



# PROPOSED RULE MAKING

## CR-102 (July 2022) (Implements RCW 34.05.320) Do NOT use for expedited rule making

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STATE OF WASHINGTON  
FILED

DATE: October 04, 2022

TIME: 9:20 AM

WSR 22-20-088

**Agency:** Department of Social & Health Services, Aging and Long-Term Support Administration, HCS

☒ **Original Notice**

☐ **Supplemental Notice to WSR**

☐ **Continuance of WSR** \_\_\_\_\_

☒ **Preproposal Statement of Inquiry was filed as WSR 22-07-064 ; 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) WACs 388-06-0030, 388-06-0500, 388-06-0510, 388-06-0525 & 388-06-0530 (amended), 388-06-0550 (new), 388-06-0520, 388-06-0535 & 388-06-0540 (repealed) in chapter 388-06 WAC 120-Day Provisional Hire-Pending FBI Background Check Results.

### Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
November 8, 2022	10:00 am	Office Building 2 DSHS Headquarters 1115 Washington Olympia, WA 98504  or Virtually	Public parking at 11 <sup>th</sup> and Jefferson. A map is available at: <a href="https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2">https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2</a>  Due to COVID-19 pandemic, hearings are held virtually, see the DSHS website <a href="https://www.dshs.wa.gov/office-of-the-secretary/filings-and-rules">https://www.dshs.wa.gov/office-of-the-secretary/filings-and-rules</a> for the most current information.

**Date of intended adoption:** no earlier than November 9, 2022 (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](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov)

Fax: 360-664-6185

Other:

By (date) 5:00 p.m. on November 8, 2022

### Assistance for persons with disabilities:

Contact DSHS Rules Consultant

Phone: 360-664-6036

Fax: 360-664-6185

TTY: 711 Relay Service

Email: [shelley.tencza@dshs.wa.gov](mailto:shelley.tencza@dshs.wa.gov)

Other:

By (date) 5:00 p.m. on October 25, 2022

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The proposal grants the department rule making authority in ESHB 1120 (chapter 203, Laws of 2021) to allow a long-term care worker, or service provider to work on a conditional basis pending the completion of a background check. The long-term care worker or service provider may have unsupervised access to vulnerable adults pending the results of a fingerprint-based background check required under RCW 74.39A.056 or RCW 43.43.837.

The department filed two emergency rules, one on March 1, 2022, as WSR 22-06-074 and a second one on June 27, 2022, as WSR 22-14-038 that reinstates the fingerprinting requirement for providers that were temporarily suspended by the Governor's Proclamation due to the Public Health Emergency (PHE). The proposal also amends other rules in chapter 388-06 WAC to ensure they are consistent with one another and do not conflict with current background check rules in chapter 388-113 WAC. The Governor's proclamation temporarily waived fingerprinting and will be in place until the PHE end date.

**Reasons supporting proposal:** The reason for supporting this proposal is to reinstate state fingerprinting rules for applicants, long-term care workers and service providers.

**Statutory authority for adoption:** RCW 43.20A.710, 43.43.837, 74.08.090, 74.09.520, 74.39A.056, ESHB 1120 Chapter 203, Laws of 2021.

**Statute being implemented:** RCW 43.43.837 and 74.39A.056

**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:** None

**Type of proponent:** ☐ Private ☐ Public ☒ Governmental

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

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Stacy Graff	PO Box 45600, Olympia, WA 98504-5600	360-742-2071
Implementation:	Stacy Graff	PO Box 45600, Olympia, WA 98504-5600	360-742-2071
Enforcement:	Stacy Graff	PO Box 45600, Olympia, WA 98504-5600	360-742-2071

**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:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

☒ No: Please explain: Even though long-term care workers, applicants, and service providers are subject to these rules, this proposal reinstates rules that had been suspended and adds clarifying language. Additionally, a cost-benefit analysis is not necessary because a substantially similar rule was in place and suspended temporarily due to the Governor's Proclamation during a PHE. This rulemaking does not impose any new costs, it reinstates requirements previously in rule and adds clarifying language.

**Regulatory Fairness Act and Small Business Economic Impact Statement**

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

**(1) Identification of exemptions:**

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). 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 19.85.025](#)(4) (does not affect small businesses).

☐ This rule proposal, or portions of the proposal, is exempt under RCW \_\_\_\_\_.

Explanation of how the above exemption(s) applies to the proposed rule: RCW 34.05.310 (4)(d) correct or clarify language, 34.05.310 (4)(e), and 34.05.310 (4)(g) because it reinstates rules that already exist and were suspended due to Governor's Proclamation in a PHE.

**(2) Scope of exemptions:** *Check one.*

☒ The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.

☐ The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):

☐ The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

**(3) Small business economic impact statement:** *Complete this section if any portion is not exempt.*

If any portion of 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 minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. \_\_\_\_\_

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

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

Name:

Address:

Phone:

Fax:

TTY:

Email:

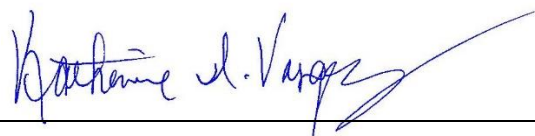
Other:

**Date:** October 3, 2022

**Name:** Katherine I. Vasquez

**Title:** DSHS Rules Coordinator

**Signature:**



AMENDATORY SECTION (Amending WSR 15-05-030, filed 2/10/15, effective 3/13/15)

**WAC 388-06-0030 What is the purpose of this chapter?** (1) WAC 388-06-500 through ~~((388-06-0540 defines))~~ 388-06-0550 define when ~~((the one hundred twenty-day provisional hire is allowed by DSHS))~~ an applicant, long-term care worker, or service provider may have unsupervised access to vulnerable adults and children pending the results of a fingerprint-based background check required by RCW 74.39A.056 or RCW 43.43.837.

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

AMENDATORY SECTION (Amending WSR 01-15-019, filed 7/10/01, effective 8/10/01)

**WAC 388-06-0500 What is the purpose of the ~~((one hundred twenty))~~ 120-day provisional ((hire)) period?** The ~~((one hundred and twenty))~~ 120-day provisional ((hire)) period allows ~~((an employee))~~ applicants, long-term care workers, and service providers to have unsupervised access to vulnerable adults and children~~((, juveniles and vulnerable adults on a provisional basis))~~ pending the results of ~~((their Federal Bureau of Investigation (FBI))~~ a fingerprint-based background check.

AMENDATORY SECTION (Amending WSR 01-15-019, filed 7/10/01, effective 8/10/01)

**WAC 388-06-0510 What definitions apply to ~~((one hundred twenty))~~ 120-day provisional ((hires)) period rules?** ~~((("Agency" means any agency of the state or any private agency providing services to children, juveniles, and vulnerable adults.~~

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

**"Disqualified"** means the results of an individual's background check disqualifies them from a position which will or may provide unsupervised access to children, juveniles, and vulnerable adults.

**"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.

**"Hiring individual"** means a DSHS client who is eligible to hire an individual to provide in-home service with state funding.

**"Individual"** means an employee, a contract employee, a volunteer, or a student intern.

**"Qualified"** means an individual can be hired into a position that includes unsupervised access to children, juveniles, and vulnerable

adults because the results of their background check are not disqualifying.

**"Unsupervised access"** means that:

(1) An individual will or may have the opportunity to be alone with a child, juvenile, or a vulnerable adult; and

(2) Neither a qualified employee, contract employee, volunteer, or student intern of the agency, or entity nor a relative or guardian of the child, juvenile or vulnerable adult is present)) **"Applicant"** has the same meaning as defined in RCW 43.43.830.

**"Completed fingerprint check"** means the applicant has a final fingerprint notification from the background check central unit that is not disqualifying.

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

**"Service provider"** means entities, facilities, agencies, businesses, or individuals who are licensed, certified, authorized, or regulated by, receive payment from, or have contracts or agreements with, the department of social and health services or its designee, to provide services to vulnerable adults or children.

AMENDATORY SECTION (Amending WSR 14-14-026, filed 6/24/14, effective 7/25/14)

**WAC 388-06-0525 When are ((individuals)) applicants, long-term care workers, and service providers eligible for the ((one hundred twenty)) 120-day provisional ((hire)) period?** ((Individuals)) Applicants, long-term care workers, and service providers are eligible for the ((one hundred twenty)) 120-day provisional ((hire immediately. The signed)) period once they have passed a state name and date of birth background check ((application and fingerprinting process must be completed as required by the applicable DSHS program)) and have scheduled their appointment to have their fingerprints taken for the fingerprint-based background check.

AMENDATORY SECTION (Amending WSR 01-15-019, filed 7/10/01, effective 8/10/01)

**WAC 388-06-0530 When does the ((one hundred twenty)) 120-day provisional ((hire)) period begin?** The ((one hundred twenty)) 120-day provisional ((hire may begin from either:

(1)) period begins on the date ((of hire of an individual; or

(2) After completion of a state background check on an individual.

The agency, entity, or hiring individual makes this decision)) an applicant, long-term care worker, or service provider begins providing care to a vulnerable adult or child.

## NEW SECTION

**WAC 388-06-0550** How does the state of emergency declared in response to the COVID-19 pandemic affect the provisional period for applicants, long-term care workers, and service providers? Notwithstanding WAC 388-06-0530, applicants, long-term care workers, and service providers who began providing care to vulnerable adults between November 1, 2019, and April 30, 2022, will have until August 28, 2022, to complete the fingerprint background check. Providers who begin providing care on or after May 1, 2022, are subject to the rules set forth in WAC 388-06-0525 and WAC 388-06-0530.

## REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-06-0520	Who is responsible for approving the one hundred twenty-day provisional hire?
WAC 388-06-0535	Who approves one hundred twenty-day provisional hire extensions?
WAC 388-06-0540	Are there instances when the one hundred twenty-day provisional hire is not available?