



# PROPOSED RULE MAKING

## CR-102 (June 2012)

(Implements RCW 34.05.320)

Do **NOT** use for expedited rule making

**Agency:** Department of Social and Health Services, Operations Support and Services Division, Background Check Central Unit

- Preproposal Statement of Inquiry was filed as WSR: 14-13-065; or
- Expedited Rule Making--Proposed notice was filed as WSR:\_\_\_; or
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

- Original Notice
- Supplemental Notice to WSR:
- Continuance of WSR:

**Title of rule and other identifying information:** (Describe Subject)

The Operations Support and Services Division, Background Check Central Unit, is coordinating with the Human Resources Division to create a new WAC 388-06-0030, repeal Sections 0600 through 0640 of Chapter 388-06 WAC, and create chapter 388-06B WAC, DSHS Employee Background Checks.

**Hearing location(s):**

Office Building 2  
DSHS Headquarters  
1115 Washington  
Olympia, WA 98504  
Public parking at 11<sup>th</sup> and Jefferson. A map is available at:  
<http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>

Date: January 27, 2014 Time: 10:00 a.m.

**Submit written comments to:**

Name: DSHS Rules Coordinator  
Address: PO Box 45850  
Olympia, WA 98504  
e-mail [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov)  
fax (360) 664-6185  
**by: 5:00 p.m. January 27, 2014**

**Assistance for persons with disabilities:** Contact Jeff Kildahl, DSHS Rules Consultant by TTY (360) 664-6178 or (360) 664-6092 or by email at [Kildaja@dshs.wa.gov](mailto:Kildaja@dshs.wa.gov)

**Date of intended adoption:** Not earlier than January 28, 2014  
(Note: This is **NOT** the effective date)

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

The purpose of this coordinated rulemaking is to move DSHS employee background check requirements from Chapter 388-06 WAC, Sections 0600 through 0640, to Chapter 388-06B WAC. DSHS employee background check requirements will be revised to align with federal and state laws and current Department standards. This rulemaking will permanently adopt emergency rules filed under WSR 14-21-062 implementing Chapter 88, Laws of 2014.

**Reasons supporting proposal:**

This rulemaking is intended to comply with federal and state law and to provide clarity for the affected individuals and hiring authorities.

**Statutory authority for adoption:** RCW 43.43.832

**Statute being implemented:**

Chapter 388-06: RCW 43.43.832; RCW 43.43.837  
Chapter 388-06B: RCW 43.43.832; RCW 43.20A.710; RCW 43.43.837.

**Is rule necessary because of a:**

- Federal Law?  Yes  No
  - Federal Court Decision?  Yes  No
  - State Court Decision?  Yes  No
- If yes, CITATION:

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE: December 17, 2014**

**TIME: 11:48 AM**

**WSR 15-01-094**

**DATE**

December 10, 2014

**NAME** (type or print)

Katherine Vasquez

**SIGNATURE**

**TITLE**

DSHS Rules Coordinator

**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-Eatwell	FSA, Background Check Central Unit	(360) 902-8072
Implementation....	Ellen Andrews	Human Resources Division	(360) 725-5802
Enforcement.....	Ellen Andrews	Human Resources Division	(360) 725-5802

**Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?**

Yes. Attach copy of small business economic impact statement or school district fiscal 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.

These rule revisions relate to internal governmental operations and have no impact on outside businesses.

**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: These rule revisions relate to internal governmental operations and is exempt under RCW 34.05.328.

NEW SECTION

**WAC 388-06-0030 What is the purpose of this chapter?** (1) WAC 388-06-500 through 388-06-0540 defines when the one hundred twenty-day provisional hire is allowed by DSHS.

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

NEW SECTION

**WAC 388-06B-0010 What is the purpose of this chapter?** The purpose of this chapter is to establish standards for the department of social and health services to conduct background checks for department employees, applicants for employment, volunteers and student interns.

NEW SECTION

**WAC 388-06B-0020 What definitions apply to this chapter?** "**Applicant**" means a person who has applied for work in a department-covered position, including current employees, volunteers, students, or interns serving or working in a similarly situated position or any person who must meet state and federal background check requirements to work in a department-covered position.

"**Background check central unit**" means the program responsible for conducting background checks for the department of social and health services.

"**Child or children**" means any person under eighteen years of age.

"**Department**" means the department of social and health services.

"**Department-covered position**" means a position that has:

(1) Unsupervised access to vulnerable adults, juveniles, or children; or

(2) Access to the internal databases in the background check central unit and the division of disability determination services.

"**Division of disability determination services**" means the DSHS program contracted to perform medical determinations for the Social Security Administration in accordance with Social Security Administration regulations and requirements.

"**DSHS**" means the department of social and health services.

"**Employee**" means a permanent or non-permanent department of social and health services employee who is appointed to a department-covered position for any reason including but not limited to: transfer, promotion, demotion, elevation, layoff, reassignment, reallocation, and reversion.

"**Juvenile**" means a person under the age of twenty-one under the juvenile rehabilitation administration's (JRA) jurisdiction, or under the department of corrections' jurisdiction while placed in a JRA facility.

"**Pending charge or pending action**" means a charge or action awaiting a decision by a court or a civil adjudication proceeding. The term pending charge also includes specific types of court action where

the defendant has agreed to certain conditions. Examples include a deferred prosecution or a stipulated order of continuance on an agreed condition. The department considers these types of cases on an individual case-by-case basis.

**"Permanent employee"** means a department employee who has successfully completed a Washington general service probationary period or Washington management service review period after appointment to a permanent position.

**"Sensitive positions"** means positions in the division of disability determination services and the background check central unit with access to federal databases or databases containing background check information.

**"Unsupervised access"** means a DSHS employee, volunteer or student intern who:

(1) Works, volunteers or serves in a setting, such as an institution, that provides residential services to vulnerable adults, juveniles and children;

(2) Works, volunteers or serves in a position where, during the course of his or her employment, the employee may transport, or visit the residence of, a vulnerable adult, juvenile or child; or

(3) Works, volunteers or serves in a position, other than one described in subsection (1) and (2) in this section, where the employee may be left alone with a vulnerable adult, juvenile or child. "Left alone" does not include the possibility of a public encounter, or public interaction.

**"Vulnerable adult"** means a person who is a client of the department who is:

(1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(2) Found incapacitated under chapter 11.88 RCW; or

(3) Developmentally disabled as defined under RCW 71A.10.020; or

(4) Admitted to any facility that is operated by the department; or

(5) Receiving services from a department contracted, authorized, certified, licensed, or individual provider, including those certified under chapter 70.96A RCW; or

(6) Receiving services through home health, hospice, or home care agencies required to be licensed under chapter 70.127 RCW; or

(7) Admitted for detoxification in a certified chemical dependency treatment facility in accordance with chapter 70.96A RCW; or

(8) A vulnerable adult as defined in chapter 74.34 RCW.

## NEW SECTION

**WAC 388-06B-0100 Must the DSHS secretary or designee conduct background checks on all employees in department-covered positions and applicants under consideration for a covered position?** (1) The secretary of the department of social and health services or designee must conduct a background check, as authorized by statute, on all employees in covered positions; employees in sensitive positions, and applicants under final consideration for a covered position.

(2) A national fingerprint-based background check will be conducted if required by state law, federal regulations, or presidential directive.

NEW SECTION

**WAC 388-06B-0200 What are the DSHS secretary's responsibilities in carrying out the requirements to conduct background checks?** The DSHS secretary or designee will:

(1) Develop policies and guidelines pertaining to background checks. The department's background check policies and guidelines must minimally address the following:

(a) Process for identifying department-covered positions;  
(b) Notification to employees and applicants that a background check is required for covered positions;

(c) When employees and applicants may be hired on a conditional basis pending the results of a background check;

(d) When a character, competence, and suitability review will be required to determine if the applicant and/or employee may have unsupervised access to vulnerable adults, juveniles and children;

(e) When rechecks may be initiated;

(f) What happens when a permanent DSHS employee is denied a department-covered position because of a background check or failure to authorize a background check to include:

(i) Employment options available when a permanent employee is disqualified from holding a department covered position;

(ii) Interim measures available while exploring employment options;

(iii) Process that will be used to identify non-covered department positions; and

(iv) Specific time-frame allowed for exploration of employment options prior to separation of a permanent employee.

(g) When an employee may request a review of a disqualification for employment in a covered position;

(2) Not further disseminate background check information unless authorized or required by law to do so; and

(3) Comply with public disclosure requirements and the rules of civil discovery when applicable.

NEW SECTION

**WAC 388-06B-0300 What information is considered in a background check conducted by DSHS and how are the results of the background check used?**

(1) The background check information considered by the DSHS secretary or designee will include but is not limited to conviction records, pending charges, and civil adjudications as defined in RCW 43.43.830.

(2) The background information must be used by DSHS to determine the character, competence, and suitability of the applicant and/or employee to have unsupervised access to vulnerable adults, juveniles and children.

(3) If the applicant or employee's criminal history was reviewed in 2002 by DSHS through its background assessment review team (BART) process, and if DSHS determined the employee could remain in a covered position, the applicant or employee will not be disqualified based upon criminal history, including his or her conviction record, that was known and considered during the BART process.

(4) Background information that was the subject of a pardon, annulment, or other equivalent procedure will not disqualify an applicant and/or employee from having unsupervised access to vulnerable adults, juveniles and children.

(5) Results of a background check may be discoverable pursuant to the rules of civil discovery, or subject to disclosure pursuant to a public records request.

NEW SECTION

**WAC 388-06B-0400 Must an employee or applicant authorize the secretary of the department of social and health services or designee to conduct a background check and what happens if the employee or applicant does not provide authorization?** (1) An employee and/or applicant applying for or being considered for retention in a department-covered position must authorize the secretary of DSHS or designee to conduct a background check which may include fingerprinting when required by state or federal law or regulations.

(2) Failure to authorize the DSHS secretary or designee to conduct a background check shall disqualify an employee or applicant from consideration for any covered position including their current covered position.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- |                 |   |
|-----------------|---|
| WAC 388-06-0600 | Must the DSHS secretary or designee conduct background checks on all employees in covered positions and applicants under consideration for a covered position?  |
| WAC 388-06-0605 | What is a covered position?   |
| WAC 388-06-0610 | Who are vulnerable adults, juveniles or children?   |
| WAC 388-06-0615 | What is unsupervised access?  |
| WAC 388-06-0620 | What information is considered in a background check conducted by DSHS and what are the results of the background check used for?   |
| WAC 388-06-0625 | Must an employee and/or applicant authorize the secretary of the department of social and health services or designee to conduct a background check and what happens if the employee or applicant does not provide authorization? |

- WAC 388-06-0630      What happens when a permanent DSHS employee is disqualified because of a background check or failure to authorize a background check?
- WAC 388-06-0635      What are the DSHS secretary's responsibilities in carrying out the requirements to conduct background checks?
- WAC 388-06-0640      Does a DSHS permanent employee who is disqualified from a covered position as a result of a background check have the right to request a review of the disqualification?