



# RULE-MAKING ORDER EMERGENCY RULE ONLY

## CR-103E (December 2017) (Implements RCW 34.05.350 and 34.05.360)

CODE REVISER USE ONLY

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STATE OF WASHINGTON  
FILED

DATE: October 24, 2022

TIME: 10:10 AM

WSR 22-22-025

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

**Effective date of rule:**

**Emergency Rules**

- Immediately upon filing.
- Later (specify) 10/26/2022

**Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?**

- Yes
  - No
- If Yes, explain:

**Purpose:** 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388-06-0510, 388-06-0525 & 388-06-0530 (amended), 388-06-0550 (new), 388-06-0520, 388-06-0535 & 388-06-0540 (repealed) in chapter 388-06 WAC 120-Day Provisional Hire-Pending FBI Background Check Results. The Department of Social and Health Services (department) was granted rulemaking in ESHB 1120 (chapter 203, Laws of 2021) rulemaking authority to reinstate the fingerprinting requirement for providers that were temporarily suspended by the Governor's Proclamation due to the Public Health Emergency. The proposal also amends other rules in chapter 388-06 WAC to ensure there is consistency with one another and do not conflict with current background check rules in chapter 388-113 WAC Disqualifying Crimes and Negative Actions.

**Citation of rules affected by this order:**

- New: WAC 388-06-0550
- Repealed: WAC 388-06-0520, 388-06-0535, and 388-06-0540
- Amended: WAC 388-06-0030, 388-06-0500, 388-06-0510, 388-06-0525, and 388-06-0530
- Suspended:

**Statutory authority for adoption:** RCW 43.20A.710, 43.43.837, 74.08.090, 74.09.520, and 74.39A.056.

**Other authority:** ESHB 1120, chapter 203, Laws of 2021

**EMERGENCY RULE**

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

**Reasons for this finding:** The department needs an emergency WAC prior to the end of the Governor's Proclamation since it reduces future capacity issues by decreasing the backlog of providers who need to complete fingerprinting. Additionally, this allows the department to complete permanent rules with the emergency rule in place. The department filed a preproposal under WSR 22-07-064 and a CR 102 proposal under WSR 22-20-088.

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

|                                  |     |          |         |          |          |          |
|----------------------------------|-----|----------|---------|----------|----------|----------|
| Federal statute:                 | New | ___      | Amended | ___      | Repealed | ___      |
| Federal rules or standards:      | New | ___      | Amended | ___      | Repealed | ___      |
| Recently enacted state statutes: | New | <u>1</u> | Amended | <u>5</u> | Repealed | <u>3</u> |

**The number of sections adopted at the request of a nongovernmental entity:**

New      Amended      Repealed     

**The number of sections adopted on the agency's own initiative:**


New      Amended      Repealed     

**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New   1   Amended   5   Repealed   3  

**The number of sections adopted using:**

|                                |     |              |         |              |          |              |
|--------------------------------|-----|--------------|---------|--------------|----------|--------------|
| Negotiated rule making:        | New | <u>    </u>  | Amended | <u>    </u>  | Repealed | <u>    </u>  |
| Pilot rule making:             | New | <u>    </u>  | Amended | <u>    </u>  | Repealed | <u>    </u>  |
| Other alternative rule making: | New | <u>  1  </u> | Amended | <u>  5  </u> | Repealed | <u>  3  </u> |

|                                       |   |
|---------------------------------------|---|
| <b>Date Adopted:</b> October 24, 2022 | <b>Signature:</b><br> |
| <b>Name:</b> Katherine I. Vasquez     |   |
| <b>Title:</b> DSHS Rules Coordinator  |   |

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? |