

**Chapter 388-115 WAC
CONSUMER DIRECTED EMPLOYER**

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WAC

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WAC 388-115-0500 What is the purpose of this section of the chapter? The purpose of WAC 388-115-0500 through WAC 388-115-05640 is to describe:

- (1) The role of the client as the managing employer of individual providers;
- (2) Individual provider qualifications and responsibilities;
- (3) When the consumer directed employer must or may reject a client's selected individual provider; and
- (4) When the consumer directed employer has a right to an administrative hearing.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-115-0500, filed 8/30/21, effective 10/1/21.]

WAC 388-115-0503 What definitions apply to WAC 388-115-0500 through 388-115-05640? (1) "Area agencies on aging (AAA)" means a contracted entity that aging and long-term support administration (AL TSA) grants funds to in order to carry out the functions of the Older Americans Act, general-fund state programs, and to provide case management services and supports to individuals 18 and older who receive medicaid-funded LTC in the individual's own home.

(2) "Applicant" means a person who is in the process of becoming an in-home long-term care worker.

(3) "Negative actions" are listed in WAC 388-113-0030.

(4) "Background check" means a name and date of birth check or a fingerprint-based background check, or both.

(5) "Background check result" is defined in WAC 388-113-0101.

(6) "Background check central unit (BCCU)" means the DSHS entity responsible for conducting background checks for the department.

(7) "Character, competence, and suitability determination (CC&S)" is defined in WAC 388-113-0050.

(8) "Client" means an individual receiving medicaid or veterans' administration funded in-home long term services from the department.

(9) **"Consumer directed employer (CDE)"** is a private entity that contracts with the department to be the legal employer of individual providers for purposes of performing administrative functions. The consumer directed employer is patterned after the agency with choice model, recognized by the federal centers for medicare and medicaid services for financial management in consumer directed programs. The entity's responsibilities are described in RCW 74.39A.515 and throughout chapter 74.39A RCW and include:

(a) Coordination with the consumer, who is the individual provider's managing employer;

(b) Withholding, filing, and paying income and employment taxes, including workers' compensation premiums and unemployment taxes, for individual providers;

(c) Verifying an individual provider's qualifications; and

(d) Providing other administrative and employment-related supports. The consumer directed employer is a social service agency and its employees are mandated reporters as defined in RCW 74.34.020.

(10) **"Date of hire"** for determining time frames related to training and certification means the first day the long-term care worker is employed by any employer.

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

(12) **"Fingerprint-based background check"** means an in-state criminal history records check through the Washington state patrol and a national criminal history records check through the Federal Bureau of Investigation.

(13) **"Individual provider (IP)"** as defined in RCW 74.39A.240 limited to individual providers employed by the consumer directed employer.

(14) **"Managing employer"** means a consumer who employs one or more individual providers and whose responsibilities include:

(a) Choosing potential individual providers and referring them to the consumer directed employer;

(b) Selecting an individual provider(s);

(c) Overseeing the day-to-day management and scheduling of the individual provider's tasks consistent with the plan of care; and

(d) Dismissing the individual provider when desired.

(15) **"Name and date of birth check"** is a search, conducted by the background check central unit (BCCU), of Washington state criminal history and negative action records using the applicant's name and date of birth.

[Statutory Authority: RCW 18.88B.021, 18.88B.041, 18.88B.060, 74.08.090, 74.39A.076, and 74.39A.341. WSR 24-05-003, § 388-115-0503, filed 2/8/24, effective 3/10/24. Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-115-0503, filed 8/30/21, effective 10/1/21.]

WAC 388-115-0505 What is the client's role as managing employer of an individual provider? The client, or the client's representative, is the managing employer and:

(1) Has the primary responsibility to select, dismiss, assign hours, and supervise the work of one or more individual providers; and

(2) May receive assistance from the consumer directed employer or other resources in identifying potential providers.

[Statutory Authority: RCW 18.88B.021, 18.88B.041, 18.88B.060, 74.08.090, 74.39A.076, and 74.39A.341. WSR 24-05-003, § 388-115-0505, filed 2/8/24, effective 3/10/24. Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-115-0505, filed 8/30/21, effective 10/1/21.]

WAC 388-115-0510 What are the qualifications of an individual provider? In order to be qualified as an individual provider, an applicant must:

- (1) Be eighteen years of age or older;
- (2) Not have a disqualifying crime or negative action under chapter 388-113 WAC based on a completed background check;
- (3) Not be disqualified based on a character, competence, and suitability determination;
- (4) Complete training and certification requirements as required by WAC 388-71-0520 and WAC 388-71-0523;
- (5) If required, have a home care aide certification or other qualifying credential by the DOH that is both active and in good standing;
- (6) Be an employee of the consumer directed employer to provide personal care services;
- (7) Pass the federal exclusion list screening; and
- (8) Not have credible allegations of fraud which are pending investigation, unless they fit within the exceptions listed in 42 C.F.R. 455.23.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-115-0510, filed 8/30/21, effective 10/1/21.]

WAC 388-115-0511 When is a background check required of an individual provider? (1) Individual providers are required to complete and pass a name and date of birth background check prior to working with a client.

(2) Individual providers are required to complete and pass a name and date of birth background check:

- (a) Every two years; and
- (b) Any time the consumer directed employer requests a new background check from an individual provider.

(3) In addition to the name and date of birth background check, individual providers must complete and pass a fingerprint-based background check as required in RCW 43.43.837 and RCW 74.39A.056.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-115-0511, filed 8/30/21, effective 10/1/21.]

WAC 388-115-0513 How does an individual provider complete a background check? (1)The individual provider must:

- (a) Complete the background check authorization form;
- (b) Answer all questions on the background check authorization form truthfully;
- (c) Obtain a fingerprint-based background check result;
- (d) Not have any automatically disqualifying conviction(s), pending charge(s), or negative action(s) as described in chapter 388-113 WAC;
- (e) Review the background check results and if necessary provide documents or other information to BCCU to correct the background check results; and
- (f) When requested by BCCU, provide additional information in order to complete a background check as mandated by statute.

(2) It is the responsibility of the consumer directed employer to ensure compliance with subsection (1) of this section for individual providers it employs.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-115-0513, filed 8/30/21, effective 10/1/21.]

WAC 388-115-0516 What are the responsibilities of the consumer directed employer when providing care to a client? In providing care to a client, the consumer directed employer must:

- (1) Be responsible that the client assigned individual provider(s) understands the approved plan of care;
- (2) Assign client approved tasks from services outlined in a client's plan of care, as described in WAC 388-106-0010;
- (3) Accommodate the client's individual preferences and unique needs in providing care;
- (4) Contact the client, client's representative and case manager when there are changes observed by the individual provider that affect the personal care and other tasks listed on the plan of care;
- (5) Be responsible that the individual provider(s) observes the client for and consults with the client or representative, regarding change(s) in health, takes appropriate action, and responds to emergencies;
- (6) Notify the case manager immediately when the client enters a hospital or moves to another setting;
- (7) Notify the case manager immediately in the event of the client's death;
- (8) Notify the department or AAA immediately when unable to staff/serve the client;
- (9) Comply with time keeping requirements, and keep accurate records of time of authorized/paid hours that are accessible to the appropriate department or designee staff; and
- (10) Comply with all applicable laws and regulations.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-115-0516, filed 8/30/21, effective 10/1/21.]

WAC 388-115-0520 What are the training requirements for an individual provider? An individual hired on or after January 7, 2012, must meet the training requirements described in WAC 388-71-0836 through 388-71-1006.

[Statutory Authority: RCW 18.88B.021, 18.88B.041, 18.88B.060, 74.08.090, 74.39A.076, and 74.39A.341. WSR 24-05-003, § 388-115-0520, filed 2/8/24, effective 3/10/24. Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-115-0520, filed 8/30/21, effective 10/1/21.]

WAC 388-115-0523 What are the training and certification requirements for individual providers? The following chart provides a summary of the training and certification requirements for individual providers. This includes criteria for those providers working limited hours for one person, caring only for one's child, parent, sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild, providing respite services, or providing approved services only for a spouse or registered domestic partner and funded through the United States department of veterans' affairs home and community-based programs:

Who	Status	Orientation training	Safety training	Basic training	Continuing education	Required credential
(1) An individual provider who is a licensed, certified health care professional in good standing through the Washington state department of health, or an individual provider or home care agency long-term care worker with special education training who meets the criteria in RCW 18.88B.041 (1)(a)(i)(A).	ARNP, RN, LPN, HCA, NA-C, or other professionals listed in WAC 388-71-0839.	Not required.	Not required.	Not required.	Not required of ARNPs, RNs, or LPNs in chapter 388-71 WAC. Required 12 hours under WAC 388-71-0990 and 388-71-0991 of NA-Cs, HCAs, and other professionals listed in WAC 388-71-0839, such as an individual with special education training with an endorsement granted by the superintendent of public instruction under RCW 28A.300.010. For NA-C and those with special education training, 12 hours is required for each year worked in long-term care.	Required under chapter 246-980 WAC.

Who	Status	Orientation training	Safety training	Basic training	Continuing education	Required credential
(2) An individual provider with specific employment history.	A long-term care worker employed at some point between January 1, 2011, and January 6, 2012, and has completed the basic training requirements in effect on the worker's date of hire. WAC 388-71-0839.	Not required.	Not required.	Not required.	12 hours is required for each year worked in long-term care under WAC 388-71-0990 and 388-71-0991.	Not required.
(3) An individual provider.	Hired by the consumer directed employer to provide personal care service as defined in WAC 388-71-0836 and is not exempt under subsection (1) or (2) of this section.	Required. Two hours under WAC 388-71-0860.	Required. Three hours under WAC 388-71-0860.	Required. 70 hours under WAC 388-71-0870 and 388-71-0875.	Required. 12 hours under WAC 388-71-0990 and 388-71-0991.	Required under chapter 246-980 WAC.
(4) An individual provider who works limited hours for one person.	An individual provider employed by the consumer directed employer providing 20 hours or less of nonrespite care for one person per calendar month and does not meet the criteria in subsection (1) or (2) of this section.	Required. Two hours under WAC 388-71-0860.	Required. Three hours under WAC 388-71-0860.	Required. 30 hours under WAC 388-71-0880.	Not required.	Not required.

Who	Status	Orientation training	Safety training	Basic training	Continuing education	Required credential
(5) An individual who provides respite services and works 300 hours or less in any calendar year.	(a) An individual providing respite care and works no more than 300 hours in the calendar year, is not exempt in subsection (1) or (2) of this section, and does not meet criteria in subsection (7) of this section. (b) An individual providing respite services for individuals with developmental disabilities that receive services under Title 71A RCW and for individuals that receive services under chapter 74.39A, that is working 300 hours or less in any calendar year, and that is not exempt in subsection (1) or (2) of this section.	Required. Two hours under WAC 388-71-0860.	Required. Three hours under WAC 388-71-0860.	Required. Nine hours under WAC 388-71-0890.	Not required.	Not required.
(6) An individual provider caring only for the provider's biological, step, or adoptive adult child.	An individual providing care only for the provider's adult child that receives services through the developmental disabilities administration and not exempt under subsection (1) or (2) of this section.	Required. Two hours per WAC 388-71-0895.	Required. Three hours under WAC 388-71-0895.	Required. Seven hours under WAC 388-71-0890.	Not required.	Not required.

Who	Status	Orientation training	Safety training	Basic training	Continuing education	Required credential
(7) An individual provider caring only for the provider's biological, step, or adoptive child, or parent.	An individual providing care only to the provider's child or parent, who is not exempt in subsection (1) or (2) of this section, and does not meet criteria in subsection (6) of this section.	Required. Two hours under WAC 388-71-0860.	Required. Three hours under WAC 388-71-0860.	Required. 30 hours under WAC 388-71-0880.	12 hours is required for each year worked in long-term care for an individual provider caring only for the individual's biological, step, or adoptive parent under WAC 388-71-0990 and 388-71-0991. Not required for an individual provider caring only for the individual's biological, step, or adoptive child under WAC 388-71-1001.	Not required.
(8) An individual provider caring only for the individual provider's sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild, including when related by marriage or domestic partnership.	An individual providing care only for the individual provider's sibling, aunt, uncle, cousin, niece, nephew, grandparent, or grandchild, including when related by marriage or domestic partnership, who is not exempt in subsection (1) or (2) of this section, and does not meet criteria in subsection (6) of this section.	Required. Two hours under WAC 388-71-0860.	Required. Three hours under WAC 388-71-0860.	Required. 30 hours under WAC 388-71-0880.	Not required.	Not required.
(9) A long-term care worker providing approved services only for a spouse or registered domestic partner and funded through the United States department of veterans' affairs home and community-based programs.	A long-term care worker providing approved services only for a spouse or registered domestic partner and funded through the United States department of veterans' affairs home and community-based programs who is not exempt in subsection (1) or (2) of this section.	Required. Two hours under WAC 388-71-0860.	Required. Three hours under WAC 388-71-0860.	Required. 30 hours under WAC 388-71-0880.	12 hours is required for each year worked in long-term care under WAC 388-71-0990 and 388-71-0991.	Not required.

[Statutory Authority: RCW 18.88B.021, 18.88B.041, 18.88B.060, 74.08.090, 74.39A.076, and 74.39A.341. WSR 24-05-003, § 388-115-0523, filed 2/8/24, effective 3/10/24. Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710,

74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-115-0523, filed 8/30/21, effective 10/1/21.]

WAC 388-115-0540 When will the consumer directed employer (CDE) reject your selected individual provider? (1) The CDE will reject an individual provider who:

(a) Is the client's spouse, except in the case of an individual provider for a chore services client or when the client is receiving services under the veteran directed home care program;

(b) Is the natural, step, or adoptive parent of a minor client aged 17 or younger;

(c) Is the foster parent providing personal care or skills acquisition training to a child residing in the individual's licensed foster home; or

(d) Does not meet the qualifications under WAC 388-115-0510.

(2) The CDE will also reject an individual provider when the CDE believes that the individual will be unable to appropriately meet the care needs of the consumer, including health and safety.

[Statutory Authority: RCW 18.88B.021, 18.88B.041, 18.88B.060, 74.08.090, 74.39A.076, and 74.39A.341. WSR 24-05-003, § 388-115-0540, filed 2/8/24, effective 3/10/24. Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-115-0540, filed 8/30/21, effective 10/1/21.]

WAC 388-115-05410 What are the client's rights if the consumer directed employer rejects the selection of a person to serve as the client's individual provider or discontinues the current individual provider's assignment? (1) The client may choose to receive services from a different individual provider or another qualified provider.

(2) The client has the right to dispute the decision under the consumer directed employer's dispute resolution process.

(3) The client does not have a right to a hearing under chapter 34.05 RCW.

[Statutory Authority: RCW 18.88B.021, 18.88B.041, 18.88B.060, 74.08.090, 74.39A.076, and 74.39A.341. WSR 24-05-003, § 388-115-05410, filed 2/8/24, effective 3/10/24. Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-115-05410, filed 8/30/21, effective 10/1/21.]

WAC 388-115-05415 When will the department deny payment to the CDE? The department will deny payment to the CDE for services provided to a department client:

(1) By an individual provider who does not meet the qualifications in WAC 388-115-0510;

(2) In excess of the client's authorized number of hours, except when necessary to respond to an emergent situation that poses a serious risk to the client's health and safety; or

(3) As provided in the contract with the consumer directed employer.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-115-05415, filed 8/30/21, effective 10/1/21.]

WAC 388-115-0562 When does the consumer directed employer have the right to an administrative hearing and how can a hearing be requested?

(1) The consumer directed employer has the right to an administrative hearing when the department or a department designee terminates its contract or takes other enforcement action related to its contract because the consumer directed employer:

(a) Employs an individual provider who has not completed training within the required timeframe; or

(b) Employs an individual provider who does not meet the certification or recertification requirements or whose certification has been revoked by the department of health (DOH).

(2) In an administrative hearing under subsection (1) of this section, the consumer directed employer may not challenge an action taken by the DOH that affects an individual provider's certification.

(3) To request an administrative hearing, the consumer directed employer must send, deliver, or fax a written request to the office of administrative hearings (OAH). OAH must receive the written request within thirty calendar days of the date the department's notice letter is served upon the consumer directed employer.

(4) The consumer directed employer should keep a copy of the request.

(5) The appeal process will be governed by the Administrative Procedure Act (chapter 34.05 RCW), RCW 74.39A.085, chapter 388-02 WAC, title 182 WAC, and this chapter. If there is a conflict between chapter 388-02 WAC, title 182 WAC, and this chapter, this chapter will govern.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-115-0562, filed 8/30/21, effective 10/1/21.]

WAC 388-115-05640 Self-directed care—Who must direct self-directed care?

Self-directed care under chapter 74.39 RCW must be directed by an adult client for whom the health-related tasks are provided. The adult client is responsible to train the individual provider in the health-related tasks which the client self-directs.

[Statutory Authority: RCW 74.08.090, 74.09.520, 43.43.832, 74.39A.270, 74.39A.056, 74.39A.074, 43.20A.710, 74.39A.525, 43.43.842, 74.39A.326, 74.39A.515, 74.39A.505, 18.88B.021, 43.43.837 and 2018 c 278. WSR 21-18-081, § 388-115-05640, filed 8/30/21, effective 10/1/21.]