/15/10. Statutory Authority: Chapter 71A.12 RCW. WSR 08-02-022, § 388-101-3250, filed 12/21/07, effective 2/1/08.]

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

WAC 388-101D-0080 Background checks—Provisional hire—Pending results. (~~Persons identified in WAC 388-101-3250 and who have~~) Each provider applicant or employee who has lived in Washington state less than three years, or who (~~are~~) is otherwise required to complete a national fingerprint-based background check, may be hired for a (~~one hundred twenty~~) 120-day provisional period when:

(1) The person is not disqualified based on the initial results of the background check from the department; and

(2) A national fingerprint-based background check is pending.

[WSR 17-03-062, recodified as § 388-101D-0080, filed 1/10/17, effective 2/1/17. Statutory Authority: Chapter 71A.12 RCW. WSR 14-14-030, § 388-101-3255, filed 6/24/14, effective 7/25/14. Statutory Authority: RCW 71A.12.030 and [71A.12].080. WSR 12-02-048, § 388-101-3255, filed 12/30/11, effective 1/30/12. Statutory Authority: RCW 71A.12.080, chapter 74.39A RCW. WSR 10-16-084, § 388-101-3255, filed 7/30/10, effective 1/1/11.]