



RULE-MAKING ORDER

CR-103E (May 2009)
(Implements RCW 34.05.360)

Agency: Department of Social and Health Services, Aging and Disability Administration

Emergency Rule Only

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify) January 1, 2011

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

- Yes
 - No
- If Yes, explain:

Purpose: The department is adding new WAC 388-71-06020 through WAC 388-71-06420. As a result of the 2009-2011 Supplemental Operating Budget (Engrossed Substitute Senate Bill 6444), the Home Care Quality Authority is no longer funded, and the Home Care Referral Registry program has moved to the Aging and Disability Services Administration's Home & Community Services Division effective July 1, 2010.

This CR-103E replaces emergency rules filed as WSR 10-22-069 to include an amendment to WAC 388-71-06160, which will require individual providers to complete a background check every two years instead of every 12 months. This change is necessary to manage budget shortfalls, as required by Governor's Executive Order 10-04, which reduces current year spending by 6.287%.

Citation of existing rules affected by this order:

Repealed: None
 Amended: None
 Suspended: None

Statutory authority for adoption: RCW 74.08.090; RCW 74.09.520

Other authority Washington State 2009-2011 Supplemental Operating Budget (Engrossed Substitute Senate Bill 6444); Governor's Executive Order 10-04

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.
- That in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this finding:

These amendments are necessary to address the state's revenue shortfall as outlined in the 2009-2011 Supplemental Operating Budget (Engrossed Substitute Senate Bill 6444). The Home Care Quality Authority is no longer funded, and the Home Care Referral Registry moved to the Home & Community Services Division effective July 1, 2010. This CR-103E replaces emergency rules filed as WSR 10-22-069 to make additional amendments while the department completes adoption of permanent rules. A CR-101 was filed as WSR 10-14-052, and a CR-102 was filed as WSR 10-24-103.

Date adopted:

December 23, 2010

NAME (TYPE OR PRINT)

Katherine Vasquez

SIGNATURE

TITLE

DSHS Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: December 30, 2010

TIME: 11:00 AM

WSR 11-02-043

**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	<u>23</u>	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

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

New	_____	Amended	_____	Repealed	_____
-----	-------	---------	-------	----------	-------

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

New	_____	Amended	_____	Repealed	_____
-----	-------	---------	-------	----------	-------

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

New	_____	Amended	_____	Repealed	_____
-----	-------	---------	-------	----------	-------

The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	<u>23</u>	Amended	_____	Repealed	_____

Referral registry

NEW SECTION

WAC 388-71-06020 What is the purpose of WAC 388-71-06020 through 388-71-06420? The purpose of this chapter is to ensure compliance by the department with the provisions of RCW 74.39.250. The department is authorized to adopt rules under the provisions of the Administrative Procedure Act, chapter 34.05 RCW.

NEW SECTION

WAC 388-71-06040 What definitions apply to WAC 388-71-06020 through 388-71-06420? The following definitions apply to this chapter:

"AAA" refers to the local area agency on aging.

"ALJ" refers to administrative law judge.

"Consumer/employer" refers to an adult or child with functional or developmental disabilities who qualifies for and uses personal care or respite care paid for through medicaid or state-only funds.

"Consumer representative" refers to an individual who is acting on behalf of the consumer/employer.

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

"DSHS" refers to the department of social and health services.

"Emergency provider" means an individual provider who is employed as a back-up for a provider who did not show up or who was unable to work due to unexpected circumstances.

"Employer" refers to the consumer.

"HCRR" refers to the home care referral registry.

"Home care referral registry operations" refers to the activities carried out at the local level to recruit and register individual providers or prospective individual providers for the referral registry and assist consumers to utilize the referral registry to find qualified individual providers.

"Individual provider" means a person, regardless of relationship, including a personal aide working for a consumer under self-directed care, who has a contract with the department of social and health services to provide personal care or respite care services to adults or children with functional or developmental disabilities and is reimbursed for those services through medicaid or state-only funding.

"IP" refers to an individual provider.

"**Malfeasance**" means any unlawful act committed by the provider, whether in the course of employment or otherwise.

"**Mandatory reporter**" is an employee of DSHS; law enforcement officer; social worker; professional school personnel; individual provider; an employee of a facility; an operator of a facility; an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency; county coroner or medical examiner; Christian science practitioner; or health care provider subject to chapter 18.130 RCW.

"**Misfeasance**" means performance of a workplace duty in an improper manner; including events which jeopardize the health and safety of persons, unresolved pattern of performance, issues related to truth or dishonesty, including failure to report a criminal conviction.

"**OAH**" refers to the office of administrative hearings.

"**Prospective individual provider**" refers to someone who is seeking employment with a consumer/employer.

"**Provider**" means an individual provider.

"**Referral registry**" is a data base that is designed to assist consumers with finding individual providers and to assist individual providers to find employment.

"**Respite provider**" means an individual provider who is employed on a prearranged short-term basis to fill in for a routine caregiver.

"**Routine provider**" means an individual provider who is employed on a regularly scheduled basis.

NEW SECTION

WAC 388-71-06060 What is the purpose of the referral registry? The purpose of the referral registry was to increase consumer/employer choice while providing assistance in finding individual providers and prospective individual providers. In addition, the referral registry:

(1) Takes into account the consumer/employer needs and preferences when identifying potential individual providers;

(2) Provides for reasonable standards of accountability providers and prospective individual providers listed through the registry;

(3) Is voluntary for individual providers and prospective individual providers and consumers/employers;

(4) Promotes job opportunities for individual providers and prospective individual providers;

(5) Provides access to the data base for consumer/employers who want to query a referral independently; and

(6) Increases a consumer/employer's choice of individual providers and prospective individual providers via an established pool of available individual providers and prospective individual providers on the registry.

NEW SECTION

WAC 388-71-06080 Who is eligible to request a referral from the referral registry? The following people are eligible to request a referral from the referral registry:

(1) Consumer/employers who are adults or children with functional or developmental disabilities who qualify for and use personal care or respite care paid for through medicaid or state-only funds.

(2) People who are authorized to request a referral on behalf of a consumer including family members, area agency on aging case managers, department social workers and/or a consumer representative.

NEW SECTION

WAC 388-71-06100 What is the difference between an individual provider and a prospective individual provider? The difference between an individual provider and a prospective individual provider is

(1) An individual provider is someone who has signed a department contract.

(2) A prospective individual provider is someone who is seeking employment with a consumer/employer and who has not yet signed a DSHS contract.

NEW SECTION

WAC 388-71-06120 What qualifies an individual provider or prospective individual provider to be on the referral registry? In order for an individual provider or prospective individual provider to be qualified to be on the referral registry, the individual provider or prospective individual provider must:

(1) Prior to January 1, 2012 satisfactorily complete a Washington state patrol background check and not be convicted of a disqualifying crime or negative action based on the applicable department list of disqualifying crimes and negative actions; and

(2) Complete an FBI fingerprint-based background check if the person has lived in the state of Washington less than three consecutive years immediately before the background check. An individual provider or prospective individual provider that has lived in Washington state less than three consecutive years may be included on the referral registry for a one hundred twenty-day provisional period as allowed by law or program rules when:

(a) A fingerprint-based background check is pending; and

(b) The individual provider or prospective individual provider is not disqualified based on the immediate result of the Washington state patrol background check.

- (3) Not be listed on any long-term care abuse and neglect registry used by the department;
- (4) Be eighteen years of age or older;
- (5) Provide a valid Washington state driver's license or other valid picture identification;
- (6) Have a Social Security card or proof of authorization to work in the United States as required on the employment verification form; and
- (7) Comply with requirements listed in WAC 388-71-06180 and other applicable requirements in chapter 388-71 WAC.
- (8) Effective January 1, 2012, be screened through the department's fingerprint-based background check, as required by RCW 74.39A.055.

NEW SECTION

WAC 388-71-06130 What information will be considered cause for denying an individual provider or prospective individual provider placement on the referral registry? An individual provider or prospective individual provider will be denied placement on the referral registry when:

- (1) A background check that reveals a disqualifying crime or negative action listed on an applicable department list of disqualifying crimes and/or negative actions;
- (2) He or she is listed on any state abuse or neglect registry;
- (3) He or she is subject to a current and valid protective order that was issued in the state of Washington barring or restricting contact with children, vulnerable adults or persons with disabilities;
- (4) The department individual provider contract is denied; or
- (5) He or she is found ineligible per WAC 388-71-0540.

NEW SECTION

WAC 388-71-06135 What information may be considered cause for denying an individual provider or prospective individual provider placement on the referral registry? The following information may be considered cause for denying an individual provider or prospective individual provider placement on the referral registry:

- (1) He or she failed to disclose pending charges, criminal convictions, or negative actions on background authorization form;
- (2) The department has a reasonable, good faith belief that he or she is unable to meet the care needs of consumers;
- (3) The background check reveals an offense or pattern of offenses, not listed on the applicable list of disqualifying crimes, that the department determines may put consumers at risk; or

(4) Information found in WAC 388-71-0543.

NEW SECTION

WAC 388-71-06140 How does an individual provider or prospective individual provider apply to be on the referral registry? In order for an individual provider or prospective individual provider to apply to be on the registry, he or she must:

- (1) Contact their local home care referral registry operations;
- (2) Request and complete an application packet; and
- (3) Meet the qualifications specified in WAC 388-71-06120.

NEW SECTION

WAC 388-71-06160 Does an individual provider or prospective individual provider have any ongoing responsibilities in order to continue to be listed on the referral registry? (1) In order for an individual provider or prospective individual provider to stay on the registry, he or she must:

(a) Contact the referral registry office once a month to verify that the information in the system is accurate and up-to-date; and

(b) Successfully complete the criminal history background check process a minimum of every two years, described in WAC 388-71-06130 and 388-71-0513.

(2) Failure to comply with ongoing responsibilities will result in placing the individual provider or prospective individual provider in an "inactive" status. The provider will not be referred to a consumer/employer when in "inactive" status.

NEW SECTION

WAC 388-71-06180 Are there any training requirements for being on the referral registry? In order for an individual provider or prospective individual provider to be listed on the referral registry, he or she must complete the "Becoming a Professional IP" training prior to being referred to a consumer, unless the person has already worked as an individual provider for more than three months under DSHS contract. All other mandatory training requirements for long-term care workers per chapter 388-71 WAC are applicable.

NEW SECTION

WAC 388-71-06200 Will an individual provider or prospective individual provider be removed from the referral registry? An individual provider or prospective individual provider will be removed from the referral registry when he or she:

- (1) Fails to meet the qualifications identified in WAC 388-71-06120 and 388-71-06180;
- (2) Committed misfeasance in the performance of his or her duties as an individual provider;
- (3) Committed malfeasance in the performance of his or her duties as an individual provider;
- (4) Requests that their name be removed from the registry;
- (5) Has his or her individual provider contract with the department terminated for cause;
- (6) Has a cause for denial, as listed in WAC 388-71-06130, exists; or
- (7) Fails to meet qualifications found in WAC 388-71-0510 and 388-71-0540.

NEW SECTION

WAC 388-71-06220 What is the procedure for removing an individual provider or prospective individual provider from the referral registry? The procedure for removing an individual provider or prospective individual provider from the referral registry is as follows:

The department and/or its designee, will review all complaints and disqualification information received and:

(1) For those complaints that fall under the legal jurisdiction of law enforcement or adult protective services (APS) or child protective services (CPS), an immediate referral will be made to the appropriate agency.

(a) The department may initiate an emergency proceeding to inactivate the individual provider or prospective individual provider on the registry pending the investigation.

(b) If APS, CPS, and/or law enforcement declines the referral, the complaint will proceed to assessment, recommendation and decision.

(c) If APS, CPS, and/or law enforcement accepts the complaint, then action beyond the emergency adjudicative process per RCW 34.05.479 will be stayed pending APS, CPS, and/or law enforcement action.

(2) For those complaints not forwarded to APS, CPS, or law enforcement, the department will conduct an internal assessment.

(a) Upon assessment, a decision will be made and notification will be sent, in writing to the individual provider or prospective individual provider.

(b) The individual provider or prospective individual provider has the right to appeal an adverse decision.

(c) The appeal must be sent in writing to the office of administrative hearings (OAH) as designated on the formal notice

within twenty-eight days of the date the formal notice was mailed by the department.

(d) OAH will schedule the hearing and notify interested parties.

(e) An administrative law judge (ALJ) from OAH will act as presiding officer for the adjudicative proceeding as provided in RCW 34.05.425(1)(c).

(f) The ALJ will render an initial decision.

(g) The initial decision will be reviewed and final agency action will be taken by the department board of appeals, either adopting, modifying, or reversing the initial decision.

(h) The final order is the final department action and will be provided to all interested parties and to the individual provider or prospective individual provider along with information regarding the right to seek judicial review in superior court when applicable.

(i) The final order will include, or incorporate by reference to the initial order, all matters required by RCW 34.05.461(3).

NEW SECTION

WAC 388-71-06240 What is the procedure for the denial of an individual provider or prospective individual provider's application to be on the referral registry? Upon receipt of an individual provider or prospective individual provider's application to be on the referral registry, the department will utilize the following procedure to determine whether the individual provider or prospective individual provider meets the minimum qualifications and whether he or she will be able to appropriately meet the care needs of consumers:

(1) An internal assessment will be conducted, a decision will be made and notification will be sent, in writing to the individual provider or prospective individual provider.

(2) The individual provider or prospective individual provider has the right to appeal an adverse decision.

(3) The appeal must be sent in writing to the office of administrative hearings (OAH) as designated on the formal notice within twenty-eight days of the date the formal notice was mailed by DSHS.

(4) OAH will schedule the hearing and notify interested parties.

(5) An administrative law judge from OAH will act as presiding officer for the adjudicative proceeding as provided in RCW 34.05.425(1)(c).

(6) The ALJ will render an initial decision.

(7) The initial decision will be reviewed and final department action will be taken by the department board of appeals, either adopting, modifying, or reversing the initial decision.

(8) The final order is the final department action and will be provided to all interested parties and to the individual provider or prospective individual providers along with information regarding the right to seek judicial review in superior court when

applicable.

(9) The final order will include, or incorporate by reference to the initial order, all matters required by RCW 34.05.461(3).

NEW SECTION

WAC 388-71-06260 Who must be notified if a complaint is received about an individual provider? If, in the course of carrying out its duties, the department or its designee, receives a complaint regarding the services being provided by an individual provider, the department, or its designee, must notify the relevant area agency on aging case manager or DSHS social worker regarding such concerns per RCW 74.39A.250(1)(h).

NEW SECTION

WAC 388-71-06280 Are referral registry staff considered mandatory reporters? Any department staff, or subcontracted staff working for the referral registry are considered mandatory reporters.

NEW SECTION

WAC 388-71-06300 What is reasonable cause for mandatory reporting? RCW 74.34.035 outlines reasonable cause for mandatory reporting.

NEW SECTION

WAC 388-71-06320 Does an individual provider or prospective individual provider have the right to appeal being removed from the referral registry? The individual provider or prospective individual provider or the consumer/employer, to whom the individual provider is providing services, has the right to appeal when he or she is being removed from the referral registry, as provided in RCW 74.39A.250(1)(e) and WAC 388-71-06240.

A letter will be sent notifying the individual provider or prospective individual provider that he or she is being removed from the registry and will include information pertaining to the appeal and hearing process.

NEW SECTION

WAC 388-71-06340 How does a consumer/employer apply to use the referral registry services? In order to use the referral registry, a consumer/employer or consumer representative must complete the registration process. The registration process conducted by the local home care referral registry operations must confirm that the consumer/employer is qualified to receive personal care or respite care paid for through medicaid or state-only funds.

NEW SECTION

WAC 388-71-06360 How does a consumer/employer obtain a list of names from the referral registry? In order for a consumer/employer or consumer representative to obtain a referral list of names, he or she must complete and submit a request application to the local referral registry. The completed application may indicate the days and times an individual provider is needed, the personal care tasks that need to be performed, and any preferences the consumer/employer may have. Upon completion of the application, a registry coordinator will conduct a query that will generate a list of names that best match the consumer/employer's specific criteria. The list will be given to the consumer/employer via mail, phone, fax, or email, depending on the consumer/employer's preference, within a reasonable time.

Upon successful submission of a request application, a consumer/employer or consumer representative may request a user name and password to access the registry independently to generate a list of names.

NEW SECTION

WAC 388-71-06380 Who hires an individual provider or prospective individual provider? It is the consumer/employer or consumer representative's responsibility to interview, screen, hire, supervise, and terminate an individual provider or prospective individual provider.

NEW SECTION

WAC 388-71-06400 Does a consumer/employer who is eligible to have his or her individual provider to be paid through medicaid or public funding from DSHS need to gain approval from his/her case manager, social worker or nurse? A consumer/employer who is eligible for his/her individual provider to be paid through medicaid or public funding from the department must be approved by his/her case manager, social worker or nurse. Pursuant to WAC 388-71-0540 through 388-71-0551, DSHS or the AAA may deny payment to the client's choice of an individual provider or prospective individual provider when:

(1) The individual provider or prospective individual does not meet the requirements to contract with DSHS; or

(2) The case manager has a reasonable, good faith belief that the person will be unable to appropriately meet the consumer/employer needs.

NEW SECTION

WAC 388-71-06420 How can a consumer/employer use the referral registry to get an individual provider in an emergency or as a critical personal care back-up? In order to obtain an emergency or critical personal care back-up referral, a consumer/employer must complete an application with the referral registry office. Registry applications can be completed by contacting the local referral registry. Although a consumer/employer must complete the application process, he/she is not required to have previously used the registry prior to requesting a back-up referral.