



# PROPOSED RULE MAKING

## CR-102 (June 2004)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

**Agency:** Department of Social and Health Services, Management Services

- Preproposal Statement of Inquiry was filed as WSR 07-11-097 ; or  
 Expedited Rule Making--Proposed notice was filed as WSR \_\_\_\_\_; or  
 Proposal is exempt under RCW 34.05.310(4).

- Original Notice  
 Supplemental Notice to WSR  
 Continuance of WSR

**Title of rule and other identifying information:** (Describe Subject) Amending WAC 388-06-0110 describing who must have background checks; WAC 388-06-0150 describing what information must be reviewed by the department when performing a background check; and WAC 388-06-0160 describing who pays for background checks.

**Hearing location(s):**

Blake Office Park East – Rose Room  
4500 – 10<sup>th</sup> Ave. SE  
Lacey, Washington 98503  
(One block north of the intersection of Pacific Ave. SE and Alhadeff Lane. A map or directions are available at <http://www1.dshs.wa.gov/msa/rpau/docket.html> or by calling 360-664-6094)

Date: **January 6, 2009** Time: **10:00 a.m.**

**Submit written comments to:**

Name: DSHS Rules Coordinator  
Address: PO Box 45850, Olympia WA, 98504-5850  
Delivery: 4500 – 10<sup>th</sup> Ave. SE, Lacey, Washington 98503  
E-mail: [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov)  
Fax: (360) 664-6185

by

**5 p.m. on January 6, 2009**

**Assistance for persons with disabilities:** Contact Jennisha Johnson, DSHS Rules Consultant by December 23, 2008

TTY (360) 664-6178 or (360) 664-6094 or  
by e-mail at [johnsil4@dshs.wa.gov](mailto:johnsil4@dshs.wa.gov)

**Date of intended adoption: Not earlier than January 7, 2009**  
(Note: This is **NOT** the **effective** date)

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:**

DSHS is proposing these rules to comply with chapter 387, Laws of 2007 (ESSB 5774), impacting background check requirements for certain child care providers and children returning to their home; and to comply with the federal Adam Walsh Act of 2006. These rules describe the requirements related to background checks for individuals who will have unsupervised access to children or to individuals with developmental disabilities in homes, facilities or operations licensed or contracted by the department to provide care.

**Reasons supporting proposal:** Same as above.

**Statutory authority for adoption:** RCW 74.15.030, RCW 43.43.837, RCW 13.34.138, RCW 26.33.190, RCW 26.44.030.

**Statute being implemented:**  
RCW 43.43.837, RCW 26.33.190

**Is rule necessary because of a:**

- |                         |   |  |
|-------------------------|---|--|
| Federal Law?            | <input checked="" type="checkbox"/> Yes | <input type="checkbox"/> No            |
| Federal Court Decision? | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |
| State Court Decision?   | <input type="checkbox"/> Yes            | <input checked="" type="checkbox"/> No |

If yes, CITATION:

PL 109-248 Adam Walsh Act

**DATE**

November 24, 2008

**NAME** (type or print)

Stephanie Schiller

**SIGNATURE**

**TITLE**

DSHS Rules Coordinator

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE:** December 01, 2008

**TIME:** 2:57 PM

**WSR 08-24-080**

(COMPLETE REVERSE SIDE)

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:  
None

**Name of proponent:** (person or organization) Department of Social and Health Services

- Private  
 Public  
 Governmental

**Name of agency personnel responsible for:**

Name	Office Location	Phone
Drafting.....Cindy LaRose	PO Box 45025, Olympia WA 98504-5025	(360 ) 902-8072
Implementation.... Cindy LaRose	PO Box 45025, Olympia WA 98504-5025	(360 ) 902-8072
Enforcement..... Cindy LaRose	PO Box 45025, Olympia WA 98504-5025	(360 ) 902-8072

**Has a small business economic impact statement been prepared under chapter 19.85 RCW?**

Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone ( )

fax ( )

e-mail

No. Explain why no statement was prepared.

This rule is exempt under RCW 19.85.025 (3) because it adopts or incorporates without material change portions of Chapter 387, Laws of 2007 and portions of the Federal Adam Walsh Act.

**Is a cost-benefit analysis required under RCW 34.05.328?**

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone ( )

fax ( )

e-mail

No: Please explain:

This rule is exempt from preparing further analysis under RCW 34.05.328(5)(b)(iii) because it adopts or incorporates without material change portions of Chapter 387, Laws of 2007 and portions of the Federal Adam Walsh Act.

AMENDATORY SECTION (Amending WSR 01-18-025, filed 8/27/01, effective 10/1/01)

**WAC 388-06-0110 Who must have background checks?** The department requires background checks on individuals who will have unsupervised access to children or to individuals with a developmental disability in homes, facilities, or operations licensed, relicensed, or contracted by the department to provide care as required under chapter 74.15 RCW. The department requires background checks on the following people:

(1) A person licensed, certified, or contracted by us to care for children (chapter 74.15 RCW and RCW 43.43.832);

(2) A prospective or current employee for a licensed care provider or a person or entity contracting with us;

(3) A volunteer or intern with regular or unsupervised access to children who is in a home or facility that offers licensed care to children;

(4) A person who is at least sixteen years old, is residing in a foster home, relative's home, or child care home and is not a foster child;

(5) A person not related to the child who the court has approved placement as allowed in RCW 13.34.130;

(6) A relative other than a parent who may be caring for a child or an individual with a developmental disability;

~~((+6))~~ (7) A person who regularly has unsupervised access to a child or an individual with a developmental disability;

~~((+7))~~ (8) A provider who has unsupervised access to a child or individual with a developmental disability in the home of the child or individual with a developmental disability; and

~~((+8))~~ (9) Prospective adoptive parents ((as defined in RCW 26.33.020)).

AMENDATORY SECTION (Amending WSR 01-18-025, filed 8/27/01, effective 10/1/01)

**WAC 388-06-0150 What does the background check cover?** (1) The department must review the following records:

(a) Criminal convictions and pending charges based on identifying information provided by you. However, if you have lived in Washington State for less than three years prior to the check, the department must conduct a fingerprint based background check for you to have unsupervised access to children or to individuals with developmental disabilities.

(b) ~~((For children's administration, child protective service case file information (CAMIS) for founded reports of child abuse or neglect; and))~~ If the background check is being conducted for Children's Administration, it must also include:

(i) A review of child protective services case files information or other applicable information system.

(ii) Administrative hearing decisions related to any DSHS license that has been revoked, suspended, or denied.

~~(c) ((For children's administration, administrative hearing decisions related to any DLR license that has been revoked, suspended or denied))~~ If the background check is being conducted by Children's Administration for placement of a child in out-of-home care, including foster homes, adoptive homes, relative placements, and placement with other suitable persons under chapter 13.34 RCW, the department must check the following in addition to the requirements above for each person over eighteen years of age residing in the home:

(i) Child abuse and neglect registries in each state a person has lived in the five years prior to conducting the background check.

(ii) Washington state patrol (WSP) and federal bureau of investigation (FBI) fingerprint based background checks regardless of how long you have resided in Washington.

(2) The department may also review:

(a) Any civil judgment, determination or disciplinary board final decisions of child abuse or neglect.

(b) Law enforcement records of convictions and pending charges in other states or locations if:

(i) You have lived in another state.

(ii) Reports from other credible sources indicating a need to investigate another state's records.

~~((3) The department may review law enforcement records of convictions and pending charges in other states or locations if:~~

~~(a) You have lived in another state; and~~

~~(b) Reports from credible community sources indicate a need to investigate another state's records.~~

~~(4) If you have lived in Washington state less than three years immediately prior to your application to have unsupervised access to children or to individuals with a developmental disability, the department requires that you be fingerprinted for a background check with the Washington state patrol (WSP) and the Federal Bureau of Investigation (FBI), as mandated by chapter 74.15 RCW.))~~

AMENDATORY SECTION (Amending WSR 01-18-025, filed 8/27/01, effective 10/1/01)

**WAC 388-06-0160 Who pays for the background check?** (1) Children's administration (CA) pays ~~((for))~~ the DSHS general administrative costs for background checks for foster home applicants, CA relative and other suitable caregivers, and CA adoptive home applicants.

(2) Children's administration pays ~~((for fingerprinting expenses))~~ the WSP and FBI-fingerprint processing fees for ~~((those))~~ foster home applicants ~~((and relatives))~~, CA relative and other suitable caregivers, CA adoptive home applicants, and other

adults in the home who require fingerprinting under chapter 13.34 RCW.

(3) Children's administration does not pay ((for)) fingerprinting fees or expenses for employees, contractors, or volunteers associated with any other type of home or facility.

(4) The division of developmental disabilities pays for background checks for individuals seeking authorization to provide services to their clients.