



# RULE-MAKING ORDER EMERGENCY RULE ONLY

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

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: October 18, 2017

TIME: 12:14 PM

WSR 17-22-001

**Agency:** Department of Social and Health Services, Children's Administration

**Effective date of rule:**

**Emergency Rules**

- Immediately upon filing.
- Later (specify) October 19, 2017

**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 amending licensing regulations in WAC 388-148-1320 and creating WAC 388-148-1321 due to new legislative requirements from the 2017 session. The WACs changed or created due to the 2017 legislation are required to go into effect on October 19, 2017. Therefore, these WACs must be filed as an emergency WAC.

The changes to WAC 388-148-1320 will now require fingerprint-based background checks for all persons residing in a home that will provide foster care for dependent youth who are sixteen years old and older.

The new legislation also requires the Division of Licensed Resources (DLR) to issue provisional expedited licenses for individuals that were previously licensed within the last five years when they meet the specific criteria outlined in the law. In order to meet this requirement, the department created a new WAC section, WAC 388-148-1321, that describes the criteria and process to obtain a provisional expedited license.

WAC 388-145-1325 is being amended to align the DLR WAC with legislation that went into effect on January 1, 2016. The legislation requires all group care agency employees to complete a fingerprint-based background check if the agency takes placement of Developmental Disabilities Administration (DDA) children. As any DLR-licensed agency could potentially take placement of a DDA child, the decision was made to fingerprint all group care agency employees. This change will now align the DLR WAC with the legislation and DLR's practice since January 1, 2016.

WAC 388-145-1805 is also being amended based on recommendations from the Children's Administration Regional Medical Consultants. The revised WAC will clarify that neither formula nor breastmilk can be warmed in a microwave oven. These changes are made to ensure child safety; therefore, they meet the criteria for an emergency WAC and are included in this emergency WAC filing.

There will be no other content or language changes to the WACs that are part of this emergency rule change.

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

- New: WAC 388-148-1321
- Repealed: None
- Amended: WAC 388-145-1325, WAC 388-145-1805, WAC 388-148-1320
- Suspended: None

**Statutory authority for adoption:** RCW 74.15.010, RCW 74.15.030, RCW 74.15.040, RCW 74.15.090, RCW 74.13.031, RCW 74.39A.056, RCW 43.43.832, and Laws of 2017 chapter 20 §4, which will create a new section in chapter 74.15 RCW

**Other authority:**

**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:** These changes are being filed as an emergency WAC to meet the legislative deadline of October 19, 2017.

**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>3</u>	Repealed	___

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

New	___	Amended	___	Repealed	___
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**The number of sections adopted on the agency's own initiative:**

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

New	___	Amended	___	Repealed	___
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**The number of sections adopted using:**

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

**Date:** October 12, 2017

**Name:** Katherine I. Vasquez

**Title:** DSHS Rules Coordinator

**Signature:**



AMENDATORY SECTION (Amending WSR 16-06-041, filed 2/24/16, effective 3/26/16)

**WAC 388-145-1325 What is required to apply for a group care facility license?** (1) You, the person responsible for the license, must submit a completed application which is available from the division of licensed resources, children's administration.

(2) You must submit ~~((the following))~~ a completed background authorization form for your executive director, agency staff, consultants, interns, volunteers, and anyone who may have unsupervised access to children per chapter 388-06A WAC~~((+))~~.

~~((a) Completed background authorization form; and))~~ (3) You must ensure that an agency employee who may have unsupervised access to children complete a FBI fingerprint check.

~~((b))~~ (4) You must ensure that agency volunteers or interns that have lived outside of Washington state during any portion of the previous three years complete a FBI fingerprint check ((if the individual over eighteen years of age has lived out of state during any portion of the previous three years)).

~~((3))~~ (5) You must ensure that no employee, volunteer or subcontractor has unsupervised access to children until ((a full and satisfactory)) you are notified by children's administration that a background check ((is)) was completed ((and returned to you, qualifying the individual for)) that qualifies the individual to have unsupervised access. If ((your employee requires FBI fingerprints, they are allowed to work while awaiting fingerprint results, under the provisions of WAC 388-06-0500 through 388-06-0540)) you have both a license issued by DLR and a contract with the department you must adhere to the most stringent background check requirement.

AMENDATORY SECTION (Amending WSR 15-01-069, filed 12/11/14, effective 1/11/15)

**WAC 388-145-1805 Are there special requirements for serving milk?** (1) The milk or milk products you serve must be pasteurized and follow these recommended guidelines:

(a) Children under the age of twelve months must receive formula or breast milk unless written authorization from the child's ~~((physician))~~ licensed health care provider requires a different liquid intake; and

(b) Children between the age of twelve and twenty-four months must receive whole milk unless you have written authorization from a ~~((physician))~~ licensed health care provider not to serve whole milk.

(2) Before serving a child breast milk you must have approval of the child's DSHS worker, ~~((physician))~~ licensed health care provider, parent or guardian. If breast milk is provided by anyone other than a baby's biological mother, it must be obtained through a licensed breast milk bank.

(3) When you are using bottles to feed infants you must sterilize and use them according to product standards and commonly acceptable practices. You must refrigerate filled bottles if you do not use them immediately, and you must empty the bottle if not used within twenty-

four hours. If more than one child is bottle-fed, the child's name and date the bottle is prepared must be on each bottle.

(4) You must hold infants, under the age of six months, for all bottle feedings. Infants who are six months of age or over who are developmentally able may hold their own bottles as long as an adult remains in the room and within sight. You must take bottles from the child when the child finishes feeding, when the bottle is empty, or when the child falls asleep. You must not prop bottles when feeding infants.

(5) To prevent burns, formula or breast milk must not be warmed in a microwave oven (~~in the bottle that will be used for feeding the infant~~).

AMENDATORY SECTION (Amending WSR 16-01-121, filed 12/18/15, effective 1/18/16)

**WAC 388-148-1320 When will the department grant me a foster family license?** (1) We issue you a license when you and everyone in your household meet the licensing requirements contained in this chapter, and all required documents are in the licensing file.

(2) You and other caregivers over the age of eighteen must:

(a) Complete first aid training and age-appropriate adult and/or infant CPR (cardiopulmonary resuscitation). Training must be department approved and accredited with nationally recognized standards; and

(b) Complete HIV/AIDS and bloodborne pathogens training including infection control standards consistent with educational materials published by the department of health, office on HIV/AIDS.

(3) You, your household members and anyone else having unsupervised contact with your foster child(ren) must pass the following background check requirements per chapter 388-06A WAC (This includes people living on any part of your property):

(a) (~~Anyone over the age of sixteen must pass a criminal history check.~~

~~(b))~~ Anyone (~~over the age of eighteen~~) sixteen years old or older must pass an FBI fingerprint check.

(b) Anyone younger than sixteen years old must pass a background check where the department determines it is warranted to ensure the safety of a child in foster care; and

(c) Anyone (~~over the age of~~) eighteen years old or older must complete a child abuse and neglect registry check from each state they have lived in over the past five years indicating:

(i) No license denials or revocations from an agency that regulates the care of children or vulnerable adults, unless the department determines that you do not pose a risk to a child's health, safety, well-being and long-term stability; and

(ii) No finding or substantiation of abuse or neglect of a child or a vulnerable adult, unless the department determines that you do not pose a risk to a child's safety, well-being, and long-term stability.

(4) You, and your household members over the age of eighteen must submit a negative tuberculosis test or an X-ray, unless you can demonstrate a medical reason prohibiting the TB test, or have had a negative TB test in the previous twelve months. If there is a positive TB test, then the individual must submit a physician's statement identi-

fyng that there is no active TB or risk of contagion to children in care.

(5) You must have proof of current immunizations for any children living on your premises, not in out-of-home care. We may, in consultation with a licensed health care provider, grant exception to this requirement if you have a statement from a licensed health care provider (MD, DO, ND, PA and ARNP).

(6) We recommend that you have pertussis and influenza immunizations. The department will not license you to serve foster children under the age of two, without proof of pertussis and influenza immunizations for all people living in your home. The department may license you to serve children under the age of two even though you or someone in your home is unable to obtain an influenza vaccination for medical reasons. In this case, a licensed health care provider's statement is required noting that the influenza vaccination would result in severe medical consequences to the person and that there is no other form of the influenza vaccine that would not cause severe medical consequences. All other persons in the home must still be vaccinated.

(7) Before granting or renewing a license, your licenser will assess your ability to provide a safe home and to provide the quality of care needed by children placed in your home. Your licenser will also determine that you meet training requirements.

(8) Foster children under the care and authority of the department living in your home do not need to obtain a criminal history check, FBI fingerprint check or TB test.

#### NEW SECTION

**WAC 388-148-1321 May I request a provisional expedited foster family license?** (1) You may request a provisional expedited foster family license if you meet all of the following requirements:

(a) You have been licensed to provide foster care within the previous five years;

(b) You have not had your foster care license closed due to a denial, revocation, or an agreement to relinquish;

(c) You reside in the same home in which you previously held a foster care license and no additional individuals have moved into your home;

(d) You are applying for an expedited license that will be supervised by the same agency that previously licensed or certified you and the agency agrees to supervise your home; and

(e) You and all household members age sixteen years old and older have passed a fingerprint-based background check for this provisional expedited foster family license.

(2) To initiate a provisional expedited license, you must submit a completed expedited license application and completed background check authorization forms for all household members who are sixteen years old and older to DLR or a licensed child-placing agency.

(3) In order for your full license to be processed you must submit your licensing application packet within fourteen days. Application packets are available from DLR and licensed child-placing agencies.

(4) You will be issued a provisional expedited foster family license if you have submitted the policy agreements and all of the re-

quired household members in your home have passed the required background check. The provisional expedited foster family license will be issued for ninety days and will close after ninety days.

(5) Your licensing or certifying agency will continue to work with you and make every effort to ensure that individuals qualified for and seeking a provisional expedited foster family license may become fully foster care licensed within forty days of the department's receipt of a complete application for a provisional expedited foster family license.

(6) You do not have the right to appeal the department's decision that you do not meet the criteria for a provisional expedited foster family license.