



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 and Disability Services

- Preproposal Statement of Inquiry was filed as WSR **09-14-070** ; 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): See attachment.

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 johnsjl4@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 it consistent with current laws and standards. Also to remove an incorrect statutory authority reference in the footnote. The anticipated effects are to make the rule clearer, easier to read, understand and apply.

Highlights of proposed changes:

- Editorial and housekeeping changes in the following sections: definitions, utilization, call systems, new construction, notice and appeal rights, advance directives.
- To be consistent with Chapter 521, Laws of 2009, E2SSB 5688 clarified that domestic partners could share a room.
- Clarified tuberculosis requirements to be consistent with current standards.
- Clarified when notice is considered complete and proof of notice.
- Consolidated disqualifying crime lists to make Home and Community Services and RCS lists consistent.
- Clarified dialysis services provided in the nursing home and those provided outside the home.
- Added liability insurance requirement to rule.
- Clarified that nursing home may not need to relinquish license and cease operations if residents are relocated due to natural disasters.
- 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.

Reasons supporting proposal:

See above

Statutory authority for adoption:
Chapters 18.51 and 74.42 RCW

Statute being implemented:
Chapters 18.51 and 74.42 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
September 30, 2009

NAME (type or print)
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: 2:33 PM

WSR 09-20-062

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.....Lisa N.H. Yanagida	P.O. Box. 45600, Olympia, WA 98513	(360) 725-2589
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: Lisa N.H. Yanagida, Program Manager
Address: P.O. Box 45600 Olympia, WA 98504-5600

phone (360) 725-2589
fax (360) 438-7903
e-mail yanagln2@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: Lisa N.H. Yanagida, Program Manager
Address: P.O. Box 45600 Olympia, WA 98504-5600

phone (360) 725-2589
fax (360) 438-7903
e-mail yanagln2@dshs.wa.gov

No: Please explain:

Attachment to CR 102

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

The department is amending: WAC 388-97-0001 Definitions; WAC 388-97-0100 Utilization review; 388-97-0280 Advance directives; WAC 388-97-0580 Roommates/room; WAC 388-97-0720 Notification of preliminary finding; WAC 388-97-1400 Tuberculosis-testing method-Required; WAC 388-97-1440 Tuberculosis-No skin testing; WAC 388-97-1460 Tuberculosis-One step testing; WAC 388-97-1480 Tuberculosis-Two step skin testing; WAC 388-97-1500 Tuberculosis-Positive test result; WAC 388-97-1520 Tuberculosis-Negative test result; WAC 388-97-1540 Tuberculosis-Declining a skin test; WAC 388-97-1560 Tuberculosis-Reporting required; WAC 388-97-1580 Tuberculosis-Test records; WAC 388-97-1600 Care of residents with active tuberculosis; WAC 388-97-1800 Criminal history disclosure and background inquiries; WAC 388-97-1820 Disqualification from nursing home employment; WAC 388-97-1900 Dialysis services provided in nursing home; WAC 388-97-2060 New construction compliance; WAC 388-97-2280 Call systems on resident care units; WAC 388-97-4200 Department review of initial nursing home license applications; WAC 388-97-4220 Reasons for denial, suspension, modification, revocation of, or refusal to renew a nursing home license; WAC 388-97-4320 Relocation of residents; WAC 388-97-4340 License relinquishment; WAC 388-97-4440 Notice and appeal rights; and other related rules as appropriate.

The department is proposing the following new sections: WAC 388-97-0725 Notice to others of preliminary findings; WAC 388-97-1910 Dialysis services provided outside of nursing home; 388-97-4165 Application-Liability insurance required; WAC 388-97-4166 Liability insurance required—ongoing; WAC 388-97-4167 Liability insurance required-Commercial General Liability Insurance or Businesses Liability Insurance coverage; WAC 388-97-4168 Liability insurance required-Professional Liability Insurance coverage; WAC 388-97-4425 Notice-Service complete; WAC 388-97-4430 Notice-Proof of service.

The department is proposing to repeal the following sections: WAC 388-97-1420 Tuberculosis-Mantoux skin testing; WAC 388-97-3820 Stairways, ramps, and corridors in new construction; and removing incorrect statutory authority reference 42 C.F.R. 489.52. in the footnote in all sections of the chapter 388-97 WAC.



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

MEMORANDUM

DATE: September 30, 2009

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

FROM: Lisa N.H. Yanagida, 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 388-97 WAC, Nursing Homes

SUMMARY OF PROPOSED RULES

The Department of Social and Health Services' Residential Care Services (RCS) is proposing amendments to Chapter 388-97 WAC, Nursing Homes.

The purpose of this 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: definitions, utilization, call systems, new construction, notice and appeal rights, advance directives.
- To be consistent with Chapter 521, Laws of 2009, E2SSB 5688 clarified that domestic partners could share a room.
- Clarified tuberculosis requirements to be consistent with current standards.
- Clarified when notice is considered complete and proof of notice.
- Consolidated disqualifying crime lists to make Home and Community Services and RCS lists consistent.

- Clarified dialysis services provided in the nursing home and those provided outside the home.
- Added liability insurance requirement to rule.
- Clarified that nursing home may not need to relinquish license and cease operations if residents are relocated due to natural disasters.
- 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.

SMALL BUSINESS ECONOMIC IMPACT STATEMENT

Chapter 19.85 RCW, The Regulatory Fairness Act, requires that the economic impact of proposed regulations be analyzed in relation to small businesses. This statute outlines 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 analyzed these proposed rules and concludes that the new requirements of liability insurance may impose a new cost to the nursing home that does not have an existing contract with DSHS and does not already have liability insurance (approximately 3% licensed nursing homes do not have contracts and may be without liability insurance). The cost of liability insurance ranges in price depending on many variables such as the number of claims the nursing home has made in the past, the number of occurrences, and the length of time the administrator and director of nursing have been working. The estimated average cost for nursing home liability insurance is approximately \$300 a bed.

RCS understands that nursing homes can deduct the cost of liability insurance when taxes are filed with the Internal Revenue Service, which would mitigate the impact of the cost. RCS does not believe that the proposed rules will result in any job losses or gains for nursing homes. The proposed rule amendments do not disproportionately impact small businesses more than larger businesses.

EVALUATION OF PROBABLE COSTS AND PROBABLE 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 nursing homes may impose additional costs to the small number of nursing homes who may not have liability insurance.
- DSHS has shared the draft language with interested parties who participated 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 all written comments on the draft language and one comment on the cost impact for the proposed liability insurance requirement.

COST SAVINGS

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

- Reducing unnecessary confusion, citations, hearings and appeals;
- Reducing time and legal costs of appealing unclear rules;
- Reducing amount of technical support requests and dear provider letters mailed to providers for clarification of rule issues which reduces the amount of time providers need to keep current with requirements.

OTHER BENEFITS

The rules result in several benefits which 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 can help nursing 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 any possible cost. These rules continue to implement state laws and regulations related to nursing homes. RCS has complied with the appropriate sections of the Administrative Procedure Act and is prepared to proceed with the rule filing.

Please contact me by email at yanagln2@dshs.wa.gov or by telephone at (360) 725-2589 if you have questions.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-0001 Definitions. "**Abandonment**" means action or inaction by an individual or entity with a duty of care for a vulnerable adult that leaves the vulnerable individual without the means or ability to obtain necessary food, clothing, shelter, or health care.

"**Abuse**" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment of a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(1) "**Mental abuse**" means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a resident from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

(2) "**Physical abuse**" means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or restraints including chemical restraints, unless the restraint is consistent with licensing requirements.

(3) "**Sexual abuse**" means any form of nonconsensual, sexual contact, including, but not limited to, unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse includes any sexual contact between a staff person and a resident, whether or not it is consensual.

(4) "**Exploitation**" means an act of forcing, compelling, or exerting undue influence over a resident causing the resident to act in a way that is inconsistent with relevant past behavior, or causing the resident to perform services for the benefit of another.

"**Administrative hearing**" is a formal hearing proceeding before a state administrative law judge that gives:

(1) A licensee an opportunity to be heard in disputes about licensing actions, including the imposition of remedies, taken by the department; or

(2) An individual an opportunity to appeal a finding of abandonment, abuse, neglect, financial exploitation of a resident, or misappropriation of a resident's funds.

"**Administrative law judge (ALJ)**" means an impartial decision-maker who presides over an administrative hearing. ALJs are employed by the office of administrative hearings (OAH), which is a separate state agency. ALJs are not DSHS employees or DSHS representatives.

"Administrator" means a nursing home administrator, licensed under chapter 18.52 RCW, who must be in active administrative charge of the nursing home, as that term is defined in the board of nursing home administrator's regulations.

"Advanced registered nurse practitioner (ARNP)" means an individual who is licensed to practice as an advanced registered nurse practitioner under chapter 18.79 RCW.

"Applicant" means an individual, partnership, corporation, or other legal entity seeking a license to operate a nursing home.

"ASHRAE" means the American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc.

"Attending physician" means the doctor responsible for a particular individual's total medical care.

"Berm" means a bank of earth piled against a wall.

"Chemical restraint" means a psychopharmacologic drug that is used for discipline or convenience and is not required to treat the resident's medical symptoms.

"Civil adjudication 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 findings that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.

"Civil fine" is a civil monetary penalty assessed against a nursing home as authorized by chapters 18.51 and 74.42 RCW. There are two types of civil fines, "per day" and "per instance."

(1) **"Per day fine"** means a fine imposed for each day that a nursing home is out of compliance with a specific requirement. Per day fines are assessed in accordance with WAC 388-97-4580 (1); and

(2) **"Per instance fine"** means a fine imposed for the occurrence of a deficiency.

"Condition on a license" means that the department has imposed certain requirements on a license and the licensee cannot operate the nursing home unless the requirements are observed.

"Deficiency" is a nursing home's failed practice, action or inaction that violates any or all of the following:

(1) Requirements of chapters 18.51 or 74.42 RCW, or the requirements of this chapter; and

(2) In the case of a medicare and medicaid contractor, participation requirements under Title XVIII and XIX of the Social Security Act and federal medicare and medicaid regulations.

"Deficiency citation" or **"cited deficiency"** means written documentation by the department that describes a nursing home's deficiency(ies); the requirement that the deficiency(ies) violates; and the reasons for the determination of noncompliance.

"Deficient facility practice" or **"failed facility practice"** means the nursing home action(s), error(s), or lack of action(s) that provide the basis for the deficiency.

"Dementia care" means a therapeutic modality or modalities designed specifically for the care of persons with dementia.

"Denial of payment for new admissions" is an action imposed on a nursing home (facility) by the department that prohibits payment for new medicaid admissions to the nursing home after a specified date. Nursing homes certified to provide medicare and medicaid services may also be subjected to a denial of payment for new admissions by the federal Centers for Medicare and Medicaid Services.

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

"Department on-site monitoring" means an optional remedy of on-site visits to a nursing home by department staff according to department guidelines for the purpose of monitoring resident care or services or both.

"Dietitian" means a qualified dietitian. A qualified dietitian is one who is registered by the American Dietetic Association or certified by the state of Washington.

"Disclosure statement" means a signed statement by an individual in accordance with the requirements under RCW 43.43.834.

The statement should include a disclosure of whether or not the individual has been convicted of certain crimes or has been found by any court, state licensing board, disciplinary board, or protection proceeding to have neglected, sexually abused, financially exploited, or physically abused any minor or adult individual.

"Drug" means a substance:

(1) Recognized as a drug in the official *United States Pharmacopoeia*, *Official Homeopathic Pharmacopoeia of the United States*, *Official National Formulary*, or any supplement to any of them; or

(2) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease.

"Drug facility" means a room or area designed and equipped for drug storage and the preparation of drugs for administration.

"Emergency closure" is an order by the department to immediately close a nursing home.

"Emergency transfer" means immediate transfer of residents from a nursing home to safe settings.

"Entity" means any type of firm, partnership, corporation, company, association, or joint stock association.

"Financial exploitation" means the illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any individual for his or her profit or advantage.

"Habilitative services" means the planned interventions and procedures which constitute a continuing and comprehensive effort to teach an individual previously undeveloped skills.

"Highest practicable physical, mental, and psychosocial well-being" means providing each resident with the necessary individualized care and services to assist the resident to achieve or maintain the highest possible health, functional and independence level in accordance with the resident's comprehensive assessment and plan of care. Care and services provided by the nursing home must be consistent with all requirements in this chapter, chapters 74.42 and 18.51 RCW, and the resident's informed choices. For medicaid and medicare residents, care and services must also be consistent with Title XVIII and XIX of the Social Security Act and federal medicare and medicaid regulations.

"Informal department review" is a dispute resolution process that provides an opportunity for the licensee or administrator to informally present information to a department representative about disputed, cited deficiencies. Refer to WAC 388-97-4420.

"Inspection" or **"survey"** means the process by which department staff evaluates the nursing home licensee's compliance with applicable statutes and regulations.

"Intermediate care facility for the mentally retarded (ICF/MR)" means an institution certified under chapter 42 C.F.R., Part 483, Subpart I, and licensed under chapter 18.51 RCW.

"License revocation" is an action taken by the department to cancel a nursing home license in accordance with RCW 18.51.060 and WAC 388-97-4220.

"License suspension" is an action taken by the department to temporarily revoke a nursing home license in accordance with RCW 18.51.060 and this chapter.

"Licensee" means an individual, partnership, corporation, or other legal entity licensed to operate a nursing home.

"Licensed practical nurse" means an individual licensed to practice as a licensed practical nurse under chapter 18.79 RCW;

"Mandated reporter" as used in this chapter means any employee of a nursing home, any health care provider subject to chapter 18.130 RCW, the Uniform Disciplinary Act, and any licensee or operator of a nursing home. Under RCW 74.34.020, mandated reporters also include any employee of the department of social and health services, law enforcement officers, social workers, professional school personnel, individual providers, employees and licensees of boarding home, adult family homes, soldiers' homes, residential habilitation centers, or any other facility licensed by the department, employees of social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agencies, county coroners or medical examiners, or Christian Science practitioners.

"Misappropriation of resident property" means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money.

"NFPA" means National Fire Protection Association, Inc.

"Neglect":

(1) ((For)) In a nursing home licensed under chapter 18.51 RCW, neglect means that an individual or entity with a duty of care for nursing home residents has:

(a) By a pattern of conduct or inaction, failed to provide goods and services to maintain physical or mental health or to avoid or prevent physical or mental harm or pain to a resident; or

(b) By an act or omission, demonstrated a serious disregard of consequences of such magnitude as to constitute a clear and present danger to the resident's health, welfare, or safety.

(2) ((For)) In a skilled nursing facility or nursing facility, neglect also means a failure to provide a resident with the goods and services necessary to avoid physical harm, mental anguish, or mental illness.

"Noncompliance" means a state of being out of compliance with state and/or federal requirements for nursing homes/facilities.

"Nursing assistant" means a nursing assistant as defined under RCW 18.88A.020 or successor laws.

"Nursing facility (NF)" or **"medicaid-certified nursing**

facility" means a nursing home or a long-term care wing or unit of a hospital that has been certified to provide nursing services to medicaid recipients under Section 1919(a) of the federal Social Security Act.

"Nursing home" means any facility licensed to operate under chapter 18.51 RCW.

"Officer" means an individual serving as an officer of a corporation.

"Owner of five percent or more of the assets of a nursing home" means:

(1) The individual, and if applicable, the individual's spouse, who operates, or is applying to operate, the nursing home as a sole proprietorship;

(2) In the case of a corporation, the owner of at least five percent of the shares or capital stock of the corporation; or

(3) In the case of other types of business entities, the owner of a beneficial interest in at least five percent of the capital assets of an entity.

"Partner" means an individual in a partnership owning or operating a nursing home.

"Person" means any individual, firm, partnership, corporation, company, association or joint stock association.

"Pharmacist" means an individual licensed by the Washington state board of pharmacy under chapter 18.64 RCW.

"Pharmacy" means a place licensed under chapter 18.64 RCW where the practice of pharmacy is conducted.

"Physical restraint" means any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the resident cannot remove easily, and which restricts freedom of movement or access to the resident's body.

"Physician's assistant (PA)" means a physician's assistant as defined under chapter 18.57A or 18.71A RCW or successor laws.

"Plan of correction" is a nursing home's written response to cited deficiencies that explains how it will correct the deficiencies and how it will prevent their reoccurrence.

"Reasonable accommodation" and **"reasonably accommodate"** has the meaning given in federal and state antidiscrimination laws and regulations. For the purpose of this chapter:

(1) Reasonable accommodation means that the nursing home must:

(a) Not impose admission criteria that excludes individuals unless the criteria is necessary for the provision of nursing home services;

(b) Make reasonable modification to its policies, practices or procedures if the modifications are necessary to accommodate the needs of the resident;

(c) Provide additional aids and services to the resident.

(2) Reasonable accommodations are not required if:

(a) The resident or individual applying for admission presents a significant risk to the health or safety of others that cannot be eliminated by the reasonable accommodation;

(b) The reasonable accommodations would fundamentally alter the nature of the services provided by the nursing home; or

(c) The reasonable accommodations would cause an undue burden, meaning a significant financial or administrative burden.

"Receivership" is established by a court action and results in

the removal of a nursing home's current licensee and the appointment of a substitute licensee to temporarily operate the nursing home.

"Recurring deficiency" means a deficiency that was cited by the department, corrected by the nursing home, and then cited again within fifteen months of the initial deficiency citation.

"Registered nurse" means an individual licensed to practice as a registered nurse under chapter 18.79 RCW.

"Rehabilitative services" means the planned interventions and procedures which constitute a continuing and comprehensive effort to restore an individual to the individual's former functional and environmental status, or alternatively, to maintain or maximize remaining function.

"Resident" generally means an individual residing in a nursing home. Except as specified elsewhere in this chapter, for decision-making purposes, the term "resident" includes the resident's surrogate decision maker acting under state law. The term resident excludes outpatients and individuals receiving adult day or night care, or respite care.

"Resident care unit" means a functionally separate unit including resident rooms, toilets, bathing facilities, and basic service facilities.

"Respiratory isolation" is a technique or techniques instituted to prevent the transmission of pathogenic organisms by means of droplets and droplet nuclei coughed, sneezed, or breathed into the environment.

"Siphon jet clinic service sink" means a plumbing fixture of adequate size and proper design for waste disposal with siphon jet or similar action sufficient to flush solid matter of at least two and one-eighth inches in diameter.

"Skilled nursing facility (SNF)" or **"medicare-certified skilled nursing facility"** means a nursing home or a long-term care wing or unit of a hospital that has been certified to provide nursing services to medicare recipients under Section 1819(a) of the federal Social Security Act.

"Social/therapeutic leave" means leave which is for the resident's social, emotional, or psychological well-being; it does not include medical leave.

"Staff work station" means a location at which nursing and other staff perform charting and related activities throughout the day.

"Stop placement" or **"stop placement order"** is an action taken by the department prohibiting nursing home admissions, readmissions, and transfers of patients into the nursing home from the outside.

"Substantial compliance" means the nursing home has no deficiencies higher than severity level 1 as described in WAC 388-97-4500, or for medicaid certified facility, no deficiencies higher than a scope and severity "C."

"Surrogate decision maker" means a resident representative or representatives as outlined in WAC 388-97-0240, and as authorized by RCW 7.70.065.

"Survey" means the same as **"inspection"** as defined in this section.

"Temporary manager" means an individual or entity appointed by the department to oversee the operation of the nursing home to

ensure the health and safety of its residents, pending correction of deficiencies or closure of the facility.

"Termination" means an action taken by:

(1) The department, or the nursing home, to cancel a nursing home's medicaid certification and contract; or

(2) The department of health and human services Centers for Medicare and Medicaid Services, or the nursing home, to cancel a nursing home's provider agreement to provide services to medicaid or medicare recipients, or both.

"Toilet room" means a room containing at least one toilet fixture.

"Uncorrected deficiency" is a deficiency that has been cited by the department and that is not corrected by the licensee by the time the department does a revisit.

"Violation" means the same as **"deficiency"** as defined in this section.

"Volunteer" means an individual who is a regularly scheduled individual not receiving payment for services and having unsupervised access to a nursing home resident.

"Vulnerable adult" includes a person:

(1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(2) Found incapacitated under chapter 11.88 RCW; or

(3) Who has a developmental disability as defined under RCW 71A.10.020; or

(4) Admitted to any facility, including any boarding home; or

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

(6) Receiving services from an individual provider; or

(7) With a functional disability who lives in his or her own home, who is directing and supervising a paid personal aide to perform a health care task as authorized by RCW 74.39.050.

"Whistle blower" means a resident, employee of a nursing home, or any person licensed under Title 18 RCW, who in good faith reports alleged abandonment, abuse, financial exploitation, or neglect to the department, the department of health or to a law enforcement agency.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-0100 Utilization review. (1) To assure appropriate use of medicaid services, the nursing facility must determine whether each medicaid resident's health has improved sufficiently so the resident no longer needs nursing facility care.

(a) The nursing facility must base its determination on:

(i) An accurate, comprehensive assessment process; and

(ii) Documentation by the resident's physician.

(b) The nursing facility (~~(must not make this determination for residents the department)~~) is not responsible to assess under WAC 388-97-1960, PASSR level II screening assessment.

(2) When the nursing facility determines a resident no longer needs nursing facility care under subsection (1) of this section, the nursing facility must initiate transfer or discharge in accordance with WAC 388-97-0120, 388-97-0140, and 42 C.F.R. § 483.12, or successor laws, unless the resident voluntarily chooses to transfer or discharge.

(3) When a nursing facility initiates a transfer or discharge of a medicaid recipient under subsection (2) of this section:

(a) The resident will be ineligible for medicaid nursing facility payment:

(i) Thirty days after the receipt of written notice of transfer or discharge; or

(ii) If the resident appeals the facility determination, thirty days after the final order is entered upholding the nursing home's decision to transfer or discharge a resident.

(b) The department's home and community services may grant extension of a resident's medicaid nursing facility payment after the time specified in subsection (3)(a) of this section, when the department's home and community services staff determine:

(i) The nursing facility is making a good faith effort to relocate the resident; and

(ii) A location appropriate to the resident's medical and other needs is not available.

(4) Department designees may review any assessment or determination made by a nursing facility of a resident's need for nursing facility care.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-0280 Advance directives. (1) "Advance directive" as used in this chapter means any document indicating a resident's choice with regard to a specific service, treatment, medication or medical procedure option that may be implemented in the future such as power of attorney, health care directive, limited or restricted treatment cardiopulmonary resuscitation (CPR), do not resuscitate (DNR), and organ tissue donation.

(2) The nursing home must carry out the provisions of this section in accordance with the applicable provisions of WAC 388-97-0240 and 388-97-0260, and with state law.

(3) The nursing home must:

(a) Document in the clinical record whether or not the resident has an advance directive;

(b) Not request or require the resident to have any advance directives and not condition the provision of care or otherwise discriminate against a resident on the basis of whether or not the resident has executed an advance directive;

(c) In a language and words the resident understands, inform the resident in writing and orally at the time of admission, and thereafter as necessary to ensure the resident's right to make informed choices, about:

(i) The right to make health care decisions, including the

right to change his or her mind regarding previous decisions;
(ii) Nursing home policies and procedures concerning implementation of advance directives (~~(, including how the nursing home implements emergency responses)~~); and

(d) Review and update as needed the resident advance directive information:

(i) At the resident's request;

(ii) When the resident's condition warrants review; and

(iii) When there is a significant change in the resident's condition.

(4) When the nursing home becomes aware that a resident's health care directive is in conflict with facility practices and policies which are consistent with state and federal law, the nursing home must:

(a) Inform the resident of the existence of any nursing home practice or policy which would preclude implementing the health care directive;

(b) Provide the resident with written policies and procedures that explain under what circumstances a resident's health care directive will or will not be implemented by the nursing home;

(c) Meet with the resident to discuss the conflict; and

(d) Determine, in light of the conflicting practice or policy, whether the resident chooses to remain at the nursing home:

(i) If the resident chooses to remain in the nursing home, develop with the resident a plan in accordance with chapter 70.122 RCW to implement the resident's wishes. The nursing home may need to actively participate in ensuring the execution of the plan, including moving the resident at the time of implementation to a care setting that will implement the resident's wishes. Attach the plan to the resident's directive in the resident's clinical record; or

(ii) If, after recognizing the conflict between the resident's wishes and nursing home practice or policy the resident chooses to seek other long-term care services, or another physician who will implement the directive, the nursing home must assist the resident in locating other appropriate services.

(5) If a terminally ill resident, in accordance with state law, wishes to die at home, the nursing home must:

(a) Use the informed consent process as described in WAC 388-97-0260, and explain to the resident the risks associated with discharge; and

(b) Discharge the resident as soon as reasonably possible.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-0580 Roommates/rooms. (1) A resident has the right to:

(a) Share a room with his or her spouse (~~(when married residents)~~) or state registered domestic partners when both residents live in the same facility and both ((spouses)) consent to the arrangement and the room complies with the requirements for two

occupants; and

(b) Receive three days notice of change in room or roommate except:

(i) For room changes: The move is at the resident's request; and

(ii) For room or roommate changes: A longer or shorter notice is required to protect the health or safety of the resident or another resident; or an admission to the facility is necessary, and the resident is informed in advance. The nursing home must recognize that the change may be traumatic for the resident and take steps to lessen the trauma.

(2) The nursing home must make reasonable efforts to accommodate residents wanting to share the same room.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-0720 ((Notification)) Notice to individual of preliminary findings. (1) ~~((Within ten working days of making a preliminary finding,))~~ The department will ~~((send))~~ serve notice of the preliminary finding(~~:~~

~~(a) To the individual by first class and certified mail, return receipt requested. The department may choose to substitute personal service for certified mail;~~

~~(b) To the current administrator of the facility where the incident occurred; and~~

~~(c) To the appropriate licensing agency))~~ as provided in WAC 388-97-4425.

~~(2) ((The notice will include the following information:~~

~~(a) A description of the allegation;~~

~~(b) The date and time of the incident, if known;~~

~~(c) That the individual may appeal the preliminary finding;~~

~~(d) That the preliminary finding will become final unless the individual makes a written request for a hearing within thirty days of the date of the notice; and~~

~~(e) That if the finding becomes final, it will be reported to the department's registry and the appropriate licensing authority~~

~~(3) In a manner consistent with confidentiality requirements concerning the resident, witnesses, and the reporter, the department may also provide notification of a preliminary finding to:~~

~~(a) Other divisions within the department;~~

~~(b) The agency, program or employer with which the individual was associated including the current employer, if known;~~

~~(c) Law enforcement; and~~

~~(d) Other entities as authorized by law and this chapter including investigative authorities consistent with chapter 74.34 RCW))~~ The department may establish proof of service as provided in WAC 388-97-4430.

NEW SECTION

WAC 388-97-0725 Notice to others of preliminary findings. Consistent with confidentiality requirements concerning the resident, witnesses, and the reporter, the department may provide notification of a preliminary finding to:

- (1) Other divisions within the department;
- (2) The agency, program or employer where the incident occurred;
- (3) The employer or program that is currently associated with the individual;
- (4) Law enforcement;
- (5) Other entities as authorized by law including chapter 74.34 RCW and this chapter; and
- (6) The appropriate licensing agency.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1400 Tuberculosis--Testing method--Required. The nursing home must ensure that all tuberculosis testing is done through ~~((a nationally recognized testing method such as))~~ either:

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

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1440 Tuberculosis--No skin testing. The nursing home is not required to have a person tested for tuberculosis if the person has:

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

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08,

effective 11/1/08)

WAC 388-97-1460 Tuberculosis--((Mantoux)) One step testing.
The nursing home is only required to have a person take a one-step skin or blood test ((upon admission or employment)) if the 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.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1480 Tuberculosis--((Mantoux)) Two step skin testing. Unless the person meets the requirement for having no skin testing or only a one step skin test, the nursing home must ensure that each 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 is not required for the IGRA blood test which is only a one-step test.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1500 Tuberculosis--Positive ((reaction)) test result. When there is a positive ((reaction)) result to tuberculosis skin or blood testing the nursing home must:

- (1) Ensure that the ((individual)) person has a chest X ray within seven days;
- (2) Evaluate each resident or ((employee,)) person with a positive test result((7)) for signs and symptoms of tuberculosis; and
- (3) Follow the ((direction)) recommendation of the ((local health department if it requires additional tuberculin testing of residents or personnel for contact investigation)) person's health care provider.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1520 Tuberculosis--Negative ((reaction)) test

result. The nursing home may be required by the public health ((official)) provider or licensing authority to ensure that persons with negative ((QuantIFERON or Mantoux)) 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 ((a)) the health ((official)) provider.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1540 Tuberculosis--Declining a skin test. The nursing home ((may accept a signed statement from a person who has reason to decline skin testing; if:

- (1) ~~The signed statement includes the reason for declining; and~~
 - (2) ~~Additional evidence is provided to support the reason))~~
- must ensure that a person take the blood test for tuberculosis if they decline the skin test.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1560 Tuberculosis--Reporting--Required. ((When, based upon symptoms or diagnosis, the nursing home suspects that a person has tuberculosis,)) The nursing home must:

(1) ((Notify the local public health officer so that appropriate contact investigation can be performed;

~~(2))~~ Report any person with tuberculosis symptoms or a positive chest Xray to the appropriate health care provider or public health provider;

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

(3) Institute appropriate measures for the control of the transmission of droplet nuclei;

((+3)) (4) Apply living or work restrictions where residents or personnel are, or may be, infectious and pose a risk to other residents and personnel; and

((+4)) (5) Ensure that personnel caring for a resident with suspected tuberculosis comply with the WISHA standard for respiratory protection found in chapter 296-842 WAC.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1580 Tuberculosis--Test records. The nursing home must:

(1) Keep ~~((any))~~ the records ~~((such as))~~ of tuberculin test results, reports of X-ray findings, and any physician or public health ~~((official))~~ orders ~~((and the person's statement declining the test))~~ in the nursing home;

(2) Make the records readily available to the appropriate health authority and licensing agency;

(3) Retain ~~((employee tuberculin testing results))~~ the records for ~~((the duration of employment))~~ eighteen months beyond the date of employment termination; and

~~((+3))~~ (4) Provide the ~~((employee))~~ person a copy of his/her test~~((ing))~~ results.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1600 Care of residents with active tuberculosis.

(1) When the nursing home accepts the care of a resident with suspected or confirmed tuberculosis, the nursing home must:

(a) Coordinate the resident's admission, nursing home care, discharge planning, and discharge with the ~~((local))~~ health ~~((officer or officer designee))~~ care provider;

(b) Provide necessary education about tuberculosis for staff, visitors, and residents; and

(c) Ensure that personnel caring for a resident with active tuberculosis comply with the WISHA standards for respiratory protection, chapter 296-842 WAC.

(2) For a resident who requires respiratory isolation for tuberculosis, the nursing home must:

(a) Provide a private or semiprivate isolation room:

(i) In accordance with WAC 388-97-2480;

(ii) In which, construction review of the department of health determines that room air is maintained under negative pressure; and appropriately exhausted, either directly to the outside away from intake vents or through properly designed, installed, and maintained high efficiency particulate air (HEPA) filters, or other measures deemed appropriate to protect others in the facility;

(iii) However, when a semiprivate isolation room is used, only residents requiring respiratory isolation for confirmed or suspected tuberculosis are placed together.

(b) Provide supplemental environment approaches, such as ultraviolet lights, where deemed to be necessary;

(c) Provide appropriate protective equipment for staff and visitors; and

(d) Have measures in place for the decontamination of equipment and other items used by the resident.

WAC 388-97-1800 Criminal history disclosure and background inquiries. (1) As used in this section, the term "nursing home" includes a nursing facility and a skilled nursing facility.

(2) The nursing home must:

(a) Have a valid criminal history background check for any individual employed, directly or by contract, or any individual accepted as a volunteer or student who may have unsupervised access to any resident; and

(b) Repeat the check every two years.

(3) A nursing home licensed under chapter 18.51 RCW must make a background inquiry request to one of the following:

(a) The Washington state patrol;

(b) The department;

(c) The most recent employer licensed under chapters 18.51, 18.20, and 70.128 RCW provided termination of that employment was within twelve months of the current employment application and provided the inquiry was completed by the department or the Washington state patrol within the two years of the current date of application; or

(d) A nurse pool agency licensed under chapter 18.52C RCW, or hereafter renamed, provided the background inquiry was completed by the Washington state patrol within two years before the current date of employment in the nursing home(~~(; and)~~).

~~((+e))~~ (4) A nursing home may not rely on a criminal background inquiry from a former employer, including a nursing pool, if the nursing home knows or has reason to know that the individual applying for the job has, or may have, a disqualifying conviction or finding.

~~((+2))~~ (5) Nursing homes must:

(a) Request a background inquiry of any individual employed, directly or by agreement or contract, or accepted as a volunteer or student; and

(b) Notify appropriate licensing or certification agency of any individual resigning or terminated as a result of ~~((having))~~ a criminal conviction ((record)) or a civil adjudication proceeding, as defined in RCW 43.43.830.

~~((+3))~~ (6) Before a nursing home employs any individual, directly or by contract, or accepts any individual as a volunteer or student, a nursing home must:

(a) Inform the individual that the nursing home must make a background inquiry and require the individual to sign a disclosure statement, under penalty or perjury and in accordance with RCW 43.43.834;

(b) Inform the individual that he or she may ~~((make a))~~ request ~~((for))~~ a copy of ~~((a))~~ the results of the completed background inquiry ~~((of))~~ described in this section; and

(c) Require the individual to sign a statement authorizing the nursing home, the department, and the Washington state patrol to make a background inquiry; and

(d) Verbally inform the individual of the background inquiry results within seventy-two hours of receipt.

~~((+4))~~ (7) The nursing home must establish procedures ensuring that:

- (a) The individual is verbally informed of the background inquiry results within seventy-two hours of receipt;
- (b) All disclosure statements and background inquiry responses and all copies are maintained in a confidential and secure manner;
- (c) Disclosure statements and background inquiry responses are used for employment purposes only;
- (d) Disclosure statements and background inquiry responses are not disclosed to any individual except:
 - (i) The individual about whom the nursing home made the disclosure or background inquiry;
 - (ii) Authorized state employees including the department's licensure and certification staff, resident protection program staff and background inquiry unit staff;
 - (iii) Authorized federal employees including those from the Department of Health and Human Services, Centers for Medicare and Medicaid Services;
 - (iv) The Washington state patrol auditor; and
 - (v) Potential employers licensed under chapters 18.51, 18.20, and 70.128 RCW who are making a request as provided for under subsection (1) of this section.
- (e) A record of findings be retained by the nursing home for twelve months beyond the date of employment termination.
 - ((+5+)) (8) The nursing home must not employ individuals who are disqualified under the requirements of WAC 388-97-1820.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1820 Disqualification from nursing home employment. (1) The nursing home must not employ directly or by contract, or accept as a volunteer or student, any individual:

- (a) Who has been found to have abused, neglected, exploited or abandoned a minor or vulnerable adult by a court of law, by a disciplining authority, including the state department of health, or by the department's resident protection program;
- (b) Against whom a finding of abuse, neglect, exploitation, misappropriation of property or abandonment has been entered on any department or state registry((, including the nursing assistant registry)); or
- (c) Who has been subject to an order of protection under chapter 74.34 RCW for abandonment, abuse, neglect, or financial exploitation of a vulnerable adult, or misappropriation of resident property.

(2) Except as provided in this section, the nursing home must not employ directly or by contract, or accept as a volunteer or student, any individual who may have unsupervised access to residents if the individual:

- (a) Has been convicted of a "crime against children and other persons" as defined in RCW 43.43.830, unless the individual has been convicted of one of the ((five)) 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:

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

(ii) Prostitution, or the same offense as it may hereafter be renamed, and three or more years have passed ~~((7))~~.

(b) Has been convicted of crimes relating to financial exploitation as defined in RCW 43.43.830, 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:

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

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

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

~~((b))~~ (c) Has been convicted of ((crimes relating to financial exploitation as defined under RCW 43.43.830)):

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

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

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

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

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

(d) Has been convicted in another state of a crime that is equivalent to a crime listed in subsection (2)(a) through (c) of this section.

(3) The term "**vulnerable adult**" is defined in RCW 74.34.020; the term "**unsupervised access**" is defined in RCW 43.43.830.

(4) In addition to chapters 18.51 and 74.42 RCW, these rules are authorized by RCW 43.20A.710, 43.43.830 through 43.43.842 and 74.39A.050(8).

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1900 Dialysis services provided in nursing home.

(1) The nursing home must ensure that appropriate care, treatment, and services are provided to each nursing home resident ~~((receiving))~~ who receives dialysis in the nursing home. "Dialysis" means the process of separating crystalloids and colloids in solution by means of the crystalloids and colloids unequal diffusion through a natural or artificial semipermeable membrane.

~~((Dialysis for acute renal failure must not be administered in a nursing home))~~ The nursing home must not administer dialysis for a resident with acute renal failure.

(3) A nursing home may only administer maintenance dialysis in the nursing home ~~((after the))~~:

~~(a) ((Analysis of other options and elimination of these options)) After other options have been analyzed and rejected, based on the resident's best interest; and~~

~~(b) Following a joint decision ((is)) made ((jointly)) by a team of individuals ((representing)) including representatives of the kidney center and the nursing home, the resident, and the resident's nephrologist((, and the nursing home)). A "**kidney center**" means ((those facilities)) a facility as defined and certified by the federal government to provide end stage renal (ESRD) services.~~

~~(4) ((The nursing home must ensure that:~~

~~(a) A current written agreement is in effect with each kidney center responsible for the management and care of each nursing home resident undergoing dialysis; and~~

~~(b) Such agreement delineates the functions, responsibilities, and services of both the kidney center and the nursing home.~~

~~(5) The kidney center must assist the nursing home in ensuring appropriate care, treatment, and services related to dialysis. Responsibilities of the kidney center must include, but not be limited to:~~

~~(a) The provision of clinical and chemical laboratory services;~~

~~(b) The services of a qualified dietitian;~~

~~(c) Social services;~~

~~(d) Preventative maintenance and emergency servicing of dialysis and water purification equipment;~~

~~(e) The certification and continuing education of dialysis helpers and periodic review and updating of dialysis helpers' competencies. A "dialysis helper" means an individual who has completed an in-service class approved by the kidney center and has been hired by the resident to provide to the resident care related only to the dialysis treatment;~~

~~(f) An in-hospital dialysis program for the care and treatment of a dialysis resident with a complication or acute condition necessitating hospital care;~~

~~(g) A continuing in-service education program for nursing home staff working with a dialysis resident;~~

~~(h) A program for periodic, on-site review of the nursing home's dialysis rooms;~~

~~(i) Selection, procurement, and installation of dialysis equipment;~~

~~(j) Selection and procurement of dialysis supplies;~~

~~(k) Proper storage of dialysis supplies; and~~

~~(l) Specification, procurement, and installation of the purification process for treatment of water used as a diluent in the dialyzing fluid.~~

~~(6)) Only a registered nurse from the kidney center or a dialysis helper may administer dialysis in the nursing home.~~

~~(a) A dialysis helper may be a registered nurse; ((and)) or~~

~~(b) ((When)) If a dialysis helper is not a registered nurse, the nursing home must have a registered nurse who has completed an in-service class approved by the kidney center, on the premises during dialysis.~~

~~((+7)) (5) A physician, designated or approved by ((the)) a kidney center, must be on call at all times dialysis is being administered in the nursing home.~~

~~((+8+))~~ (6) The resident's attending physician and the kidney center must provide, or direct and supervise, the continuing medical management and surveillance of the care of each nursing home resident receiving dialysis.

~~((+9+))~~ (7) The nursing home must:

(a) Ensure the kidney center develops a dialysis treatment plan; ~~((and))~~

(b) Coordinate and update changes to the dialysis treatment plan with the kidney center; and

(c) Incorporate this treatment plan into the resident's comprehensive plan of care and include specific medical orders for medications, treatment, and diet.

~~((+10+))~~ (8) The dialysis room in the nursing home must be in compliance with federal standards established for ESRD facilities. This includes:

(a) Storage space available for equipment and supplies;

(b) A telephone at the bedside of each dialysis resident; and

(c) A mechanical means of summoning additional staff to the dialysis area in the event of a dialysis emergency.

NEW SECTION

WAC 388-97-1910 Dialysis services provided outside of nursing home. (1) If dialysis services are provided outside the nursing home, the nursing home must coordinate with the kidney center to ensure the resident's comprehensive plan of care is monitored and changed as needed.

(2) The nursing home must ensure that a current written agreement is in effect with the kidney center responsible for the management and care of each nursing home resident undergoing dialysis.

(3) The nursing home must ensure that the agreement:

(a) Delineates the nursing home's functions, responsibilities and services and that the kidney center must assist the nursing home in ensuring appropriate care, treatment, and services related to dialysis;

(b) Delineates the functions, responsibilities, and services of the kidney center including but not limited to:

(i) The provision of clinical and chemical laboratory services;

(ii) The services of a qualified dietitian;

(iii) Social services;

(iv) Preventative maintenance and emergency servicing of dialysis and water purification equipment;

(v) The certification and continuing education of dialysis helpers and periodic review and updating of dialysis helpers' competencies. A "dialysis helper" means an individual who has completed an inservice class approved by the kidney center and has been hired by the resident to provide to the resident care related only to the dialysis treatment;

(vi) An in-hospital dialysis program for the care and treatment of a dialysis resident with a complication or acute

condition necessitating hospital care;

(vii) A continuing in-service education program for nursing home staff working with a dialysis resident;

(viii) A program for periodic, on-site review of the nursing home's dialysis rooms;

(ix) Selection, procurement, and installation of dialysis equipment;

(x) Selection and procurement of dialysis supplies;

(xi) Proper storage of dialysis supplies; and

(xii) Specification, procurement, and installation of the purification process for treatment of water used as a diluent in the dialyzing fluid.

(c) Provides that if a problem occurs, the kidney center must contact and inform the nursing home medical director.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-2060 New construction compliance. The nursing home must ensure that:

(1) New construction, as defined in WAC 388-97-2160, complies with all the requirements of subchapter II of this chapter;

(2) New construction ((approved by the department of health, certificate of need and construction review, before the effective date of this chapter complies with the rules in effect at the time of the plan approval)) must maintain compliance with the regulations in effect at the time of initial submission to the department of health, certificate of need and construction review services; except if the previous construction jeopardizes resident health and safety, the department may require compliance with current construction rules;

(3) The department of health, certificate of need and construction review programs, ((is)) are contacted for review and ((issues an)) that the programs issue applicable determinations and approvals for all new construction; and

(4) Construction is completed in compliance with the final construction review services approved documents. Compliance with these standards and regulations does not relieve the nursing home of the need to comply with applicable state and local building and zoning codes.

(5) The department has done a pre-occupancy survey and has notified the nursing home that ((they)) it may begin admitting residents.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-2280 Call systems on resident care units. The

nursing home must provide (~~the following, or an equivalent~~) a system that meets (~~these~~) the following standards:

(1) A wired or wireless communication system which registers a call by distinctive light at the room door and by distinctive light and audible tone at the staff work station. The system must be equipped to receive resident calls from:

(a) The bedside of each resident;

(b) Every common area, dining and activity areas, common use toilet rooms, and other areas used by residents; and

(c) Resident toilet, bath and shower rooms.

(2) An emergency signal device (~~activated by a nonconductive pull cord, or adapted to~~) that meets the needs of the resident (~~(The nursing home must locate the signal device)~~) and adapted for easy reach by the resident. A signal device must be adapted to meet resident needs and, in the dementia unit, may be adapted for staff and family use, see WAC (~~388-97-2990~~) 388-97-2900.

NEW SECTION

WAC 388-97-4165 Application--Liability insurance required.

(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 388-97-4167 and 388-97-4168.

NEW SECTION

WAC 388-97-4166 Liability insurance required--Ongoing. The nursing home must:

(1) Maintain liability insurance as required in WAC 388-97-4167 and 388-97-4168; and

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

NEW SECTION

WAC 388-97-4167 Liability insurance required--Commercial general liability insurance or business liability insurance coverage. The nursing 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 contractors, products-completed operations, personal 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 388-97-4168 Liability insurance required--Professional liability insurance coverage. The nursing home must have professional liability insurance or errors and omissions insurance. The insurance must include:

(1) Coverage for losses caused by errors and omissions of the nursing 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 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-4200 Department review of initial nursing home license applications. (1) All initial nursing home license applications must be reviewed by the department under this chapter.

(2) The department will not begin review of an incomplete license application.

(3) The proposed licensee must respond to any department request for additional information within five working days.

(4) When the application is determined to be complete, the department will consider the proposed licensee or any partner, officer, director, managerial employee, or owner of five percent or more of the proposed licensee, separately and jointly, in its review. The department will review:

(a) The information contained in the application;

(b) Survey and complaint investigation (~~(findings)~~) citations in every facility each individual and entity named in the application has been affiliated with during the past ten years;

(c) Compliance history;

(d) Financial assessments;

(e) Actions against the proposed licensee (i.e., revocation, suspension, refusal to renew, etc.);

(f) All criminal convictions, and relevant civil or administrative actions or findings including, but not limited to, findings (~~(under 42 C.F.R. § 488.335, disciplinary findings, and)~~) including professional disciplinary actions, and findings of abuse, neglect, exploitation, (~~(or)~~) abandonment, or domestic violence

resulting from a civil adjudication proceeding, as defined in RCW 43.43.830; and

(g) Other relevant information.

(5) The department will notify the proposed licensee of the results of the review.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-4220 Reasons for denial, suspension, modification, revocation of, or refusal to renew a nursing home license. (1) The department may deny, suspend, modify, revoke, or refuse to renew a nursing home license when the department finds the proposed or current licensee, or any partner, officer, director, managing employee, owner of five percent or more of the proposed or current licensee of the nursing home, owner of five percent or more of the assets of the nursing home, proposed or current administrator, or employee or individual providing nursing home care or services has:

(a) Failed or refused to comply with the:

(i) Requirements established by chapters 18.51, 74.42, or 74.46 RCW and regulations adopted under these chapters; or

(ii) Medicaid requirements of Title XIX of the Social Security Act and medicaid regulations, including 42 CFR, Part 483.

(b) A history of significant noncompliance with federal or state regulations in providing nursing home care;

(c) No credit history or a poor credit history;

(d) Engaged in the illegal use of drugs or the excessive use of alcohol or been convicted of "crimes relating to drugs" as defined in RCW 43.43.830 which are not listed in subsection (3)(c);

(e) Unlawfully operated a nursing home, or long term care facility as defined in RCW 70.129.010, without a license or under a revoked or suspended license;

(f) Previously held a license to operate a hospital or any facility for the care of children or vulnerable adults, and that license has been revoked, or suspended, or the licensee did not seek renewal of the license following written notification of the licensing agency's initiation of revocation or suspension of the license;

(g) Obtained or attempted to obtain a license by fraudulent means or misrepresentation;

(h) Permitted, aided, or abetted the commission of any illegal act on the nursing home premises;

(i) Been convicted of a felony or other crime that would not be ~~((prohibited))~~ automatically disqualifying under RCW 74.39A.050(8) or this chapter, if ~~((it))~~ the conviction reasonably relates to the competency of the individual to own or operate a nursing home;

(j) Had a sanction, corrective, or remedial action taken by federal, state, county or municipal officials or safety officials related to the care or treatment of children or vulnerable adults;

(k) Failed to:

(i) Provide any authorization, documentation, or information

the department requires in order to verify information contained in the application;

(ii) Meet financial obligations as the obligations fall due in the normal course of business;

(iii) Verify additional information the department determines relevant to the application;

(iv) Report abandonment, abuse, neglect or financial exploitation in violation of chapter 74.34 RCW; or in the case of a skilled nursing facility or nursing facilities, failure to report as required by 42 C.F.R. 483.13; or

(v) Pay a civil fine the department assesses under this chapter within ten days after assessment becomes final.

~~((k))~~ (l) Been certified pursuant to RCW 74.20A.320 as a person who is not in compliance with a child support order (license suspension only);

~~((i))~~ (m) Knowingly or with reason to know makes a false statement of a material fact in the application for a license or license renewal, in attached data, or in matters under department investigation;

~~((m))~~ (n) Refused to allow department representatives or agents to inspect required books, records, and files or portions of the nursing home premises;

~~((n))~~ (o) Willfully prevented, interfered with, or attempted to impede the work of authorized department representatives in the:

(i) Lawful enforcement of provisions under this chapter or chapters 18.51 or 74.42 RCW; or

(ii) Preservation of evidence of violations of provisions under this chapter or chapters 18.51 or 74.42 RCW.

~~((o))~~ (p) Retaliated against a resident or employee initiating or participating in proceedings specified under RCW 18.51.220; or

~~((p))~~ (q) Discriminated against medicaid recipients as prohibited under RCW 74.42.055.

(2) In determining whether there is a history of significant noncompliance with federal or state regulations under subsection (1)(b), the department may, at a minimum, consider:

(a) Whether the violation resulted in a significant harm or a serious and immediate threat to the health, safety, or welfare of any resident;

(b) Whether the proposed or current licensee promptly investigated the circumstances surrounding any violation and took steps to correct and prevent a recurrence of a violation;

(c) The history of surveys and complaint investigation findings and any resulting enforcement actions;

(d) Repeated failure to comply with regulations;

(e) Inability to attain compliance with cited deficiencies within a reasonable period of time; and

(f) The number of violations relative to the number of facilities the proposed or current licensee, or any partner, officer, director, managing employee, employee or individual providing nursing home care or services has been affiliated within the past ten years, or owner of five percent or more of the proposed or current licensee or of the assets of the nursing home.

(3) The department must deny, suspend, revoke, or refuse to renew a proposed or current licensee's nursing home license if the proposed or current licensee or any partner, officer, director,

managing employee, owner of five percent or more of the proposed or current licensee of the nursing home or owner of five percent or more of the assets of the nursing home, proposed or current administrator, or employee or individual providing nursing home care or services has been:

(a) Convicted of a "crime against children or other persons" as defined under RCW 43.43.830(~~(7)~~) 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:

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

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

(b) Convicted of a "crime relating to financial exploitation" as defined under RCW 43.43.830(~~(7)~~) 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:

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

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

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

(c) Has been convicted of:

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

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

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

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

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

(d) Found by a court in a criminal proceeding or a protection proceeding under chapter 74.34 RCW, or any comparable state or federal law, to have abandoned, abused, neglected or financially exploited a vulnerable adult;

(~~(d)~~) (e) Found in any final decision issued by a disciplinary board to have sexually or physically abused or exploited any minor or an individual with a developmental disability or to have abused, neglected, abandoned, or financially exploited any vulnerable adult;

(~~(e)~~) (f) Found in any dependency action to have sexually assaulted or exploited any minor or to have physically abused any minor;

(~~(f)~~) (g) Found by a court in a domestic relations proceeding under Title 26 RCW, or any comparable state or federal law, to have sexually abused or exploited any minor or to have physically abused any minor; or

(~~(g)~~) (h) Found to have abused, neglected, abandoned or financially exploited or mistreated residents or misappropriated their property, and that finding has been entered on (~~a nursing assistant~~) any department's registry or list.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-4320 Relocation of residents. (1) In the event of license revocation or suspension, decertification, or other emergency closures the department (~~(must)~~) will:

(a) Notify residents and, when appropriate, resident representatives of the action;

(b) Assist with residents' relocation and identify possible alternative living choices and locations; and

(c) The nursing home will assist the residents to the extent it is directed to do so by the department.

(2) When a resident's relocation occurs due to an emergency closure from a natural disaster, the nursing home may not be required to cease its business operations unless directed to do so by the department.

(3) When a resident's relocation occurs due to a nursing home's voluntary closure, or voluntary termination of its medicare or medicaid contract or both, the nursing home must:

(a) Notify the department and all residents and resident representatives in accordance with WAC 388-97-1640;

(b) Notify the Centers for Medicare and Medicaid Services and the public as required by 42 C.F.R. 489.52, or a successor regulation, if the closure or termination affects the provision of medicare services; and

(c) Provide appropriate discharge planning and coordination for all residents including a plan to the department for safe and orderly transfer or discharge of residents from the nursing home.

~~((3))~~ (4) The department may provide residents assistance with relocation.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-4340 License relinquishment. (1) A nursing home licensee must voluntarily relinquish its license when:

(a) The nursing home ceases to do business as a nursing home; and

(b) Within twenty-four hours after the last resident is discharged from the facility.

(2) The nursing home may not be required to relinquish its license when residents must be relocated due to emergency closures from natural disasters.

(3) The relinquished license must be returned to the department.

~~((3))~~ (4) If a nursing home licensee fails to voluntarily relinquish its license when required, the department will revoke the license.

NEW SECTION

WAC 388-97-4425 Notice--Service complete. Service of the department notices is complete when:

- (1) Personal service is made;
- (2) The notice is addressed to the facility or to the individual at his or her last known address, and deposited in the United States mail;
- (3) The notice is faxed and the department receives evidence 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 388-97-4430 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 nursing home or to the individual to whom the notice is directed;
- (3) A signed receipt from the person who accepted the certified mail, the commercial delivery service, or the legal messenger service package; or
- (4) Proof of fax transmission.

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-4440 (~~Notice and~~) Appeal rights. (1) The (~~notification and hearing~~) appeal rights in this section apply to any appealable action taken by the department under chapters 18.51, 74.42 and 74.39A RCW. (~~Notification~~) Notice and appeal(~~s~~) requirements for resident protection program findings are described in WAC 388-97-0720 and 388-97-0740.

- (2) The following actions may be appealed:
 - (a) Imposition of a penalty under RCW 18.51.060 or 74.42.580;
 - (b) (~~An action by the department such as~~) A denial of a license under RCW 18.51.054, a license suspension under RCW 18.51.067 or a condition on a license under RCW 74.39A.050; or
 - (c) Deficiencies cited on the state survey report.
- (3) The appeal process will be governed by the Administrative Procedure Act (chapter 34.05 RCW), RCW 18.51.065 and 74.42.580, chapter 388-02 WAC and this chapter. If (~~any provision in this chapter conflicts with~~) there is a conflict between chapter 388-02 WAC and this chapter, (~~the provision of~~) this chapter will govern.

(4) The purpose of an administrative hearing will be to review actions taken by the department under chapters 18.51, 74.42 or 74.39A RCW, and under this chapter.

(5) The office of administrative hearings must receive an administrative hearing request from the applicant, licensee or nursing home (~~(must receive a request for an administrative hearing with the office of administrative hearings)~~) within twenty days of receipt of written notification of the department's action (~~(as defined)~~) listed in subsection (2) of this section. Further information about administrative hearings is available in chapter 388-02 WAC and at the office of administrative hearing (OAH) web site: www.oah.wa.gov.

(6) Orders of the department imposing a stop placement, license suspension, emergency closure emergency transfer of residents, temporary management or conditions on a license are effective immediately upon verbal or written notice and must remain in effect until they are rescinded by the department or through the state administrative appeals process.

(7) Deficiencies cited on the federal survey report may not be appealed through the state administrative appeals process. If a federal remedy is imposed, the Centers for Medicare and Medicaid Services will notify the nursing facility of appeal rights under the federal administrative appeals process.

~~((8) The department's decision to petition to remove a finding of neglect under WAC 388-97-0780 (3)(c) may not be appealed.))~~

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-97-1420	Tuberculosis--Mantoux skin testing.
WAC 388-97-3820	Stairways, ramps, and corridors in new construction.