

Chapter 388-06 WAC

BACKGROUND CHECKS

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388-06-0180	Are there other criminal convictions that will prohibit me from working with children or individuals with a developmental disability?	WAC 388-06-0010 What is the purpose of this chapter? (1) The purpose of this chapter is to establish rules for background checks conducted by children's administration (CA), and the division of developmental disabilities (DDD) at the department of social and health services (DSHS). The department does background checks on individuals who are licensed, certified, contracted, or authorized to care for or have unsupervised access to children and to individuals with a developmental disability. Background checks are conducted to find and evaluate any history of criminal convictions or civil adjudication proceedings, including those involving abuse, abandonment, financial exploitation, or neglect of a child or vulnerable adult.
388-06-0190	If I have a conviction, may I ever have unsupervised access to children or individuals with a developmental disability?	(2) This chapter also defines when the one hundred twenty-day provisional hire is allowed by DSHS. WAC 388-06-0500 through 388-06-0540 apply to all DSHS administrations.
388-06-0200	Will I be disqualified if there are pending criminal charges on my background check?	(3) WAC 388-06-0600 through 388-06-0640 of this chapter includes the background check requirements for DSHS employees and applicants seeking, working or serving in a covered position.
388-06-0210	Will you license, contract, or authorize me to have unsupervised access to children or individuals with a developmental disability if my conviction has been expunged, or vacated from my record or I have been pardoned for a crime?	(4) WAC 388-06-0700 through 388-06-0720 of this chapter describes the responsibilities of the background check central unit.
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[Statutory Authority: RCW 43.43.832, 74.39A.055, 74.39A.050, 74.39A.095, 74.39A.260, 43.20A.710, and 43.43.837. WSR 10-16-083, § 388-06-0010, filed 7/30/10, effective 8/30/10. Statutory Authority: RCW 43.43.832, 43.20A.710, and 2007 c 387. WSR 09-03-003, § 388-06-0010, filed 1/8/09, effective 2/8/09. Statutory Authority: RCW 74.15.030. WSR 01-18-025, § 388-06-0010, filed 8/27/01, effective 10/1/01.]

BACKGROUND CHECK REQUIREMENTS FOR CHILDREN'S ADMINISTRATION AND DIVISION OF DEVELOPMENTAL DISABILITIES

WAC 388-06-0020 What definitions apply to WAC 388-06-0100 through 388-06-0260 of this chapter? The following definitions apply to WAC 388-06-0100 through 388-06-0260 of this chapter:

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

"CA" means children's administration, department of social and health services. Children's administration is the cluster of programs within DSHS responsible for the provision of licensing of foster homes, group facilities/programs and child-placing agencies, child protective services, child welfare services, and other services to children and their families.

"Certification" means:

(1) Department approval of a person, home, or facility that does not legally need to be licensed, but wishes to have evidence that they met the minimum licensing requirements.

(2) Department licensing of a child-placing agency to certify and supervise foster home and group care programs.

"Children" and **"youth"** are used interchangeably in this chapter and refer to individuals who are under parental or department care including:

(1) Individuals under eighteen years old; or

(2) Foster children up to twenty-one years of age and enrolled in high school or a vocational school program; or

(3) Developmentally disabled individuals up to twenty-one years of age for whom there are no issues of child abuse and neglect; or

(4) JRA youth up to twenty-one years of age and who are under the jurisdiction of JRA or a youthful offender under the jurisdiction of the department of corrections who is placed in a JRA facility.

"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 division of developmental disabilities supported living

providers with the exception of supported living providers who are also licensed as an assisted living facility or adult family home provider. Community residential service providers also include DDD companion homes, DDD alternative living and licensed residential homes for children.

"DCFS" means division of children and family services and is a division within children's administration that provides child welfare, child protective services, and support services to children in need of protection and their families.

"DDD" means the division of developmental disabilities, department of social and health services (DSHS).

"DLR" means the division of licensed resources that is a division within children's administration, the department of social and health services.

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

"I" and **"you"** refers to anyone who has unsupervised access to children or to persons with developmental disabilities in a home, facility, or program. This includes, but is not limited to, persons seeking employment, a volunteer opportunity, an internship, a contract, certification, or a license for a home or facility.

"JRA" means the juvenile rehabilitation administration, department of social and health services.

"Licensor" means an employee of DLR or of a child placing agency licensed or certified under chapter 74.15 RCW to approve and monitor licenses for homes or facilities that offer care to children. Licenses require that the homes and facilities meet the department's health and safety standards.

"Individual provider" as defined in RCW 74.39A.240 means a person, including a personal aide, who has contracted with the department to provide personal care or respite care services to functionally disabled persons under the medicaid personal care, community options program entry system, chore services program, or respite care program, or to provide respite care or residential services and supports to persons with developmental disabilities under chapter 71A.12 RCW, or to provide respite care as defined in RCW 74.13.270.

"Individuals with a developmental disability" means individuals who meet eligibility requirements in Title 71A RCW. A developmental disability is any of the following: Intellectual disability, cerebral palsy, epilepsy, autism, or another neurological condition described in chapter 388-823 WAC; originates before the age of eighteen years; is expected to continue indefinitely; and constitutes a substantial limitation to the individual.

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

"Spousal abuse" includes any crime of domestic violence as defined in RCW 10.99.020 when committed against a spouse, former spouse, person with whom the perpetrator has a child regardless of whether the parents have been married or lived together at any time, or an adult with whom the perpetrator is presently residing or has resided in the past.

"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 child or developmentally disabled individual or vulnerable adult 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)).

"Unsupervised access" means that an individual will or may be left alone with a child or vulnerable adult (individual with developmental disability) at any time for any length of time.

"We" refers to the department, including licensors and social workers.

"WSP" refers to the Washington state patrol.

[Statutory Authority: RCW 43.43.832 and 74.39A.056 as amended by 2012 c 164 and 2012 c 1. WSR 12-21-053, § 388-06-0020, filed 10/15/12, effective 12/25/12. Statutory Authority: RCW 43.43.832, 74.39A.055, 74.39A.-050, 74.39A.095, 74.39A.260, 43.20A.710, and 43.43.837. WSR 10-16-083, § 388-06-0020, filed 7/30/10, effective 8/30/10. Statutory Authority: RCW 74.15.030. WSR 01-18-025, § 388-06-0020, filed 8/27/01, effective 10/1/01.]

WAC 388-06-0100 Why are background checks done? The department does background checks to help safeguard the health, safety and well being of children and of individuals with a developmental disability in licensed homes and facilities and in day treatment programs. By doing background checks, the department reduces the risk of harm to children and individuals with a developmental disability from caregivers that have been convicted of certain crimes. The department's regulations require the evaluation of your background to determine your character, suitability and competence before you are issued a license, contract, certificate, or authorized to have unsupervised access to children or to individuals with a developmental disability.

[Statutory Authority: RCW 74.15.030. WSR 01-18-025, § 388-06-0100, filed 8/27/01, effective 10/1/01.]

WAC 388-06-0110 Who must have background checks? (1) Per RCW 74.15.030, the department requires background checks on all providers who may have unsupervised access to children or individuals with a developmental disability. This includes licensed, certified or contracted providers, their current or prospective employees and prospective adoptive parents as defined in RCW 26.33.020.

(2)[(b)] As described in WAC 388-06-0115, the division of developmental disabilities requires background checks on all contracted providers, individual providers, employees of contracted providers, and any other individual who is qualified by DDD to have unsupervised access to individuals with developmental disabilities.

(3) Long-term care workers as defined in chapter 74.39A RCW hired after January 7, 2012 are subject to national fingerprint-based background checks. For individual providers and home care agency providers refer to WAC 388-71-0500 through 388-71-05909. 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.

(4) Per RCW 74.15.030, the department also requires background checks on other individuals who may have unsupervised access to children or to individuals with a developmental disability in department licensed or contracted homes,

or facilities which provide care. The department requires background checks on the following people:

(a) A volunteer or intern with regular or unsupervised access to children;

(b) Any person who regularly has unsupervised access to a child or an individual with a developmental disability;

(c) A relative other than a parent who may be caring for a child;

(d) A person who is at least sixteen years old, is residing in a foster home, relatives home, or child care home and is not a foster child.

[Statutory Authority: RCW 43.43.832 and 74.39A.056 as amended by 2012 c 164 and 2012 c 1. WSR 12-21-053, § 388-06-0110, filed 10/15/12, effective 12/25/12. Statutory Authority: RCW 43.43.832, 74.39A.055, 74.39A.-050, 74.39A.095, 74.39A.260, 43.20A.710, and 43.43.837. WSR 10-16-083, § 388-06-0110, filed 7/30/10, effective 8/30/10. Statutory Authority: RCW 43.43.832, 26.33.190, 26.44.030, 74.15.030, 2007 c 387 and Adam Walsh Act of 2006. WSR 09-06-028, § 388-06-0110, filed 2/24/09, effective 3/6/09. Statutory Authority: RCW 74.15.030. WSR 01-18-025, § 388-06-0110, filed 8/27/01, effective 10/1/01.]

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems ineffectual changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.

WAC 388-06-0115 What are the division of developmental disabilities background check requirements? (1) Per RCW 74.39A.056, long-term care workers undergoing a background check for initial hire or initial contract 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 388-06-0115 (a) and (b). 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 lived outside of Washington state within the past three years consecutive 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 388-06-0115(1).

(2) The division of developmental disabilities requires rechecks for all DDD contracted providers and their employees at least every three years or more frequently if required by program rule. Rechecks will be conducted as follows:

(a) 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.

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

[Statutory Authority: RCW 43.43.832 and 74.39A.056 as amended by 2012 c 164 and 2012 c 1. WSR 12-21-053, § 388-06-0115, filed 10/15/12, effective 12/25/12.]

WAC 388-06-0120 Who is not affected by this chapter? This chapter does not apply to schools, hospitals, or other facilities where the primary focus is not custodial.

[Statutory Authority: RCW 74.15.030. WSR 01-18-025, § 388-06-0120, filed 8/27/01, effective 10/1/01.]

WAC 388-06-0130 Does the background check process apply to new and renewal licenses, certification, contracts, and authorizations to have unsupervised access to children or individuals with a developmental disability?

(1) For children's administration these regulations apply to all applications for new and renewal licenses, contracts, certifications, and authorizations to have unsupervised access to children or individuals with a developmental disability that are processed by the children's administration after the effective date of this chapter.

(2) For the division of developmental disabilities these regulations apply to initial contracts and renewals as required by the applicable DDD background check renewal schedule and program regulations.

[Statutory Authority: RCW 43.43.832 and 74.39A.056 as amended by 2012 c 164 and 2012 c 1. WSR 12-21-053, § 388-06-0130, filed 10/15/12, effective 12/25/12. Statutory Authority: RCW 43.43.832, 74.39A.055, 74.39A.-050, 74.39A.095, 74.39A.260, 43.20A.710, and 43.43.837. WSR 10-16-083, § 388-06-0130, filed 7/30/10, effective 8/30/10. Statutory Authority: RCW 74.15.030. WSR 01-18-025, § 388-06-0130, filed 8/27/01, effective 10/1/01.]

WAC 388-06-0140 What happens if I don't comply with the background check requirement? The department will deny, suspend or revoke your license, contract, certification, or authorization to care for children or for individuals with a developmental disability, if you or someone on the premises of your home or facility having unsupervised access does not comply with the department's requirement for a background check.

[Statutory Authority: RCW 74.15.030. WSR 01-18-025, § 388-06-0140, filed 8/27/01, effective 10/1/01.]

WAC 388-06-0150 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) Except as required in WAC 388-06-0150 (4)(b) and (5), children's administration and division of developmental disabilities will conduct a fingerprint-based background check on any individual who has lived in Washington state for less than three consecutive years.

(3) Background checks conducted for children's administration also include:

- (a) A review of child protective services case files information or other applicable information system.
- (b) Administrative hearing decisions related to any DSHS license that has been revoked, suspended, or denied.

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(4) In addition to the requirements in subsections (1) through (3) of this section, background checks conducted by children's administration for placement of a child in out-of-home care, including foster homes, adoptive homes, relative placements, and placement with other suitable persons under chapter 13.34 RCW, include the following for each person over eighteen years of age residing in the home:

(a) Child abuse and neglect registries in each state a person has lived in the five years prior to conducting the background check.

(b) Washington state patrol (WSP) and Federal Bureau of Investigation (FBI) fingerprint-based background checks regardless of how long you have resided in Washington.

(5) The division of developmental disabilities requires fingerprint-based background checks as described in WAC 388-06-0115. 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.

[Statutory Authority: RCW 43.43.832 and 74.39A.056 as amended by 2012 c 164 and 2012 c 1. WSR 12-21-053, § 388-06-0150, filed 10/15/12, effective 12/25/12. Statutory Authority: RCW 43.43.832, 74.39A.055, 74.39A.-050, 74.39A.095, 74.39A.260, 43.20A.710, and 43.43.837. WSR 10-16-083, § 388-06-0150, filed 7/30/10, effective 8/30/10. Statutory Authority: RCW 43.43.832, 26.33.190, 26.44.030, 74.15.030, 2007 c 387 and Adam Walsh Act of 2006. WSR 09-06-028, § 388-06-0150, filed 2/24/09, effective 3/6/09. Statutory Authority: RCW 74.15.030. WSR 01-18-025, § 388-06-0150, filed 8/27/01, effective 10/1/01.]

WAC 388-06-0160 Who pays for the background check? (1) Children's administration (CA) pays the DSHS general administrative costs for background checks for foster home applicants, CA relative and other suitable caregivers, and CA adoptive home applicants.

(2) Children's administration pays the WSP and FBI-fingerprint processing fees for foster home applicants, CA relative and other suitable caregivers, CA adoptive home applicants, and other adults associated with the home who require background clearances under chapter 13.34 RCW.

(3) Children's administration does not pay WSP and FBI fingerprint processing fees or expenses for employees, contractors, or volunteers associated with facilities other than foster homes.

(4) The division of developmental disabilities pays for background checks, including fingerprint-based background checks, for individuals seeking authorization to provide services to clients of the division.

[Statutory Authority: RCW 43.43.832, 74.39A.055, 74.39A.050, 74.39A.-095, 74.39A.260, 43.20A.710, and 43.43.837. WSR 10-16-083, § 388-06-0160, filed 7/30/10, effective 8/30/10. Statutory Authority: RCW 43.43.832, 26.33.190, 26.44.030, 74.15.030, 2007 c 387 and Adam Walsh Act of 2006. WSR 09-06-028, § 388-06-0160, filed 2/24/09, effective 3/6/09. Statutory Authority: RCW 74.15.030. WSR 01-18-025, § 388-06-0160, filed 8/27/01, effective 10/1/01.]

WAC 388-06-0170 Will a criminal conviction permanently prohibit me from being licensed, contracted, or authorized to have unsupervised access to children or to individuals with developmental disability? (1) There are convictions for certain crimes that will permanently prohibit you from being licensed, contracted, or authorized to have unsupervised access to children or to individuals with developmental disability. Those felony convictions are as follows:

(10/15/12)

- (a) Child abuse and/or neglect;
 - (b) Spousal abuse;
 - (c) A crime against a child (including child pornography);
 - (d) A crime involving violence (including rape, sexual assault, or homicide but not including other physical assault); or
 - (e) Any federal or out-of-state conviction for an offense that under the laws of this state would disqualify you from having unsupervised access to children or individuals with developmental disabilities in any home or facility.
- (2) If you are convicted of one of the crimes listed in WAC 388-06-0170 (1)(a) through (e) you will not be able to:
- (a) Receive a license to provide care to children;
 - (b) Be approved for adoption of a child;
 - (c) Be a contractor;
 - (d) Be employed by a licensed agency or contractor, if you will have unsupervised access to children or to individuals with a developmental disability;
 - (e) Volunteer or participate as an intern in a home or facility that offers care to children or to individuals with a developmental disability; or
 - (f) Provide any type of care to children or to individuals with a developmental disability, if the care is funded by the state.

[Statutory Authority: RCW 74.15.030, WSR 01-18-025, § 388-06-0170, filed 8/27/01, effective 10/1/01.]

WAC 388-06-0180 Are there other criminal convictions that will prohibit me from working with children or individuals with a developmental disability? The department must disqualify you from licensing, contracting, certification, or from having unsupervised access to children or to individuals with a developmental disability if it has been less than five years from a conviction for the following crimes:

- (1) Any physical assault not included in WAC 388-06-0170;
- (2) Any sex offense not included in WAC 388-06-0170;
- (3) Any felony conviction not included in WAC 388-06-0170; or
- (4) Felony violation of the following drug-related crimes:
 - (a) The Imitation Controlled Substances Act (for substances that are falsely represented as controlled substances (see chapter 69.52 RCW));
 - (b) The Legend Drug Act (prescription drugs, see chapter 69.41 RCW);
 - (c) The Precursor Drug Act (substances used in making controlled substances, see chapter 69.43 RCW);
 - (d) The Uniform Controlled Substances Act (illegal drugs or substances, see chapter 69.50 RCW); or
 - (e) Unlawfully manufacturing, delivering or possessing a controlled substance with intent to deliver, or unlawfully using a building for drug purposes.
- (5) Any federal or out-of-state conviction for an offense that under the laws of Washington state would disqualify you for no less than five years from having unsupervised access to children or individuals with a developmental disability.

[Statutory Authority: RCW 43.43.832, 74.39A.055, 74.39A.050, 74.39A.095, 74.39A.260, 43.20A.710, and 43.43.837. WSR 10-16-083, § 388-06-0180, filed 7/30/10, effective 8/30/10. Statutory Authority: RCW

(10/15/12)

74.15.030, WSR 01-18-025, § 388-06-0180, filed 8/27/01, effective 10/1/01.]

WAC 388-06-0190 If I have a conviction, may I ever have unsupervised access to children or individuals with a developmental disability? (1) In two situations, DSHS may find a person with convictions able to have unsupervised access to children or individuals with a developmental disability:

- (a) If the conviction for any crime listed in WAC 388-06-0180 occurred more than five years ago; or
 - (b) If the conviction was for a crime other than those listed in WAC 388-06-0170 or 388-06-0180.
- (2) In both of these situations, DSHS must review your background to determine your character, suitability, and competence to have unsupervised access to children or individuals with a developmental disability. In this review, DSHS must consider the following factors:
- (a) The amount of time that has passed since you were convicted;
 - (b) The seriousness of the crime that led to the conviction;
 - (c) The number and types of other convictions in your background;
 - (d) The amount of time that has passed since you were convicted;
 - (e) Your age at the time of conviction;
 - (f) Documentation indicating you have successfully completed all court-ordered programs and restitution;
 - (g) Your behavior since the conviction; and
 - (h) The vulnerability of those that would be under your care.

[Statutory Authority: RCW 74.15.030, WSR 01-18-025, § 388-06-0190, filed 8/27/01, effective 10/1/01.]

WAC 388-06-0200 Will I be disqualified if there are pending criminal charges on my background check? (1) The department will not license, contract, certify, or authorize a person to have unsupervised access to children or individuals with a developmental disability who have a criminal charge pending.

- (2) You may reapply for a license, contract, certification, or approval to have unsupervised access to children or to individuals with a developmental disability by providing proof to the department that the charge against you has been dropped or that you were acquitted.

[Statutory Authority: RCW 74.15.030, WSR 01-18-025, § 388-06-0200, filed 8/27/01, effective 10/1/01.]

WAC 388-06-0210 Will you license, contract, or authorize me to have unsupervised access to children or individuals with a developmental disability if my conviction has been expunged, or vacated from my record or I have been pardoned for a crime? If you receive a pardon or a court of law acts to expunge or vacate a conviction on your record, the crime will not be considered a conviction for the purposes of licensing, contracting, certification, or authorization for unsupervised access to children or to individuals with a developmental disability.

[Statutory Authority: RCW 74.15.030, WSR 01-18-025, § 388-06-0210, filed 8/27/01, effective 10/1/01.]

WAC 388-06-0220 How will I know if I have not been disqualified by the background check? (1) If you have not been disqualified by the background check and are applying for a license or certification to care for children, the department will not directly notify you. Instead, the department continues the process for approving your application.

(2) If you have requested a contract or approval for unsupervised access to children or to individuals with a developmental disability, the department will notify you, and your prospective employer or your supervisor.

[Statutory Authority: RCW 74.15.030. WSR 01-18-025, § 388-06-0220, filed 8/27/01, effective 10/1/01.]

WAC 388-06-0230 How will I know if I have been disqualified by the background check? (1) The department will notify you, and the care provider, the employer, or the licensor if you have been disqualified by the background check. The notice will be in writing and will include any laws and rules that require disqualification.

(2) If the department sends you a notice of disqualification, you will not receive a license, contract, certification, or be authorized to have unsupervised access to children or to individuals with a developmental disability.

[Statutory Authority: RCW 74.15.030. WSR 01-18-025, § 388-06-0230, filed 8/27/01, effective 10/1/01.]

WAC 388-06-0240 What may I do if I disagree with the department's decision to deny me a license, certification, contract, or authorization based on the results of the background check? (1) If you are seeking a license, or employment with a licensed home or facility you may request an administrative hearing to disagree with the department's decision process to deny authorization for unsupervised access to children or to individuals with a developmental disability (chapter 34.05 RCW). You cannot contest the conviction in the administrative hearing.

(2) Prospective volunteers, interns, contractors, or those seeking certification do not have the right to appeal the department's decision to deny authorization for unsupervised access to children and to individuals with a developmental disability.

(3) The employer or prospective employer cannot contest the department's decision on your behalf.

(4) The administrative hearing will take place before an administrative law judge employed by the office of administrative hearings (chapter 34.05 RCW).

[Statutory Authority: RCW 74.15.030. WSR 01-18-025, § 388-06-0240, filed 8/27/01, effective 10/1/01.]

WAC 388-06-0250 Is the background check information released to my employer or prospective employer? (1) Children's administration will share with employers or approved care providers only that:

(a) You are disqualified; or
(b) You have not been disqualified by the background check.

(2) Division of developmental disabilities will release the source of the disqualifying crime or negative action and WSP rap sheet to authorized requesters as allowed by state law.

[Ch. 388-06 WAC p. 6]

(3) The department will follow laws related to the release of criminal history records (chapters 10.97 and 43.43 RCW) and public disclosure (chapter 42.17 RCW) when releasing any information.

[Statutory Authority: RCW 43.43.832, 74.39A.055, 74.39A.050, 74.39A.095, 74.39A.260, 43.20A.710, and 43.43.837. WSR 10-16-083, § 388-06-0250, filed 7/30/10, effective 8/30/10. Statutory Authority: RCW 74.15.030. WSR 01-18-025, § 388-06-0250, filed 8/27/01, effective 10/1/01.]

WAC 388-06-0260 May I receive a copy of my criminal background check results? (1) The department will provide you a copy of your criminal background check results if you:

(a) Make the request in writing to the department; and
(b) Offer proof of identity, such as picture identification.

(2) A copy of your WSP criminal background check results may also be obtained from the Washington state patrol (chapter 10.97 RCW).

[Statutory Authority: RCW 74.15.030. WSR 01-18-025, § 388-06-0260, filed 8/27/01, effective 10/1/01.]

ONE HUNDRED AND TWENTY-DAY PROVISIONAL HIRE—PENDING FBI BACKGROUND CHECK RESULTS

WAC 388-06-0500 What is the purpose of the one hundred twenty-day provisional hire? The one hundred twenty-day provisional hire allows an employee to have unsupervised access to children, juveniles and vulnerable adults on a provisional basis pending the results of their Federal Bureau of Investigation (FBI) background check.

[Statutory Authority: Chapter 43.20A RCW, RCW 72.05.440 and 74.15.030. WSR 01-15-019, § 388-06-0500, filed 7/10/01, effective 8/10/01.]

WAC 388-06-0510 What definitions apply to one hundred twenty-day provisional hires? "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.

[Statutory Authority: Chapter 43.20A RCW, RCW 72.05.440 and 74.15.030. WSR 01-15-019, § 388-06-0510, filed 7/10/01, effective 8/10/01.]

WAC 388-06-0520 Who is responsible for approving the one hundred twenty-day provisional hire? The agency, entity or hiring individual is responsible for approving individuals for the one hundred twenty-day provisional hire.

[Statutory Authority: Chapter 43.20A RCW, RCW 72.05.440 and 74.15.030. WSR 01-15-019, § 388-06-0520, filed 7/10/01, effective 8/10/01.]

WAC 388-06-0525 When are individuals eligible for the one hundred twenty-day provisional hire? (1) Individuals are eligible for the one hundred twenty-day provisional hire immediately, except as provided under subsection (2) of this section and WAC 388-06-0540. The signed background check application and fingerprinting process must be completed as required by the applicable DSHS program.

(2) Long-term care workers as defined in chapter 74.39A RCW are eligible for the one hundred twenty-day provisional hire, pending the outcome of the fingerprint-based background check, as long as provisional hiring is allowed by the applicable DSHS program rules and the long-term care worker is not disqualified as a result of the initial name and date of birth background check.

[Statutory Authority: RCW 43.43.832 and 74.39A.056 as amended by 2012 c 164 and 2012 c 1. WSR 12-21-053, § 388-06-0525, filed 10/15/12, effective 12/25/12. Statutory Authority: RCW 43.43.832, 74.39A.055, 74.39A.-050, 74.39A.095, 74.39A.260, 43.20A.710, and 43.43.837. WSR 10-16-083, § 388-06-0525, filed 7/30/10, effective 8/30/10. Statutory Authority: Chapter 43.20A RCW, RCW 72.05.440 and 74.15.030. WSR 01-15-019, § 388-06-0525, filed 7/10/01, effective 8/10/01.]

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

- (1) 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.

[Statutory Authority: Chapter 43.20A RCW, RCW 72.05.440 and 74.15.030. WSR 01-15-019, § 388-06-0530, filed 7/10/01, effective 8/10/01.]

WAC 388-06-0535 Who approves one hundred twenty-day provisional hire extensions? The agency, entity or hiring individual approves one hundred twenty-day provisional hire extensions. An extension is approved when the agency, entity or hiring individual does not receive the FBI result within one hundred twenty days from:

- (1) The date of hire; or
- (2) Completion of the state background check.

[Statutory Authority: Chapter 43.20A RCW, RCW 72.05.440 and 74.15.030. WSR 01-15-019, § 388-06-0535, filed 7/10/01, effective 8/10/01.]

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WAC 388-06-0540 Are there instances when the one hundred twenty-day provisional hire is not available? The one hundred twenty-day provisional hire is not available to an agency, entity, or hiring individual requesting:

- (1) An initial license;
- (2) An initial contract;
- (3) Approval as a family child day care home provider, foster parent or adoptive parent (see 42 U.S.C. Sec 671 (a)(20)); or
- (4) Any other individual listed in the assisted living facility or adult family home license application, such as an adult family home entity representative or resident manager, or an assisted living facility administrator.

[Statutory Authority: RCW 43.43.832 and 74.39A.056 as amended by 2012 c 164 and 2012 c 1. WSR 12-21-053, § 388-06-0540, filed 10/15/12, effective 12/25/12. Statutory Authority: Chapter 43.20A RCW, RCW 72.05.440 and 74.15.030. WSR 01-15-019, § 388-06-0540, filed 7/10/01, effective 8/10/01.]

DEPARTMENT OF SOCIAL AND HEALTH SERVICES EMPLOYEE BACKGROUND CHECKS

WAC 388-06-0600 Must the DSHS secretary or designee conduct background checks on all employees in covered positions and applicants under consideration for a covered position? (1) The secretary of the department of social and health services (DSHS) or designee must conduct a background check, which may include fingerprinting as authorized by statute, on all employees in covered positions and applicants under final consideration for a covered position.

(2) The requirement to conduct a background check must include the following:

(a) Any employee seeking a covered position because of a layoff, reallocation, transfer, promotion or demotion or otherwise requesting a move to a covered position.

(b) Any applicant prior to appointment to a covered position, except when the appointment is made on a conditional basis in accordance with agency procedures authorized by WAC 388-06-0635.

(3) Applicant means any person who has applied for work or serves in a covered position, including current employees requesting transfer, promotion, demotion, or otherwise requesting a move to a covered position.

[Statutory Authority: RCW 43.43.832, 43.20A.710, and 2007 c 387. WSR 09-03-003, § 388-06-0600, filed 1/8/09, effective 2/8/09.]

WAC 388-06-0605 What is a covered position? A covered position is one in which a person will or may have unsupervised access to vulnerable adults, juveniles or children.

[Statutory Authority: RCW 43.43.832, 43.20A.710, and 2007 c 387. WSR 09-03-003, § 388-06-0605, filed 1/8/09, effective 2/8/09.]

WAC 388-06-0610 Who are vulnerable adults, juveniles or children? (1) Vulnerable adult means a person who is a client of DSHS and/or is:

- (a) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself;
- (b) Found incapacitated under chapter 11.88 RCW;

(c) Developmental disabled as defined under RCW 71A.10.020;

(d) Admitted to any facility that is operated by DSHS;

(e) Receiving services from a DSHS contracted, authorized, certified, licensed or individual provider, including those certified under chapter 70.96A RCW;

(f) Receiving services through home health, hospice, or home care agencies required to be licensed under chapter 70.127 RCW; or

(g) Admitted to detoxification in a certified chemical dependency treatment facility in accordance with chapter 70.96A RCW.

(2) Juvenile means a person under the age of twenty-one under the juvenile rehabilitation administration's (JRA) jurisdiction, or under the department of corrections' jurisdiction while placed in a JRA facility.

(3) Child or children means any person under eighteen years of age.

[Statutory Authority: RCW 43.43.832, 43.20A.710, and 2007 c 387. WSR 09-03-003, § 388-06-0610, filed 1/8/09, effective 2/8/09.]

WAC 388-06-0615 What is unsupervised access?

Unsupervised access means a DSHS employee, volunteer or student intern who:

(1) Works or serves in a setting, such as an institution, that provides residential services to vulnerable adults, juveniles and children;

(2) Works or serves in a position where, during the course of his or her employment, the employee may transport, or visit the residence of, a vulnerable adult, juvenile or child; or

(3) Works or serves in a position, other than one described in (1) and (2) above, where the employee may be left alone with a vulnerable adult, juvenile or child. "Left alone" does not include the possibility of a public encounter, or public interaction.

[Statutory Authority: RCW 43.43.832, 43.20A.710, and 2007 c 387. WSR 09-03-003, § 388-06-0615, filed 1/8/09, effective 2/8/09.]

WAC 388-06-0620 What information is considered in a background check conducted by DSHS and what are the results of the background check used for? (1) The background check information considered by the DSHS secretary will include but is not limited to conviction records, pending charges, and civil adjudications as defined in RCW 43.43.830.

(2) The background information must be used by DSHS to determine the character, competence, and suitability of the applicant and/or employee to have unsupervised access to vulnerable adults, juveniles and children.

[Statutory Authority: RCW 43.43.832, 43.20A.710, and 2007 c 387. WSR 09-03-003, § 388-06-0620, filed 1/8/09, effective 2/8/09.]

WAC 388-06-0625 Must an employee and/or applicant authorize the secretary of the department of social and health services or designee to conduct a background check and what happens if the employee or applicant does not provide authorization? (1) An employee and/or applicant applying for or being considered for retention in a covered position must authorize the secretary of DSHS or designee

to conduct a background check which may include fingerprinting.

(2) Failure to authorize the DSHS secretary or designee to conduct a background check disqualifies an employee or applicant from consideration for any covered position including their current covered position.

[Statutory Authority: RCW 43.43.832, 43.20A.710, and 2007 c 387. WSR 09-03-003, § 388-06-0625, filed 1/8/09, effective 2/8/09.]

WAC 388-06-0630 What happens when a permanent DSHS employee is disqualified because of a background check or failure to authorize a background check? (1) A DSHS employee who fails to authorize a background check or who is disqualified based on a background check and character, competence, and suitability assessment will be denied unsupervised access to vulnerable adults, juveniles and children.

(2) A permanent employee with a background check disqualification or who fails to authorize a background check may be subject to any of the following actions in no specific order:

(a) Denial of a transfer, promotion, demotion, or elevation;

(b) Job restructuring;

(c) Job reassignment or transfer to a noncovered position;

(d) Nondisciplinary separation;

(e) Disciplinary action;

(f) Voluntary demotion to a noncovered position;

(g) Voluntary resignation from employment.

(3) An appointing authority may use the following interim measures or any combination while deciding which action to take. Use of these interim measures will generally not exceed thirty calendar days except in the case of ongoing investigations or pending charges:

(a) Voluntary use of accrued vacation, exchange, and/or compensatory time;

(b) Authorized leave without pay, if there is no paid leave available, or if the employee chooses not to use paid leave; or

(c) Reassignment to another work location to prevent unsupervised access.

(d) When considering the above actions, the agency will consider the least restrictive means necessary to prevent unsupervised access.

(4) Before an appointing authority implements the non-disciplinary separation of a permanent employee, a search for a noncovered position that is vacant, funded and for which the employee meets the skills and abilities will occur for a period of thirty calendar days. The search will be conducted in accordance with the layoff requirements listed in applicable collective bargaining agreements and DSHS administrative policies.

[Statutory Authority: RCW 43.43.832, 43.20A.710, and 2007 c 387. WSR 09-03-003, § 388-06-0630, filed 1/8/09, effective 2/8/09.]

WAC 388-06-0635 What are the DSHS secretary's responsibilities in carrying out the requirements to conduct background checks? (1) The DSHS secretary or designee will:

(a) Notify employees and applicants that a background check is required for covered positions;

(b) Develop procedures specifying when employees and applicants may be hired on a conditional basis pending the results of a background check; and

(c) Develop policies and procedures pertaining to background checks.

(d) Use information contained in a background check for the purpose of determining the character, competence, and suitability of the applicant and/or employee to have unsupervised access to vulnerable adults, juveniles and children.

(2) The DSHS secretary or designee will not further disseminate background check information unless authorized or required by law to do so. In addition, results of a background check may be discoverable pursuant to the rules of civil discovery, or subject to disclosure pursuant to a public records request.

[Statutory Authority: RCW 43.43.832, 43.20A.710, and 2007 c 387. WSR 09-03-003, § 388-06-0635, filed 1/8/09, effective 2/8/09.]

WAC 388-06-0640 Does a DSHS permanent employee who is disqualified from a covered position as a result of a background check have the right to request a review of the disqualification? A DSHS permanent employee who is disqualified from a covered position as a result of a background check has the right to present the DSHS secretary or designee evidence that may mitigate the disqualifying background information identified by the department. The permanent employee may present additional information for consideration that includes, but is not limited to:

(1) The employee's background check authorization and disclosure form;

(2) The employee's age at the time of conviction, charge, or disciplinary board final decision;

(3) The nature and severity of the conviction, charge, or disciplinary board final decision;

(4) The length of time since the conviction, charge, or disciplinary board final decision;

(5) The nature and number of previous offenses;

(6) Vulnerability of the child, vulnerable adult, or individual with mental illness or developmental disabilities to which the employee will or may have unsupervised access; and

(7) The relationship between the potentially disqualifying event and the duties of the employee.

[Statutory Authority: RCW 43.43.832, 43.20A.710, and 2007 c 387. WSR 09-03-003, § 388-06-0640, filed 1/8/09, effective 2/8/09.]

BACKGROUND CHECK CENTRAL UNIT

WAC 388-06-0700 What definitions apply to WAC 388-06-0710 through 388-06-0720? "Authorized entity" means a department of social and health services program, service provider, licensee, contractor, or other public or private agency that has permission from the department to conduct background checks through the background check central unit.

"Background check applicant" means an employee, volunteer, student, intern, licensee, service provider, contrac-

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tor or other individual who is the subject of the background check and who will work in a position that:

(1) May have unsupervised access to vulnerable adults, juveniles or children as described in WAC 388-06-0610; or

(2) Is designated by the department as a sensitive position.

"Background check central unit" is the program responsible for conducting background checks for the department of social and health services.

(1) The background check central unit is responsible for:

(a) Compiling background check information from external and internal data sources; and

(b) Providing information to the authorized entity who requested the background check.

(2) The background check central unit does not:

(a) Make the final hiring, contracting, placement, or licensing decision for the department or authorized entity; or

(b) Determine what program, service provider, licensee, contractor, or other public or private agency qualifies as an authorized entity.

"Department" means the department of social and health services.

[Statutory Authority: RCW 43.43.832, 74.39A.055, 74.39A.050, 74.39A.-095, 74.39A.260, 43.20A.710, and 43.43.837. WSR 10-16-083, § 388-06-0700, filed 7/30/10, effective 8/30/10.]

WAC 388-06-0710 Who may submit a background check to the background check central unit? An authorized entity may request a background check through the background check central unit when the authorized entity has:

(1) A valid background check central unit account number;

(2) A current department background authorization form filled out and signed by the applicant; and

(3) Submitted the background check request under the applicable program requirements.

[Statutory Authority: RCW 43.43.832, 74.39A.055, 74.39A.050, 74.39A.-095, 74.39A.260, 43.20A.710, and 43.43.837. WSR 10-16-083, § 388-06-0710, filed 7/30/10, effective 8/30/10.]

WAC 388-06-0720 Who receives the results of a background check conducted by the background check central unit? (1) The background check central unit follows laws related to the release of criminal history records (chapters 10.97 and 43.43 RCW), public disclosure (chapter 42.56 RCW); and other applicable laws when releasing background information.

(2) The authorized entity who submits a background check request receives a copy of the background check results.

(3) The background check applicant may request a copy of his or her background check results.

(4) As required in RCW 74.39A.055(2), the department will share the results of state and national background checks with the Washington department of health to satisfy its certification responsibilities under chapter 18.88B RCW.

[Statutory Authority: RCW 43.43.832, 74.39A.055, 74.39A.050, 74.39A.-095, 74.39A.260, 43.20A.710, and 43.43.837. WSR 10-16-083, § 388-06-0720, filed 7/30/10, effective 8/30/10.]