



EXPEDITED RULE MAKING

CR-105 (June 2004)
(Implements RCW 34.05.353)
EXPEDITED RULE MAKING ONLY

Agency: Department of Social and Health Services, Developmental Disabilities Administration

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

Chapter 388-825 WAC, Division of Developmental Disabilities Services Rules recodification of WAC 388-825-0600 through WAC 388-825-0690, and update of references to correctly identify the recodified sections.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO

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AND RECEIVED BY (Date) April 7, 2015

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

The purpose of this proposal is to better organize the chapter by recodifying the sections related to background checks to the 600 series of chapter 388-825 WAC, and amending four references to correctly identify the recodified sections. None of these changes will result in any changes to policy, eligibility, or processes.

Statutory authority for adoption: RCW 74.08.090

Statute being implemented:

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: February 03, 2015

TIME: 9:52 AM

WSR 15-04-112

DATE
January 30, 2015

NAME (TYPE OR PRINT)
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SIGNATURE

TITLE
DSHS Rules Coordinator

Name of proponent: (person or organization)

- Private
- Public
- Governmental

Name of agency personnel responsible for:

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Enforcement.....	N/A		()

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

WAC 388-825-0600 What definitions apply to WAC ((388-825-0600)) 388-825-600 through ((388-825-0690)) 388-825-690 of this chapter? The following definitions apply to WAC ((388-825-0600)) 388-825-600 through ((388-825-0690)) 388-825-690 of this chapter:

"Agency" means any agency of the state or any private agency providing services to individuals with developmental disabilities.

"Authorized" or **"authorization"** means not disqualified by the department to have unsupervised access to children and individuals with a developmental disability. This term applies to persons who are certified or contracted by the department, allowed to receive payments from department funded programs, or who volunteer with department funded programs.

"Background check central unit (BCCU)" means the DSHS program responsible for conducting background checks for DSHS administrations.

"Certification" means department approval of an entity that does not legally need to be licensed indicating that the entity nevertheless meets minimum licensing requirements.

"Civil adjudication proceeding" is a judicial or administrative adjudicative proceeding that results in a finding of, or upholds an agency finding of, domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation or financial exploitation of a child or vulnerable adult under any provision of law, including but not limited to chapter 13.34, 26.44 or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative findings that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.

"Community residential service businesses" include all developmental disabilities administration supported living providers with the exception of supported living providers who are also licensed as an assisted living facility or adult family home. Community residential service providers also include DDA companion homes, DDA alternative living and licensed residential homes for children.

"DDA" means the developmental disabilities administration within the department of social and health services (DSHS).

"Department" means the department of social and health services (DSHS).

"Disqualified" means that the results of an individual's background check disqualifies him or her from a position which will or may involve unsupervised access to individuals with developmental disabilities.

"Entity" means, but is not limited to, a licensed facility, a corporation, a partnership, a sole proprietorship, or a contracted or certified service provider.

"Hire" means engagement by an agency, entity or a hiring individual to perform specific agreed duties as a paid employee, a contract employee, a volunteer, or a student intern.

"Individual provider" has the same meaning as defined in RCW 74.39A.240.

"Individuals with a developmental disability" means individuals who meet eligibility requirements in Title 71A RCW as further defined in chapter 388-823 WAC.

"Long-term care worker" has the same meaning as defined in RCW 74.39A.009.

"Permanent restraining order" means a restraining order/order of protection issued either following a hearing, or by stipulation of the parties. A "permanent" order may be in force for a specific time period (e.g. 1 year), after which it expires.

"Qualified" means an individual can be hired into a position that includes unsupervised access to individuals with developmental disabilities because the results of his or her background check are not disqualifying.

"Temporary restraining order" means restraining order/order of protection that expired without a hearing, was dismissed following an initial hearing, or was dismissed by stipulation of the parties in lieu of an initial hearing."

"Unsupervised" means not in the presence of:

(1) The licensee, another employee or volunteer from the same business or organization as the applicant who has not been disqualified by the background check.

(2) Any relative or guardian of the individual with a developmental disability to whom the applicant has access during the course of his or her employment or involvement with the business or organization (RCW 43.43.080(9)).

"WSP" refers to the Washington state patrol.

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

WAC 388-825-0615 What is the process for obtaining a background check? (1) Long-term care workers, including individual providers, undergoing a background check for initial hire or initial contract, after January 7, 2012, will be screened through a state name and date of birth check and a national fingerprint-based background check; except that long-term care workers in community residential service businesses are subject to background checks as described in ((~~WAC 388-825-0615~~)) subsection (1)(a) and (b) in this section. Parents are not exempt from the long-term care background check requirements.

(a) Prior to January 1, 2016, community residential service businesses as defined above will be screened as follows:

(i) 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.

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

(b) Beginning January 1, 2016, community residential service businesses as defined above will be screened as described in ((~~WAC 388-825-0615~~)) subsection (1) of this section.

(2) For adult family homes refer to chapter 388-76 WAC, Adult family home minimum licensing requirements. For assisted living facilities refer to chapter 388-78A WAC, Assisted living licensing rules.

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

WAC 388-825-0630 What does the background check cover? (1) The department must review criminal convictions and pending charges based on identifying information provided by you. The background check may include but is not limited to the following information sources:

- (a) Washington state patrol.
- (b) Washington courts.
- (c) Department of corrections.
- (d) Department of health.
- (e) Civil adjudication proceedings.
- (f) Applicant's self-disclosure.
- (g) Out-of-state law enforcement and court records.

(2) DDA requires fingerprint-based background checks as described in WAC ((~~388-825-0615~~)) 388-825-615. These background checks include a review of conviction records through the Washington state patrol, the Federal Bureau of Investigation, and the national sex offender registry.

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

WAC 388-825-0645 May an individual work in an unsupervised capacity with individuals with developmental disabilities when his or her background check reveals a conviction, pending charge or negative action that is not considered disqualifying per chapter 388-113 WAC or WAC ((~~388-825-0640~~)) 388-825-640? An individual with convictions, pending charges or negative actions that are not disqualifying per chapter 388-113 WAC or WAC ((~~388-825-0640~~)) 388-825-640 may work in an unsupervised capacity with individuals with developmental disabilities only after a character, competence and suitability review has been conducted as required by WAC 388-825-065.

NEW SECTION

The following sections of the Washington Administrative Code are decodified and recodified as follows:

Old WAC Number	New WAC Number
388-825-0600	388-825-600
388-825-0605	388-825-605
388-825-0610	388-825-610
388-825-0615	388-825-615
388-825-0620	388-825-620
388-825-0625	388-825-625
388-825-0630	388-825-630
388-825-0635	388-825-635

388-825-0640	388-825-640
388-825-0645	388-825-645
388-825-0650	388-825-650
388-825-0655	388-825-655
388-825-0660	388-825-660
388-825-0665	388-825-665
388-825-0670	388-825-670
388-825-0675	388-825-675
388-825-0680	388-825-680
388-825-0685	388-825-685
388-825-0690	388-825-690