

Chapter 388-76 WAC

ADULT FAMILY HOME MINIMUM LICENSING REQUIREMENTS

WAC 388-76-10000

Definitions.

"Abandonment" means action or inaction by a person or entity with a duty of care for a frail elder or vulnerable adult that leaves the vulnerable person 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.

(1) 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.

(2) Abuse includes sexual abuse, mental abuse, physical abuse, and personal exploitation of a vulnerable adult, and improper use of restraint against a vulnerable adult which have the following meanings:

(a) **"Sexual abuse"** means any form of nonconsensual sexual conduct, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse also includes any sexual conduct between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter [71A.12](#) RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter [71A.12](#) RCW, whether or not consensual.

(b) **"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, or prodding.

(c) **"Mental abuse"** means a willful verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. Mental abuse may include ridiculing, yelling, or swearing.

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

(e) **"Improper use of restraint"** means the inappropriate use of chemical, physical, or mechanical restraints for convenience or discipline or in a manner that:

- (i) Is inconsistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter [71A.12](#) RCW;
- (ii) Is not medically authorized; or
- (iii) Otherwise constitutes abuse under this section.

"Adult family home" or "AFH" means:

(1) A residential home in which a person or an entity is licensed to provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to a provider, entity representative, resident manager, or caregiver, who resides in the home.

(2) As used in this chapter, the term "entity" includes corporations, partnerships, and limited liability companies, and the term "adult family home" includes the person or entity that is licensed to operate an adult family home.

"Affiliated with an applicant" means any person listed on the application as a partner, officer, director, resident manager, entity representative, or majority owner of the applying entity, or is the spouse or domestic partner of the applicant.

"Affiliated entity" means any entity owned, controlled, or managed by the applicant or licensed provider, or associated with a parent or subsidiary entity applying for, or holding, an adult family home license.

"Applicant" means:

(1) An individual, partnership, corporation, or other entity seeking a license to operate an adult family home; and

(2) For the following sections only, also includes an entity representative solely for the purposes of fulfilling requirements on behalf of the entity:

(a) WAC [388-76-10020](#)(1);

(b) WAC [388-76-10035](#)(1);

(c) WAC [388-76-10060](#);

(d) WAC [388-76-10064](#);

(e) WAC [388-76-10120](#);

(f) WAC [388-76-10125](#);

(g) WAC [388-76-10129](#);

(h) WAC [388-76-10130](#);

(i) WAC [388-76-10146](#)(4);

(j) WAC [388-76-10265](#);

(k) WAC [388-76-10500](#); and

(l) WAC [388-76-10505](#).

"Capacity" means the maximum number of persons in need of personal or special care who are permitted to reside in an adult family home at a given time. Capacity includes:

(1) The number of related children or adults in the home who receive personal or special care and services; and

(2) The number of residents the adult family home may admit and retain (resident capacity), which is the number listed on the license.

"Caregiver" means any person eighteen years of age or older responsible for providing direct personal or special care to a resident and who is not the provider, entity representative, a student or volunteer.

"Chemical restraint" means the administration of any drug to manage a vulnerable adult's behavior in a way that reduces the safety risk to the vulnerable adult or others, has a temporary effect of restricting the vulnerable adult's freedom of movement, and is not standard treatment for the vulnerable adult's medical or psychiatric condition.

"Consent" means express written consent granted after the vulnerable adult or their legal representative has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

"Dementia" means a condition documented through the assessment process required by WAC [388-76-10335](#).

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

"Department case manager" means the department authorized staff person or designee assigned to negotiate, monitor, and facilitate a care and services plan for residents receiving services paid for by the department.

"Developmental disability" means the same as defined under WAC [388-823-0015](#).

"Direct supervision" means oversight by a person who has demonstrated competency in the basic training and specialty training if required, or who has been exempted from the basic training requirements and is:

- (1) On the premises; and
- (2) Quickly and easily available to the caregiver.

"Domestic partners" means two adults who meet the requirements for a valid state registered domestic partnership as established by RCW [26.60.030](#) and who have been issued a certificate of state registered domestic partnership.

"Entity representative" means the individual designated by an entity provider or entity applicant as its representative for the purposes of fulfilling the training and qualification requirements under this chapter that only an individual can fulfill where an entity cannot. The entity representative is responsible for overseeing the operation of the home. The entity representative does not hold the license on behalf of the entity.

"Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW [74.34.020](#)(7).

"Financial solvency" means that the applicant or provider is able to meet debts or financial obligations with some money to spare.

"Home" means adult family home.

"Imminent danger" or **"immediate threat"** means serious physical harm to or death of a resident has occurred, or there is a serious threat to the resident's life, health, or safety.

"Indirect supervision" means oversight by a person who is quickly and easily available to the caregiver, but not necessarily on-site and:

- (1) Has demonstrated competency in the basic and specialty training, if required; or
- (2) Is exempt from basic training requirements.

"Inspection" means a review by department personnel to determine the health, safety, and well-being of residents, and the adult family home's compliance with this chapter and chapters [70.128](#), 70.129, [74.34](#) RCW, and other applicable rules and regulations. The department's review may include an on-site visit.

"Management agreement" means a written, executed agreement between the adult family home and another individual or entity regarding the provision of certain services on behalf of the adult family home.

"Mandated reporter" means an employee of the department, law enforcement, officer, social worker, professional school personnel, individual provider, an employee of a facility, an employee of a social service, welfare, mental health, adult day health, adult day care, or hospice agency, county coroner or medical examiner, Christian Science practitioner, or health care provider subject to chapter [18.130](#) RCW. For the purpose of the definition of a mandated reporter, **"Facility"** means a residence licensed or required to be licensed under chapter [18.20](#) RCW (assisted living facilities), chapter [18.51](#) RCW (nursing homes), chapter [70.128](#) RCW (adult family homes), chapter [72.36](#) RCW (soldiers' homes), chapter [71A.20](#) RCW (residential habilitation centers), or any other facility licensed by the department.

"Mechanical restraint" means any device attached or adjacent to the vulnerable adult's body that they cannot easily remove and restricts freedom of movement or normal access to the vulnerable adult's body. "Mechanical restraint" does not include the use of devices, materials, or equipment that are:

- (a) Medically authorized, as required; and
- (b) Used in a manner that is consistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter [71A.12](#) RCW.

"Medical device" as used in this chapter, means any piece of medical equipment used to treat a resident's assessed need.

- (1) A medical device is not always a restraint and should not be used as a restraint;
- (2) Some medical devices have considerable safety risks associated with use; and
- (3) Examples of medical devices with known safety risks when used are transfer poles, Posey or lap belts, and side rails.

"Medication administration" means giving resident medications by a person legally authorized to do so, such as a physician, pharmacist, or nurse.

"Medication organizer" is a container with separate compartments for storing oral medications organized in daily doses.

"Mental illness" is defined as an axis I or II diagnosed mental illness as outlined in volume IV of the Diagnostic and Statistical Manual of Mental Disorders (a copy is available for review through the aging and disability services administration).

"Minimal" means violations that result in little or no negative outcome or little or no potential harm for a resident.

"Moderate" means violations that result in negative outcome and actual or potential harm for a resident.

"Multiple home provider" means a provider who is licensed to operate more than one adult family home.

"Neglect" means:

(1) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or

(2) An act or omission by a person or entity with a duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW [9A.42.100](#).

"Nurse delegation" means a registered nurse transfers the performance of selected nursing tasks to competent nursing assistants, home care aides, or qualified long-term care workers in selected situations. The registered nurse delegating the task retains the responsibility and accountability for the nursing care of the resident.

"Over-the-counter medication" is any medication that can be purchased without a prescriptive order, including but not limited to vitamin, mineral, or herbal preparations.

"Permanent restraining order" means a restraining order or order of protection issued either following a hearing, or by stipulation of the parties. A "permanent restraining order" order may be in force for a specific time period (for example, one year), after which it expires.

"Personal care services" means both physical assistance and prompting and supervising the performance of direct personal care tasks as determined by the resident's needs and does not include assistance with tasks performed by a licensed health professional.

"Physical restraint" means application of physical force without the use of any device, for the purpose of restraining the free movement of a vulnerable adult's body. "Physical restraint" does not include briefly holding without undue force a vulnerable adult in order to calm or comfort them, or holding a vulnerable adult's hand to safely escort them from one area to another.

"Placement agency" is an "elder or vulnerable adult referral agency" as defined in chapter [18.330](#) RCW and means a business or person who receives a fee from or on behalf of a vulnerable adult seeking a referral to care services or supportive housing or who receives a fee from a care services provider or supportive housing provider because of any referral provided to or on behalf of a vulnerable adult.

"Practitioner" includes a physician, osteopathic physician, podiatric physician, pharmacist, licensed practical nurse, registered nurse, advanced registered nurse practitioner, dentist, and physician assistant licensed in the state of Washington.

"Prescribed medication" refers to any medication (legend drug, controlled substance, and over-the-counter) that is prescribed by an authorized practitioner.

"Provider" means:

(1) Any individual who is licensed to operate an adult family home and meets the requirements of this chapter;

(2) Any corporation, partnership, limited liability company, or other entity that is licensed under this chapter to operate an adult family home and meets the requirements of this chapter; and

(3) For the following sections only, also includes an entity representative solely for the purposes of fulfilling requirements on behalf of the entity:

(a) WAC [388-76-10020](#)(1);

(b) WAC [388-76-10035](#)(1);

(c) WAC [388-76-10060](#);

(d) WAC [388-76-10064](#);

(e) WAC [388-76-10120](#);

(f) WAC [388-76-10125](#);

(g) WAC [388-76-10129](#);

(h) WAC [388-76-10130](#);

(i) WAC [388-76-10146](#)(4);

(j) WAC [388-76-10265](#);

(k) WAC [388-76-10500](#); and

(l) WAC [388-76-10505](#).

"Psychopharmacologic medications" means the class of prescription medications, which includes but is not limited to antipsychotics, antianxiety medications, and antidepressants, capable of affecting the mind, emotions, and behavior.

"Recurring" or "repeated" means that the department has cited the adult family home for a violation of applicable licensing laws or rules and the circumstances of (1) or (2) of this definition are present and if the previous violation in subsection (1) or (2) of this definition was pursuant to a law or rule that has changed at the time of the new violation, a citation to the equivalent current rule or law is sufficient:

(1) The department previously imposed an enforcement remedy for a violation of the same section of law or rule for substantially the same problem following any type of inspection within the preceding thirty-six months.

(2) The department previously cited a violation under the same section of law or rule for substantially the same problem following any type of inspection on two occasions within the preceding thirty-six months.

"Resident" means any adult unrelated to the provider who lives in the adult family home and who is in need of care. 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.

"Resident manager" means a person employed or designated by the provider to manage the adult family home and who meets the requirements of this chapter.

"Resident representative" means:

(1)(a) A court-appointed guardian or conservator of a resident, if any;

(b) An individual otherwise authorized by state or federal law to act on behalf of the resident in order to support the resident in decision making; access medical, social,

or other personal information of the resident; manage financial matters; or receive notifications including, but not limited to,

(i) agents under power of attorney;

(ii) representative payees; and

(iii) other fiduciaries; or

(c) If there is no individual who meets the criteria under (1)(a) or (b) of this subsection, an individual chosen by the resident to act on behalf of the resident in order to support the resident in decision making; access medical, social, or other personal information of the resident; manage financial matters; or receive notifications.

(2) The term "resident representative" does not include any individual described in (1) of this subsection who is affiliated with the adult family home where the resident resides, or its licensee or management company, unless the affiliated individual is a family member of the resident.

"Serious" means violations that either result in one or more negative outcomes and significant actual harm to residents that does not constitute imminent danger, or there is a reasonable predictability of recurring actions, practices, situations, or incidents with potential for causing significant harm to a resident, or both.

"Severity" means the seriousness of a violation as determined by actual or potential negative outcomes for residents and subsequent actual or potential for harm. Outcomes include any negative effect on the resident's physical, mental, or psychosocial well-being (such as safety, quality of life, quality of care).

"Significant change" means:

(1) A lasting change, decline, or improvement in the resident's baseline physical, mental, or psychosocial status;

(2) The change is significant enough so either the current assessment, or negotiated care plan, or both, do not reflect the resident's current status; and

(3) A new assessment may be needed when the resident's condition does not return to baseline within a two week period of time.

"Special care" means care beyond personal care services as defined in this section.

"Staff" means any person who is employed or used by an adult family home, directly or by contract, to provide care and services to any residents.

Staff must meet all the requirements in this chapter and chapter [388-112A WAC](#).

"Temporary restraining order" means a restraining order or order of protection that expired without a hearing, was dismissed following an initial hearing, or was dismissed by stipulation of the parties before an initial hearing.

"Uncorrected" means the department has cited a violation of WAC or RCW following an inspection and the violation remains uncorrected at the time of a subsequent inspection for the specific purpose of verifying whether such violation has been corrected.

"Unsupervised" means not in the presence of:

(1) Another employee or volunteer from the same business or organization; or

(2) Any relative or guardian of any of the children or individuals with developmental disabilities or vulnerable adults to which the employee, student, or volunteer has access during the course of their employment or involvement with the business or organization.

"Usable floor space" means resident bedroom floor space exclusive of:

- (1) Toilet rooms;
- (2) Closets;
- (3) Lockers;
- (4) Wardrobes;
- (5) Vestibules; and
- (6) The space required for the door to swing if the bedroom door opens into the resident bedroom.

"Vulnerable adult" includes a person:

- (1) Sixty years of age or older who has the functional, mental, or physical inability to care for themselves;
- (2) Found incapacitated under chapter [11.88](#) RCW;
- (3) Who has a developmental disability as defined under RCW [71A.10.020](#);
- (4) Admitted to any facility;
- (5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter [70.127](#) RCW;
- (6) Receiving services from an individual provider; or
- (7) With a functional disability who lives in their own home, who is directing and supervising a paid personal aide to perform a health care task as authorized by RCW [74.39.050](#).

"Water hazard" means any body of water over twenty-four inches in depth that can be accessed by a resident, and includes but is not limited to:

- (1) In-ground, above-ground, and on-ground pools;
- (2) Hot tubs, spas;
- (3) Fixed-in-place wading pools;
- (4) Decorative water features;
- (5) Ponds; or
- (6) Natural bodies of water such as streams, lakes, rivers, and oceans.

WAC 388-76-10320

Resident record—Content.

The adult family home must ensure that each resident record contains, at a minimum, the following information:

- (1) Identifying information about the resident, including, but not limited to:
 - (a) Name;
 - (b) Bedroom they live in;
 - (c) Telephone number, if available; and
 - (d) Email address, if available.

(2) The name, address, and telephone number of the resident's:

(a) Representative and the representative's:

(i) Relationship to the resident; and

(ii) Email address, if available.

(b) Health care providers;

(c) Significant family members identified by the resident; and

(d) Other individuals the resident wants involved or notified.

(3) Current medical history;

(4) The resident assessment information;

(5) The preliminary service plan;

(6) The negotiated care plan;

(7) List of resident medications;

(8) The resident's Social Security number;

(9) When the resident was:

(a) Admitted to the home;

(b) Absent from the home; and

(c) Discharged from the home.

(10) A current inventory of the resident's personal belongings dated and signed by:

(a) The resident; and

(b) The adult family home.

(11) Financial records.

NEW SECTION

WAC 388-76-XXXX.

Resident roster and aggregated contact information

(1) The adult family home must:

(a) Create and regularly maintain a current resident roster containing the name and room number of each resident; and

(b) Immediately provide a written copy of the resident roster upon an in-person request from any long-term care ombuds.

(2) The adult family home must:

(a) Create and regularly maintain current, accurate, and aggregated contact information for all residents, including the following resident information:

(i) Name;

(ii) Room number;

(iii) Phone number, if available

(iv) Email address, if available; and

(iv) If a resident has a representative, the representative's:

(A) Name;

(B) Relationship to the resident;

(C) Phone number;

(D) Email address, if available; and

(E) Mailing address, if available.

(b) Record and update the aggregated contact information required by this section upon receipt of new or updated contact information from the resident or resident representative; and

(c) Upon the written request of any long-term care ombuds that includes reference to RCW 70.128.155 and the relevant legal functions and duties of long-term care ombuds, provide a copy of the aggregated contact information required by RCW 70.128.155 within 48 hours, or within a reasonable time if agreed to by the requesting long-term care ombuds, by electronic copy to the secure email address or facsimile number provided in the written request.

WAC 388-76-10980

Remedies—Specific—Stop placement—Admissions prohibited.

(1) The department may order stop placement and prohibit the admission of residents if the home does not meet the requirements of chapters **70.128**, 70.129, **74.32** RCW or this chapter.

(2) Once imposed, the adult family home must not admit any person until the stop placement order is terminated.

(3) The adult family home must:

(a) Publicly post any department issued notice of a stop placement order or limited stop placement order in a conspicuous place at the adult family home; and

(b) Leave the notice in place until the department has terminated the stop placement order or limited stop placement order.

~~(34)~~ If the home requests, the department may approve readmission of a resident to the home from a hospital or nursing home during the stop placement.

~~(45)~~ The department must end the stop placement only after the department finds the:

(a) Deficiencies necessitating the stop placement have been corrected; and

(b) Home can show it has the capacity to maintain adequate care and service.

Chapter 388-78A WAC

ASSISTED LIVING FACILITY LICENSING RULES

WAC 388-78A-2020

Definitions.

"Abandonment" means action or inaction by a person with a duty of care for a vulnerable adult that leaves the vulnerable person 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 on 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 personal exploitation of a vulnerable adult, and improper use of restraint against a vulnerable adult, which have the following meanings:

(1) **"Sexual abuse"** means any form of nonconsensual sexual conduct, including, but not limited to, unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse also includes any sexual conduct between a staff person, who is not also a resident or a client, of a facility or a staff person of a program authorized under chapter [71A.12](#) RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter [71A.12](#) RCW, whether or not it is consensual.

(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, or prodding.

(3) **"Mental abuse"** means a willful verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. Mental abuse may include ridiculing, yelling, or swearing.

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

(5) "**Improper use of restraint**" means the inappropriate use of chemical, physical, or mechanical restraints for convenience or discipline or in a manner that:

(a) Is inconsistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter [71A.12](#) RCW;

(b) Is not medically authorized; or

(c) Otherwise constitutes abuse under the section.

"**Activities of daily living**" means the following tasks related to basic personal care: Bathing; toileting; dressing; personal hygiene; mobility; transferring; and eating.

"**Administrator**" means an assisted living facility administrator who must be in active administrative charge of the assisted living facility as required in this chapter. Unless exempt under RCW [18.88B.041](#), the administrator must complete long-term care training and home care aide certification.

"**Adult day services**" means care and services provided to a nonresident individual by the assisted living facility on the assisted living facility premises, for a period of time not to exceed ten continuous hours, and does not involve an overnight stay.

"**Ambulatory**" means capable of walking or traversing a normal path to safety without the physical assistance of another individual:

(1) "**Nonambulatory**" means unable to walk or traverse a normal path to safety without the physical assistance of another individual;

(2) "**Semiambulatory**" means physically and mentally capable of traversing a normal path to safety with the use of mobility aids, but unable to ascend or descend stairs without the physical assistance of another individual.

"**Applicant**" means a person, as defined in this section, that has submitted, or is in the process of submitting, an application for an assisted living facility license.

"**Assisted living facility**" means any home or other institution, however named, that is advertised, announced, or maintained for the express or implied purpose of providing housing, basic services, and assuming general responsibility for the safety and well-being of the residents, and may also provide domiciliary care, consistent with this chapter to seven or more residents after July 1, 2000. However, an assisted living facility that is licensed for three to six residents prior to or on July 1, 2000, may maintain its assisted living facility license as long as it is continually licensed as an assisted living facility. "Assisted living facility" may also

include persons associated with the assisted living facility to carry out its duties under this chapter. "Assisted living facility" does not include facilities certified as group training homes under RCW [71A.22.040](#), nor any home, institution, or section that is otherwise licensed and regulated under state law that provides specifically for the licensing and regulation of that home, institution, or section. "Assisted living facility" also does not include independent senior housing, independent living units in continuing care retirement communities, or other similar living situations including those subsidized by the U.S. Department of Housing and Urban Development.

"Basic services" means housekeeping services, meals, nutritious snacks, laundry, and activities.

"Bathing fixture" means a bathtub, shower or sit-down shower.

"Bathroom" means a room containing at least one bathing fixture.

"Building code" means the building codes and standards adopted by the Washington state building code council.

"Caregiver" means anyone providing direct personal care to another person including, but not limited to: Cuing, reminding, or supervision of residents, on behalf of an assisted living facility, except volunteers who are directly supervised.

"Construction review services" means the office of construction review services within the Washington state department of health.

"Continuing care contract" means, as stated in RCW [70.38.025](#), a contract providing a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related, or personal care services, which is conditioned upon the transfer of property, the payment of an entrance fee to the provider of such services, or the payment of periodic charges for the care and services involved. A continuing care contract is not excluded from this definition because the contract is mutually terminable or because shelter and services are not provided at the same location.

"Continuing care retirement community" means, as stated in RCW [70.38.025](#), an entity which provides shelter and services under continuing care contracts with its members and which sponsors or includes a health care facility or a health service.

"Contractor" means an agency or person who contracts with a licensee to provide resident care, services, or equipment.

"Crimes relating to financial exploitation" means the same as "crimes relating to financial exploitation" as defined in RCW [43.43.830](#) or [43.43.842](#).

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

"Dietitian" means an individual certified under chapter [18.138](#) RCW.

"Direct supervision" means oversight by a person on behalf of the assisted living facility who has met training requirements, demonstrated competency in core areas, or has been fully exempted from the training requirements, is on the premises, and is quickly and easily available to the caregiver.

"Document" means to record, with signature, title, date, and time:

(1) Information about medication administration, medication assistance or disposal, a nursing care procedure, accident, occurrence or change in resident condition that may affect the care or needs of a resident; and

(2) Processes, events, or activities that are required by law, rule, or policy.

"Domiciliary care" means:

(1) Assistance with activities of daily living provided by the assisted living facility either directly or indirectly;

(2) Health support services, if provided directly or indirectly by the assisted living facility; or

(3) Intermittent nursing services, if provided directly or indirectly by the assisted living facility.

"Enforcement remedy" means one or more of the department's responses to an assisted living facility's noncompliance with chapter [18.20](#) RCW and this chapter, as authorized by RCW [18.20.190](#).

"Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW [74.34.020](#)(6).

"Food service worker" means according to chapter [246-217](#) WAC, an individual who works (or intends to work) with or without pay in a food service establishment and handles unwrapped or unpackaged food or who may contribute to the transmission of infectious diseases through the nature of the individual's contact with food products or equipment and facilities. This does not include persons who simply assist residents with meals.

"General responsibility for the safety and well-being of the resident" means the provision of any one or more of the following:

(1) Prescribed general low sodium diets;

(2) Prescribed general diabetic diets;

(3) Prescribed mechanical soft foods;

(4) Emergency assistance;

(5) Monitoring of the resident;

(6) Arranging health care appointments with outside health care providers and reminding residents of such appointments as necessary;

(7) Coordinating health care services with outside health care providers consistent with WAC [388-78A-2350](#);

(8) Assisting the resident to obtain and maintain glasses, hearing aids, dentures, canes, crutches, walkers, wheelchairs, and assistive communication devices;

(9) Observation of the resident for changes in overall functioning;

(10) Blood pressure checks as scheduled;

(11) Responding appropriately when there are observable or reported changes in the resident's physical, mental, or emotional functioning;

(12) Medication assistance as permitted under RCW [69.41.085](#) and as described in RCW [69.41.010](#) and chapter [246-888](#) WAC.

"Harm" means a physical or mental or emotional injury or damage to a resident including those resulting from neglect or violations of a resident's rights.

"Health support services" means any of the following optional services:

(1) Blood glucose testing;

(2) Puree diets;

(3) Calorie controlled diabetic diets;

(4) Dementia care;

(5) Mental health care;

(6) Developmental disabilities care.

"Independent living unit" means:

(1) Independent senior housing;

(2) Independent living unit in a continuing care retirement community or other similar living environments;

(3) Assisted living facility unit where domiciliary services are not provided; or

(4) Assisted living facility unit where one or more items listed under "general responsibilities" are not provided.

"Independent senior housing" means an independent living unit occupied by an individual or individuals sixty or more years of age.

"Infectious" means capable of causing infection or disease by entrance of organisms into the body, which grow and multiply there, including, but not limited to, bacteria, viruses, protozoans, and fungi.

"Licensee" means a person, as defined in this section, to whom the department issues an assisted living facility license.

"Licensed resident bed capacity" means the resident occupancy level requested by a licensee and approved by the department. All residents receiving domiciliary care or the items or services listed under general responsibility for the safety and well-being of the resident as defined in this section count towards the

licensed resident bed capacity. Adult day services clients do not count towards the licensed resident bed capacity.

"Long-term care worker" or **"caregiver"** means the same as "long-term care workers" is defined in RCW [74.39A.009](#).

"Majority owner" means any person that owns:

- (1) More than fifty percent interest;
- (2) If no one person owns more than fifty percent interest, the largest interest portion; or
- (3) If more than one person owns equal largest interest portions, then all persons owning those equal largest interest portions.

"Manager" means a person, as defined in this section, that provides management services on behalf of a licensee.

"Management agreement" means a written, executed agreement between a licensee and manager regarding the provision of certain services on behalf of the licensee.

"Mandated reporter:"

(1) Is an employee of the department, law enforcement officer, social worker, professional school personnel, individual provider, employee of a facility, operator of a facility, employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency, county coroner or medical examiner, Christian Science practitioner, or health care provider subject to chapter [18.130](#) RCW; and

(2) For the purpose of the definition of mandated reporter, "facility" means a residence licensed or required to be licensed under chapter [18.20](#) RCW (assisted living facility), chapter [18.51](#) RCW (nursing homes), chapter [70.128](#) RCW (adult family homes), chapter [72.36](#) RCW (soldiers' homes), chapter [71A.20](#) RCW (residential habilitation centers), or any other facility licensed by the department.

"Maximum facility capacity" means the maximum number of individuals that the assisted living facility may serve at any one time, as determined by the department.

(1) The maximum facility capacity includes all residents, respite care residents, and adult day services clients.

(2) The maximum facility capacity is equal to the lesser of:

(a) The sum of the number of approved bed spaces for all resident rooms (total number of approved bed spaces), except as specified in subsection (3) of this section;

(b) Twice the seating capacity of the dining area(s) consistent with WAC [388-78A-2300](#) (1)(h);

(c) The number of residents permitted by calculating the ratios of toilets, sinks, and bathing fixtures to residents consistent with WAC [388-78A-3030](#);

(d) For assisted living facilities licensed on or before December 31, 1988, the total day room area in square feet divided by ten square feet, consistent with WAC [388-78A-3050](#); or

(e) For assisted living facilities licensed after December 31, 1988, the total day room area in square feet divided by twenty square feet, consistent with WAC [388-78A-3050](#).

(3) For the purposes of providing adult day services consistent with WAC [388-78A-2360](#), one additional adult day services client may be served, beyond the total number of approved bed spaces, for each additional sixty square feet of day room area greater than the area produced by multiplying the total number of approved bed spaces by twenty square feet, provided that:

(a) There is at least one toilet and one hand washing sink accessible to adult day services clients for every eight adult day services clients or fraction thereof;

(b) The total number of residents and adult day services clients does not exceed twice the seating capacity of the dining area(s) consistent with WAC [388-78A-2300](#) (1)(h); and

(c) The adult day services program area(s) and building do not exceed the occupancy load as determined by the local building official or state fire marshal.

"Medication administration" means the direct application of a prescribed medication whether by injection, inhalation, ingestion, or other means, to the resident's body by an individual legally authorized to do so.

"Medication assistance" means assistance with self-administration of medication rendered by a nonpractitioner to a resident of an assisted living facility in accordance with chapter [246-888](#) WAC.

"Medication organizer" means a container with separate compartments for storing oral medications organized in daily doses.

"Medication service" means any service provided either directly or indirectly by an assisted living facility related to medication administration, medication administration provided through nurse delegation, medication assistance, or resident self-administration of medication.

"Neglect" means:

(1) A pattern of conduct or inaction resulting in the failure to provide the goods and services that maintain physical or mental health of a resident, or that fails to avoid or prevent physical or mental harm or pain to a resident; or

(2) An act or omission by a person or entity with a duty of care that demonstrates a serious disregard of consequences of such a magnitude as to

constitute a clear and present danger to the resident's health, welfare, or safety, including but not limited to conduct prohibited under RCW [9A.42.100](#).

"Nonresident individual" means an individual who resides in independent senior housing, independent living units in continuing care retirement communities, other similar living environment, or an unlicensed room located within an assisted living facility. A nonresident individual must not receive from the assisted living facility:

- (1) Domiciliary care directly or indirectly; or
- (2) Items or services listed in the definition of "general responsibility for the safety and well-being of the resident," except as allowed under WAC [388-78A-2032](#) or when the person is receiving adult day services.

"Nonpractitioner" means any individual who is not a practitioner as defined in WAC 388-78A-2020 and chapter [69.41](#) RCW.

"Nurse" means an individual currently licensed under chapter [18.79](#) RCW as either a:

- (1) **Licensed practical nurse** (LPN); or
- (2) **Registered nurse** (RN).

"Over-the-counter (OTC) medication" means any medication that may be legally purchased without a prescriptive order, including, but not limited to, aspirin, antacids, vitamins, minerals, or herbal preparations.

"Person" means any individual, firm, partnership, corporation, company, association, joint stock association or any other legal or commercial entity.

"Physician" means an individual licensed under chapter [18.57](#) or [18.71](#) RCW.

"Practitioner" includes a licensed physician, osteopathic physician, podiatric physician, pharmacist, licensed practical nurse, registered nurse, advanced registered nurse practitioner, dentist, and physician assistant. Refer to chapter [69.41](#) RCW for a complete listing of practitioners.

"Prescribed medication" means any medication (legend drug, controlled substance, and over-the-counter) that is prescribed by an authorized practitioner.

"Prescriber" means a health care practitioner authorized by Washington state law to prescribe drugs.

"Problem" means a violation of any WAC or RCW applicable to the operation of an assisted living facility:

- (1) **"Recurring problem"** means, for all purposes other than those described in RCW [18.20.400](#), that the department has cited the assisted living facility for a violation of WAC or RCW and the circumstances of either (a) or (b) of this subsection are present. If the previous violation in (a) or (b) of this subsection was pursuant to WAC or RCW that has changed at the time of the new violation, citation to the equivalent current WAC or RCW section is sufficient. When there is a change in

licensees between the first and the second or third citations, the new licensee must accept, and the department will consider, the prior licensee's compliance and enforcement record as part of the new licensee's compliance record at that assisted living facility if any person affiliated with the new licensee was affiliated with the prior licensee at the same assisted living facility. A person is considered affiliated with the licensee if the person is an applicant for the assisted living facility license, or is listed on the license application as a partner, officer, director, or majority owner of the applicant.

(a) The department previously imposed an enforcement remedy for a violation of the same section of WAC or RCW for substantially the same problem following any type of inspection within the preceding thirty-six months.

(b) The department previously cited a violation under the same section of WAC or RCW for substantially the same problem following any type of inspection on two occasions within the preceding thirty-six months.

(2) **"Serious problem"** means that there has been a violation of a WAC or RCW and:

(a) The resident was significantly harmed; or

(b) It is likely that the resident will be significantly harmed or die.

(3) **"Uncorrected problem"** means the department has cited a violation of WAC or RCW following any type of inspection and the violation remains uncorrected at the time the department makes a subsequent inspection for the specific purpose of verifying whether such violation has been corrected. When there is a change in licensee, the new licensee is responsible for correcting any remaining violations that may exist, including complying with any plan of correction in effect immediately prior to the change in licensee.

"Prospective resident" means an individual who seeks admission to a licensed assisted living facility and has completed and signed an application for admission, or the individual's legal representative or designated representative, if any, completed and signed the application on their behalf.

"Reasonable accommodation" or **"reasonably accommodate"** have the meaning given in federal and state antidiscrimination laws and regulations which include, but are not limited to, the following:

(1) Reasonable accommodation means that the assisted living facility must:

(a) Not impose admission criteria that excludes individuals unless the criteria is necessary for the provision of assisted living facility 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 assisted living facility; or

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

"RCW" means Revised Code of Washington.

"Records" means:

(1) **"Active records"** means the current, relevant documentation regarding residents necessary to provide care and services to residents; or

(2) **"Inactive records"** means historical documentation regarding the provision of care and services to residents that is no longer relevant to the current delivery of services and has been thinned from the active record.

"Resident" means an individual who:

(1) Chooses to reside in an assisted living facility, including an individual receiving respite care;

(2) Is not related by blood or marriage to the operator of the assisted living facility;

(3) Receives basic services; and

(4) Receives one or more of the services listed in the definition of "general responsibility for the safety and well-being of the resident," and may receive domiciliary care or respite care provided directly, or indirectly, by the assisted living facility. Whereas, a nonresident individual may receive services that are permitted under WAC [388-78A-2032](#).

"Resident's representative" means ~~one of the following:~~

~~(1) The legal representative who is the person or persons identified in RCW [7.70.065](#) and who may act on behalf of the resident pursuant to the scope of their legal authority. The legal representative must not be affiliated with the licensee, assisted living facility, or management company, unless the affiliated person is a family member of the resident.~~

~~(2) If there is no legal representative, a person designated voluntarily by a competent resident in writing, to act in the resident's behalf concerning the care and services provided by the assisted living facility and to receive information from the assisted living facility if there is no legal representative. The resident's representative must not be affiliated with the licensee, assisted living facility, or management company, unless the affiliated person is a family member of the resident. The resident's representative under this subsection must not have authority to act on behalf of the resident once the resident is no longer competent.~~

~~The resident's competence must be determined using the criteria in~~

~~RCW [11.88.010](#) (1)(e). (a) A court-appointed guardian or conservator of a resident, if any;~~

~~(b) An individual otherwise authorized by state or federal law including, but not limited to, agents under power of attorney, representative payees, and other fiduciaries, to act on behalf of the resident in order to support the resident in decision making; access medical, social, or other personal information of the resident; manage financial matters; or receive notifications; or~~

~~(c) If there is no individual who meets the criteria under (1)(a) or (b) of this subsection, an individual chosen by the resident to act on behalf of the resident in order to support the resident in decision making; access medical, social, or other personal information of the resident; manage financial matters; or receive notifications.~~

~~(2) The term "resident representative" does not include any individual described in (1) of this subsection who is affiliated with the assisted living facility where the resident resides, or its licensee or management company, unless the affiliated individual is a family member of the resident.~~

"Respite care" means short-term care for any period in excess of twenty-four continuous hours for a resident to temporarily relieve the family or other caregiver of providing that care.

"Restraint" means any method or device used to prevent or limit free body movement, including, but not limited to:

(1) Confinement, unless agreed to as provided in WAC [388-78A-2370](#);

(2) **"Chemical restraint"** means the administration of any drug to manage a vulnerable adult's behavior in a way that reduces the safety risk to the vulnerable adult or others, has the temporary effect of restricting the vulnerable adult's freedom of movement, and is not standard treatment for the vulnerable adult's medical or psychiatric condition.

(3) **"Mechanical restraint"** means any device attached or adjacent to the vulnerable adult's body that they cannot easily remove and restricts freedom of movement or normal access to the vulnerable adult's body. "Mechanical restraint" does not include the use of devices, materials, or equipment that are:

(a) Medically authorized, as required, and;

(b) Used in a manner that is consistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter [71A.12](#) RCW.

(4) **"Physical restraint"** means the application of physical force without the use of any device, for the purpose of restraining the free movement of a vulnerable adult's body. "Physical restraint" does not include:

(a) Briefly holding without undue force a vulnerable adult in order to calm or comfort the vulnerable adult; or

(b) Holding a vulnerable adult's hand to safely escort the vulnerable adult from one area to another.

"Room" means a space set apart by floor to ceiling partitions on all sides with all openings provided with doors or windows.

(1) **"Sleeping room"** means a room where a resident is customarily expected to sleep and contains a resident's bed.

(2) **"Resident living room"** means the common space in a resident unit that is not a sleeping room, bathroom, or closet.

"Significant change" means a change in the resident's physical, mental, or psychosocial status that causes either life-threatening conditions or clinical complications.

"Special needs" means a developmental disability, mental illness, or dementia.

"Staff person" means any assisted living facility employee, temporary employee, or contractor, whether employed or retained by the licensee or any management company or volunteer.

"State fire marshal" means the director of fire protection under the direction of the chief of the Washington state patrol.

"Toilet" means a disposal apparatus used for urination and defecation fitted with a seat and flushing device.

"Volunteer" means an individual who interacts with residents without reimbursement.

"Vulnerable adult" includes a person:

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

(2) Found incapacitated under chapter [11.88](#) RCW;

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

(4) Admitted to any facility, including any assisted living facility;

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

(6) Receiving services from an individual provider; or

(7) For the purposes of requesting and receiving background checks pursuant to RCW [43.43.832](#), includes a person who is an adult of any age who lacks the functional, mental, or physical ability to care for themselves.

"WAC" means Washington Administrative Code.

"Wellness program" means an educational program provided by the assisted living facility. It is a proactive and preventative approach to assist residents

and nonresident individuals in achieving optimal levels of health, social, and emotional functioning. A wellness program does not include medical care or interventions.

"Willful" means the deliberate, or nonaccidental action or inaction by an alleged perpetrator that the alleged perpetrator knows or reasonably should have known could cause a negative outcome, including harm, injury, pain, or anguish.

"WISHA" means the Washington Industrial Safety and Health Act, chapter [49.17](#) RCW administered by the Washington state department of labor and industries.

WAC 388-78A-2410

Content of resident records.

The assisted living facility must organize and maintain resident records in a format that the assisted living facility determines to be useful and functional to enable the effective provision of care and services to each resident. Active resident records must include the following:

- (1) Resident identifying information, including resident's:
 - (a) Name;
 - (b) Birth date;
 - (c) Move-in date; ~~and~~
 - (d) Sleeping room ~~identification;~~
 - (e) Phone number, if available, and Email address, if available.
- (2) Current name, address, and telephone number of:
 - (a) Resident's primary health care provider;
 - (b) If a resident has a representative, the Rresident's representative's:
 - (i) Name;
 - (ii) Relationship to the resident;
 - (iii) Phone number;
 - (iv) Email address, if available; and
 - (v) Mailing address, if available;
 - (c) Individual(s) to contact in case of emergency, illness or death; and
 - (d) Family members or others, if any, the resident requests to be involved in the development or delivery of services for the resident.
- (3) Resident's written acknowledgment of receipt of:
 - (a) Required disclosure information prior to moving into the assisted living facility; and

(b) Information required by long-term care resident rights per RCW [70.129.030](#).

(4) The resident's assessment and reassessment information.

(5) Clinical information such as admission weight, height, blood pressure, temperature, blood sugar and other laboratory tests required by the negotiated service agreement.

(6) The resident's negotiated service agreement consistent with WAC [388-78A-2140](#).

(7) Any orders for medications, treatments, and modified or therapeutic diets, including any directions for addressing a resident's refusal of medications, treatments, and prescribed diets.

(8) Medical and nursing services provided by the assisted living facility for a resident, including:

(a) A record of providing medication assistance and medication administration, which contains:

(i) The medication name, dose, and route of administration;

(ii) The time and date of any medication assistance or administration;

(iii) The signature or initials of the person providing any medication assistance or administration; and

(iv) Documentation of a resident choosing to not take ~~his or her~~their medications.

(b) A record of any nursing treatments, including the signature or initials of the person providing them.

(9) Documentation consistent with WAC [388-78A-2120](#) Monitoring resident well-being.

(10) Staff interventions or responses to subsection (9) of this section, including any modifications made to the resident's negotiated service agreement.

(11) Notices of and reasons for relocation as specified in RCW [70.129.110](#).

(12) The individuals who were notified of a significant change in the resident's condition and the time and date of the notification.

(13) When available, a copy of any legal documents in which:

(a) The resident has appointed another individual to make ~~his or her~~their health care, financial, or other decisions;

(b) The resident has created an advance directive or other legal document that establishes a surrogate decision maker in the future and/or provides directions to health care providers; and

(c) A court has established guardianship on behalf of the resident.

WAC 388-78A-2440

Resident register, resident roster, and aggregated contact information.

(1) The assisted living facility must maintain in the assisted living facility a single current register of all assisted living facility residents, their roommates, and identification of the rooms in which such persons reside or sleep.

(2) The assisted living facility must maintain a readily available permanent, current book, computer file, or register with entries in ink or typewritten, of all individuals who resided in the assisted living facility within the past five years, including:

- (a) Move-in date;
- (b) Full name;
- (c) Date of birth;
- (d) Date of moving out;
- (e) Reason for moving out; and
- (f) Location and address to which the resident was discharged.

(3) The assisted living facility must make this register immediately available to:

- (a) Authorized department staff;
- (b) Representatives of the long-term care ombud's office; and
- (c) Representatives of the Washington state fire marshal when conducting fire safety inspections.

(4) The assisted living facility must:

- (a) Create and regularly maintain a current resident roster of all residents in the assisted living facility. The roster must include the resident name and room number; and
- (b) Immediately provide a written copy of the roster upon an in-person request from any long-term care ombuds.

(5) The assisted living facility must:

(a) Create and regularly maintain current, accurate, and aggregated contact information for all residents, including the following information:

- (i) Resident name;
- (ii) Resident room number;
- (iii) Resident phone number, if available;
- (iv) Email address, if available; and
- (iv) If the resident has a representative, the resident representative:
 - (F) Name;
 - (G) Relationship to the resident;
 - (H) Phone number;

(l) Email address, if available; and

(j) Mailing address, if available.

(b) Record and update the aggregated contact information required by this section, upon receipt of new or updated contact information from the resident or resident representative; and

(c) Upon the written request of any long-term care ombuds that includes reference to 18.20.095 RCW and the relevant legal functions and duties of long-term care ombuds, provide a copy of the aggregated contact information required by this section within 48 hours, or within a reasonable time if agreed to by the requesting long-term care ombuds by electronic copy to the secure email address or facsimile number provided in the written request.

WAC 388-78A-3200

Progression of enforcement remedies.

(1) When the department cites an assisted living facility for an initial problem that does not represent a recurring problem, serious problem or uncorrected problem, and that results in minimal or moderate harm that is limited in scope, the department may:

- (a) Require a plan of correction from the assisted living facility;
- (b) Impose conditions on the assisted living facility license; and/or
- (c) Impose a civil penalty.

(2) The department may take any of the actions specified in subsection (1) of this section and/or impose a stop-placement or limited stop-placement on an assisted living facility when:

- (a) There is a reasonable probability, at the time the stop-placement or limited stop-placement is imposed, at least a moderate degree of harm will occur or recur as a result of a single problem or by a combination of problems; and
- (b) The threatening problem is more than an isolated event or occurrence.

(3) The assisted living facility must:

(a) Publicly post any department issued notice of a stop placement order or limited stop placement order in a conspicuous place at the assisted living facility; and

(b) Leave the posted notice in place until the department has terminated the stop placement order or limited stop placement order.

~~(3)~~ (4) The department may take any of the actions specified in subsections (1) and (2) of this section and/or summarily suspend an assisted living facility's license when:

(a) There is an imminent threat that a serious degree of harm may occur to residents as a result of a single problem or a combination of problems; and

(b) The threatening problem is more than an isolated event or occurrence.

(45) The department may take any of the actions specified in subsections (1), (2) and (34) of this section and/or revoke an assisted living facility's license when:

(a) The department has cause to summarily suspend the assisted living facility's license;

(b) There is a current problem with the assisted living facility and the assisted living facility has a history of having enforcement remedies imposed by the department;

(c) There is a current problem with the assisted living facility and the assisted living facility has a history of noncompliance representing problems that were at least moderate in nature and moderate in scope;

(d) The assisted living facility has moved all residents out of the assisted living facility without the department's approval and is no longer operating as an assisted living facility; or

(e) There is a serious current problem, which may not warrant a summary suspension, with the assisted living facility that does not have a history of noncompliance. Examples of the types of serious current problems that may warrant license revocation include, but are not limited to:

(i) The licensee has been found or convicted by a court of competent jurisdiction to have engaged in fraudulent activity; or

(ii) The licensee is experiencing significant financial problems resulting in poor care or jeopardizing the care and services that can be provided to residents, and possible business failure; or

(f) The assisted living facility fails to cooperate with the department during any inspection or complaint investigation.

Chapter 388-107 WAC

LICENSING REQUIREMENTS FOR ENHANCED SERVICES FACILITIES

WAC 388-107-0001

Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

"Abandonment" means action or inaction by a person with a duty of care for a vulnerable adult that leaves the vulnerable person 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 on a resident. In instances of abuse of a resident 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 is also defined in RCW [74.34.020](#). Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a resident, 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 the use of chemical restraints or physical restraints except as described in section [388-107-0420](#);

(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 contact may include interactions that do not involve touching, including but not limited to sending a resident sexually explicit messages, or cuing or encouraging a resident to perform sexual acts. 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.

"Activities of daily living" means the following tasks related to basic personal care: Bathing; toileting; dressing; personal hygiene; mobility; transferring; and eating.

"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.

"Administrator" means an enhanced services facility administrator who must be in active administrative charge of the enhanced services facility as required in this chapter. Unless exempt under RCW [18.88B.041](#), the administrator must complete long-term care worker training and home care aide certification.

"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.

"Aggressive behavior" means actions by the individual that constitute a threat to the individual's health and safety or the health and safety of others in the environment.

"Antipsychotic medications" means that class of medications primarily used to treat serious manifestations of mental illness associated with thought disorders, which includes but is not limited to atypical antipsychotic medications.

"Applicant" means the individual or entity, as defined in this section that has submitted, or is in the process of submitting, an application for an enhanced services facility license.

"Capacity" means the maximum amount an enhanced services facility can serve is sixteen residents.

"Caregiver" means the same as "long-term care worker" as defined in RCW [74.39A.009](#), as follows: "Long-term care workers" include all persons who provide paid, hands-on personal care services for the elderly or persons with disabilities, including but not limited to individual providers of home care services, direct care workers employed by home care agencies, providers of home care agencies to persons with developmental disabilities under Title [71A](#) RCW, all direct care workers in state-licensed enhanced services facilities, assisted living facilities, and adult family homes, respite care providers, direct care workers employed by community residential service businesses, and any other direct care worker providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.

"Challenging behavior" means a persistent pattern of behaviors that inhibit the individual's functioning in public places, in the facility and integration within the community, or uncontrolled symptoms of a physical or mental condition. These

behaviors may have been present for long periods of time or have manifested as an acute onset.

"Chemical dependency" means alcoholism, medication addiction, or dependence on alcohol and one or more other psychoactive chemicals, as the context requires and as those terms are defined in chapter [70.96A](#) RCW.

"Chemical dependency professional" means a person certified as a chemical dependency professional by the department of health under chapter [18.205](#) RCW.

"Deficiency" means an enhanced services facility's practice, action, or inaction that violates any or all of the requirements of chapter [70.97](#) RCW or this chapter.

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

"Direct supervision" means oversight by a person on behalf of the enhanced services facility who has met training requirements, demonstrated competency in core areas, or has been fully exempted from the training requirements, is on the premises, and is quickly and easily available to the caregiver.

"Enhanced services facility" or "ESF" means a facility licensed under chapter [70.97](#) RCW that provides treatment and services to persons for whom acute inpatient treatment is not medically necessary and who have been determined by the department to be inappropriate for placement in other licensed facilities due to the complex needs that result in behavioral and security issues. For the purposes of this chapter, an enhanced services facility is not an evaluation and treatment facility certified under chapter [71.05](#) RCW.

"Facility" means an enhanced services facility.

"Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW [74.34.020](#)(6).

"Holding technique" means using the least amount of force necessary to manually hold all or part of a person's body in a way that restricts the person's free movement; also includes any approved controlling maneuvers identified in the person-centered service plan. Examples include holds taught in approved training for deescalation techniques and control of self-harm or aggressive behavior. This definition does not apply to briefly holding, without force, a person in order to calm the person, or holding a person's hand to escort the person safely from one area to another.

"Infectious" means capable of causing infection or disease by entrance of organisms into the body, which grow and multiply there, including, but not limited to, bacteria, viruses, protozoans, and fungi.

"Inspection" means the process by which department staff evaluates the enhanced services facility licensee's compliance with applicable statutes and regulations.

"License suspension" is an action taken by the department to temporarily revoke an enhanced services facility license in accordance with RCW [70.97.120](#) and this chapter.

"Licensee" means the individual or entity, as defined in this chapter, to whom the department issues the enhanced services facility license.

"Licensed physician" means a person licensed to practice medicine or osteopathic medicine and surgery in the state of Washington.

"Likelihood of serious harm" means a substantial risk that:

(1) Physical harm will be inflicted by an individual upon ~~his or her~~their own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself;

(2) Physical harm will be inflicted by an individual upon another, as evidenced by behavior that has caused such harm or that places another person or persons in reasonable fear of sustaining such harm; or

(3) Physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others.

"Long-term care worker" as defined in RCW [74.39A.009](#), has the same meaning as the term "caregiver."

"Management agreement" means a written, executed agreement between the licensee and the manager regarding the provision of certain services on behalf of the licensee.

"Mandated reporter":

(1) Is an employee of the department, law enforcement officer, social worker, professional school personnel, individual provider, an employee of a facility, an operator of a facility, an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency, county coroner or medical examiner, Christian Science practitioner, or health care provider subject to chapter [18.130](#) RCW; and

(2) For the purpose of the definition of mandated reporter, "facility" means a residence licensed or required to be licensed under chapter [18.20](#) RCW, Assisted living facility; chapter [18.51](#) RCW, Nursing homes; chapter [70.128](#) RCW, Adult family homes; chapter [72.36](#) RCW, Soldiers' homes; chapter [71A.20](#) RCW, Residential

habilitation centers; chapter [70.97](#) RCW, Enhanced services facility or any other facility licensed by the department.

"Medically fragile" means a chronic and complex physical condition which results in prolonged dependency on specialized medical care that requires frequent daily skilled nursing interventions. If these medically necessary interventions are interrupted or denied, the resident may experience irreversible damage or death. Examples of specialized medical care and treatment for medically fragile residents include but are not limited to: IV therapies requiring monitoring of vital signs and dose titration dependent on lab values; wound care requiring external vacuum or other mechanical devices for debridement; complicated wound care requiring other specialized or extensive interventions and treatment; ventilator or other respiratory device dependence and monitoring; dependence on licensed staff for complex respiratory support; and peritoneal or hemodialysis (on-site).

"Medication administration" means the direct application of a prescribed medication whether by injection, inhalation, ingestion, or other means, to the body of the resident by an individual legally authorized to do so.

"Medication service" means any service provided either directly or indirectly by an enhanced services facility related to medication administration medication assistance, or resident self-administration of medication.

"Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

"Mental health professional" means a psychiatrist, psychologist, psychiatric nurse, licensed mental health counselor, licensed mental health counselor-associate, licensed marriage and family therapist, licensed marriage and family therapist-associate, licensed independent clinical social worker, licensed independent clinical social worker-associate, licensed advanced social worker, or licensed advanced social worker-associate and such other mental health professionals as may be defined by rules adopted by the secretary under the authority of chapter [71.05](#) RCW.

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

"Neglect" means:

(1) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a resident, or that fails to avoid or prevent physical or mental harm or pain to a resident; or

(2) An act or omission by a person or entity with a duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the resident's health, welfare, or safety, including but not limited to conduct prohibited under RCW [9A.42.100](#).

"Permanent restraining order" means a restraining order or order of protection issued either following a hearing, or by stipulation of the parties. A "permanent" order may be in force for a specific time period (e.g. 5 years), after which it expires.

"Prescriber" means a health care practitioner authorized by Washington state law to prescribe medications.

"Professional person" means a mental health professional and also means a physician, registered nurse, and such others as may be defined in rules adopted by the secretary pursuant to the provisions of this chapter.

"Psychopharmacologic medications" means a class of prescription medications that affect the mind, emotions, and behavior, including but not limited to antipsychotics, antianxiety medication, and antidepressants.

"Reasonable accommodation" and **"reasonably accommodate"** have the meaning given in federal and state antidiscrimination laws and regulations which include, but are not limited to, the following:

(1) Reasonable accommodation means that the enhanced services facility must:

(a) Not impose an admission criterion that excludes individuals unless the criterion is necessary for the provision of enhanced services facility 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 enhanced services facility; or

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

"RCW" means Revised Code of Washington.

"Records" means:

(1) **"Active records"** means the current, relevant documentation regarding residents necessary to provide care and services to residents; or

(2) **"Inactive records"** means historical documentation regarding the provision of care and services to residents that is no longer relevant to the current delivery of services and has been thinned from the active record.

"Registration records" include all the records of the department, regional support networks, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify individuals who are receiving or who at any time have received services for mental illness.

"Resident" means a person admitted to an enhanced services facility.

"Resident's representative" means:

~~(1) The legal representative who is the person or persons identified in RCW 7.70.065 and who may act on behalf of the resident pursuant to the scope of their legal authority. The legal representative shall not be affiliated with the licensee, enhanced services facility, or management company, unless the affiliated person is a family member of the resident; or~~

~~(2) If there is no legal representative, a person designated voluntarily by a competent resident in writing, to act in the resident's behalf concerning the care and services provided by the enhanced services facility and to receive information from the enhanced services facility if there is no legal representative. The resident's representative may not be affiliated with the licensee, enhanced services facility, or management company, unless the affiliated person is a family member of the resident. The resident's representative under this subsection shall not have authority to act on behalf of the resident once the resident is no longer competent. The resident's competence shall be determined using the criteria in~~

~~RCW 11.88.010 (1)(e). (a) A court-appointed guardian or conservator of a resident, if any;~~

~~(b) An individual otherwise authorized by state or federal law including, but not limited to, agents under power of attorney, representative payees, and other fiduciaries, to act on behalf of the resident in order to support the resident in decision making; access medical, social, or other personal information of the resident; manage financial matters; or receive notifications; or~~

~~(c) If there is no individual who meets the criteria under (1)(a) or (b) of this subsection, an individual chosen by the resident to act on behalf of the resident in order to support the resident in decision making; access medical, social, or other personal information of the resident; manage financial matters; or receive notifications.~~

~~(2) The term "resident representative" does not include any individual described in (1) of this subsection who is affiliated with the enhanced services facility where the resident resides, or its licensee or management company, unless the affiliated individual is a family member of the resident.~~

"Secretary" means the secretary of the department or the secretary's designee.

"Significant change" means:

(1) A deterioration in a resident's physical, mental, or psychosocial condition that has caused or is likely to cause clinical complications or life-threatening conditions; or

(2) An improvement in the resident's physical, mental, or psychosocial condition that may make the resident eligible for discharge or for treatment in a less intensive or less secure setting.

"Significant medication error" includes any failure to administer or receive a medication according to an authorized health care provider's order, or according to the manufacturer's directions for nonprescription medications, that results in an error involving the wrong medication, wrong dose, wrong patient, wrong time, wrong rate, wrong preparation, or wrong route of administration.

"Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW [18.320.010](#).

"Staff" or **"staff person"** means any person who:

(1) Is employed or used by an enhanced services facility, directly or by contract, to provide care and services to any resident.

(2) Staff must meet all of the requirements of chapter [388-112A](#) WAC.

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

"Temporary restraining order" means restraining order or order of protection that expired without a hearing, was terminated following an initial hearing, or was terminated by stipulation of the parties in lieu of an initial hearing.

"Treatment" means the broad range of emergency, detoxification, residential, inpatient, and outpatient services and care, including diagnostic evaluation, mental health or chemical dependency education and counseling, medical, physical therapy, restorative nursing, psychiatric, psychological, and social service care, vocational rehabilitation, and career counseling.

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

"Volunteer" means an individual who interacts with residents without reimbursement.

"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 enhanced services facility; 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.

(7) Who self-directs ~~his or her~~[their](#) own care and receives services from a personal aide under chapter [74.39](#) RCW.

(8) For the purposes of requesting and receiving background checks pursuant to RCW [43.43.832](#), it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves.

"WAC" means Washington Administrative Code.

WAC 388-107-0560

Resident records—Clinical records.

(1) The enhanced services facility must:

(a) Maintain clinical records on each resident in accordance with accepted professional standards and practices that are:

(i) Complete;

(ii) Accurately documented;

(iii) Readily accessible; and

(iv) Systematically organized;

(b) Safeguard clinical record information against alteration, loss, destruction, and unauthorized use; and

(c) Keep confidential all information contained in the resident's records, regardless of the form or storage method of the records, except when release is required by:

(i) Transfer to another health care institution;

(ii) Law; or

(iii) The resident.

(2) The enhanced services facility must ensure the clinical record of each resident includes at a minimum of the following:

(a) Resident identification and sociological data including, but not limited to:

(b) Name;

(c) Room number,

(d) Telephone number, if available,

(e) Email address, if available;

(f) including the name Name and address of the individual or individuals the resident designates as significant;

(g) If a resident has a representative, the following representative information:

- (i) Name;
- (ii) Relationship to the resident;
- (iii) Phone number;
- (iv) Email address, if available; and
- (v) Mailing address, if available;

- (bh) Medical information;
- (ei) Physician's orders;
- (dj) Assessments;
- (ek) Person-centered service plans;
- (fl) Services provided;
- (gm) Progress notes;
- (hn) Medications administered;
- (io) Consents, authorizations, releases;
- (jp) Allergic responses;
- (kq) Laboratory, X-ray, and other findings; and
- (lr) Other records as appropriate.

(3) The enhanced services facility must maintain resident records and preserve their confidentiality in accordance with applicable state and federal statutes and rules, including chapters [70.02](#) and [70.96A](#) RCW.

NEW SECTION

WAC 388-107-XXXX, Resident roster and aggregated contact information

- (1) The enhanced services facility must:
 - (a) Create and regularly maintain a current resident roster containing the name and room number of each resident; and
 - (b) Immediately provide a written copy upon an in-person request from any long-term care ombuds.
- (2) The enhanced services facility must:
 - (a) Create and regularly maintain current, accurate, and aggregated contact information for all residents, including the following resident information:
 - (i) Name;
 - (ii) Room number;
 - (iii) Phone number, if available
 - (iv) Email address, if available; and
 - (iv) Representative's:
 - (A) Name;
 - (B) Relationship to the resident;

(C) Phone number;

(D) Email address, if available; and

(E) Mailing address, if available.

(b) Record and update the aggregated contact information required by this section, upon receipt of new or updated contact information from the resident or resident representative; and

(c) Upon the written request of any long-term care ombuds that includes reference to 70.97.205 and the relevant legal functions and duties of long-term care ombuds, provide a copy of the aggregated contact information required by this section within 48 hours, or within a reasonable time if agreed to by the requesting long-term care ombuds, by electronic copy to the secure email address or facsimile number provided in the written request.;

WAC 388-107-1430

Enforcement authority—Penalties and sanctions.

(1) In any case in which the department finds that a licensee of a facility, or any partner, officer, director, owner of five percent or more of the assets of the facility, managing employee, any person who may have unsupervised access to residents or failed or refused to comply with the requirements of this chapter or the rules established under them, the department may take any or all of the following actions:

(a) Suspend, revoke, or refuse to issue or renew a license;

(b) Order stop placement; or

(c) Assess civil monetary penalties.

(2) The department may suspend, revoke, or refuse to renew a license, assess civil monetary penalties, or both, in any case in which it finds that the licensee of a facility, or any partner, officer, director, owner of five percent or more of the assets of the facility, or managing employee:

(a) Operated a facility without a license or under a revoked or suspended license;

(b) Knowingly or with reason to know made a false statement of a material fact in the license application or any data attached thereto, or in any matter under investigation by the department;

(c) Refused to allow representatives or agents of the department to inspect all books, records, and files required to be maintained or any portion of the premises of the facility;

(d) Willfully prevented, interfered with, or attempted to impede in any way the work of any duly authorized representative of the department and the lawful enforcement of any provision of this chapter;

(e) Willfully prevented or interfered with any representative of the department in the preservation of evidence of any violation of any of the provisions of this chapter or of the rules adopted under it; or

(f) Failed to pay any civil monetary penalty assessed by the department under this chapter within ten days after the assessment becomes final.

(3)(a) Civil penalties collected under this chapter must be deposited into a special fund administered by the department.

(b) Civil monetary penalties, if imposed, may be assessed and collected, with interest, for each day the facility is or was out of compliance. Civil monetary penalties must not exceed three thousand dollars per day. Each day upon which the same or a substantially similar action occurs is a separate violation subject to the assessment of a separate penalty.

(4) The department may use the civil penalty monetary fund for the protection of the health or property of residents of facilities found to be deficient including:

(a) Payment for the cost of relocation of residents to other facilities;

(b) Payment to maintain operation of a facility pending correction of deficiencies or closure; and

(c) Reimbursement of a resident for personal funds or property loss.

(5)(a) The department may issue a stop placement order on a facility, effective upon oral or written notice, when the department determines:

(i) The facility no longer substantially meets the requirements of this chapter; and

(ii) The deficiency or deficiencies in the facility:

(A) Jeopardizes the health and safety of the residents; or

(B) Seriously limits the facility's capacity to provide adequate care.

(b) When the department has ordered a stop placement, the department may approve a readmission to the facility from a hospital, residential treatment facility, or crisis intervention facility when the department determines the readmission would be in the best interest of the individual seeking readmission.

(6) The enhanced services facility must:

(a) Publicly post any department issued notice of a stop placement order or limited stop placement order in a conspicuous place at the facility; and

(b) Leave the notice in place until the department has terminated the stop placement order or limited stop placement order.

(67) If the department determines that an emergency exists and resident health and safety is immediately jeopardized as a result of a facility's failure or refusal to comply with this chapter, the department may summarily suspend the facility's license and order the immediate closure of the facility, or the immediate transfer of residents, or both.

(78) If the department determines that the health or safety of the residents is immediately jeopardized as a result of a facility's failure or refusal to comply with requirements of this chapter, the department may appoint temporary management to:

- (a) Oversee the operation of the facility; and
- (b) Ensure the health and safety of the facility's residents while:
 - (i) Orderly closure of the facility occurs; or
 - (ii) The deficiencies necessitating temporary management are corrected.

Chapter 388-97 WAC

NURSING HOMES

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, personal exploitation of a vulnerable adult, and improper use of restraint against a vulnerable adult which have the following meanings:

(1) **"Mental abuse"** means a willful verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. Mental abuse may include ridiculing, 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, or prodding.

(3) "**Sexual abuse**" means any form of nonconsensual sexual conduct, including, but not limited to, unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual conduct may include interactions that do not involve touching, including but not limited to sending a resident sexually explicit messages, or cuing or encouraging a resident to perform sexual acts. Sexual abuse includes any sexual conduct between a staff person and a resident, whether or not it is consensual.

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

(5) "**Improper use of restraint**" means the inappropriate use of chemical, physical, or mechanical restraints for convenience or discipline or in a manner that:

(a) Is inconsistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter [71A.12](#) RCW;

(b) Is not medically authorized; or

(c) Otherwise constitutes abuse under this section.

"**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 the administration of any drug to manage a vulnerable adult's behavior in a way that reduces the safety risk to the vulnerable adult or others, has the temporary effect of restricting the vulnerable adult's freedom of movement, and is not standard treatment for the vulnerable adult's medical or psychiatric condition.

"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.

"Consent" means express written consent granted after the vulnerable adult or [his or her](#) legal representative has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

"Commuting distance radius" means the one-way travel time between any two points traveling on the generally fastest route without any impediments such as traffic, road work, or road closure.

"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.

"Direct care staff" means the staffing domain identified and defined in the Centers for Medicare and Medicaid Service's five-star quality rating system and as reported through the Centers for Medicare and Medicaid Service's payroll-based journal.

"Directly supervising" means that the individual responsible for providing oversight to staff is on the premises and quickly and easily available to provide necessary assessments and other direct care of residents.

"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.

"Essential community provider" means a nursing home, which is the only nursing home within a commuting distance radius of at least forty minutes duration, traveling by automobile.

"Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person or entity's profit or advantage other than the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW [74.34.020](#)(7).

"Geriatric behavioral health worker" means a person with a bachelor's or master's degree in social work, who has received specialized training devoted to mental illness and treatment of older adults.

"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 individuals with intellectual disabilities (ICF/IID)" means an institution certified under chapter 42 C.F.R., Part 483, Subpart I, and licensed under chapter [18.51](#) RCW.

"Large nonessential community providers" means nonessential community providers that have more than sixty licensed nursing home beds, even if some of those beds are not set up or are not in use.

"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 practical nursing 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 assisted living facilities, 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.

"Mechanical restraint" means any device attached or adjacent to the vulnerable adult's body that he or she cannot easily remove that restricts freedom of movement or normal access to ~~his or her~~their body. "Mechanical restraint" does not include the use of devices, materials, or equipment that are:

- (1) Medically authorized, as required; and

(2) Used in a manner that is consistent with federal or state licensing or certification requirements for facilities.

"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) In a nursing home licensed under chapter [18.51](#) RCW, neglect means:

(a) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or

(b) An act or omission by a person or entity with a duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW [9A.42.100](#).

(2) 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.

"Nonessential community provider" means a nursing home located within a commuting distance radius of less than forty minutes duration by automobile from another nursing home.

"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 any portion of a hospital, veterans' home, or residential habilitation center, that is certified to provide nursing services to medicaid recipients under section 1919(a) of the federal Social Security Act. All beds in a nursing facility are certified to provide medicaid services, even though one or more of the beds are also certified to provide medicare skilled nursing facility services.

"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.

"Permanent restraining order" means a restraining order or order of protection issued either following a hearing, or by stipulation of the parties. A "permanent" order may be in force for a specific time period (for example, one year), after which it expires.

"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 the application of physical force without the use of any device for the purpose of restraining the free movement of a vulnerable adult's body. "Physical restraint" does not include briefly holding without undue force a vulnerable adult in order to calm or comfort him or her, or holding a vulnerable adult's hand to safely escort him or her from one area to another.

"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.

"Resident representative" means:

(1)(a) A court-appointed guardian or conservator of a resident, if any;

(b) An individual otherwise authorized by state or federal law including, but not limited to, agents under power of attorney, representative payees, and other fiduciaries, to act on behalf of the resident in order to support the resident in decision making; access medical, social, or other personal information of the resident; manage financial matters; or receive notifications; or

(b) If there is no individual who meets the criteria under (1)(a) or (b) of this subsection, an individual chosen by the resident to act on behalf of the resident in order to support the resident in decision making; access medical, social, or other personal information of the resident; manage financial matters; or receive notifications.

(2) The term "resident representative" does not include any individual described in (a) of this subsection who is affiliated with the nursing home where the resident resides, or its licensee or management company, unless the affiliated individual is a family member of the resident.

"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, a portion of 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.

"Small nonessential community providers" means nonessential community providers that have sixty or fewer nursing home licensed beds, even if some of those beds are not set up or are not in use.

"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.

"Temporary restraining order" means restraining order or order of protection that expired without a hearing, was dismissed following an initial hearing, or was dismissed by stipulation of the parties before an initial hearing.

"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;
- (2) Found incapacitated under chapter [11.88](#) RCW;
- (3) Who has a developmental disability as defined under RCW [71A.10.020](#);
- (4) Admitted to any facility;
- (5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter [70.127](#) RCW;
- (6) Receiving services from an individual provider; or
- (7) Who self directs ~~his or her~~[their](#) own care and receives services from a personal aide under chapter [74.39](#) RCW.

"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.

WAC 388-97-0180

Resident rights.

(1) The nursing home must meet the resident rights requirements of this section and those in the rest of the chapter.

(2) The resident has a right to a dignified existence, self-determination, and communication with, and access to individuals and services inside and outside the nursing home.

(3) A nursing home must promote and protect the rights of each resident, including those with limited cognition or other barriers that limit the exercise of rights.

(4) The resident has the right to:

(a) Exercise ~~his or her~~their rights as a resident of the nursing home and as a citizen or resident of the United States. Refer to WAC [388-97-0240](#);

(b) Be free of interference, coercion, discrimination, and reprisal from the nursing home in exercising ~~his or her~~their rights; and

(c) Not be asked or required to sign any contract or agreement that includes provisions to waive:

(i) Any resident right set forth in this chapter or in the applicable licensing or certification laws; or

(ii) Any potential liability for personal injury or losses of personal property.

(5) The nursing home must take steps to safeguard residents and their personal property from foreseeable risks of injury or loss.

WAC 388-97-0240

Resident decision making.

(1) At the time of admission, or not later than the completion of the initial comprehensive resident assessment, the nursing home must determine if the resident:

(a) Has appointed another individual to make ~~his or her~~their health care, financial, or other decisions;

(b) Has created any advance directive or other legal documents that will establish a surrogate decision maker in the future; and

(c) Is not making ~~his or her~~their own decisions, and identify who has the authority for surrogate decision making, and the scope of the surrogate decision maker's authority.

(2) The nursing home must review the requirements of (1) of this section when the resident's condition warrants the review or when there is a significant change in the resident's condition.

(3) In fulfilling its duty to determine who, if anyone, is authorized to make decisions for the resident, the nursing home must:

(a) Obtain copies of the legal documents that establish the surrogate decision maker's authority to act; and

(b) Document in the resident's clinical record:

(i) The name, address, and telephone number of the individual who has legal authority for substitute decision making;

(ii) The type of decision making authority such individual has; and

(iii) Where copies of the legal documents are located at the facility.

(4) In accordance with state law or at the request of the resident, the resident's surrogate decision maker is, in the case of:

(a) A capacitated resident, the individual authorized by the resident to make decisions on the resident's behalf;

(b) A resident adjudicated by a court of law to be incapacitated, the court appointed guardian; and

(c) A resident who has been determined to be incapacitated, but is not adjudicated incapacitated established through:

(i) A legal document, such as a durable power of attorney for health care; or

(ii) Authority for substitute decision making granted by state law, including RCW [7.70.065](#).

(5) Determination of an individual's incapacity must be a process according to state law not a medical diagnosis only and be based on:

(a) Demonstrated inability in decision making over time that creates a significant risk of personal harm;

(b) A court order; or

(c) The criteria contained in a legal document, such as durable power of attorney for health care.

(6) The nursing home must promote the resident's right to exercise decision making and self-determination to the fullest extent possible, taking into consideration ~~his or her~~ the resident's ability to understand and respond. Therefore, the nursing home must presume that the resident is the resident's own decision maker unless:

(a) A court has established a full guardianship of the individual;

(b) The capacitated resident has clearly and voluntarily appointed a surrogate decision maker;

(c) A surrogate is established by a legal document such as a durable power of attorney for health care; or

(d) The facility determines that the resident is an incapacitated individual according to RCW [11.88.010](#) and (5)(a) of this section.

(7) The nursing home must honor the exercise of the resident's rights by the surrogate decision maker as long as the surrogate acts in accordance with this section and with state and federal law which govern ~~his or her~~ their appointment.

(8) If a surrogate decision maker exercises a resident's rights, the nursing home must take into consideration the resident's ability to understand and respond and must:

- (a) Inform the resident that a surrogate decision maker has been consulted;
- (b) Provide the resident with the information and opportunity to participate in all decision making to the maximum extent possible; and
- (c) Recognize that involvement of a surrogate decision maker does not lessen the nursing home's duty to:
 - (i) Protect the resident's rights; and
 - (ii) Comply with state and federal laws.

(9) The nursing home must:

(a) Regularly review any determination of incapacity based on (4)(b) and (c) of this section;

(b) Except for residents with a guardian, cease to rely upon the surrogate decision maker to exercise the resident's rights, if the resident regains capacity, unless so designated by the resident or by court order; and

(c) In the case of a guardian notify the court of jurisdiction in writing if:

- (i) The resident regains capacity;
- (ii) The guardian is not respecting or promoting the resident's rights;
- (iii) The guardianship should be modified; or
- (iv) A different guardian needs to be appointed.

WAC 388-97-0260

Informed consent.

(1) The nursing home must ensure that the informed consent process is followed with:

(a) The resident to the maximum extent possible, taking into consideration ~~his or her~~their ability to understand and respond; and

(b) The surrogate decision maker when the resident is determined to be incapacitated as established through the provision of a legal document such as durable power of attorney for health care, a court proceeding, or as authorized by state law, including RCW [7.70.065](#). The surrogate decision maker must:

(i) First determine if the resident would consent or refuse the proposed or alternative treatment;

(ii) Discuss determination of consent or refusal with the resident whenever possible; and

(iii) When a determination of the resident's consent or refusal of treatment cannot be made, make the decision in the best interest of the resident.

(2) The informed consent process must include, in words and language that the resident, or if applicable the resident's surrogate decision maker, understands, a description of:

- (a) The nature and character of the proposed treatment;
- (b) The anticipated results of the proposed treatment;
- (c) The recognized possible alternative forms of treatment;
- (d) The recognized serious possible risks, complications, and anticipated benefits involved in the treatment and in the recognized possible alternative forms of treatment including nontreatment; and
- (e) The right of the resident to choose not to be informed.

(3) To ensure informed consent or refusal by a resident, or if applicable the resident's surrogate decision maker, regarding plan or care options, the nursing home must:

- (a) Provide the informed consent process to the resident in a neutral manner and in a language, words, and manner the resident can understand;
- (b) Inform the resident of the right to consent to or refuse care and service options at the time of resident assessment and plan of care development (see WAC [388-97-1000](#) and [388-97-1020](#) and with condition changes, as necessary to ensure that the resident's wishes are known;
- (c) Inform the resident at the time of initial plan of care decisions and periodically of the right to change ~~his or her~~their mind about an earlier consent or refusal decision;
- (d) Ensure that evidence of informed consent or refusal is consistent with WAC [388-97-1000](#) and [388-97-1020](#); and
- (e) Where appropriate, include evidence of resident's choice not to be informed as required in subsections (2) and (3) of this section.

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~~their mind regarding previous decisions;

(ii) Nursing home policies and procedures concerning implementation of advance directives; 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.

WAC 388-97-0300

Notice of rights and services.

(1) The nursing home must provide the resident, before admission, or at the time of admission in the case of an emergency, and as changes occur during the resident's stay, both orally and in writing and in language and words that the resident understands, with the following information:

(a) All rules and regulations governing resident conduct, resident's rights and responsibilities during the stay in the nursing home;

(b) Advanced directives, and of any nursing home policy or practice that might conflict with the resident's advance directive if made;

(c) Advance notice of transfer requirements, consistent with RCW [70.129.110](#);

(d) Advance notice of deposits and refunds, consistent with RCW [70.129.150](#);
and

(e) Items, services and activities available in the nursing home and of charges for those services, including any charges for services not covered under medicare or medicaid or by the home's per diem rate.

(2) The resident has the right:

(a) Upon an oral or written request, to access all records pertaining to the resident including clinical records within twenty-four hours; and

(b) After receipt of ~~his or her~~their records for inspection, to purchase at a cost not to exceed twenty-five cents a page, photocopies of the records or any portions of them upon request and two working days advance notice to the nursing home. For the purposes of this chapter, "**working days**" means Monday through Friday, except for legal holidays.

(3) The resident has the right to:

(a) Be fully informed in words and language that ~~he or she~~they can understand of ~~his or her~~their total health status, including, but not limited to, ~~his or her~~their medical condition;

(b) Accept or refuse treatment; and

(c) Refuse to participate in experimental research.

(4) The nursing home must inform each resident:

(a) Who is entitled to medicaid benefits, in writing, prior to the time of admission to the nursing facility or, when the resident becomes eligible for medicaid of the items, services and activities:

(i) That are included in nursing facility services under the medicaid state plan and for which the resident may not be charged; and

(ii) That the nursing home offers and for which the resident may be charged, and the amount of charges for those services.

(b) That deposits, admission fees and prepayment of charges cannot be solicited or accepted from medicare or medicaid eligible residents; and

(c) That minimum stay requirements cannot be imposed on medicare or medicaid eligible residents.

(5) The nursing home must, except for emergencies, inform each resident in writing, thirty days in advance before changes are made to the availability or charges for items, services or activities specified in section (4)(a)(i) and (ii), or before changes to the nursing home rules.

(6) The private pay resident has the right to the following, regarding fee disclosure-deposits:

(a) Prior to admission, a nursing home that requires payment of an admission fee, deposit, or a minimum stay fee, by or on behalf of an individual seeking admission to the nursing home, must provide the individual:

(i) Full disclosure in writing in a language the potential resident or ~~his or her~~their representative understands:

(A) Of the nursing home's schedule of charges for items, services, and activities provided by the nursing home; and

(B) Of what portion of the deposits, admissions fees, prepaid charges or minimum stay fee will be refunded to the resident if the resident leaves the nursing home.

(ii) The amount of any admission fees, deposits, or minimum stay fees.

(iii) If the nursing home does not provide these disclosures, the nursing home must not keep deposits, admission fees, prepaid charges or minimum stay fees.

(b) If a resident dies or is hospitalized or is transferred and does not return to the nursing home, the nursing home:

(i) Must refund any deposit or charges already paid, less the home's per diem rate, for the days the resident actually resided or reserved or retained a bed in the nursing home, regardless of any minimum stay or discharge notice requirements; except that

(ii) The nursing home may retain an additional amount to cover its reasonable, actual expenses incurred as a result of a private pay resident's move,

not to exceed five days per diem charges, unless the resident has given advance notice in compliance with the admission agreement.

(c) The nursing home must refund any and all refunds due the resident within thirty days from the resident's date of discharge from the nursing home; and

(d) Where the nursing home requires the execution of an admission contract by or on behalf of an individual seeking admission to the nursing home, the terms of the contract must be consistent with the requirements of this section.

(7) The nursing home must furnish a written description of legal rights which includes:

(a) A description of the manner of protecting personal funds, under WAC [388-97-0340](#);

(b) In the case of a nursing facility only, a description of the requirements and procedures for establishing eligibility for medicaid, including the right to request an assessment which determines the extent of a couple's nonexempt resources at the time of institutionalization and attributes to the community spouse an equitable share of resources which cannot be considered available for payment toward the cost of the institutionalized spouse's medical care in ~~his or her~~their process of spending down to medicaid eligibility levels;

(c) A posting of names, addresses, and telephone numbers of all relevant state client advocacy groups such as the state survey and certification agency, the state licensure office, the state ombuds program, the protection and advocacy network, and the medicaid fraud control unit; and

(d) A statement that the resident may file a complaint with the state survey and certification agency concerning resident abandonment, abuse, neglect, financial exploitation, and misappropriation of resident property in the nursing home.

(8) The nursing home must:

(a) Inform each resident of the name, and specialty of the physician responsible for ~~his or her~~their care; and

(b) Provide a way for each resident to contact ~~his or her~~their physician.

(9) The skilled nursing facility and nursing facility must prominently display in the facility written information, and provide to residents and individuals applying for admission oral and written information, about how to apply for and use medicare and medicaid benefits, and how to receive refunds for previous payments covered by such benefits.

(10) The written information provided by the nursing home pursuant to this section, and the terms of any admission contract executed between the nursing home and an individual seeking admission to the nursing home, must be consistent with the requirements of chapters [74.42](#) and [18.51](#) RCW and, in addition, for

facilities certified under medicare or medicaid, with the applicable federal requirements.

WAC 388-97-0340

Protection of resident funds.

(1) The resident has the right to manage ~~his or her~~their financial affairs and the nursing home may not require residents to deposit their personal funds with the nursing home.

(2) Upon written authorization of a resident, the nursing home must hold, safeguard, manage and account for the personal funds of the resident deposited with the nursing home.

(3) The nursing home must establish and maintain a system that assures a full, complete and separate accounting, according to generally accepted accounting principles, of each resident's personal funds entrusted to the nursing home on the resident's behalf and must:

(a) Deposit any resident's personal funds in excess of fifty dollars, one hundred dollars for medicare residents, in an interest-bearing resident personal fund account or accounts, separate from any nursing home operating accounts, and credit all interest earned to the account;

(b) Keep personal funds under fifty dollars, one hundred dollars for medicare residents, in a noninterest-bearing account or petty cash fund maintained for residents; and

(c) Make the individual financial record available to the resident or ~~his or her~~their surrogate decision maker through quarterly statements and on request.

(4) The nursing facility must notify each resident that receives medicaid benefits:

(a) When the amount in the resident's account reaches two hundred dollars less than the SSI resource limit for one individual; and

(b) That if the amount in the account, in addition to the value of the resident's other nonexempt resources, reaches the SSI resource limit for one individual, the resident may lose eligibility for medicaid or SSI.

(5) The nursing home must convey the resident's funds, and a final accounting of those funds, to the resident or to the individual or jurisdiction administering the resident's estate, within thirty days of the discharge, transfer or death of any resident with a personal fund deposited with the nursing home. The funds of a deceased medicaid resident must be sent to the state of Washington, department of social and health services, office of financial recovery.

(6) The nursing facility must purchase a surety bond, or an approved alternative, to assure security of personal funds of residents deposited with the facility.

(7) Medicare certified and medicaid certified facilities may not impose a charge against a resident's personal funds for any item or service for which payment is made under medicaid or medicare as described in 42 C.F.R. § 483.10 (c)(8).

(8) Medicare certified and medicaid certified nursing facilities must:

(a) Not charge a resident (or the resident's representative) for any item or service not requested by the resident;

(b) Not require a resident, or the resident's representative, to request any item or service as a condition of admission or continued stay; and

(c) Inform the resident, or the resident's representative, requesting an item or services for which a charge will be made that there will be a charge for the item or service and what the charge will be.

(9) When a resident's financial eligibility for nursing facility services is established by the department, the facility must refund to the resident:

(a) Any deposit that was required prior to eligibility; and

(b) Any payments for services that will be covered retroactively by medicaid.

WAC 388-97-0360

Privacy and confidentiality.

(1) The resident has the right to personal privacy and confidentiality of ~~his or her~~their personal and clinical records. Personal privacy includes:

(a) Accommodations;

(b) Medical treatment;

(c) Written and telephone communications;

(d) Personal care;

(e) Visits; and

(f) Meetings with family and resident groups.

(2) The resident may approve or refuse the release of personal and clinical records to any individual outside the nursing home, unless the resident has been adjudged incapacitated according to state law.

(3) The resident's right to refuse release of personal and clinical records does not apply when:

(a) The resident is transferred to another health care institution; or

(b) Record release is required by law.

WAC 388-97-0420

Work.

The resident has the right to:

- (1) Refuse to perform services for the nursing home; and
- (2) Perform services for the nursing home, if ~~he or she~~they chooseschoose,

when:

- (a) The facility has documented the need or desire for work in the plan of care;
- (b) The plan specifies the nature of the services performed and whether the services are voluntary or paid;
- (c) Compensation for paid services is at or above prevailing rates; and
- (d) The resident agrees to the work arrangement described in the plan of care.

WAC 388-97-0480

Examination of survey results.

(1) The resident has the right to examine the results of:

- (a) The most recent survey of the nursing home conducted by federal and state surveyors;
- (b) Surveys related to any current or subsequent complaint investigation; and
- (c) Any required accompanying plan of correction, completed or not.

(2) Upon receipt of any deficiency citation report, the nursing home must publicly post a notice:

- (a) That the results of the survey or complaint investigation, or both, are available regardless of whether the plan of correction is completed or not; and
- (b) Of the location of the deficiency citation reports.

(3) For a report posted prior to the plan of correction being completed, the nursing home may attach an accompanying notice that explains the purpose and status of the plan of correction, informal dispute review, administrative hearing and other relevant information.

(4) Upon receipt of any citation report, the nursing home must publicly post a copy of the most recent full survey and all subsequent complaint investigation deficiency citation reports, including the completed plans of correction, when one is required.

(5) The notices and any survey reports must be available for viewing or examination in a place or places:

(a) Readily accessible to residents, which does not require staff interventions to access; and

(b) In plain view of the nursing home residents, including individuals visiting those residents, and individuals who inquire about placement in the nursing home.

(6) If the notice is a stop placement order, the nursing home must also follow requirements in WAC 388-97-4540.

WAC 388-97-0580

Roommates/rooms.

(1) A resident has the right to:

(a) Share a room with ~~his or her~~their spouse or state registered domestic partners when both residents live in the same facility and both 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.

WAC 388-97-0860

Resident dignity and accommodation of needs.

(1) Dignity. The nursing home must ensure that:

(a) Resident care is provided in a manner to enhance each resident's dignity, and to respect and recognize ~~his or her~~their individuality; and

(b) Each resident's personal care needs are provided in a private area free from exposure to individuals not involved in providing the care.

(2) Accommodation of needs. Each resident has the right to reasonable accommodation of personal needs and preferences, except when the health or safety of the individual or other residents would be endangered.

WAC 388-97-0880

Environment.

The nursing home must provide and maintain:

- (1) A safe, clean, comfortable, and homelike environment, allowing the resident to use ~~his or her~~their personal belongings to the extent possible;
- (2) Housekeeping and maintenance services necessary to maintain a sanitary, orderly, and comfortable interior;
- (3) Comfortable and safe temperature levels:
 - (a) Facilities licensed after October 1, 1990 must maintain a temperature range of seventy-one to eighty-one degrees Fahrenheit; and
 - (b) Regardless of external weather conditions, all nursing homes must develop and implement procedures and processes to maintain a temperature level that is comfortable and safe for residents;
- (4) Comfortable sound levels, to include:
 - (a) Minimizing the use of the public address system to ensure each use is in the best interest of the residents; and
 - (b) Taking reasonable precautions with noisy services so as not to disturb residents, particularly during their sleeping time; and
- (5) Lighting suitable for any task the resident chooses to do, and any task the staff must do.

WAC 388-97-0900

Self determination and participation.

The resident has the right to:

- (1) Choose activities, schedules, and health care consistent with ~~his or her~~their interests, assessments, and plan of care;
- (2) Interact with members of the community both inside and outside the nursing home;
- (3) Make choices about aspects of ~~his or her~~their life in the facility that are significant to the resident; and
- (4) Participate in social, religious, and community activities that do not interfere with the rights of other residents in the nursing home.

WAC 388-97-1720

Clinical records.

- (1) The nursing home must:
 - (a) Maintain clinical records on each resident in accordance with accepted professional standards and practices that are:

- (i) Complete;
- (ii) Accurately documented;
- (iii) Readily accessible; and
- (iv) Systematically organized.

(b) Safeguard clinical record information against alteration, loss, destruction, and unauthorized use; and

(c) Keep confidential all information contained in the resident's records, regardless of the form or storage method of the records, except when release is required by:

- (i) Transfer to another health care institution;
- (ii) Law;
- (iii) Third party payment contract; or
- (iv) The resident.

(2) The nursing home must ensure the clinical record of each resident includes at least the following:

(a) Resident identification and sociological data including:

- (i) Name;
- (ii) Room number
- (iii) Resident telephone number, if available; and
- (iv) Resident email address, if available

(b) If a resident has a representative, the following representative information:

- (i) Name;
- (ii) Relationship to the resident;
- (iii) Phone number;
- (iv) Email address, if available; and
- (v) Mailing address, if available;

(c) including the name Name and address of the individual or individuals the resident designates as significant;

(d) ~~(d)~~ Medical information required under WAC [388-97-1260](#);

(e) ~~(e)~~ Physician's orders;

(f) ~~(f)~~ Assessments;

(g) ~~(g)~~ Plans of care;

(h) ~~(h)~~ Services provided;

(i) ~~(i)~~ In the case of the medicaid-certified nursing facility, records related to preadmission screening and resident review;

(j) ~~(j)~~ Progress notes;

(k) ~~(k)~~ Medications administered;

- (l) Consents, authorizations, releases;
- (m) Allergic responses;
- (n) Laboratory, X-ray, and other findings; and
- (o) Other records as appropriate.

(3) The nursing home must:

(a) Designate an individual responsible for the record system who:

- (i) Has appropriate training and experience in clinical record management; or
- (ii) Receives consultation from a qualified clinical record practitioner, such as a registered health information administrator or registered health information technician.

(b) Make all records available to authorized representatives of the department for review and duplication as necessary; and

(c) Maintain the following:

(i) A master resident index having a reference for each resident including the health record number, if applicable; full name; date of birth; admission dates; and discharge dates; and

(ii) A chronological census register, including all admissions, discharge, deaths and transfers, and noting the receiving facility. The nursing home must ensure the register includes discharges for social leave and transfers to other treatment facilities in excess of twenty-four hours.

(4) The nursing home must ensure the clinical record of each resident:

(a) Is documented and authenticated accurately, promptly and legibly by individuals giving the order, making the observation, performing the examination, assessment, treatment or providing the care and services. **"Authenticated"** means the authorization of a written entry in a record by signature, including the first initial and last name and title, or a unique identifier allowing identification of the responsible individual; and:

(i) Documents from other health care facilities that are clearly identified as being authenticated at that facility will be considered authenticated at the receiving facility; and

(ii) The original or a durable, legible, direct copy of each document will be accepted.

(b) Contains appropriate information for a deceased resident including:

(i) The time and date of death;

(ii) Apparent cause of death;

(iii) Notification of the physician and appropriate resident representative; and

(iv) The disposition of the body and personal effects.

(5) In cases where the nursing home maintains records by computer rather than hard copy, the nursing home must:

- (a) Have in place safeguards to prevent unauthorized access; and
- (b) Provide for reconstruction of information.
- (6) The nursing home licensee must:
 - (a) Retain health records for the time period required in RCW [18.51.300](#):
 - (i) For a period of no less than eight years following the most recent discharge of the resident; except
 - (ii) That the records of minors must be retained for no less than three years following the attainment of age eighteen years, or ten years following their most recent discharge, whichever is longer.
 - (b) In the event of a change of ownership, provide for the orderly transfer of clinical records to the new licensee;
 - (c) In the event a nursing home ceases operation, make arrangements prior to cessation, as approved by the department, for preservation of the clinical records. The nursing home licensee must provide a plan for preservation of clinical records to the department's designated local aging and disability services administration office no later than seven days after the date of notice of nursing home closure as required by WAC [388-97-1640](#) (8) and (9) unless an alternate date has been approved by the department; and
 - (d) Provide a resident access to all records pertaining to the resident as required under WAC [388-97-0300](#)(2).

NEW SECTION

WAC 388-97-XXXX, Resident roster and aggregated contact information

- (1) The nursing home must:
 - (a) Create and regularly maintain a current resident roster containing the name and room number of each resident; and
 - (b) Immediately provide a written copy upon an in-person request from any long-term care ombuds.
- (2) The nursing home must:
 - (a) Create and regularly maintain current, accurate, and aggregated contact information for all residents, including the following resident information:
 - (i) Name;
 - (ii) Room number;
 - (iii) Phone number, if available
 - (iv) Email address, if available; and
 - (iv) Representative's-:
 - (A) Name;
 - (B) Relationship to the resident;
 - (C) Phone number;

(D) Email address, if available; and

(E) Mailing address, if available.

(b) Record and update the aggregated contact information required by this section, upon receipt of new or updated contact information from the resident or resident representative; and

(c) Upon the written request of any long-term care ombuds that includes reference to 18.51.095 RCW and the relevant legal functions and duties of long-term care ombuds, provide a copy of the aggregated contact information required by this section within 48 hours, within a reasonable time if agreed to by the requesting long-term care ombuds, by electronic copy to the secure email address or facsimile number provided in the written request.

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WAC 388-97-4540

Stop placement.

(1) The department must impose a stop placement order when required by RCW **18.51.060**(5) and WAC **388-97-4460**(1) and may impose a stop placement order as an optional remedy in accordance with WAC **388-97-4480**. The department's stop placement order becomes effective upon verbal or written notice.

(2) The nursing home must:

(a) Publicly post any department issued notice of a stop placement order or limited stop placement order in a conspicuous place at the nursing home; and

(b) Leave the notice in place until the department has terminated the stop placement order or limited stop placement order.

~~(23)~~ The nursing home has the right to an informal department review to refute the federal or state deficiencies, or both, cited as the basis for the stop placement and must request such review in accordance with WAC **388-97-4420**(3).

~~(34)~~ The department will not delay or suspend a stop placement order because the nursing home requests an administrative hearing or informal department review.

~~(45)~~ The stop placement order must remain in effect until:

(a) The department terminates the stop placement order; or

(b) The stop placement order is terminated by a final agency order following appeal conducted in accordance with chapter **34.05** RCW.

~~(56)~~ The department must terminate the stop placement when:

(a) The nursing home states in writing that the deficiencies necessitating the stop placement action have been corrected; and

(b) Within fifteen working days of the nursing home's notification, department staff confirm by on-site revisit of the nursing home that:

(i) The deficiencies that necessitated the stop placement action have been corrected; and

(ii) The nursing home exhibits the capacity to maintain adequate care and services and correction of deficiencies.

(~~6~~7) After lifting the stop placement, the department may continue to perform on site monitoring to verify that the nursing home has maintained correction of deficiencies.

(~~7~~8) While a stop placement order is in effect, the department may approve a readmission to the nursing home from the hospital in accordance with RCW 18.51.060 (5)(b) and department guidelines for readmission decisions.