

WSR 23-20-108
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Developmental Disabilities Administration)
[Filed October 3, 2023, 12:16 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-14-038.

Title of Rule and Other Identifying Information: WAC 388-825-335 Is a background check required of a long-term care worker employed by a home care agency licensed by the department of health?, 388-825-615 What type of background check is required?, and 388-825-620 How often must a background check be renewed?

Hearing Location(s): On November 7, 2023, at 10:00 a.m., virtually via [Microsoft] Teams or call in. Please see the department of social and health services (DSHS) website for the most up-to-date information.

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

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by November 7, 2023, at 5:00 p.m.

Assistance for Persons with Disabilities: Contact Shelley Tencza, rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email shelley.tencza@dshs.wa.gov, by October 24, 2023, at 5:00 p.m.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The developmental disabilities administration (DDA) is amending these rules to comply with federal background check requirements and to align rules with recent amendments to state law passed under SB 5252.

Reasons Supporting Proposal: See purpose.

Statutory Authority for Adoption: RCW 71A.12.030.

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, DDA, governmental.

Name of Agency Personnel Responsible for Drafting: Chantelle Diaz, P.O. Box 45310, Olympia, WA 98504-5310, 360-790-4732; 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, phone 360-790-4732, 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(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect; and rule content is explicitly and specifically dictated by statute.

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

September 28, 2023

Katherine I. Vasquez
Rules Coordinator

SHS-4986.4

AMENDATORY SECTION (Amending WSR 14-14-029, filed 6/24/14, effective 7/25/14)

WAC 388-825-335 Is a background check required of a long-term care worker employed by a home care agency licensed by the department of health? (1) In order to be a long-term care worker employed by a home care agency, a person must:

(a) Complete the required DSHS form authorizing a background check((-));

(b) Disclose any disqualifying criminal convictions and pending charges as listed in chapter 388-113 WAC, and also disclose civil adjudication proceedings and negative actions as those terms are defined in WAC ((388-71-0512)) 388-113-0030((-));

(c) ((Effective January 8, 2012, be)) Be screened through a Washington ((state's)) state name and date of birth background check((-)) (Preliminary results may require a thumb print for identification purposes); and

(d) ((Effective January 8, 2012, be)) Be screened through ((the)) a Washington state and national fingerprint-based background check((-)) as required by RCW 74.39A.056.

(2) Results of background checks are provided to the department and the employer or potential employer for the purpose of determining whether the person:

(a) Is disqualified based on a disqualifying criminal conviction or a pending charge for a disqualifying crime ((as listed in)) under WAC 388-113-0020, civil adjudication proceeding((-)) or negative action ((as defined in)) under WAC ((388-71-0512 and listed in WAC 388-71-0540)) 388-113-0030; or

(b) Should or should not be employed based on his or her character, competence, ((and/)or suitability.

(3) For ((those providers)) a provider listed in RCW 43.43.837(1), ((a second national fingerprint-based background check is required if they have)) who has lived out of the state of Washington ((since the first national fingerprint-based background check was completed)) in the past 36 months, a national fingerprint-based background check is required.

(4) The department may require a long-term care worker to have a Washington state name and date of birth background check ((or)) at any time and a ((Washington state and)) national fingerprint-based background check((-or both, at any time.)) if information is disclosed or found regarding a new:

(a) Pending charge;

(b) Conviction; or

(c) Negative action.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-335, filed 6/24/14,

effective 7/25/14. Statutory Authority: RCW 71A.12.030, 71A.12.120. WSR 05-17-135, § 388-825-335, filed 8/19/05, effective 9/19/05.]

AMENDATORY SECTION (Amending WSR 23-07-130, filed 3/22/23, effective 4/22/23)

WAC 388-825-615 What type of background check is required? (1)

~~((Beginning January 7, 2012, long)) Long-term care workers and providers ((, including parents and individual providers,))~~ undergoing a background check for initial hire or initial contract ~~((,))~~ must be screened through a Washington state name and date of birth check and a national fingerprint-based background check.

~~((2) Beginning January 1, 2016, a newly hired long-term care worker employed by a community residential service business must be screened through a Washington state name and date of birth check and a national fingerprint-based background check.))~~

(a) For a renewal, a person who has continuously resided in Washington state for the past ~~((three consecutive years))~~ 36 months must be screened through a Washington state name and date of birth check.

(b) For a renewal, a person who has resided outside of Washington state in the past ~~((three years))~~ 36 months must be screened through a Washington state name and date of birth check and a national fingerprint-based background check.

~~((3))~~ (2) For adult family homes, refer to chapter 388-76 WAC. For assisted living facilities, refer to chapter 388-78A WAC.

~~((4))~~ (3) Beginning July ~~((1))~~ 23, 2023, a residential habilitation center applicant undergoing a background check for initial hire must be screened through a Washington state name and date of birth check and a national fingerprint-based background check.

~~((5))~~ (4) All background checks must be completed through the online background check system.

[Statutory Authority: RCW 71A.12.020, 71A.12.030, 71A.12.040, 71A.12.050, 71A.12.110, 71A.12.161, 43.20A.710, and 43.43.837. WSR 23-07-130, § 388-825-615, filed 3/22/23, effective 4/22/23. Statutory Authority: RCW 71A.12.030, 74.08.090. WSR 15-09-068, amended and re-codified as § 388-825-615, filed 4/15/15, effective 5/16/15. Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-0615, filed 6/24/14, effective 7/25/14.]

AMENDATORY SECTION (Amending WSR 23-07-130, filed 3/22/23, effective 4/22/23)

WAC 388-825-620 How often must a background check be renewed?

(1) DDA requires a background check at least every ~~((three years))~~ 36 months, or more frequently if required by program rule.

(2) A background check renewal will be conducted as follows:

(a) ~~((Individuals who have))~~ A person who has continuously resided in Washington state for the past ~~((three consecutive years will))~~ 36 months must be screened through a state name and date of birth background check.

(b) (~~Individuals who have~~) A person who has lived outside of Washington state within the past (~~three years will~~) 36 months must be screened through a state name and date of birth check and a national fingerprint-based background check.

(c) (~~Individuals who live~~) A person who lives outside of Washington state and (~~provide~~) provides services in Washington state (~~will~~) must be screened through a Washington state name and date of birth check and a national fingerprint-based background check.

(3) The department may require a long-term care worker to have a renewed Washington state name and date of birth background check at any time and a national fingerprint-based background check if information is disclosed or found regarding a new:

(a) Pending charge;

(b) Conviction; or

(c) Negative action.

[Statutory Authority: RCW 71A.12.020, 71A.12.030, 71A.12.040, 71A.12.050, 71A.12.110, 71A.12.161, 43.20A.710, and 43.43.837. WSR 23-07-130, § 388-825-620, filed 3/22/23, effective 4/22/23. Statutory Authority: RCW 71A.12.030, 74.08.090. WSR 15-09-068, recodified as § 388-825-620, filed 4/15/15, effective 5/16/15. Statutory Authority: RCW 71A.12.030, 71A.12.120, 43.43.842, 74.39A.056, 43.20A.710. WSR 14-14-029, § 388-825-0620, filed 6/24/14, effective 7/25/14.]