



PROPOSED RULE MAKING

CR-102 (June 2004)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

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

- Preproposal Statement of Inquiry was filed as WSR 09-14-069 ; or
- Expedited Rule Making--Proposed notice was filed as WSR _____; or
- Proposal is exempt under RCW 34.05.310(4).

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

Title of rule and other identifying information: (Describe Subject)

The department is amending and creating new sections to Chapter 388-78A WAC regarding Boarding Home rules. Please see attachment A for the specific sections.

Hearing location(s):

Blake Office Park East – Rose Room
4500 – 10th Ave. SE
Lacey, Washington 98503
(One block north of the intersection of Pacific Ave. SE and Alhadeff Lane. A map or directions are available at <http://www.dshs.wa.gov/msa/rpau/docket.html> or by calling 360-664-6094)

Date: **December 8, 2009** Time: **10:00 a.m.**

Submit written comments to:

Name: DSHS Rules Coordinator
Address: PO Box 45850, Olympia WA, 98504-5850
Delivery: 4500 – 10th Ave. SE, Lacey, Washington 98503
E-mail: DSHSRPAURulesCoordinator@dshs.wa.gov
Fax: (360) 664-6185

By

5 p.m. on December 8, 2009

Assistance for persons with disabilities: Contact Jennisha Johnson, DSHS Rules Consultant by November 24, 2009
TTY (360) 664-6178 or (360) 664-6094 or
by e-mail at johnsil4@dshs.wa.gov

Date of intended adoption: Not earlier than December 9, 2009 (Note: This is **NOT** the **effective** date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The purpose of amending these rules is to consider making editorial and clarifying changes and to make these rules consistent with current law and standards. The anticipated effects are to make the rule clearer, easier to read, understand and apply.

Purpose and reasons for the proposed changes:

- Editorial and housekeeping changes in the following sections: preadmission assessment, food and nutrition services, resident register, toilet rooms and bathrooms.
- Added disclosure requirement regarding the facility's policy on accepting Medicaid payments to be consistent with RCW 18.20.440 and SSB 6009.
- Clarified tuberculosis requirements to be consistent with current standards.
- Clarified when notice is considered complete and proof of notice.
- Consolidated disqualifying crime lists.
- Added liability insurance requirement to rule.
- Clarified management agreement requirements.
- Clarified resident protection program requirements.
- Clarified that new construction must comply with rules in effect at the time of plan approval except in cases where resident health and safety may be jeopardized
- Chunked large administrator qualifications section into smaller sections.

Reasons supporting proposal: See above

Statutory authority for adoption: RCW 18.20.090

Statute being implemented: Chapter 18.20 RCW

Is rule necessary because of a:

- | | | |
|-------------------------|------------------------------|--|
| Federal Law? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |

If yes, CITATION:

DATE

October 1, 2009

NAME

Stephanie Vaughn

SIGNATURE

TITLE

DSHS Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: October 02, 2009
TIME: 2:28 PM

WSR 09-20-061

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None.

Name of proponent: (person or organization) Department of Social and Health Services

- Private
 Public
 Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting.....Judy Johnson.	P.O. Box 45600, Olympia, WA 98513	(360) 725-2591
Implementation...Lori Melchiori	P.O. Box 45600, Olympia, WA 98513	(360) 725-2404
Enforcement Lori Melchiori	P.O. Box 45600, Olympia, WA 98513	(360) 725-2404

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name: Judy Johnson, Boarding Home Program Manager
Address: P.O. Box 45600, Olympia, WA 98504-5600

phone (360) 725-2591
fax (360) 438-7903
e-mail johnsjm1@dshs.wa.gov

No. Explain why no statement was prepared.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name: Judy Johnson, Boarding Home Program Manager
Address: P.O. Box 45600, Olympia, WA 98504-5600

phone (360) 725-2591
fax (360) 438-7903
e-mail johnsjm1@dshs.wa.gov

No: Please explain:

The department is proposing amendments to the following existing WAC sections:

- 388-78A-2060 Preadmission assessment.
- 388-78A-2300 Food and nutrition services.
- 388-78A-2440 Resident register.
- 388-78A-2470 Criminal history disclosure and background checks.
- 388-78A-2480 Tuberculosis – Testing – Required.
- 388-78A-2520 Administrator qualifications – General.
- 388-78A-2540 Administrator requirements.
- 388-78A-2590 Management agreements – General.
- 388-78A-2910 Applicable building codes.
- 388-78A-3030 Toilet rooms and bathrooms.
- 388-78A-3190 Denial, suspension, revocation, or nonrenewal of license statutorily required.
- 388-78A-3410 Resident protection program – Notice to the individual of preliminary finding.
- 388-78A-3420 Resident protection program – Notice to others of preliminary findings.
- 388-78A-3430 Resident protection program – Disputing a preliminary finding.
- 388-78A-3450 Resident protection program – Finalizing a preliminary finding.
- 388-78A-3460 Resident protection program – Appeal of initial order.
- 388-78A-3470 Resident protection program – Reporting final findings.
- 388-78A-3480 Resident protection program – Disclosure of investigative and finding information.

The department is proposing the following new sections:

- 388-78A-2481 Tuberculosis – Testing method – Required.
- 388-78A-2482 Tuberculosis – No testing.
- 388-78A-2483 Tuberculosis – One step testing.
- 388-78A-2484 Tuberculosis – Two step skin testing.
- 388-78A-2485 Tuberculosis – Positive test result.
- 388-78A-2486 Tuberculosis – Negative test result.
- 388-78A-2487 Tuberculosis – Declining a skin test.
- 388-78A-2488 Tuberculosis – reporting – Required.
- 388-78A-2489 Tuberculosis – Test records.
- 388-78A-2521 Certification of training.

- 388-78A-2522 Administrator qualifications – Prior to 2004.
- 388-78A-2523 Administrator qualification – NH Administrator license.
- 388-78A-2524 Administrator qualifications – Certification of training and three years experience.
- 388-78A-2525 Administrator qualifications – Associate degree, certification of training, and two years experience.
- 388-78A-2526 Administrator qualifications – Bachelor’s degree, certification of training and one year experience.
- 388-78A-2527 Administrator qualifications – Five years experience.
- 388-78A-2592 Management Agreements – Licensee.
- 388-78A-2593 Management Agreements – Terms of Agreement.
- 388-78A-2594 Management Agreements – Department Review.
- 388-78A-2595 Management Agreements – Resident Funds.
- 388-78A-2665 Resident Rights – Notice – Policy on accepting Medicaid as a payment source.
- 388-78A-2731 Application – Liability Insurance required.
- 388-78A-2732 Liability insurance required – Ongoing.
- 388-78A-2733 Liability insurance required – Commercial General Liability Insurance or Business Liability Insurance coverage.
- 388-78A-2734 Liability insurance required – Professional Liability Insurance coverage.
- 388-78A-3390 Resident protection program – Individual defined.
- 388-78A-4000 Notice – Service complete.
- 388-78A-4010 Notice – Proof of service.



**STATE OF WASHINGTON
DEPARTMENT OF SOCIAL AND HEALTH SERVICES**

MEMORANDUM

DATE: September 29, 2009

TO: Stephanie Vaughn, Manager
DSHS Rules and Policy Assistance Unit

FROM: Judy Johnson, Program Manager
Policy, Program Development and Training Unit
Residential Care Services

SUBJECT: Small Business Economic Impact Statement and Cost-Benefit Analysis for Proposed Amendments to Chapter 388-78A WAC, Boarding Homes.

SUMMARY OF PROPOSED RULES

The Department of Social and Health Services, Residential Care Services (RCS), is proposing amendments to Chapter 388-78A, Boarding Homes.

The purpose of the proposed rule-making is to make editorial and clarifying changes and to make the rules consistent with current laws and standards.

Highlights of proposed changes:

- Editorial and housekeeping changes in the following sections: preadmission assessment, food and nutrition services, sections related to preliminary findings,
- Clarified Medicaid issues to be consistent with RCW 18.20.440 and SSB 6009.
- Deleted construction tables to eliminate redundancy, and clarified that new construction must comply with rules in effect at the time of plan approval.
- Clarified management agreement requirements.
- Clarified tuberculosis requirements to be consistent with current standards
- Clarified when notice is considered complete and proof of notice.
- Updated disqualifying crime requirements.
- Added liability insurance requirement to rule.

SMALL BUSINESS IMPACT STATEMENT

RCW Chapter 19.85, The Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses and outlines the information that must be included in a Small Business Economic Impact Statement (SBEIS). Preparation of a SBEIS is required when a proposed rule has the potential of placing more than a minor impact on a business.

RCW 19.85.020 defines a "small business" as "any business entity, including a sole proprietorship, corporation, partnership, or other legal entity, that is owned and operated independently from all other businesses, and that has fifty or fewer employees."

RCS has analyzed its proposed rules and concludes that the new requirement of liability insurance may impose a new cost to the boarding home that does not already have liability insurance. Approximately 351 (63.3%) boarding homes have contracts and are required to have liability insurance. Although 36.4% of the boarding homes do not have contracts, many of those facilities may already have liability insurance, including those who may have liability insurance coverage required by their banks or landlords.

The cost of liability insurance ranges in price depending on many variables such as level of care, number of residents, expertise of staff, outcome of inspections, loss history, and the length of time the administrator has been working. According to three insurance companies, the estimated average cost for a combination of liability insurance that also covers professionals for the boarding home is \$150 to \$200 per bed.

RCS understands that some of the cost of the liability insurance can be deducted as a legitimate business expense when taxes are filed with the Internal Revenue Service. RCS does not believe that the proposed rules will result in any job losses or gains for boarding homes. The proposed rule amendments do not disproportionately impact small businesses more than larger businesses.

EVALUATION OF PROBABLE COSTS AND BENEFITS

RCS has determined that some of the proposed rules are "significant legislative rules" as defined by legislature. As required by RCW 34.05.328(1) (c), RCS has analyzed the probable costs and probable benefits of the proposed amendments, taking into account both the qualitative and quantitative benefits and costs.

COSTS

- The liability insurance requirement for all boarding homes may impose additional costs to those boarding homes that currently do not have insurance coverage.
- DSHS has shared the draft language with interested parties who participate in a stakeholder meeting to discuss the proposed rule changes.

At the meeting, liability insurance was brought up by a stakeholder as a potential cost.

- In addition, the draft language was posted on the Aging and Disability Services Administration internet website for anyone in the public to review and comment.
- DSHS used the input from internal and external stakeholders to determine cost impacts for the drafting of the rule.
- To date, the department has received and considered written comments on the draft language and one comment on the cost impact of the proposed liability insurance requirement.

COST SAVINGS

Clarity of the proposed rule could save providers costs in time and dollars by:

- Clarifying rule language for the provider; and
- Clarification could reduce the need for clarifying technical support and dear provider letters due to confusing rules.

OTHER BENEFITS

The proposed rule amendments result in several benefits. Benefits may include:

- The liability insurance requirement will provide a consistent standard among those with contracts with DSHS and those without contracts.
- The liability insurance requirement will provide all residents with another level of consumer protection.
- The liability insurance requirement may help boarding homes defend themselves and pay awarded damages without threatening their financial stability.
- The amendments are clearer, and easier to read, understand and apply; and
- Residents will ultimately benefit from the rule revision because providers will be able to better understand and follow the requirements.

CONCLUSION

RCS concludes that the benefits of the proposed amendments exceed the possible cost. These rules continue to implement state laws and regulations related to boarding homes. RCS has complied with the appropriate sections of the Administrative Procedure Act and is prepared to proceed with the rule filing.

Please contact Judy Johnson by email at johnsim1@dshs.wa.gov or by telephone at (360) 725-2591 if you have questions.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2060 Preadmission assessment. The boarding home must conduct a preadmission assessment for each prospective resident that includes the following information, unless unavailable despite the best efforts of the boarding home:

- (1) Medical history;
- (2) Necessary and contraindicated medications;
- (3) A licensed medical or health professional's diagnosis, unless the ((individual)) prospective resident objects for religious reasons;
- (4) Significant known behaviors or symptoms that may cause concern or require special care;
- (5) Mental illness diagnosis, except where protected by confidentiality laws;
- (6) Level of personal care needs;
- (7) Activities and service preferences; and
- (8) Preferences regarding other issues important to the ((applicant)) prospective resident, such as food and daily routine.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-2300 Food and nutrition services. (1) The boarding home must:

- (a) Provide a minimum of three meals a day:
 - (i) At regular intervals;
 - (ii) With no more than fourteen hours between the evening meal and breakfast, unless the boarding home provides a nutritious snack after the evening meal and before breakfast.
- (b) Provide sufficient time and staff support for residents to consume meals;
- (c) Ensure all menus:
 - (i) Are written at least one week in advance and delivered to residents' rooms or posted where residents can see them, except as specified in (f) of this subsection;
 - (ii) Indicate the date, day of week, month and year;
 - (iii) Include all food and snacks served that contribute to nutritional requirements;
 - (iv) Are kept at least six months;
 - (v) Provide a variety of foods; and
 - (vi) Are not repeated for at least three weeks, except that breakfast menus in boarding homes that provide a variety of daily choices of hot and cold foods are not required to have a minimum three-week cycle.
- (d) Prepare food on-site, or provide food through a contract

with a food service establishment located in the vicinity (~~and~~) that meets the requirements of chapter 246-215 WAC(~~(, palatable, attractively served meals and nourishments that meet the current recommended dietary allowances established by the Food and Nutrition Board, National Research Council,)~~) Food Service;

(e) Serve nourishing, palatable and attractively served meals adjusted for:

(i) Age, gender and activities, unless medically contraindicated; and

(ii) Individual preferences to the extent reasonably possible.

~~((f))~~ (f) Substitute foods of equal nutrient value, when changes in the current day's menu are necessary, ~~((of equal nutrient value))~~ and record changes on the original menu;

~~((g))~~ (g) Make available and (~~known to~~) give residents alternate choices in entrees for midday and evening meals that are of comparable quality and nutritional value. The boarding home is not required to post alternate choices in entrees on the menu one week in advance, but must record on the menus the alternate choices in entrees that are served;

~~((h))~~ (h) Develop, make known to residents, and implement a process for residents to express their views and comment on the food services; and

~~((i))~~ (i) Maintain a dining area or areas approved by the department with a seating capacity for fifty percent or more of the residents per meal setting, or ten square feet times the licensed resident bed capacity, whichever is greater.

(2) The boarding home must plan in writing, prepare on-site or provide through a contract with a food service establishment located in the vicinity that meets the requirements of chapter 246-215 WAC, and serve to each resident as ordered:

(a) Prescribed general low sodium, general diabetic, and mechanical soft food diets according to a diet manual. The boarding home must ensure the diet manual is:

(i) Available to and used by staff persons responsible for food preparation;

(ii) Approved by a dietitian; and

(iii) Reviewed and updated as necessary or at least every five years.

(b) Prescribed nutrient concentrates and supplements when prescribed in writing by a health care practitioner.

(3) The boarding home may provide to a resident at his or her request and as agreed upon in the resident's negotiated service agreement, nonprescribed:

(a) Modified or therapeutic diets;

(b) Nutritional concentrates or supplements.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2440 Resident register. (1) The boarding home must maintain in the boarding home a single current (~~roster~~) register of all boarding home residents, their roommates and

identification of the rooms in which such persons reside or sleep.

~~(2) ((The boarding home must make this roster immediately available to:~~

~~(a) Authorized department staff;~~

~~(b) Representatives of the long-term care ombudsman's office;~~
and

~~(c) Representatives of the Washington state fire protection bureau when conducting fire safety inspections.~~

~~(3)) The boarding home must maintain a readily available permanent, current book, computer file, or register with entries in ink or typewritten, of all ((former)) individuals who resided in the boarding home ((residents)) within the past five years, including:~~

~~(a) ((Date of moving in)) Move-in date;~~

~~(b) Full name;~~

~~(c) Date of birth;~~

~~(d) Date of moving out;~~

~~(e) Reason for moving out; and~~

~~(f) ((New address if known)) Location and address to which the resident was discharged.~~

~~(3) The boarding home must make this register immediately available to:~~

~~(a) Authorized department staff;~~

~~(b) Representatives of the long-term care ombudsman's office;~~
and

~~(c) Representatives of the Washington state fire marshal when conducting fire safety inspections.~~

AMENDATORY SECTION (Amending WSR 09-01-052, filed 12/10/08, effective 1/10/09)

WAC 388-78A-2470 Criminal history disclosure and background checks. (1) This section applies to any individual associated with the licensee or boarding home who may have unsupervised access to residents, including but not limited to:

(a) Employees;

(b) Managers;

(c) Volunteers who are not residents;

(d) Contractors; and

(e) Students.

(2) The boarding home must:

(a) Ensure any individual associated with the licensee or boarding home who may have unsupervised access to residents has had a background check ((of conviction records, pending charges and disciplinary board decisions)) completed within the past two years, ((and)) that the background check is repeated every two years ((thereafter)), and that individual has not been:

(i) Convicted of a crime against children or other persons as defined in RCW 43.43.830 ((or 43.43.842;)), unless the individual has been convicted of one of the two crimes listed below and the required number of years has passed between the most recent conviction and the date of the application for employment:

(A) Simple assault, assault in the fourth degree, or the same offense as it may hereafter be renamed, and three or more years have passed;

(B) Prostitution, or the same offense as it may hereafter be renamed, and three or more years have passed.

(ii) Convicted of crimes relating to financial exploitation as defined in RCW 43.43.830 (~~or 43.43.842~~), unless the individual has been convicted of one of the three crimes listed below and the required number of years has passed between the most recent conviction and the date of the application for employment:

(A) Theft in the second degree, or the same offense as it may hereafter be renamed, and five or more years have passed;

(B) Theft in the third degree, or the same as it may hereafter be renamed, and three or more years have passed; or

(C) Forgery, or the same offense as forgery may hereafter be renamed, and five or more years have passed.

(iii) Convicted of:

(A) Violation of the imitation controlled substances act (VICSA);

(B) Violation of the uniform controlled substances act (VUCSA);

(C) Violation of the uniform legend drug act (VULDA);

(D) Violation of the uniform precursor drug act (VUPDA); or

(E) Sending or bringing into the state depictions of a minor engaged in sexually explicit conduct.

(iv) Found in any disciplinary board final decision to have abused a vulnerable adult as defined in RCW 43.43.830;

~~((iv))~~ (v) The subject in a protective proceeding under chapter 74.34 RCW;

~~((v))~~ (vi) Convicted of criminal mistreatment; (~~or~~)

~~((vi))~~ (vii) Found by the department to have abandoned, abused, neglected or exploited a minor, or abandoned, abused, neglected, exploited, or financially exploited a vulnerable person, provided the individual was offered an administrative hearing to contest the finding, and the finding was upheld, or the individual failed to timely appeal the finding; or

(viii) Convicted in another state of a crime that is equivalent to a crime described in this subsection.

(b) Not hire or retain, directly or by contract, or accept as a volunteer, any individual prohibited from having unsupervised access to residents under (a) of this subsection, except as provided in subsection (6) (~~of this section and RCW 43.43.842~~).

(3) Prior to first starting his or her duties, the boarding home must:

(a) Require each prospective employee, manager, volunteer, contractor and student associated with the licensee or boarding home who may have unsupervised access to residents to disclose, consistent with RCW 43.43.834(2), whether he or she:

(i) Has been convicted of (~~a~~) any crime, including (~~any of~~) the following (~~as defined in RCW 43.43.830~~):

(A) (~~All~~) Crimes against children or (~~their~~) other persons as defined in RCW 43.43.830;

(B) (~~All~~) Crimes relating to financial exploitation as defined in RCW 43.43.830; (~~and~~)

(C) (~~All~~) Crimes relating to drugs as defined in RCW 43.43.830; and

(D) Sending or bringing into the state depictions of a minor engaged in sexually explicit conduct.

(ii) Has had findings made against him or her in any civil adjudicative proceeding as defined in RCW 43.43.830. "Civil adjudicative proceeding" means 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 finding that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings; or

(iii) Has ~~((both))~~ one or more convictions for (i) and one or more findings ~~((made against him or her))~~ under (ii).

(b) Require each individual making the disclosures required in subsection (3)(a) of this section:

(i) To make the disclosures in writing;

(ii) To swear under penalty of perjury that the contents of the disclosure are accurate; and

(iii) To sign the disclosure statement.

(4) Prior to first starting his or her duties, the boarding home must take one or more of the following three actions for each prospective employee, manager, volunteer, contractor and student associated with the licensee or boarding home who may have unsupervised access to residents:

(a) Initiate a background check on the individual through the department, which includes taking the following actions:

(i) Informing the individual that a background check is required.

(ii) Requiring the individual to complete and sign a DSHS background authorization form prior to the individual having unsupervised access to residents;

(iii) Submitting all background check authorization forms to the department's:

(A) Aging and disability services administration with the initial application for licensure; and

(B) Background check central unit for currently licensed boarding homes.

(iv) Verbally informing the named individual of his/her individual background check results and offering to provide him or her a copy of the background check results within ten days of receipt.

(b) Obtain from the individual's prior employer a copy of the completed criminal background inquiry information for the individual, subject to the following conditions:

(i) The prior employer was a nursing home licensed under chapter 18.51 RCW, a boarding home licensed under chapter 18.20 RCW, or an adult family home licensed under chapter 70.128 RCW;

(ii) The nursing home, boarding home or adult family home providing completed criminal background inquiry information for the individual is reasonably known to be the individual's most recent employer;

(iii) No more than twelve months has elapsed (~~(from)~~) between the date the individual was last employed by the nursing home, boarding home or adult family home and the date of the individual's current application;

(iv) The background inquiry for the individual is no more than two years old; and

(v) The boarding home has no reason to believe the individual has or may have a disqualifying conviction or finding as described in (~~RCW 43.43.842~~) subsection (2)(a) of this section.

(c) When using staff persons from a home health, hospice, or home care agency licensed under chapter 70.127 RCW, or a nursing pool registered under chapter 18.52C RCW, the boarding home must establish, maintain and follow a written agreement with the agency or pool to ensure the requirements of subsection (2) of this section are met for the agency or pool staff who may work in the boarding home.

(5) The boarding home must ensure that all disclosure statements, and background check results obtained by the boarding home, are:

(a) Maintained on-site in a confidential and secure manner;

(b) Used for employment purposes only;

(c) Not disclosed to any individual except:

(i) The individual named on the background check result;

(ii) Authorized state and federal employees;

(iii) The Washington state patrol auditor; and

(iv) As otherwise authorized in chapter 43.43 RCW.

(d) Retained and available for department review:

(i) During the individual's employment or association with a facility; and

(ii) At least two years following termination of employment or association with a facility.

(6) The boarding home may conditionally hire, directly or by contract, an individual having unsupervised access to residents pending a background inquiry, provided the boarding home:

(a) Obtains a criminal history background check authorization form from the individual prior to the individual beginning work;

(b) Submits the criminal history background check authorization form to the department no later than one business day after the individual started working; and

(c) Has received three positive references for the individual.

(7) The department may require the boarding home or any other individual associated with the boarding home who has unsupervised access to residents to complete additional disclosure statements or background inquiries if the department has reason to believe that offenses specified (~~under RCW 43.43.830~~) in subsection (2)(a) of this section have occurred since completion of the previous disclosure statement or background inquiry.

(8) In addition to chapter 18.20 RCW, these rules are authorized by RCW 43.20A.710, 43.43.830 through 43.43.842 and 74.39A.050(8).

effective 1/4/07)

WAC 388-78A-2480 ((TB tests))
Tuberculosis--Testing--Required. (1) The boarding home must develop and implement a system to ensure each staff person(~~, except for volunteers and contactors,~~) is screened for tuberculosis(~~, as follows:~~

(a) Except when a staff person provided the boarding home with documentation of a previous positive Mantoux skin test, a staff person hired before September 1, 2004 must have had:

(i) A tuberculin skin test by the Mantoux method within six months preceding the date of employment in the boarding home; and

(ii) A second tuberculin skin test within one to three weeks after a negative Mantoux test if the staff person was thirty-five years of age or older at the time of hiring.

(b) A staff person hired on or after September 1, 2004 must have a baseline two-step skin test initiated within three days of being hired unless the staff person meets the requirements in (c) or (d) of this subsection. The skin tests must be:

(i) Given no less than one and no more than three weeks apart;

(ii) By intradermal (Mantoux) administration of purified protein derivative (PPD);

(iii) Read between forty-eight and seventy-two hours following administration, by trained personnel; and

(iv) Recorded in millimeters of induration.

(c) A staff person needs to have only a one-step skin test within three days of being hired if:

(i) There is documented history of a negative result from previous two-step testing; or

(ii) There was a documented negative result from one-step skin testing in the previous twelve months.

(d) A staff person does not need to be skin tested for tuberculosis if he/she has:

(i) Documented history of a previous positive skin test consisting of ten or more millimeters of induration; or

(ii) Documented evidence of adequate therapy for active disease; or

(iii) Documented evidence of adequate preventive therapy for infection.

(e) If a skin test results in a positive reaction, the boarding home must:

(i) Ensure that the staff person has a chest X ray within seven days;

(ii) Report positive chest X rays to the appropriate public health authority; and

(iii) Follow precautions ordered by a physician or public health authority)) within three days of employment.

(2) ((The boarding home must:

(a) Keep in the boarding home for the duration of the staff person's employment, and at least two years following termination of employment, records of:

(i) Tuberculin test results;

(ii) Reports of X-ray findings; and

(iii) Physician or public health official orders.

(b) Provide staff persons with a copy of the records specified in (a) of this subsection:

~~(i) During the time the staff person is employed in the boarding home, limited to one copy per report; and~~
~~(ii) When requested by the staff person.~~
~~(3) The boarding home must ensure that caregivers caring for a resident with suspected tuberculosis comply with the WISHA standard for respiratory protection)) For purposes of WAC 388-78A-2481 through 388-78A-2489, "staff person" means any boarding home employee or temporary employee of the boarding home, excluding volunteers and contractors.~~

NEW SECTION

WAC 388-78A-2481 Tuberculosis--Testing method--Required. The boarding home must ensure that all tuberculosis testing is done through either:

- (1) Intradermal (mantoux) administration with test results read:
 - (a) Within forty-eight to seventy-two hours of the test; and
 - (b) By a trained professional; or
- (2) A blood test for tuberculosis called interferon-gamma release assay (IGRA).

NEW SECTION

WAC 388-78A-2482 Tuberculosis--No testing. The boarding home is not required to have a staff person tested for tuberculosis if the staff person has:

- (1) A documented history of a previous positive skin test, with ten or more millimeters induration;
- (2) A documented history of a previous positive blood test; or
- (3) Documented evidence of:
 - (a) Adequate therapy for active disease; or
 - (b) Completion of treatment for latent tuberculosis infection preventive therapy.

NEW SECTION

WAC 388-78A-2483 Tuberculosis--One step testing. The boarding home is only required to have a staff person take a one-step skin or blood test if the staff person has any of the following:

- (1) A documented history of a negative result from previous two step testing done no more than one to three weeks apart; or
- (2) A documented negative result from one step skin or blood

testing in the previous twelve months.

NEW SECTION

WAC 388-78A-2484 Tuberculosis--Two step skin testing. Unless the staff person meets the requirement for having no skin testing or only a one step skin test, the boarding home must ensure that each staff person has the following two-step testing:

- (1) An initial skin test within three days of employment; and
- (2) A second test done one to three weeks after the first test; except
- (3) A two-step test is not required for the IGRA blood test, which is only a one-step test.

NEW SECTION

WAC 388-78A-2485 Tuberculosis--Positive test result. When there is a positive result to tuberculosis skin or blood testing the boarding home must:

- (1) Ensure that the staff person has a chest X-ray within seven days;
- (2) Evaluate each staff person with a positive test result for signs and symptoms of tuberculosis; and
- (3) Follow the recommendation of the staff person's health care provider.

NEW SECTION

WAC 388-78A-2486 Tuberculosis--Negative test result. The boarding home may be required by the public health provider or licensing authority to ensure that staff persons with negative test results have follow-up testing in certain circumstances, such as:

- (1) After exposure to active tuberculosis;
- (2) When tuberculosis symptoms are present; or
- (3) For periodic testing as determined by the public health provider.

NEW SECTION

WAC 388-78A-2487 Tuberculosis--Declining a skin test. The

boarding home must ensure that a staff person take a blood test for tuberculosis if they decline the skin test.

NEW SECTION

WAC 388-78A-2488 Tuberculosis--Reporting--Required. The boarding home must:

(1) Report any staff person or resident with tuberculosis symptoms or a positive chest X-ray to the appropriate staff person's health care provider, or public health provider;

(2) Follow the infection control and safety measures ordered by the staff person's health care provider including a public health provider;

(3) Institute appropriate infection control measures;

(4) Apply living or work restrictions where residents or staff persons are, or may be, infectious and pose a risk to other residents and staff persons; and

(5) Ensure that staff person's caring for a resident with suspected tuberculosis comply with the WISHA standard for respiratory protection found in chapter 296-842 WAC.

NEW SECTION

WAC 388-78A-2489 Tuberculosis--Test records. The boarding home must:

(1) Keep the records of the tuberculin test results, reports of X-ray findings, and any physician or public health provider orders in the boarding home;

(2) Make the records readily available to the appropriate health provider and licensing agency,

(3) Retain the records for at least two years after the date the staff person either quits or is terminated; and

(4) Provide the staff person a copy of his/her test results.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-2520 Administrator qualifications--General. (1) The licensee must appoint an administrator who is:

(a) At least twenty-one years old ((and who is));

(b) Not a resident(, and is) of the boarding home; and

(c) Qualified to perform the administrator's duties specified in WAC 388-78A-2560.

(2) The licensee must only appoint as a boarding home administrator an individual who meets the requirements listed in at least one of the following (~~(a) through (f) of this subsection:~~

~~(a) The individual was actively employed as a boarding home administrator and met existing qualifications on September 1, 2004;~~

~~(b) The individual holds a current Washington state nursing home administrator license in good standing;~~

~~(c) Prior to assuming duties as a boarding home administrator, the individual has met the qualifications listed in both (c) (i) and (ii) of this subsection:~~

~~(i) Obtained certification of completing a recognized administrator training course consisting of a minimum of twenty-four hours of instruction or equivalent on-line training or certification of passing an administrator examination, from or endorsed by a department-recognized national accreditation health or personal care organization such as:~~

~~(A) The American Association of Homes and Services for the Aging; or~~

~~(B) The American College of Health Care Administrators; or~~

~~(C) The American Health Care Association; or~~

~~(D) The Assisted Living Federation of America; or~~

~~(E) The National Association of Board of Examiners of Long Term Care Administrators.~~

~~(ii) Three years paid experience:~~

~~(A) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or~~

~~(B) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living.~~

~~(d) The individual holds an associate degree in a related field of study such as health, social work, or business administration and meets the qualifications listed in either (d) (i), (ii) or (iii) of this subsection:~~

~~(i) Obtains certification of completing a recognized administrator training course consisting of a minimum of twenty-four hours of instruction or equivalent on-line training, or certification of passing an administrator examination, within six months of beginning duties as the administrator, from or endorsed by a department-recognized national accreditation health or personal care organization such as:~~

~~(A) The American Association of Homes and Services for the Aging; or~~

~~(B) The American College of Health Care Administrators; or~~

~~(C) The American Health Care Association; or~~

~~(D) The Assisted Living Federation of America; or~~

~~(E) The National Association of Board of Examiners of Long Term Care Administrators.~~

~~(ii) Has two years paid experience:~~

~~(A) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or~~

~~(B) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living.~~

~~(iii) Has completed a qualifying administrator training program supervised by a qualified administrator according to WAC 388-78A-2530.~~

~~(e) The individual holds a bachelor's degree in a related field of study such as health, social work, or business administration and meets the qualifications listed in either (e)(i), (ii) or (iii) of this subsection:~~

~~(i) Obtains certification of completing a recognized administrator training course consisting of a minimum of twenty-four hours of instruction or equivalent on-line training, or certification of passing an administrator examination, within six months of beginning duties as the administrator, from or endorsed by a department-recognized national accreditation health or personal care organization such as:~~

~~(A) The American Association of Homes and Services for the Aging; or~~

~~(B) The American College of Health Care Administrators; or~~

~~(C) The American Health Care Association; or~~

~~(D) The Assisted Living Federation of America; or~~

~~(E) The National Association of Board of Examiners of Long Term Care Administrators.~~

~~(ii) Has one year paid experience:~~

~~(A) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or~~

~~(B) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living.~~

~~(iii) Has completed a qualifying administrator training program supervised by a qualified administrator according to WAC 388-78A-2530.~~

~~(f) Before assuming duties as an administrator, the individual has five years of paid experience:~~

~~(i) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported~~

living; and/or

~~(ii) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living)) sections in WAC 388-78A-2522 through 388-78A-2527.~~

NEW SECTION

WAC 388-78A-2521 Certification of training. As used in WAC 388-78A-2522 through 388-78A-2527, an individual may meet the certification of training as follows. The individual has certification of completing a recognized administrator training course that consists of a minimum of twenty-four hours of instruction or equivalent online training, or certification of passing an administrator examination from or endorsed by a department-recognized national accreditation health or personal care organization such as:

- (1) The American association of homes and services for the aging;
- (2) The American college of health care administrators;
- (3) The American health care association;
- (4) The assisted living federation of America; or
- (5) The national association of board of examiners of long term care administrators.

NEW SECTION

WAC 388-78A-2522 Administrator qualifications--Prior to 2004. The individual was actively employed as a boarding home administrator and met existing qualifications on September 1, 2004.

NEW SECTION

WAC 388-78A-2523 Administrator qualifications--NH administrator license. The individual holds a current Washington state nursing home administrator license in good standing.

NEW SECTION

WAC 388-78A-2524 Administrator qualifications--Certification of training and three years experience. Prior to assuming duties as a boarding home administrator, the individual has met the following qualifications:

(1) Obtained certification of completing a recognized administrator training as referenced in WAC 388-78A-2521; and

(2) Has three years paid experience:

(a) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or

(b) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living.

NEW SECTION

WAC 388-78A-2525 Administrator qualifications--Associate degree, certification of training, and two years experience. The individual holds an associate degree in a related field of study such as health, social work, or business administration and meets the qualifications listed in either subsection (1), (2) or (3) of this section:

(1) Obtains certification of completing a recognized administrator training course as referenced in WAC 388-78A-2521 within six months of beginning duties as the administrator; or

(2) Has two years paid experience:

(a) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or

(b) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; or

(3) Has completed a qualifying administrator training program supervised by a qualified administrator according to WAC 388-78A-2530.

NEW SECTION

WAC 388-78A-2526 Administrator qualifications--Bachelor's degree, certification of training, and one year experience. The individual holds a bachelor's degree in a related field of study such as health, social work, or business administration and meets the qualifications listed in either subsection (1), (2) or (3) of this section.

(1) Obtains certification of completing a recognized administrator training course and referenced in WAC 388-78A-2521 within six months of beginning duties as the administrator; or

(2) Has one year paid experience:

(a) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or

(b) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; or

(3) Has completed a qualifying administrator training program supervised by a qualified administrator according to WAC 388-78A-2530.

NEW SECTION

WAC 388-78A-2527 Administrator qualifications--Five years experience. Before assuming duties as an administrator, the individual has five years of paid experience:

(1) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or

(2) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2540 Administrator ((training)) requirements.

The licensee must ensure the boarding home administrator:

(1) Meets the training requirements ((of)) under chapter 388-112 WAC; and

(2) ~~((Completes department training on))~~ Knows and understands how to apply Washington state statutes and administrative rules related to the operation of a boarding home((.

~~(a) The training must include, but is not limited to, an overview of:~~

~~(i) Chapter 18.20 RCW, Boarding homes;~~

~~(ii) Chapter 43.43 RCW, Criminal history background checks;~~

~~(iii) Chapter 74.34 RCW, Abuse of vulnerable adults;~~

~~(iv) Chapter 70.129 RCW, Long-term care resident rights;~~

~~(v) Chapter 388-78A WAC, Boarding home licensing rules; and~~

~~(vi) Chapter 388-112 WAC, Long-term care services training.~~

~~(b) Individuals hired as boarding home administrators after September 1, 2004, must complete department required training within thirty days of assuming duties as a boarding home administrator.~~

~~(c) Individuals employed as boarding home administrators on September 1, 2004, must complete department required training by November 1, 2004); and~~

(3) Meets the administrator qualification requirements referenced in WAC 388-78A-2520 through 388-78A-2527.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2590 Management agreements--General. (1) ~~((If~~

~~the licensee uses a manager, the licensee must have a written management agreement approved by the department that is consistent with this section.~~

~~(2) The licensee may enter into a management agreement only if the management agreement creates a principal/agent relationship between the licensee and the manager.~~

~~(3) The licensee must ensure the manager acts in conformance with a department-approved management agreement with the boarding home licensee.~~

~~(4) A licensee must not delegate the following to a manager:~~

~~(a) The licensee's responsibility to ensure that the boarding home is operated in a manner consistent with all laws and rules applicable to boarding homes;~~

~~(b) The licensee's responsibility to review, acknowledge and sign all boarding home initial and renewal license applications.~~

~~(5) The licensee must ensure that its manager does not represent itself as, or give the appearance that it is the licensee.~~

~~(6) A duly authorized manager may execute resident leases or agreements on behalf of the licensee, but all such resident leases or agreements must be between the licensee and the resident.~~

~~(7) The licensee must notify the department of its use of a manager and provide a copy of any written management agreement to~~

~~the department upon the following:~~

- ~~(a) Initial application for a license;~~
- ~~(b) Retention of a manager following initial application;~~
- ~~(c) Change of managers; or~~
- ~~(d) Modification of existing management agreement))~~

If the proposed or current licensee uses a manager, the licensee must have a written management agreement approved by the department that is consistent with this chapter.

(2) The proposed or current licensee must notify the department of its use of a manager upon:

- (a) Initial application for a license;
- (b) Retention of a manager following initial application;
- (c) Change of managers; and
- (d) Modification of existing management agreement.

(3) The proposed or current licensee must provide a written management agreement, including an organizational chart showing the relationship between the proposed or current licensee, management company, and all related organizations.

(4) The written management agreement must be submitted:

- (a) Sixty days before:
 - (i) The initial licensure date;
 - (ii) The proposed change of ownership date; or
 - (iii) The effective date of the management agreement; or
- (b) Thirty days before the effective date of any amendment to an existing management agreement.

(5) The proposed licensee or the current licensee must notify the resident and their representatives sixty days before entering into a management agreement.

NEW SECTION

WAC 388-78A-2592 Management agreements--Licensee. (1) The licensee is responsible for:

(a) The daily operations and provisions of services in the boarding home (See 388-78A-2730(1)(a));

(b) Ensuring the boarding home is operated in a manner consistent with all laws and rules applicable to boarding homes (See 388-78A-2730(1)(b));

(c) Ensuring the manager acts in conformance with a department approved management agreement; and

(d) Ensuring the manager does not represent itself as, or give the appearance that it is the licensee.

(2) The licensee must not give the manager responsibilities that are so extensive that the licensee is relieved of daily responsibility for the daily operations and provision of services in the boarding home. If the licensee does so, then the department must determine that a change of ownership has occurred.

(3) The licensee and manager must act in accordance with the terms of the department-approved management agreements. If the department determines they are not, then the department may take licensing action.

(4) The licensee may enter into a management agreement only if

the management agreement creates a principal/agent relationship between the licensee and manager.

NEW SECTION

WAC 388-78A-2593 Management agreements--Terms of agreement.
Management agreements, at a minimum must:

(1) Describe the responsibilities of the licensee and manager, including items, services, and activities to be provided;

(2) Require the licensee's governing body, board of directors, or similar authority to appoint the facility administrator;

(3) Provide for the maintenance and retention of all records in accordance with this chapter and other applicable laws;

(4) Allow unlimited access by the department to documentation and records according to applicable laws or regulations;

(5) Require the manager to immediately send copies of inspections and notices of noncompliance to the licensee;

(6) State that the licensee is responsible for reviewing, acknowledging and signing all boarding home initial and renewal license applications;

(7) State that the manager and licensee will review the management agreement annually and notify the department of any change according to applicable regulations;

(8) Acknowledge that the licensee is the party responsible for complying with all laws and rules applicable to boarding homes;

(9) Require the licensee to maintain ultimate responsibility over personnel issues relating to the operation of the boarding home and care of the residents, including but not limited to, staffing plans, orientation and training;

(10) State the manager will not represent itself, or give the appearance it is the licensee; and

(11) State that a duly authorized manager may execute resident leases or agreements on behalf of the licensee, but all such resident leases or agreements must be between the licensee and the resident.

NEW SECTION

WAC 388-78A-2594 Management agreements--Department review.
Upon receipt of a proposed management agreement, the department may require:

(1) The proposed or current licensee or manager to provide additional information or clarification;

(2) Any changes necessary to:

(a) Bring the management agreement into compliance with this chapter; and

(b) Ensure that the licensee has not been relieved of the responsibility for the daily operations of the facility.

(3) The licensee to participate in monthly meetings and quarterly on-site visits to the boarding home.

NEW SECTION

WAC 388-78A-2595 Management agreements--Resident funds. (1) If the management agreement delegates day-to-day management of resident funds to the manager, the licensee:

(a) Retains all fiduciary and custodial responsibility for funds that have been deposited with the boarding home by the resident;

(b) Is directly accountable to the residents for such funds; and

(c) Must ensure any party responsible for holding or managing residents' personal funds is bonded or obtains insurance in sufficient amounts to specifically cover losses of resident funds; and provides proof of bond or insurance.

(2) If responsibilities for the day-to-day management of the resident funds are delegated to the manager, the manager must:

(a) Provide the licensee with a monthly accounting of the resident funds; and

(b) Meet all legal requirements related to holding, and accounting for, resident funds.

NEW SECTION

WAC 388-78A-2665 Resident rights--Notice--Policy on accepting medicaid as a payment source. The boarding home must fully disclose the facility's policy on accepting medicaid payments. The policy must:

(1) Clearly state the circumstances under which the boarding home provides care for medicaid eligible residents and for residents who become eligible for medicaid after admission;

(2) Be provided both orally and in writing in a language that the resident understands;

(3) Be provided to prospective residents, before they are admitted to the home;

(4) Be provided to any current residents who were admitted before this requirement took effect or who did not receive copies prior to admission;

(5) Be written on a page that is separate from other documents and be written in a type font that is at least fourteen point; and

(6) Be signed and dated by the resident and be kept in the resident record after signature.

NEW SECTION

WAC 388-78A-2731 Liability insurance required--Application.

(1) The applicant must submit insurer executed evidence of liability insurance coverage with the application.

(2) The coverage and evidence of coverage must comply with the requirements of WAC 388-78A-2733 and 388-78A-2734.

NEW SECTION

WAC 388-78A-2732 Liability insurance required--Ongoing. The boarding home must:

(1) Maintain liability insurance as required in WAC 388-78A-2733 and 388-78A-2734; and

(2) Have evidence of liability insurance coverage available if requested by the department.

NEW SECTION

WAC 388-78A-2733 Liability insurance required--Commercial general liability insurance or business liability insurance coverage. The boarding home must have commercial general liability insurance or business liability insurance that includes:

(1) Coverage for the acts and omissions of any employee and volunteer;

(2) Coverage for bodily injury, property damage, and contractual liability;

(3) Coverage for premises, operations, independent contractor, products-completed operations, person injury, advertising injury, and liability assumed under an insured contract; and

(4) Minimum limits of:

(a) Each occurrence at one million dollars; and

(b) General aggregate at two million dollars.

NEW SECTION

WAC 388-78A-2734 Liability insurance required--Professional liability insurance coverage. The boarding home must have professional liability insurance or error and omissions insurance if the boarding home licensee has a professional license, or employs professionally licensed staff. The insurance must include:

(1) Coverage for losses caused by errors and omissions of the boarding home, its employees, and volunteers; and

(2) Minimum limits of:

- (a) Each occurrence at one million dollars; and
- (b) Aggregate at two million dollars.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-2910 Applicable building codes. (1) Newly licensed boarding homes and new construction in existing boarding homes must meet the requirements of all the current state and local building and zoning codes and applicable sections of this chapter.

(2) Existing licensed boarding homes must continue to meet the building codes in force at the time of their ~~((initial licensing))~~ plan approval by construction review services, except that the boarding home may be required to meet current building code requirements if the construction poses a risk to the health and safety of residents.

(3) The boarding home must ensure that construction is completed in compliance with the final construction review services approved documents. Compliance with these standards and regulations does not relieve the boarding home of the need to comply with applicable state and local building and zoning codes.

AMENDATORY SECTION (Amending WSR 09-01-052, filed 12/10/08, effective 1/10/09)

WAC 388-78A-3030 Toilet rooms and bathrooms. (1) The boarding home must provide private or common-use toilet rooms and bathrooms to meet the needs of each resident.

(2) The boarding home must provide each toilet room and bathroom with:

(a) Water resistant, smooth, low gloss, nonslip and easily cleanable materials;

(b) Washable walls to the height of splash or spray;

(c) Grab bars installed and located to minimize accidental falls including one or more grab bars at each:

(i) Bathing fixture; and

(ii) Toilet.

(d) Plumbing fixtures designed for easy use and cleaning and kept in good repair; and

(e) Adequate ventilation to the outside of the boarding home. For boarding homes issued a project number by construction review services on or after September 1, 2004 for construction related to this section, must provide mechanical ventilation to the outside.

(3) The boarding home must provide each toilet room with a:

(a) Toilet with a clean, nonabsorbent seat free of cracks;

(b) Handwashing sink in or adjacent to the toilet room. For boarding homes issued a project number by construction review services on or after September 1, 2004 for construction related to

this section, the handwashing sink must be in the toilet room or in an adjacent private area that is not part of a common use area of the boarding home; and

(c) Suitable mirror with adequate lighting for general illumination.

(4) For boarding homes approved for construction or initially licensed after August 1, 1994, the boarding home must provide a toilet and handwashing sink in, or adjoining, each bathroom.

(5) When providing common-use toilet rooms and bathrooms, the boarding home must provide toilets and handwashing sinks for residents in the ratios of one toilet and one handwashing sink for every eight residents (~~(or fraction as listed in the following table:)~~).

(Number of Residents	Number of Toilets*	Number of Handwashing Sinks
1-8	1	1
9-16	2	2
17-24	3	3
25-32	4	4
33-40	5	5
41-48	6	6
49-56	7	7
57-64	8	8
65-72	9	9
73-80	10	10
81-88	11	11
89-96	12	12
97-104	13	13
105-112	14	14
113-120	15	15
121-128	16	16
129-136	17	17
137-144	18	18
145-152	19	19
153-160	20	20
161-168	21	21
169-176	22	22
177-184	23	23))

((*)) When two or more toilets are contained in a single bathroom, they are counted as one toilet.

(6) When providing common-use toilet rooms and bathrooms, the

boarding home must provide bathing fixtures for residents in the ratio of one bathing fixture for every twelve residents ((~~or fraction thereof as listed in the following table:~~)).

((Number of Residents	Number of Bathing Fixtures
1-12	1
13-24	2
25-36	3
37-48	4
49-60	5
61-72	6
73-84	7
85-96	8
97-108	9
109-120	10
121-132	11
133-144	12
145-160	13
161-172	14
173-184	15
185-196	16))

(7) When providing common-use toilet rooms and bathrooms, the boarding home must:

(a) Designate toilet rooms containing more than one toilet for use by men or women;

(b) Designate bathrooms containing more than one bathing fixture for use by men or women;

(c) Equip each toilet room and bathroom designed for use by, or used by, more than one person at a time, in a manner to ensure visual privacy for each person using the room. The boarding home is not required to provide additional privacy features in private bathrooms with a single toilet and a single bathing fixture located within a private apartment;

(d) Provide a handwashing sink with soap and single use or disposable towels, blower or equivalent hand-drying device in each toilet room, except that single-use or disposable towels or blowers are not required in toilet rooms or bathrooms that are located within a private apartment;

(e) Provide reasonable access to bathrooms and toilet rooms for each resident by:

(i) Locating a toilet room on the same floor or level as the sleeping room of the resident served;

(ii) Locating a bathroom on the same floor or level, or adjacent floor or level, as the sleeping room of the resident served;

(iii) Providing access without passage through any kitchen, pantry, food preparation, food storage, or dishwashing area, or from one bedroom through another bedroom; and

(f) Provide and ensure toilet paper is available at each common-use toilet.

(8) In boarding homes issued a project number by construction review services on or after September 1, 2004 for construction related to this section, the boarding home must ensure twenty-five percent of all the bathing fixtures in the boarding home are roll-in type showers that have:

(a) One-half inch or less threshold that may be a collapsible rubber water barrier;

(b) A minimum size of thirty-six inches by forty-eight inches; and

(c) Single lever faucets located within thirty-six inches of the seat so the faucets are within reach of persons seated in the shower.

AMENDATORY SECTION (Amending WSR 06-01-047, filed 12/15/05, effective 1/15/06)

WAC 388-78A-3190 Denial, suspension, revocation, or nonrenewal of license statutorily required. (1) The department must deny, suspend, revoke or refuse to renew a boarding home license if any person described in subsection (2) of this section who has unsupervised access to residents (~~, is:~~

~~(a) Convicted of a crime against children or other persons or crimes relating to financial exploitation as defined under RCW 43.43.830 or 43.43.842; or~~

~~(b) Found by a court in a protection proceeding or in a civil damages lawsuit under chapter 74.34 RCW to have abused, neglected, abandoned or exploited a vulnerable adult; or~~

~~(c) Found in any dependency action under chapter 13.34 RCW to have sexually assaulted, neglected, exploited, or physically abused any minor; or~~

~~(d) Found by a court in a domestic relations proceeding under Title 26 RCW to have sexually abused, exploited, or physically abused any minor; or~~

~~(e) Found in any final decision issued by a disciplinary board to have sexually or physically abused or neglected or exploited any minor or any vulnerable adult, or has a stipulated finding of fact, conclusion of law, an agreed order, or finding of fact, conclusion of law, or final order issued by a disciplining authority, a court of law, or entered into a state registry finding him or her guilty of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW)) has a conviction or finding described in WAC 388-78A-2470(2).~~

(2) This section applies to any boarding home:

(a) Applicant;

(b) Partner, officer or director;

(c) Manager or managerial employee; or

(d) Owner of five percent or more of the applicant:

- (i) Who is involved in the operation of the boarding home; or
- (ii) Who may have direct access to the boarding home residents; or
- (iii) Who controls or supervises the provision of care or services to the boarding home residents; or
- (iv) Who exercises control over daily operations.

NEW SECTION

WAC 388-78A-3390 Resident protection program--Individual defined. As used in WAC 388-78A-3400 through 388-78A-3480, the term "individual" means anyone used by the boarding home to provide services to residents who is alleged to have abandoned, abused, neglected, or financially exploited a resident. "Individual" includes, but is not limited to employees, contractors, and volunteers.

AMENDATORY SECTION (Amending WSR 08-05-099, filed 2/15/08, effective 3/17/08)

WAC 388-78A-3410 Resident protection program --Notice to the individual of preliminary finding. (1) ~~((The department will notify the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident in writing within ten working days of making a preliminary finding of abandonment, abuse, neglect, exploitation, or financial exploitation of a resident. The written notice:~~

~~(a) Will not include the identities of the alleged victim, reporter and witnesses; and~~

~~(b) Will include the necessary information for the individual to ask for an administrative hearing to challenge the preliminary finding.~~

~~(2) The department must make a reasonable, good faith effort to find the last known address of the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident.~~

~~(3) The department may extend the time frame for notification beyond ten working days for good cause.~~

~~(4) The department will serve notice of the preliminary finding as provided in chapter 388-02 WAC)) The department will serve notice of preliminary finding as provided in WAC 388-78A-4000.~~

(2) The department may establish proof of services as provided in WAC 388-78A-4010.

AMENDATORY SECTION (Amending WSR 08-05-099, filed 2/15/08, effective 3/17/08)

WAC 388-78A-3420 ((Reporting)) Resident protection program--Notice to others of preliminary findings. ~~((1) In a manner))~~ Consistent with confidentiality requirements concerning the resident, witnesses, and reporter, the department may provide notification of a preliminary finding to:

- ~~((a))~~ (1) Other divisions within the department;
- ~~((b))~~ (2) The agency ~~((or))~~, program ~~((identified under RCW 74.34.068 with which the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident is associated as an employee)), or employer where the incident occurred;~~
- ~~((c))~~ (3) The employer or program that is currently associated with the individual ~~((alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident, if known))~~;
- ~~((d))~~ (4) Law enforcement; ~~((and))~~
- ~~((e))~~ (5) Other entities as authorized by law and this chapter including investigative authorities consistent with chapter 74.34 RCW~~((~~

~~(2) The notification will identify the finding as a preliminary finding))~~; and

- (6) The appropriate licensing agency.

AMENDATORY SECTION (Amending WSR 08-05-099, filed 2/15/08, effective 3/17/08)

WAC 388-78A-3430 Resident protection program--Disputing a preliminary finding. (1) The individual ~~((alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident))~~ may request an administrative hearing to challenge a preliminary finding made by the department.

(2) The request must be made in writing to the office of administrative hearings.

(3) The office of administrative hearings must receive the individual's written request for an administrative hearing within thirty calendar days of the date written on the notice of the preliminary finding.

(4) The written request for a hearing must include:

- (a) The individual's full legal name, current mailing address and the telephone number;
- (b) A brief explanation of why the individual ~~((alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident))~~ disagrees with the preliminary finding;
- (c) A description of any assistance needed in the administrative appeal process by the individual, including a foreign or sign language interpreter or any reasonable accommodation for a disability; and
- (d) The individual's signature.

AMENDATORY SECTION (Amending WSR 09-01-052, filed 12/10/08, effective 1/10/09)

WAC 388-78A-3450 Resident protection program--Finalizing a preliminary finding. (1) A preliminary finding becomes a final finding when:

(a) The department notifies the individual (~~((alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident))~~) there is a preliminary finding (~~((pursuant to))~~) under WAC 388-78A-3410; and

(b) The individual (~~((alleged to have abandoned, abused, neglected, exploited or financially exploited a resident))~~) does not ask for an administrative hearing; or

(c) The administrative law judge:

(i) Dismisses the (~~((hearing))~~) appeal following withdrawal of the appeal or default;

(ii) Dismisses the appeal for failure to comply with time limits under WAC 388-78A-3430; or

(iii) Issues an initial order upholding the finding and the individual (~~((alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident))~~) fails to appeal the initial order to the department's board of appeals.

(d) The board of appeals issues a final order upholding the finding.

(2) A final finding is permanent.

(3) A final finding will only be removed from the department or agency list of individuals found to have abandoned, abused, neglected, exploited, or financially exploited a vulnerable adult if it is rescinded following judicial review.

~~((4) The department may remove a single finding of neglect from its records based upon a written petition by the individual found to have neglected a resident provided that at least one calendar year must have passed between the date a request was made to remove the finding of neglect and the date the final finding was finalized and recorded. If the department denies the petition, its decision may not be appealed.))~~

AMENDATORY SECTION (Amending WSR 09-01-052, filed 12/10/08, effective 1/10/09)

WAC 388-78A-3460 Resident protection program--Appeal of ((administrative law judge's)) initial order. (1) If the individual (~~((alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident))~~) or the department disagrees with the administrative law judge's decision, either party may challenge this decision by filing a petition for review with the department's board of appeals under chapter 34.05 RCW, Administrative Procedure Act, and chapter 388-02 WAC.

(2) If the department appeals the administrative law judge's decision, the department will not change the finding in the department's records until a final hearing decision is issued.

AMENDATORY SECTION (Amending WSR 08-05-099, filed 2/15/08, effective 3/17/08)

WAC 388-78A-3470 Resident protection program--Reporting final findings. The department will report a final finding of abandonment, abuse, neglect, exploitation and financial exploitation within ten workings days to the following:

(1) The individual (~~((found to have abandoned, abused, neglected, exploited, or financially exploited a resident and for))~~) against whom ((there is a)) the final finding was made;

(2) The boarding home licensee or entity representative that was associated with the individual (~~((alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident))~~) during the time of the incident;

(3) The employer or program that is currently associated with the individual against whom the final finding was made, if known;

(4) The appropriate licensing, certification or registration authority;

(5) (~~((The))~~) Any federal or state (~~((department))~~) registry or (~~((agency))~~) list of individuals found to have abandoned, abused, neglected, exploited, or financially exploited a vulnerable adult; and

(6) The findings may be disclosed to the public upon request subject to applicable public disclosure laws.

AMENDATORY SECTION (Amending WSR 08-05-099, filed 2/15/08, effective 3/17/08)

WAC 388-78A-3480 Resident protection program--Disclosure of investigative and finding information.

(1) Confidential information about residents and mandated reporters received from the department may only be used by the individual (~~((alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident))~~) to challenge findings through the appeal process. It may only be shared with persons who are involved in the appeal.

(2) Confidential information such as the name and other personal identifying information of the reporter, witnesses, or the resident will be redacted from documents unless release of that information is consistent with chapter 74.34 RCW and other applicable state and federal laws.

GENERAL NOTICE REQUIREMENT

NEW SECTION

WAC 388-78A-4000 Notice--Service complete. The department's notice is complete when:

- (1) Personal service is made;
- (2) The notice is properly stamped, addressed to the individual or facility, and deposited in the United States mail;
- (3) The notice is faxed and produces proof of transmission;
- (4) Notice is delivered to a commercial delivery service with charges prepaid; or
- (5) Notice is delivered to a legal messenger service with charges prepaid.

NEW SECTION

WAC 388-78A-4010 Notice--Proof of service. The department may establish proof of service by any of the following:

- (1) A declaration of personal service;
- (2) An affidavit or certificate of mailing to the boarding home or to the individual to whom notice is directed;
- (3) A signed receipt from the person or staff person who accepted the certified mail, the commercial delivery service, or the legal messenger service package; or
- (4) Proof of fax transmission.