

WSR 23-22-008
EMERGENCY RULES
DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Developmental Disabilities Administration)

[Filed October 19, 2023, 8:32 a.m., effective October 24, 2023]

Effective Date of Rule: October 24, 2023.

Purpose: The developmental disabilities administration (DDA) is enacting these amendments on an emergency basis to align with SB 5252 (2023) and FBI background check requirements.

Citation of Rules Affected by this Order: Amending WAC 388-825-335, 388-825-615, and 388-825-620.

Statutory Authority for Adoption: RCW 71A.12.030.

Other Authority: RCW 43.43.837 and 74.39A.056.

Under RCW 34.05.350 the agency for good cause finds that state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this Finding: Enacting amendments to WAC 388-825-335 and 388-825-620 on an emergency basis is necessary to comply with FBI background check requirements and to conduct background checks necessary to receive federal funding. Enacting amendments to WAC 388-825-615 is necessary to align with amendments to SB 5252. This is the second emergency filing on these sections and is necessary to keep the rules in effect while DDA completes the permanent rule-making process. DDA is proceeding with permanent adoption and filed a CR-102 proposal under WSR 23-20-108.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: October 17, 2023.

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Rules Coordinator

SHS-4986.2

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 screened through Washington state's name and date of birth background check, (Preliminary results may require a thumb print for identification purposes); and

(d) Effective January 8, 2012, be screened through the 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 listed in RCW 43.43.837(1), a second national fingerprint-based background check is required if they have lived out of the state of Washington since the first national fingerprint-based background check was completed.

(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 new:

(a) Pending charges;

(b) Convictions; or

(c) Negative actions.

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-term care workers, 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 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 must be screened through a Washington state name and date of birth check and a national fingerprint-based background check.

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

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

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, or more frequently if required by program rule.

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

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

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

(c) Individuals who live outside of Washington state and provide services in Washington state will 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 Washington state and national fingerprint-based background check if information is disclosed or found regarding new:

(a) Pending charges;

(b) Convictions; or

(c) Negative actions.