



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 03, 2023
TIME: 12:16 PM

WSR 23-20-108

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

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

- Preproposal Statement of Inquiry was filed as WSR 23-14-038 ; 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) WAC 388-825-335, Is a background check required of a long-term care worker employed by a home care agency licensed by the department of health?, 388-825-615, What type of background check is required?, and 388-825-620, How often must a background check be renewed?

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
November 7, 2023	10:00 a.m.	Virtually via Teams or call in	Hearing are being held virtually. Please see the DSHS website for the most up to date information.

Date of intended adoption: Not earlier than November 8, 2023 (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) November 7, 2023, at 5:00 p.m.

Assistance for persons with disabilities:

Contact Shelley Tencza, Rules Consultant
 Phone: 360-664-6036
 Fax: 360-664-6185
 TTY: 711 Relay Service
 Email: shelley.tencza@dshs.wa.gov
 Other:
 By (date) October 24, 2023, at 5:00 p.m.

Purpose of the proposal and its anticipated effects, including any changes in existing rules: DDA is amending these rules to comply with federal background check requirements and to align rules with recent amendments to state law passed under Senate Bill 5252.

Reasons supporting proposal: See purpose

Statutory authority for adoption: RCW 71A.12.030

Statute being implemented: RCW 43.43.837 and 74.39A.056

Is rule necessary because of a:

- Federal Law? Yes No
- Federal Court Decision? Yes No
- State Court Decision? Yes 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, Developmental Disabilities Administration

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Chantelle Diaz	P.O. Box 45310, Olympia WA 98504-5310	360-790-4732
Implementation:	Heather Lum	P.O. Box 45310, Olympia WA 98504-5310	360-407-1526
Enforcement:	Heather Lum	P.O. Box 45310, Olympia WA 98504-5310	360-407-1526

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: Chantelle Diaz

Address: P.O. Box 45310, Olympia WA 98504-5310

Phone: 360-790-4732

Fax: 360-407-0955

TTY: 1-800-833-6388

Email: chantelle.diaz@dshs.wa.gov

Other:

No: Please explain:

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)(e)
(Dictated by statute)

[RCW 34.05.310](#) (4)(c)
(Incorporation by reference)

[RCW 34.05.310](#) (4)(f)
(Set or adjust fees)

[RCW 34.05.310](#) (4)(d)
(Correct or clarify language)

[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:

(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:

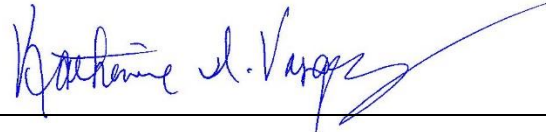
Other:

Date: September 28, 2023

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



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

WAC 388-825-335 Is a background check required of a long-term care worker employed by a home care agency licensed by the department of health? (1) In order to be a long-term care worker employed by a home care agency, a person must:

(a) Complete the required DSHS form authorizing a background check(~~(-)~~);

(b) Disclose any disqualifying criminal convictions and pending charges as listed in chapter 388-113 WAC, and also disclose civil adjudication proceedings and negative actions as those terms are defined in WAC (~~(388-71-0512)~~) 388-113-0030(~~(-)~~);

(c) (~~(Effective January 8, 2012, be)~~) Be screened through a Washington (~~(state's)~~) state name and date of birth background check(~~(-)~~) (Preliminary results may require a thumb print for identification purposes); and

(d) (~~(Effective January 8, 2012, be)~~) Be screened through (~~(the)~~) a Washington state and national fingerprint-based background check(~~(-)~~) as required by RCW 74.39A.056.

(2) Results of background checks are provided to the department and the employer or potential employer for the purpose of determining whether the person:

(a) Is disqualified based on a disqualifying criminal conviction or a pending charge for a disqualifying crime (~~(as listed in)~~) under WAC 388-113-0020, civil adjudication proceeding(~~(-)~~) or negative action (~~(as defined in)~~) under WAC (~~(388-71-0512 and listed in WAC 388-71-0540)~~) 388-113-0030; or

(b) Should or should not be employed based on his or her character, competence, (~~(and/)~~) or suitability.

(3) For (~~(those providers)~~) a provider listed in RCW 43.43.837(1), (~~(a second national fingerprint-based background check is required if they have)~~) who has lived out of the state of Washington (~~(since the first national fingerprint-based background check was completed)~~) in the past 36 months, a national fingerprint-based background check is required.

(4) The department may require a long-term care worker to have a Washington state name and date of birth background check (~~(or)~~) at any time and a (~~(Washington state and)~~) national fingerprint-based background check(~~(- or both, at any time.)~~) if information is disclosed or found regarding a new:

(a) Pending charge;

(b) Conviction; or

(c) Negative action.

AMENDATORY SECTION (Amending WSR 23-07-130, filed 3/22/23, effective 4/22/23)

WAC 388-825-615 What type of background check is required? (1) (~~(Beginning January 7, 2012, long)~~) Long-term care workers and providers(~~(- including parents and individual providers-)~~) undergoing a background check for initial hire or initial contract(~~(-)~~) must be

screened through a Washington state name and date of birth check and a national fingerprint-based background check.

~~((2) Beginning January 1, 2016, a newly hired long-term care worker employed by a community residential service business must be screened through a Washington state name and date of birth check and a national fingerprint-based background check.))~~

(a) For a renewal, a person who has continuously resided in Washington state for the past ~~((three consecutive years))~~ 36 months must be screened through a Washington state name and date of birth check.

(b) For a renewal, a person who has resided outside of Washington state in the past ~~((three years))~~ 36 months must be screened through a Washington state name and date of birth check and a national fingerprint-based background check.

~~((3))~~ (2) For adult family homes, refer to chapter 388-76 WAC. For assisted living facilities, refer to chapter 388-78A WAC.

~~((4))~~ (3) Beginning July ~~((4))~~ 23, 2023, a residential habilitation center applicant undergoing a background check for initial hire must be screened through a Washington state name and date of birth check and a national fingerprint-based background check.

~~((5))~~ (4) All background checks must be completed through the online background check system.

AMENDATORY SECTION (Amending WSR 23-07-130, filed 3/22/23, effective 4/22/23)

WAC 388-825-620 How often must a background check be renewed?

(1) DDA requires a background check at least every ~~((three years))~~ 36 months, or more frequently if required by program rule.

(2) A background check renewal will be conducted as follows:

(a) ~~((Individuals who have))~~ A person who has continuously resided in Washington state for the past ~~((three consecutive years will))~~ 36 months must be screened through a state name and date of birth background check.

(b) ~~((Individuals who have))~~ A person who has lived outside of Washington state within the past ~~((three years will))~~ 36 months must be screened through a state name and date of birth check and a national fingerprint-based background check.

(c) ~~((Individuals who live))~~ A person who lives outside of Washington state and ~~((provide))~~ provides services in Washington state ~~((will))~~ must be screened through a Washington state name and date of birth check and a national fingerprint-based background check.

(3) The department may require a long-term care worker to have a renewed Washington state name and date of birth background check at any time and a national fingerprint-based background check if information is disclosed or found regarding a new:

(a) Pending charge;

(b) Conviction; or

(c) Negative action.