



# PROPOSED RULE MAKING

## CR-102 (June 2012)

(Implements RCW 34.05.320)

Do **NOT** use for expedited rule making

**Agency:** Department of Social and Health Services, Aging and Long-Term Support Administration

- Preproposal Statement of Inquiry was filed as WSR: 15-01-181; or
- Expedited Rule Making--Proposed notice was filed as WSR:     ; or
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

- Original Notice
- Supplemental Notice to WSR: 15-10-100
- Continuance of WSR:

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

The department is amending and adding new sections to chapter 388-71 WAC, "Home and Community Services and Programs", specifically Adult Protective Services.

**Hearing location(s):**

Office Building 2  
DSHS Headquarters  
1115 Washington  
Olympia, WA 98504  
Public parking at 11<sup>th</sup> and Jefferson. A map is available at:  
<http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>

**Submit written comments to:**

Name: DSHS Rules Coordinator  
Address: PO Box 45850  
Olympia, WA 98504  
e-mail [DSHSRPAURulesCoordinator@dshs.wa.gov](mailto:DSHSRPAURulesCoordinator@dshs.wa.gov)  
fax (360) 664-6185

**by: 5:00 p.m. October 27, 2015**

Date: October 27, 2015 Time: 10:00 a.m.

**Assistance for persons with disabilities:** Contact Jeff Kildahl, DSHS Rules Consultant by October 13, 2015  
TTY (360) 664-6178 or (360) 664-6092 or by email at [Kildaja@dshs.wa.gov](mailto:Kildaja@dshs.wa.gov)

**Date of intended adoption:** Not earlier than October 28, 2015  
(Note: This is **NOT** the **effective** date)

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:**

The department is adding new sections to chapter 388-71 WAC to transfer and amend the rules for Residential Client Protection Program found in chapter 388-76 WAC (Adult Family Home), chapter 388-78A WAC (Assisted Living), chapter 388-97 WAC (Nursing Home), chapter 388-101 WAC (Supportive Living Programs), and chapter 388-111 WAC (Residential Habilitation Centers), to the Adult Protective Services Program.

The department is editing the original amendments to chapter 388-71 WAC to incorporate comments received after the hearing on June 9, 2015. New edits are:

- WAC 388-71-0210: The proposed language stated that APS 'may' notify the alleged perpetrator....The discretionary 'may' is changed to 'will.'
- WAC 388-71-01247: A reference to 40 C.F.R. 488-335 is struck as its inclusion was an error.
- WAC 388-71-01247: The language is amended to mitigate scope of authority concerns.

**Reasons supporting proposal:** Read the purpose statement above.

**Statutory authority for adoption:** RCW 74.08.090; 74.09.520

**Statute being implemented:** RCW 74.08.090; 74.09.520

**Is rule necessary because of a:**

- Federal Law?  Yes  No
- Federal Court Decision?  Yes  No
- State Court Decision?  Yes  No

If yes, CITATION:

**DATE**

August 24, 2015

**NAME** (type or print)

Katherine Vasquez

**SIGNATURE**

**TITLE**

DSHS Rules Coordinator

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE: August 27, 2015**

**TIME: 9:39 AM**

**WSR 15-18-050**

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:** None

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

- Private  
 Public  
 Governmental

**Name of agency personnel responsible for:**

Name	Office Location	Phone
Drafting..... Carol Sloan	P.O. Box 45600, Olympia, WA 98504-5600	(360) 725-2345
Implementation....Carol Sloan	P.O. Box 45600, Olympia, WA 98504-5600	(360) 725-2345
Enforcement.....Carol Sloan	P.O. Box 45600, Olympia, WA 98504-5600	(360) 725-2345

**Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?**

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

Phone:

Fax:

e-mail:

No. Explain why no statement was prepared.

The preparation of a small business economic impact statement is not required, as no new costs will be imposed on small businesses or non-profits as a result of this rule amendment.

**Is a cost-benefit analysis required under RCW 34.05.328?**

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

Name:

Address:

Phone:

fax:

e-mail:

No: Please explain:

Rules are exempt per RCW 34.05.328(5)(b)(v), rules the content of which is explicitly and specifically dictated by statute.

AMENDATORY SECTION (Amending WSR 04-19-136, filed 9/21/04, effective 10/22/04)

**WAC 388-71-0100** What are the statutory references for **WAC 388-71-0100 through ((388-71-01280)) 388-71-01281**? The statutory references for WAC 388-71-0100 through WAC ((388-71-01280)) 388-71-01281 are:

- (1) Chapter 74.34 RCW; and
- (2) ((Chapter 74.39A RCW; and
- (3) Chapter 74.39 RCW)) 42 U.S.C. § 1396r; 42 C.F.R. § 488.335.

AMENDATORY SECTION (Amending WSR 04-19-136, filed 9/21/04, effective 10/22/04)

**WAC 388-71-0105** What definitions apply to adult protective services? In addition to the definitions found in chapter 74.34 RCW, the following definitions apply:

**"((ADSA)) AL TSA"** means DSHS aging and ((disability)) long-term support services administration.

**"Adult family home"** means a home or building licensed under chapter 70.128 RCW.

**"ALJ"** means an administrative law judge, an impartial decision-maker who is an attorney and presides at an administrative hearing. The office of administrative hearings (OAH), which is a state agency, employs the ALJs. ALJs are not DSHS employees or DSHS representatives.

**"APS"** means adult protective services.

**"Basic necessities of life"** means food, water, shelter, clothing, and medically necessary health care, including but not limited to health-related treatment or activities, hygiene, oxygen, and medication.

**"BOA"** means the DSHS board of appeals. The board of appeals consists of lawyers who are members of the Washington State Bar Association. An ALJ's decision can be appealed to the board of appeals, allowing a level of review before an appeal to the court system may be considered.

**"DSHS"** means the department of social and health services.

((**"Entity"** means any agency, corporation, partnership, association, limited liability company, sole proprietorship, for profit or not for profit business that provides care and/or services to vulnerable adults under a license, certification or contract issued by DSHS or DSHS' contractor. An entity does not include a boarding home licensed under chapter 18.20 RCW, an adult family home licensed under chapter 70.128 RCW, or a nursing home licensed under chapter 18.51 RCW, but does include such facilities if they are required to be licensed but are not currently licensed.))

**"Enhanced service facility"** means a home or building licensed under chapter 70.97 RCW.

**"Facility"** means a residence licensed as ((a boarding home under chapter 18.20 RCW, an adult family home under chapter 70.128 RCW, a nursing home under chapter 18.51 RCW, a soldier's home under chapter 72.36 RCW, a residential habilitation center under chapter 71A.20 RCW, or any other facility licensed by DSHS)) an assisted living facility under chapter 18.20 RCW, an adult family home under chapter 70.128

RCW, a nursing home under chapter 18.51 RCW, a soldier's home under chapter 72.36 RCW, a residential habilitation center under chapter 71A.20 RCW, an enhanced services facility under chapter 71.05 RCW, or any other facility or residential program licensed or certified by DSHS's aging and long-term support administration.

**"Final finding"** means ~~((the department's))~~ a substantiated initial finding of abandonment, abuse, personal exploitation, financial exploitation or neglect that

(1) has been ((is)) upheld through the administrative appeal ((process—specified)) described in WAC 388-71-01205 through 388-71-01280, or

(2) is not timely appealed to the office of administrative hearings. ((The alleged perpetrator can appeal a)) A final finding may be appealed to Superior Court and the Court of Appeals under the Administrative Procedure Act, chapter 34.05 RCW.

~~((**"Initial finding"** means a determination made by the department upon investigation of an allegation of abandonment, abuse, financial exploitation, neglect or self neglect.~~

~~((1) If the department determines it is more likely than not the incident occurred, the department shall document the finding as "substantiated."~~

~~((2) If the department determines it is more likely than not the incident did not occur, the department shall document the finding as "unsubstantiated."~~

~~((3) If the department cannot make a determination about whether the incident occurred or did not occur on a more probable than not basis, the department shall document the finding as "inconclusive."))~~

"Intermediate care facility for individuals with intellectual disabilities (ICF/IID)" means a facility certified under 42 C.F.R. Part 483, Subpart 1.

**"Legal representative"** means a guardian appointed under chapter 11.88 RCW or an attorney-in-fact under chapter 11.94 RCW.

**"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 licensed under chapter 18.51 RCW, 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 may also be certified to provide medicare skilled nursing facility services.

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

**"Person ((or entity)) with a duty of care"** includes, but is not limited to, the following:

(1) A guardian appointed under chapter 11.88 RCW; or

(2) A person named in a durable power of attorney as the attorney-in-fact as defined under chapter 11.94 RCW.

(3) A person ~~((or entity))~~ providing the basic necessities of life to a vulnerable adult ~~((adults))~~ where:

(a) The person ~~((or entity))~~ is employed by or on behalf of the vulnerable adult; or

(b) The person ~~((or entity))~~ voluntarily agrees to provide, or has been providing, the basic necessities of life to the vulnerable adult on a continuing basis.

**"Personal aide"** as found in RCW 74.39.007.

"Self-directed care" as found in RCW 74.39.007.

"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.

"Substantiated initial finding" means a determination made by the department upon investigation of an allegation of abandonment, abuse, personal exploitation, financial exploitation, neglect or self-neglect that it is more likely than not that the alleged abandonment, abuse, personal exploitation, financial exploitation, neglect or self-neglect occurred.

"Willful" means the nonaccidental action or inaction by an alleged perpetrator that he/she knew or reasonably should have known could cause harm, injury or a negative outcome.

AMENDATORY SECTION (Amending WSR 04-19-136, filed 9/21/04, effective 10/22/04)

**WAC 388-71-0110 What is the purpose of an adult protective services investigation?** The purpose of an adult protective services investigation is to:

(1) Investigate allegations of abandonment, abuse, personal exploitation, financial exploitation, neglect, or self-neglect.

(2) Provide protective services with the consent of the vulnerable adult or his or her legal representative when the allegation is substantiated, or prior to substantiation when it appears abandonment, abuse, personal exploitation, financial exploitation, neglect or self-neglect may be occurring and protective services could assist in ending or preventing harm to the vulnerable adult.

(3) When an allegation is substantiated, APS may investigate whether other vulnerable adults may be at current risk of abuse, personal exploitation, neglect, abandonment or financial exploitation by the person (~~or entity~~).

AMENDATORY SECTION (Amending WSR 04-19-136, filed 9/21/04, effective 10/22/04)

**WAC 388-71-0115 When is an investigation conducted?** The department (~~determines when an investigation is conducted [required]. The following criteria must be met~~) will conduct an investigation when:

(1) The reported circumstances fit the definition of abandonment, abuse, personal exploitation, financial exploitation, neglect, or self-neglect as defined in chapter 74.34 RCW; and

(2) The alleged victim is a vulnerable adult as defined in chapter 74.34 RCW.

**WAC 388-71-01201 What state-only funded services may be offered to a vulnerable adult victim of abandonment, abuse, personal exploitation financial exploitation, neglect or self-neglect?** (1) Subject to available funding, state-only funded in-home personal care/household services and state-only funded placement in a department licensed and contracted adult family home, (~~boarding home~~) assisted living facility or nursing facility may be offered without regard to the vulnerable adult's functional status or income/resources, if:

(a) The vulnerable adult is the subject of an open APS case involving an allegation of abandonment, abuse, personal exploitation, financial exploitation, neglect, and/or self-neglect;

(b) The services would help protect the vulnerable adult from harm;

(c) APS cannot verify alternative resources or options for payment for services available to the vulnerable adult at the time;

(d) Services are provided in the least restrictive and most cost effective setting available to appropriately meet the needs of the vulnerable adult;

(e) APS is actively pursuing other service alternatives and/or resolution of the issues that resulted in the need for protective services; and

(f) The state-only funded services are temporary and provided with the consent of the vulnerable adult or legal representative only until the situation has stabilized. State-only funded protective services are provided by DSHS on a discretionary basis and are not a benefit and not an entitlement. Termination of state-only funded temporary protective services is exempt from notification and appeal requirements.

(2) State-only funded services to an individual vulnerable adult shall be based on assessed need and limited to:

(a) Up to one hundred forty-three hours of in-home personal care/household services per month; and

(b) A cumulative maximum total of ninety days service in any twelve-month period of time, with nursing facility services not exceeding thirty days of the ninety-day total. An exception to rule cannot be used to grant an extension.

NEW SECTION

**WAC 388-71-01202 What factors are considered in an investigation of an individual used by a nursing facility or skilled nursing facility to provide services to vulnerable adults?** If, after review of the results of the investigation, the department determines that an individual used by a nursing facility or skilled nursing facility to provide services to vulnerable adults, has abandoned, abused, personally exploited, neglected, or financially exploited a vulnerable adult, or has misappropriated a vulnerable adult's property, the department will make a substantiated initial finding to that effect. However, a substantiated initial finding of neglect will not be made if the individ-

ual demonstrates that the neglect was caused by factors beyond the control of the individual.

AMENDATORY SECTION (Amending WSR 04-19-136, filed 9/21/04, effective 10/22/04)

**WAC 388-71-01205 When does APS notify the alleged perpetrator ((of the results)) of ((an APS investigation)) a substantiated initial finding?** (1) APS will notify the alleged perpetrator in writing within ten working days of making a substantiated initial finding of abandonment, abuse, personal exploitation, financial exploitation or neglect of a vulnerable adult.

(2) The time frame for notification can be extended beyond ten working days to include the time needed to translate the notification letter or make provisions for the safety of the alleged victim.

AMENDATORY SECTION (Amending WSR 04-19-136, filed 9/21/04, effective 10/22/04)

**WAC 388-71-01210 How may APS give the alleged perpetrator notice of the substantiated initial finding?** ((~~(1) APS shall notify the alleged perpetrator of a substantiated initial finding by sending a letter certified mail/return receipt requested and regular mail to the alleged perpetrator's last known place of residence. The duty of notification created by this section is subject to the ability of the department to ascertain the location of the alleged perpetrator. APS shall make a reasonable, good faith effort to determine the address of the last known place of residence of the alleged perpetrator; or~~

~~(2) APS shall have the written notice delivered or personally served upon the alleged perpetrator)) APS will notify the alleged perpetrator of the substantiated initial finding using one of the following methods:~~

~~(1) Personal service of the notice as provided in RCW 4.28.080;~~  
or

~~(2) Sending a copy of the notice to the alleged perpetrator by first-class mail and by certified mail/return receipt requested, at his or her last known mailing address, which includes a post office box.~~

AMENDATORY SECTION (Amending WSR 04-19-136, filed 9/21/04, effective 10/22/04)

**WAC 388-71-01215 When is notice to the alleged perpetrator complete?** Notice is complete when:

(1) Personal service is made;

(2) Mail is properly stamped, addressed and deposited in the United States mail;

(3) A parcel is delivered to a commercial delivery service with charges prepaid; or

(4) A parcel is delivered to a legal messenger service with charges prepaid.

AMENDATORY SECTION (Amending WSR 04-19-136, filed 9/21/04, effective 10/22/04)

**WAC 388-71-01220 What proves that APS provided notice of the substantiated initial finding to the alleged perpetrator?** APS may prove notice was provided to the alleged perpetrator by any of the following:

(1) A sworn statement or declaration of personal service;

(2) The certified mail receipt signed by the recipient;

(3) An affidavit or certificate of mailing; or

(4) A signed receipt from the person who accepted the commercial delivery service or legal messenger service ((package)) parcel.

AMENDATORY SECTION (Amending WSR 04-19-136, filed 9/21/04, effective 10/22/04)

**WAC 388-71-01225 What information must not be in the APS finding notice to the alleged perpetrator?** The identities of the alleged victim, reporter, and witnesses must not be included in the ((APS)) substantiated initial finding notice to the alleged perpetrator.

AMENDATORY SECTION (Amending WSR 04-19-136, filed 9/21/04, effective 10/22/04)

**WAC 388-71-01230 Will APS notify anyone other than the alleged perpetrator of the substantiated initial finding of abandonment, personal exploitation, abuse, financial exploitation or neglect?** (1) In a manner consistent with confidentiality requirements concerning the vulnerable adult, witnesses, and reporter, APS may provide notification of a substantiated initial finding to:

(a) Other divisions within the department;

(b) The agency or program identified under RCW 74.34.068 with which the alleged perpetrator is associated as an employee, volunteer or contractor;

(c) Law enforcement;

(d) Other investigative authority consistent with chapter 74.34 RCW; ((and))

(e) The facility in which the incident occurred; and

(f) The appropriate licensing agency.

(2) In the notification APS will identify the finding as ((an)) a substantiated initial finding.

AMENDATORY SECTION (Amending WSR 04-19-136, filed 9/21/04, effective 10/22/04)

**WAC 388-71-01235 Can an alleged perpetrator challenge ((an-APS)) a substantiated initial finding of abandonment, abuse, personal exploitation, financial exploitation or neglect?** An alleged perpetrator of abandonment, abuse, personal exploitation, financial exploitation or neglect may request an administrative hearing to challenge a substantiated initial finding made by APS on or after the effective date of this rule.

AMENDATORY SECTION (Amending WSR 04-19-136, filed 9/21/04, effective 10/22/04)

**WAC 388-71-01240 How does an alleged perpetrator request an administrative hearing to challenge ((an-APS)) a substantiated initial finding of abandonment, abuse, personal exploitation, financial exploitation or neglect?** (1) To request an administrative hearing the alleged perpetrator must send, deliver, or fax a written request to the office of administrative hearings (OAH). OAH must receive the written request ((within thirty)) no later than 5:00 p.m. on the thirtieth calendar ((days of)) day from the mailing date on the department's letter of notice ((is mailed or personally served upon the alleged perpetrator, whichever occurs first)) or no later than 5:00 p.m. on the thirtieth calendar day from the date the department's letter of notice was personally served upon the alleged perpetrator, whichever occurs first, as required by WAC 388-02-0035(2). If the alleged perpetrator requests a hearing by fax, the alleged perpetrator must also mail a copy of the request to OAH on the same day.

(2) The alleged perpetrator must complete and submit the form to request an administrative hearing provided by APS or submit a written request for a hearing that includes:

(a) The full legal name, current address and phone number of the alleged perpetrator;

(b) A brief explanation of why the alleged perpetrator disagrees with the substantiated initial finding;

(c) A description of any assistance needed in the administrative appeal process by the alleged perpetrator, including a foreign or sign language interpreter or any accommodation for a disability;

(d) The alleged perpetrator should keep a copy of the request.

AMENDATORY SECTION (Amending WSR 04-19-136, filed 9/21/04, effective 10/22/04)

**WAC 388-71-01245 What laws and rules will control the administrative hearings held regarding substantiated ((APS)) initial findings?** Chapters 34.05 and 74.34 RCW, chapter 388-02 WAC, and the provisions of this chapter govern any administrative hearing regarding a substantiated ((APS)) initial finding. In the event of a conflict be-

tween the provisions of this chapter and chapter 388-02 WAC, the provisions of this chapter shall prevail.

NEW SECTION

**WAC 388-71-01247 What additional rules apply to administrative hearings held regarding substantiated initial findings made against a nursing assistant employed in a nursing facility or skilled nursing facility?** Upon receipt of a written request for a hearing from a nursing assistant employed in a nursing facility or skilled nursing facility, the office of administrative hearings will schedule a hearing, taking into account the following requirements:

(1) The hearing decision must be issued within one hundred twenty days of the date the office of administrative hearings receives a hearing request, except as provided in subsection (6);

(2) Neither the department nor the nursing assistant can waive the one hundred twenty day requirement;

(3) The hearing will be conducted at a reasonable time and at a place that is convenient for the nursing assistant;

(4) The hearing, and any subsequent appeals, will be governed by this chapter, chapter 34.05 RCW, and chapter 388-02 WAC, or its successor regulations;

(5) A continuance may be granted for good cause upon the request of any party, as long as the hearing decision can still be issued within one hundred twenty days of the date of the receipt of the appeal, except under the circumstances described in subsection (6);

(6) If the ALJ finds that extenuating circumstances exist that will make it impossible to render a decision within one hundred twenty days, the ALJ may extend the one hundred twenty-day requirement by a maximum of sixty days; and

(7) To comply with the time limits described in this section, the nursing assistant must be available for the hearing and other preliminary matters. If the hearing decision ~~((is)) cannot ((rendered)) be issued~~ within the time limits described in ~~((subsection (1), or if appropriate under subsection (6), the ALJ shall issue an order dismissing the appeal and the substantiated initial finding will become final))~~ this section due to the unavailability of the nursing assistant, then, after the time limits have expired, the nursing assistant's name will be placed on the registry pending the outcome of the hearing.

(8) If a substantiated initial finding made against a nursing assistant employed in a nursing facility or skilled nursing facility is upheld in an ALJ's initial decision, the nursing assistant's name will be placed on the registry.

AMENDATORY SECTION (Amending WSR 04-19-136, filed 9/21/04, effective 10/22/04)

**WAC 388-71-01250 How is confidential information protected in the appeal process?** (1) All information and documents provided by the department to the alleged perpetrator shall be used by the alleged

perpetrator only to challenge the findings in the administrative hearing.

(2) Confidential information such as the name and other personal identifying information of the ~~((reporter))~~ person making a report to APS and the vulnerable adult shall be redacted from documents and ~~((the parties shall use means))~~ in testimony to protect the identify of such persons, unless otherwise ordered by the ALJ consistent with chapter 74.34 RCW and other applicable state and federal laws.

AMENDATORY SECTION (Amending WSR 04-19-136, filed 9/21/04, effective 10/22/04)

**WAC 388-71-01255 How does the administrative law judge make a decision regarding the substantiated ((APS)) initial finding?** (1) ~~((The))~~ If the ALJ ~~((shall decide if))~~ determines that a preponderance of the evidence in the hearing record supports ~~((a determination))~~ the substantiated initial finding that the alleged perpetrator ~~((committed an act of abandonment, abuse, financial exploitation or neglect of))~~ abandoned, abused, personally exploited, financially exploited or neglected a vulnerable adult, the ALJ shall uphold the substantiated initial finding.

~~(2) ((If the ALJ determines that a preponderance of the evidence in the hearing record supports the substantiated APS finding, the ALJ shall uphold the finding.~~

~~(3))~~ If the ALJ determines that the substantiated ((APS)) initial finding is not supported by a preponderance of the evidence in the hearing record, the ALJ shall remand the matter to the department to modify the finding consistent with the initial decision of the ALJ.

AMENDATORY SECTION (Amending WSR 04-19-136, filed 9/21/04, effective 10/22/04)

**WAC 388-71-01260 ((How)) When is the alleged perpetrator notified of the administrative law judge's decision?** ~~((After the administrative hearing, the))~~ The ALJ will send a written initial decision to the alleged perpetrator and the department within ninety calendar days after the administrative hearing record is closed.

AMENDATORY SECTION (Amending WSR 04-19-136, filed 9/21/04, effective 10/22/04)

**WAC 388-71-01265 What if the alleged perpetrator or the department disagrees with the decision?** If the alleged perpetrator or the department disagrees with the ALJ's initial decision, either party may challenge ~~((this))~~ the initial decision by filing a ~~((petition))~~ request for review with the department's board of appeals ~~((consistent with the procedures contained))~~ in accordance with chapter 34.05 RCW and chapter 388-02 WAC. If the alleged perpetrator files a request for

review, the department will not change the substantiated finding in its records until a final decision is issued on the alleged perpetrator's request for review.

AMENDATORY SECTION (Amending WSR 04-19-136, filed 9/21/04, effective 10/22/04)

**WAC 388-71-01270 What happens if the administrative law judge rules against the department?** If the department appeals the ALJ's decision, the department will not modify the substantiated initial finding in the department's records until a final ~~((hearing))~~ agency decision is issued. If the department does not appeal the ALJ's initial decision, the department will modify the substantiated initial finding in the department's records consistent with the ALJ's initial decision and document the ALJ's initial decision in the record.

AMENDATORY SECTION (Amending WSR 04-19-136, filed 9/21/04, effective 10/22/04)

**WAC 388-71-01275 When does the APS substantiated initial finding become a final finding?** (1) A substantiated initial finding becomes a final finding when:

~~((1))~~ (a) The department gives the alleged perpetrator notice of the substantiated initial finding pursuant to WAC 388-71-01210 and the alleged perpetrator does not request an administrative hearing as set forth in WAC 388-71-01240; or

~~((2))~~ (b) The ALJ dismisses the alleged perpetrator's request for hearing following default or withdrawal by the alleged perpetrator, or issues an initial order upholding the substantiated initial finding and the alleged perpetrator fails to file a request for review of the ALJ's initial decision with the department's board of appeals consistent with the procedures contained in chapter 34.05 RCW and chapter 388-02 WAC; or

~~((3) The board of appeals issues a final order upholding))~~ (c) A party requests review of the substantiated finding ((when a request for review to the department's board of appeals is made)) consistent with the procedures contained in chapter 34.05 RCW and chapter 388-02 WAC, and the department's board of appeals issues a review decision upholding the substantiated finding.

(2) A final finding is permanent, except under the circumstances described in (3).

(3) A final finding may be removed from the department's registry under the following circumstances:

(a) The department determines the finding was made in error;

(b) The finding is rescinded following judicial review;

(c) The department is notified of a nursing assistant's death; or

(d) When a final finding is made against a nursing assistant, employed in a nursing facility or skilled nursing facility based upon a singular instance of neglect of a resident, the department may remove the finding of neglect from the department's registry in response to a petition. Any such removal shall be based upon a written peti-

tion by the nursing assistant at least one year after the finding of neglect has been finalized and in accordance with requirements of federal law, 42 U.S.C.1396r (g)(1)(D).

~~((4) The final finding will remain as substantiated in the department's records unless the final finding is reversed after judicial review.))~~

AMENDATORY SECTION (Amending WSR 04-19-136, filed 9/21/04, effective 10/22/04)

**WAC 388-71-01280 Does the department disclose information about final findings of abuse, personal exploitation, abandonment, neglect and financial exploitation?** The department will maintain a registry of final findings of abuse, personal exploitation, abandonment, neglect and financial exploitation and, upon request of any person, the department may disclose the identity of a person (~~or entity~~) with a final finding of abandonment, abuse, personal exploitation, financial exploitation or neglect.

NEW SECTION

**WAC 388-71-01281 To whom does the department report a final substantiated finding against a nursing assistant employed in a nursing facility or skilled nursing facility?** The department will report a final finding of abandonment, abuse, personal exploitation, neglect, financial exploitation of a resident within ten working days to the following:

- (1) The nursing assistant employed in a nursing facility or skilled nursing facility where the abuse, personal exploitation, abandonment, neglect or financial exploitation occurred;
- (2) The current administrator of the facility in which the incident occurred;
- (3) The administrator of the facility that currently employs the nursing assistant, if known;
- (4) The department's registry;
- (5) The appropriate licensing authority; and
- (6) Any other lists maintained by a state or federal agency as appropriate.