



PROPOSED RULE MAKING

CR-102 (October 2017) (Implements RCW 34.05.320) Do NOT use for expedited rule making

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FILED

DATE: December 19, 2017

TIME: 11:56 AM

WSR 18-01-116

Agency: Department of Social and Health Services, Children's Administration

- Original Notice**
- Supplemental Notice to WSR** _____
- Continuance of WSR** _____

- Preproposal Statement of Inquiry was filed as WSR 17-21-107 ; 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); or**
- Proposal is exempt under RCW** _____.

Title of rule and other identifying information: (describe subject) The department is proposing to amend WAC 388-145-1325 "What is required to apply for a group care facility license?", WAC 388-145-1805 "Are there special requirements for serving milk?", and WAC 388-148-1320 "When will the department grant me a foster family license?", and to create a new section as WAC 388-148-1321 "May I request a provisional expedited foster family license?".

The department is proposing new language to the WAC sections listed above to provide licensing instructions regarding fingerprinting group care staff, background checks for household members under the age of sixteen, provisional expedited foster care licenses, and food requirements.

The department will require an in-state background check for sixteen and seventeen year olds, as was the previous practice of the department prior to October 19, 2017. Also related to background checks, the new legislation allows for the department to conduct an in-state background check on those under sixteen years of age residing in a foster home, when it is warranted to ensure child safety. This is a new practice, and has been included in this proposed WAC revision.

The proposed language for WAC 388-148-1321 was also amended to require an in-state background check rather than a finger-print based background for sixteen and seventeen year olds in homes applying for provisional expedited foster family license.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
January 23, 2018	10:00 a.m.	Office Building 2 DSHS Headquarters 1115 Washington Olympia, WA 98504	Public parking at 11 th and Jefferson. A map is available at: https://www.dshs.wa.gov/sesa/rules-and-policies-assistance-unit/driving-directions-office-bldg-2

Date of intended adoption: Not earlier than January 24, 2018 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: DSHS Rules Coordinator
 Address: PO Box 45850
 Olympia, WA 98504

Email: DSHSRPAURulesCoordinator@dshs.wa.gov
 Fax: 360-664-6185
 Other:
 By (date) 5:00 p.m. on January 23, 2018

Assistance for persons with disabilities:

Contact Jeff Kildahl, DSHS Rules Consultant
 Phone: 360-664-6092

Fax: 360-664-6185
TTY: 711 Relay Service
Email: Kildaja@dshs.wa.gov
Other:
By (date) January 9, 2018

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

The department is proposing to amend WAC 388-145-1325 to align the Division of Licensed Resources (DLR) WAC with legislation that went into effect on January 1, 2016 that requires fingerprints of group care agency employees that care for the Division Disabilities Administration (DDA) children. Since any DLR facility could potentially take placement of a DDA child, it was decided to fingerprint all DLR licensed group care facility staff.

The proposed changes to WAC 388-145-1805 were based on recommendations from the Children's Administration Regional Medical Consultants. The revised WAC will clarify that neither formula nor breast milk can be warmed in a microwave oven. These changes are to ensure child safety.

The department is proposing to amend licensing regulations in WAC 388-148-1320 and to create WAC 388-148-1321 in order to meet the new legislative requirements from the 2017 session. The proposed changes to WAC 388-148-1320 allow the department to complete an in-state background check on household members under the age of sixteen when warranted to ensure child safety. The intent of creating WAC 388-148-1321 was to describe the criteria and process for a prior foster parent to obtain a provisional expedited foster care license.

Reasons supporting proposal: The proposed WAC revision to 388-148-1320 and the creation of WAC 388-148-1321 are to implement the new 2017 legislative requirements. The proposed language changes to WAC 388-148-1320 are to increase child safety by allowing for the department to complete an in-state background check on youth under the age of sixteen years when warranted to ensure child safety.

WAC 388-148-1321 will allow foster parents that were licensed in the previous five years and who meet the other eligibility requirements to be issued a provisional expedited licensed, much earlier than the current practice of obtaining a full foster care license. This will increase placement resources by allowing foster placements to be made in homes with an expedited license, while those homes continue to complete the full foster care license.

The proposed revision to WAC 388-145-1325 is to align the DLR WAC with legislation that went into effect on January 1, 2016, that requires group care agency employees to complete a fingerprint based background check when caring for DDA youth. Again, because any DLR licensed agency could take placement of a DDA youth, the decision was made to fingerprint all employees at all DLR licensed group care facilities.

The proposed revision to WAC 388-145-1805 is to provide an additional safety requirement by clarifying that neither formula nor breast milk can be warmed in the microwave oven. This WAC change is specific to infant and child safety.

Statutory authority for adoption: RCW 74.15.010, RCW 74.15.030, RCW 74.15.040, RCW 74.15.090, RCW 74.13.031, RCW 74.39A.056, RCW 43.43.832, and Laws of 2017 chapter 20 §4, which will create a new section in chapter 74.15 RCW

Statute being implemented:

Is rule necessary because of a:

- | | | |
|-------------------------|------------------------------|--|
| Federal Law? | <input type="checkbox"/> Yes | <input checked="" 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:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

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

<input type="checkbox"/> Private
<input type="checkbox"/> Public
<input checked="" type="checkbox"/> Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Kristina Wright	1115 Washington SE, Olympia, WA 98504	360-902-8349
Implementation:	Kristina Wright	1115 Washington SE, Olympia, WA 98504	360-902-8349
Enforcement:	Kristina Wright	1115 Washington SE, Olympia, WA 98504	360-902-8349

Is a school district fiscal impact statement required under RCW 28A.305.135?

Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

Is a cost-benefit analysis required under RCW 34.05.328?

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

Name: Kristina Wright

Address: PO Box 45710

Phone: Olympia WA 98504

Fax: 360-902-7588

TTY:

Email: wrihkks@dshs.wa.gov

Other:

No: Please explain:

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- RCW 34.05.310 (4)(b) (Internal government operations)
- RCW 34.05.310 (4)(c) (Incorporation by reference)
- RCW 34.05.310 (4)(d) (Correct or clarify language)
- RCW 34.05.310 (4)(e) (Dictated by statute)
- RCW 34.05.310 (4)(f) (Set or adjust fees)
- RCW 34.05.310 (4)(g) ((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW ____.

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated. All 243 DLR licensed group care and child placing agencies were emailed specifically asking whether or not there would be a cost to the agency related to the proposed WAC revisions. Fifteen agencies responded, and all of those fifteen agencies reported that there would be no financial impact on the agency.

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name: Kristina Wright
Address: PO Box 45710,
Olympia WA 98504
Phone: (360) 902-8349
Fax: (360) 902-7588
TTY:
Email: wrightks@dshs.wa.gov
Other:

Date: December 14, 2017

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



AMENDATORY SECTION (Amending WSR 16-06-041, filed 2/24/16, effective 3/26/16)

WAC 388-145-1325 What is required to apply for a group care facility license? (1) You, the person responsible for the license, must submit a completed application which is available from the division of licensed resources, children's administration.

(2) You must submit ~~((the following))~~ a completed background authorization form for your executive director, agency staff, consultants, interns, volunteers, and anyone who may have unsupervised access to children per chapter 388-06A WAC~~((+))~~.

~~((a) Completed background authorization form; and))~~ (3) You must ensure that an agency employee who may have unsupervised access to children complete a FBI fingerprint check.

~~((b))~~ (4) You must ensure that agency volunteers or interns that have lived outside of Washington state during any portion of the previous three years complete a FBI fingerprint check ((if the individual over eighteen years of age has lived out of state during any portion of the previous three years)).

~~((3))~~ (5) You must ensure that no employee, volunteer or subcontractor has unsupervised access to children until ((a full and satisfactory)) you are notified by children's administration that a background check ((is)) was completed ((and returned to you, qualifying the individual for)) that qualifies the individual to have unsupervised access. If ((your employee requires FBI fingerprints, they are allowed to work while awaiting fingerprint results, under the provisions of WAC 388-06-0500 through 388-06-0540)) you have both a license issued by DLR and a contract with the department you must adhere to the most stringent background check requirement.

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

WAC 388-145-1805 Are there special requirements for serving milk? (1) The milk or milk products you serve must be pasteurized and follow these recommended guidelines:

(a) Children under the age of twelve months must receive formula or breast milk unless written authorization from the child's ~~((physician))~~ licensed health care provider requires a different liquid intake; and

(b) Children between the age of twelve and twenty-four months must receive whole milk unless you have written authorization from a ~~((physician))~~ licensed health care provider not to serve whole milk.

(2) Before serving a child breast milk you must have approval of the child's DSHS worker, ~~((physician))~~ licensed health care provider, parent or guardian. If breast milk is provided by anyone other than a baby's biological mother, it must be obtained through a licensed breast milk bank.

(3) When you are using bottles to feed infants you must sterilize and use them according to product standards and commonly acceptable practices. You must refrigerate filled bottles if you do not use them immediately, and you must empty the bottle if not used within twenty-

four hours. If more than one child is bottle-fed, the child's name and date the bottle is prepared must be on each bottle.

(4) You must hold infants, under the age of six months, for all bottle feedings. Infants who are six months of age or over who are developmentally able may hold their own bottles as long as an adult remains in the room and within sight. You must take bottles from the child when the child finishes feeding, when the bottle is empty, or when the child falls asleep. You must not prop bottles when feeding infants.

(5) To prevent burns, formula or breast milk must not be warmed in a microwave oven (~~in the bottle that will be used for feeding the infant~~).

AMENDATORY SECTION (Amending WSR 16-01-121, filed 12/18/15, effective 1/18/16)

WAC 388-148-1320 When will the department grant me a foster family license? (1) We issue you a license when you and everyone in your household meet the licensing requirements contained in this chapter, and all required documents are in the licensing file.

(2) You and other caregivers over the age of eighteen must:

(a) Complete first aid training and age-appropriate adult and/or infant CPR (cardiopulmonary resuscitation). Training must be department approved and accredited with nationally recognized standards; and

(b) Complete HIV/AIDS and bloodborne pathogens training including infection control standards consistent with educational materials published by the department of health, office on HIV/AIDS.

(3) You, your household members and anyone else having unsupervised contact with your foster child(ren) must pass the following background check requirements per chapter 388-06A WAC (This includes people living on any part of your property):

(a) Anyone (~~over the age of~~) sixteen years old or older must pass a (~~criminal history~~) background check((-));

(b) Anyone (~~over the age of eighteen~~) younger than sixteen years old must pass (~~an FBI fingerprint~~) a background check((-) where the department determines it is warranted to ensure the safety of a child;

(c) Anyone eighteen years old or older must pass an FBI fingerprint check; and

(d) Anyone (~~over the age of~~) eighteen years old or older must complete a child abuse and neglect registry check from each state they have lived in over the past five years indicating:

(i) No license denials or revocations from an agency that regulates the care of children or vulnerable adults, unless the department determines that you do not pose a risk to a child's health, safety, well-being and long-term stability; and

(ii) No finding or substantiation of abuse or neglect of a child or a vulnerable adult, unless the department determines that you do not pose a risk to a child's safety, well-being, and long-term stability.

(4) You, and your household members over the age of eighteen must submit a negative tuberculosis test or an X-ray, unless you can demonstrate a medical reason prohibiting the TB test, or have had a negative TB test in the previous twelve months. If there is a positive TB

test, then the individual must submit a physician's statement identifying that there is no active TB or risk of contagion to children in care.

(5) You must have proof of current immunizations for any children living on your premises, not in out-of-home care. We may, in consultation with a licensed health care provider, grant exception to this requirement if you have a statement from a licensed health care provider (MD, DO, ND, PA and ARNP).

(6) We recommend that you have pertussis and influenza immunizations. The department will not license you to serve foster children under the age of two, without proof of pertussis and influenza immunizations for all people living in your home. The department may license you to serve children under the age of two even though you or someone in your home is unable to obtain an influenza vaccination for medical reasons. In this case, a licensed health care provider's statement is required noting that the influenza vaccination would result in severe medical consequences to the person and that there is no other form of the influenza vaccine that would not cause severe medical consequences. All other persons in the home must still be vaccinated.

(7) Before granting or renewing a license, your licenser will assess your ability to provide a safe home and to provide the quality of care needed by children placed in your home. Your licenser will also determine that you meet training requirements.

(8) Foster children under the care and authority of the department living in your home do not need to obtain a criminal history check, FBI fingerprint check or TB test.

NEW SECTION

WAC 388-148-1321 May I request a provisional expedited foster family license? (1) You may request a provisional expedited foster family license if you meet all of the following requirements:

(a) You have been licensed to provide foster care within the previous five years;

(b) You have not had your foster care license closed due to a denial, revocation, or an agreement to relinquish;

(c) You reside in the same home in which you previously held a foster care license and no additional individuals have moved into your home;

(d) You are applying for an expedited license that will be supervised by the same agency that previously licensed or certified you and the agency agrees to supervise your home; and

(e) You and all household members age sixteen years old and older have passed (~~a fingerprint-based~~) the required background check for this provisional expedited foster family license.

(2) To initiate a provisional expedited license, you must submit a completed expedited license application and completed background check authorization forms for all household members who are sixteen years old and older to DLR or a licensed child-placing agency.

(3) In order for your full license to be processed you must submit your licensing application packet within fourteen days. Application packets are available from DLR and licensed child-placing agencies.

(4) You will be issued a provisional expedited foster family license if you have submitted the policy agreements and all of the required household members in your home have passed the required background check. The provisional expedited foster family license will be issued for ninety days and will close after ninety days.

(5) Your licensing or certifying agency will continue to work with you and make every effort to ensure that individuals qualified for and seeking a provisional expedited foster family license may become fully foster care licensed within forty days of the department's receipt of a complete application for a provisional expedited foster family license.

(6) You do not have the right to appeal the department's decision that you do not meet the criteria for a provisional expedited foster family license.