



# 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

- |  |   |
|--|---|
| <input checked="" type="checkbox"/> Preproposal Statement of Inquiry was filed as WSR 13-15-115 ; or | <input checked="" type="checkbox"/> Original Notice       |
| <input type="checkbox"/> Expedited Rule Making--Proposed notice was filed as WSR _____; or           | <input type="checkbox"/> Supplemental Notice to WSR _____ |
| <input type="checkbox"/> Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).                  | <input type="checkbox"/> Continuance of WSR _____         |

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

The department is adding a new chapter 388-107 WAC that will provide licensing requirements for Enhanced Services Facilities.

**Hearing location(s):**

Office Building 2 – Auditorium  
(DSHS Headquarters)  
1115 Washington Street SE  
Olympia, WA 98504

**Public parking at 11<sup>th</sup> and Jefferson. A map is available at <http://www11.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling 360-664-6094**

Date: March 11, 2014 Time: 10:00 a.m.

**Date of intended adoption:** Not earlier than March 12, 2014  
(Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name: DSHS Rules Coordinator  
Address: P.O. Box 45850, Olympia WA 98504-5850  
1115 Washington Street SE, Olympia WA 98504  
e-mail [DSHSRPAURulesCoordinator@Qdshs.wa.gov](mailto:DSHSRPAURulesCoordinator@Qdshs.wa.gov)  
fax (360) 664-6185

by 5 p.m. on **March 11, 2014**

**Assistance for persons with disabilities:** Contact

Jennisha Johnson, DSHS Rules Consultant, by February 18, 2014 TTY (360) 664-6178 or (360) 664-6094 Or by email at [johnsjl4@dshs.wa.gov](mailto:johnsjl4@dshs.wa.gov)

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

The department is proposing these rules as a result of Third Engrossed Substitute Senate Bill 5034. These rules will provide licensing requirements for enhanced services facilities. The legislature has directed that residents be placed in enhanced services facilities in 2014.

**Reasons supporting proposal:** (see above)

**Statutory authority for adoption:**

Chapter 70.97 RCW Enhanced Services Facilities

**Statute being implemented:**

Chapter 70.97 RCW Enhanced Services Facilities

**Is rule necessary because of a:**

- |                         |                              |  |
|-------------------------|------------------------------|--|
| Federal Law?            | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| Federal Court Decision? | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
| State Court Decision?   | <input type="checkbox"/> Yes | <input checked="" type="checkbox"/> No |
- If yes, CITATION:

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE: January 08, 2014**

**TIME: 9:10 AM**

**WSR 14-03-026**

**DATE**

January 2, 2014

**NAME** (type or print)

Katherine Vasquez

**SIGNATURE**

**TITLE**

DSHS Rules Coordinator

**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..... John Gaskell	P.O. Box 45600, Olympia WA 98513	(360) 725-3210
Implementation.... Irene Owens	P.O. Box 45600, Olympia WA 98513	(360) 725-2489
Enforcement..... Lori Melchiori	P.O. Box 45600, Olympia WA 98513	(360) 725-2404

**Has a small business economic impact statement been prepared under chapter 19.85 RCW 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: John Gaskell

Address: P.O. Box 45600, Olympia WA 98513

phone (360) 725-3210

fax (360) 438-7903

e-mail gaskejw@dshs.wa.gov

No. Explain why no statement was prepared.

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

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

Name: John Gaskell

Address: P.O. Box 45600, Olympia WA 98513

phone (360) 725-3210

fax (360) 438-7903

e-mail gaskejw@dshs.wa.gov

No: Please explain:

## MEMORANDUM

**DATE:** December 30, 2013

**TO:** Katherine Vasquez  
DSHS Rules and Policies Assistance Unit

**FROM:** John Gaskell, Program Manager  
Policy, Program Development and Training Unit  
Residential Care Services

**SUBJECT:** Cost-Benefit Analysis and Small Business Economic Impact  
Statement for Proposed New Chapter 388-107 WAC, Enhanced  
Services Facilities

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### SUMMARY OF PROPOSED RULES

The Department of Social and Health Services' Residential Care Services (RCS) is proposing regulations in the new Chapter 388-107 WAC, Enhanced Services Facilities Licensing Requirements.

The purpose of this proposed rulemaking is to establish licensing requirements for enhanced services facilities, which is a new long-term care facility type established by Chapter 70.97 RCW and funded by the 2013 legislature. RCS is proposing these new administrative rules because RCW 70.97.230 directs the Department of Social and Health Services to adopt rules to implement chapter 70.97 RCW that, at a minimum, promote safe treatment and necessary care for residents who may reside at this newly-created facility type, to provide for safe and clean conditions, to establish licensee qualifications, to establish licensing and enforcement procedures, and to establish licensing fees.

The highlights of these new regulations include:

- Facilities must meet specific building physical plant requirements;
- Facilities may have up to sixteen residents;
- Facilities are required to report abuse and neglect;
- Residents have specific rights;
- Required trainings or credentials for staff providing direct care and services;
- Background checks for anyone having unsupervised access to residents;

- Residents will receive personal care and services, as well as mental health and/or behavioral health support;
- All residents will be state-pay (Medicaid);
- Facilities will have a high staffing ratio, including the presence of (or access to) a registered nurse at all times.

The Department has followed this stakeholder process to obtain input:

- Shared the draft language and draft small business economic statement and cost benefit analysis with interested parties who are on the Enhanced Services Facilities interested party mailing list.
- In addition, the draft language and draft small business economic statement and cost benefit analysis will be posted on the Aging and Long-Term Support Administration, Enhanced Services Facilities internet website for anyone in the public to review and comment.
- Department's process is to use the input from internal and external stakeholders to determine cost impacts for the drafting of the rule. To date, no comments have yet been received about costs for these proposed rules.

## **SMALL BUSINESS ECONOMIC IMPACT STATEMENT**

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

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

RCS evaluated the impacts of this new WAC chapter. Since this is a brand new facility type that currently does not exist, there are no existing enhanced services facilities small businesses that will be impacted by these rules. Instead, the only small businesses that would be affected by these new rules are those who choose to be licensed as this new facility type. The costs will not have disproportionate economic impact on small businesses when compared to large businesses. It is believed that all enhanced services facilities will meet the definition of small business having fifty employees or less.

Each facility will need approximately 6 to 17 staff each day, at a minimum. Specific staffing ratios will vary, depending on the needs of the residents. For example, a mental health professional is required to be on staff at the facility for sixteen hours per day, a licensed nurse must be in the facility at all times, and a

registered nurse must be on site for at least eight hours per day and on call at all other times. A facility would require additional staff to ensure all shifts are adequately staffed throughout the week in order to comply with these rules. Depending on the facility's staffing plans, 6-34 new jobs could be created at each facility (six jobs would require each staff to work every day for seven days and would incur extremely high overtime costs; 34 jobs would allow for 17 staff for weekdays and 17 staff for weekends). Facilities may need to hire beyond these staffing estimates in order to ensure the services required in the contract are provided to the residents. Since this is a new facility type, no jobs are anticipated to be lost.

RCS has looked at ways to mitigate costs to small businesses that may decide to be licensed as an enhanced services facility. Here are some examples:

- The statute allows for existing adult family homes, nursing homes, and assisted living facilities who convert to enhanced services facilities to be deemed to meet the applicable state and local rules, regulations, permits, and code requirements. This helps mitigate disproportionate costs to these small businesses since they will not need to renovate or remodel to meet the physical plant requirements unless it is a risk to resident health and safety.
- The department used staffing ratio requirements to help determine the rate the providers will receive.
- The enhanced services facilities statute requires that the department set a license fee to cover the oversight costs. The department is looking at offering payment options to mitigate an upfront large fee payment due.

## **EVALUATION OF PROBABLE COSTS AND PROBABLE BENEFITS**

RCS has determined that some of the proposed rules are "significant legislative rules" as defined by legislature. As required by RCW 34.05.328(1) (c) and (d), RCS has analyzed the probable costs and probable benefits of the proposed amendments, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented. In RCW 70.97.230, the legislature mandated the Department of Social and Health Services to adopt rules to implement chapter 70.97 RCW, including at a minimum to adopt rules sufficient to promote safe treatment and necessary care of individuals residing in this new facility type, to provide for safe and clean conditions, to establish licensee qualifications, to establish licensing and enforcement procedures, and to establish licensing fees sufficient to cover the cost of licensing and enforcement. This new WAC chapter is created to fulfill the specific directive of the statute being implemented.

### **Costs**

There are currently no small businesses that operate this facility type. RCS is mandated by the legislature in RCW 70.97.230 to establish licensing requirements for this brand new facility type.

It is the intent of the department that all residents served in enhanced services facilities will be department clients and services paid through a Medicaid waiver. Each enhanced services facilities will need to contract with the department (Home and Community Services) to receive payment and will need to adhere to contract requirements. The following are examples of contract requirements that may cost but were put into licensing regulations to be consistent:

- Approximately 6 to 34 jobs would be created to provide direct care and services to the residents of the enhanced services facility; additional staff that do not provide direct care and services may be needed.
- The liability insurance requirement for enhanced services facilities may impose additional costs.
- Background check requirements for staff with unsupervised access are required, but this is paid by the Department so that the facility will not incur any costs for this requirement.
- Specialty training requirements such as mental health and dementia for staff with unsupervised access and long-term care worker training requirements.
- If a resident needs chemical dependency treatment, the facility must contract with a chemical dependency agency or provider for this service.
- The contract requires the facility to have an Administrator, which may be an additional staff person, unless the Administrator will also provide direct care and services to residents.

Other examples of cost enhanced services facilities may incur are:

- Licensing fee; however, the department is looking at offering payment options to mitigate an upfront large fee payment due.
- Newly constructed enhanced services facilities will need to meet applicable state and local rules, regulations, permits, and code requirements. There may be building, renovation, and physical plant improvements needed for existing facilities to ensure the health and safety of residents.
- Adult family homes and assisted living facilities converting to an enhanced services facility will likely incur costs related to specific physical plant requirements, such as a significant backup power system.
- Cost of administering each staff person tuberculosis test within three days of employment.

## **BENEFITS**

The rules result in several benefits which include:

- Residents will be in a less-restrictive environment and will receive recommended services including mental health and chemical dependency services, along with having their care needs met.
- Residents will reside in a homelike community setting.

- Residents will be served by staff that passed background checks and are trained specifically in specialty areas to meet their needs.
- Placing residents in enhanced services facilities will potentially open up beds in the state hospitals for individuals who are in the need of active mental health treatment.
- Jobs will be created to work at this new licensed facility category.
- The liability insurance, license fee, background checks, training, tuberculosis testing and administrator requirements will provide a consistent standard among all licensed long-term care settings in Washington.
- The liability insurance requirement will provide all residents with another level of consumer protection. It can also help enhanced services facilities defend themselves and pay awarded damages without threatening their financial stability.
- The tuberculosis testing requirement will ensure that residents in enhanced services facilities are not at higher risk for contacting infectious diseases.
- Requiring an administrator protects residents since this staff must be readily accessible to meet with residents and is ultimately responsible for ensuring residents receive the care and services identified in their individual treatment plan and assessment.

## **CONCLUSION**

RCS concludes that the benefits of these regulations exceed any possible cost. These rules will implement state laws and carry out legislative directive to create this new license category. RCS has complied with the appropriate sections of the Administrative Procedure Act and is prepared to proceed with the rule filing.

Please contact me by email at [gaskejw@dshs.wa.gov](mailto:gaskejw@dshs.wa.gov) or by telephone at (360) 725-3210 if you have questions.

## Definitions

### NEW SECTION

**WAC 388-107-0001 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

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

**"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 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, drug 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.

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

**"Enhanced services facility"** means a facility 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.

**"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 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.

**"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).

**"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.

**"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.

**"Physical intervention"** means the use of a manual technique intended to interrupt or stop a behavior from occurring. Physical intervention includes using physical restraint to release or escape from a dangerous or potentially dangerous situation.

**"Physical restraint"** means manually holding all or part of a person's body in a way that restricts the person's free movement; also includes any approved controlling maneuvers, such as holds taught in approved training for de-escalation techniques and control of self-harm or aggressive behavior. **This definition does not apply to briefly holding, without undue 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.**

**"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.

**"Psychiatrist"** means a person having a license as a physician and surgeon in this state who has in addition completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology.

**"Psychologist"** means a person who has been licensed as a psychologist under chapter 18.83 RCW.

**"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.

**"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 drugs, that results in an error involving the wrong drug, 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"** means any person who is employed by the enhanced services facility, directly or by contract.

**"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.

## General

NEW SECTION

**WAC 388-107-0010 Scope and Purpose.** This implements Chapter 70.97 RCW and sets the minimum health and safety standards for licensure and operations of enhanced services facilities. An enhanced services facility will provide treatment and services to a maximum of sixteen residents 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.

NEW SECTION

**WAC 388-107-0020 Department Authority.** Chapter 70.97 RCW authorizes the department to develop rules to implement the chapter, and to license enhanced services facilities. At a minimum the rules are to be written to promote safe treatment and necessary care of individuals residing in each facility, to provide for safe and clean conditions and to establish licensee qualifications, licensing and enforcement standards, and license fees sufficient to cover the cost of licensing and enforcement.

**Admission and Assessment**

NEW SECTION

**WAC 388-107-0030 Admission Criteria.** The enhanced services facility will only admit residents who:

- (1) Are at least eighteen years old; and
- (2) Require:
  - (a) Daily care by or under the supervision of a mental health professional, chemical dependency professional, or nurse; or
  - (b) Assistance with three or more activities of daily living; and
- (3) Have any of the following:
  - (a) A mental disorder, chemical dependency disorder, or both;
  - (b) An organic or traumatic brain injury; or
  - (c) A cognitive impairment that results in symptoms or behaviors requiring supervision and facility services; and
- (4) Have two or more of the following:
  - (a) Self-endangering behaviors that are frequent or difficult to manage;
  - (b) Aggressive, threatening, or assaultive behaviors that create a risk to the health or safety of other residents or staff, or a significant risk to property and these behaviors are frequent or difficult to manage;
  - (c) Intrusive behaviors that put residents or staff at risk;
  - (d) Complex medication needs which include psychotropic medications;

(e) A history of or likelihood of unsuccessful placements in either a licensed facility or other state facility or a history of rejected applications for admission to other licensed facilities based on the resident's behaviors, history, or security needs;

(f) A history of frequent or protracted mental health hospitalizations; and/or

(g) A history of offenses against a person or felony offenses that created substantial damage to property.

#### NEW SECTION

**WAC 388-107-0040 Preadmission Assessment.** (1) The enhanced services facility must complete a face to face preadmission assessment with each potential resident prior to admission which includes the following minimum information:

(a) Resident identification information such as but not limited to the name, address and telephone number of the resident's:

(i) Representative;

(ii) Health Care providers;

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

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

(b) Presenting issues;

(c) Current medical and mental health history;

(d) Necessary and contraindicated medications, including psychotropic;

(e) A licensed medical or health professional's physical and mental health diagnoses;

(f) Significant known behaviors such as but not limited to aggressive, threatening, intrusive, assaultive, self-endangering including suicide and/or homicide or other symptoms that may cause concern or require special care and staffing;

(g) Chemical dependency history, including tobacco;

(h) Level of personal care needs, assistance with activities of daily living;

(i) Activities and service preferences;

(j) Preferences regarding other issues important to the prospective resident, such as food and daily routine;

(k) Information that a resident is or is not court-ordered for treatment or under the supervision of the department of corrections;

(l) Cognitive impairments that result in symptoms of behaviors requiring supervision and facility services;

(m) History of unsuccessful placement in the community settings; and

(n) Treatment recommendations or recommendations for additional program-specific assessment.

(2) The enhanced services facility will integrate information from the state's last comprehensive assessment reporting evaluation (CARE) into the facility's preadmission assessment.

NEW SECTION

**WAC 388-107-0050 Timing of preadmission assessment.** The assessor must complete the preadmission assessment of the prospective resident before the resident moves into the enhanced services facility.

NEW SECTION

**WAC 388-107-0060 Comprehensive assessment required.** (1) The enhanced services facility must complete a comprehensive assessment for each resident within fourteen (14) days of admission.

(2) The assessment will be repeated when there is a significant change in the resident's condition or, at a minimum, every one hundred eighty days if there is no significant change in condition.

NEW SECTION

**WAC 388-107-0070 Comprehensive assessment.** The enhanced services facility must obtain sufficient information to be able to assess the capabilities, needs, and preferences for each resident, and must complete a comprehensive assessment, that includes the elements of the CARE assessment, and addresses the following, within fourteen days of the resident's move-in date:

(1) Individual's recent medical history, including, but not limited to:

(a) Diagnoses from a licensed medical or health professional, unless the resident objects for religious reasons;

(b) Chronic, current, and potential skin conditions; or

(c) Known allergies to foods or medications, or other considerations for providing care or services.

(2) Currently necessary and contraindicated medications and treatments for the individual, including any prescribed medications, over-the-counter medications, and antipsychotic drugs.

(3) The individual's nursing needs.

(4) Significant known challenging behaviors or symptoms of the individual causing concern or requiring special care, including:

(a) History of substance abuse;

(b) History of harming self, others, or property;

(c) Other conditions that require behavioral intervention strategies;

(d) Individual's ability to leave the enhanced services facility unsupervised;

(e) Any court order or court stipulation regarding activities, surroundings, behaviors, and treatments; and

(f) Other safety considerations that may pose a danger to the individual or others, such as use of medical devices or the individual's ability to smoke unsupervised, if smoking is permitted outdoors in a specific location on the premises.

(5) Individual's special needs, by evaluating available information, or if available information does not indicate the presence of

special needs, selecting and using an appropriate tool to determine the presence of symptoms consistent with, and implications for, care and services of:

(a) Mental illness, or needs for psychological or mental health services;

(b) Developmental disability;

(c) Dementia. While screening a resident for dementia, the enhanced services facility must:

(i) Base any determination that the resident has short-term memory loss upon objective evidence; and

(ii) Document the evidence in the resident's record.

(d) Other conditions affecting cognition, such as traumatic brain injury or other neurological conditions.

(6) Individual's activities, typical daily routines, habits and service preferences.

(7) Individual's personal identity and lifestyle, to the extent the individual is willing to share the information, and the manner in which they are expressed, including preferences regarding food, community contacts, hobbies, spiritual preferences, or other sources of pleasure and comfort.

(8) Who has decision-making authority for the individual, including:

(a) The presence of any advance directive or other legal document that will establish a substitute decision maker in the future;

(b) The presence of any legal document that establishes a current substitute decision maker or court orders for treatment, or documents indicating resident is under the supervision and care of the department of corrections; and

(c) The scope of decision-making authority of any substitute decision maker.

(9) A plan to use antipsychotic drugs as diagnosed and documented in the clinical record in accordance with chapters 71.05 and 70.97 RCW.

#### NEW SECTION

**WAC 388-107-0080 On-going comprehensive assessments.** The enhanced services facility must:

(1) Complete a comprehensive assessment, addressing the elements set forth in WAC 388-107-0070, upon a significant change in the resident's condition or at least every 180 days if there is no significant change in condition;

(2) Complete an assessment specifically focused on a resident's identified strengths, preferences, limitations and related issues:

(a) Consistent with the resident's change of condition as specified in WAC 388-107-0060;

(b) When the resident's individual treatment plan no longer addresses the resident's current needs and preferences;

(c) When the resident has an injury requiring the intervention of a practitioner.

(3) Ensure the staff person performing the on-going assessments is qualified to perform them.

NEW SECTION

**WAC 388-107-0090 Qualified assessor.** (1) The enhanced services facility must ensure that an assessor performing an assessment for any potential or admitted resident has experience working with residents who have severe behavioral issues due to but not limited to functional or cognitive disabilities, mental health or chemical dependency disorder, or both, or an organic or traumatic brain injury and meets the following qualifications:

(a) A master's degree in social services, human services, behavioral sciences or an allied field and two years social service experience working with adults who have severe behavioral issues; or

(b) A bachelor's degree in social services, human services, behavioral sciences or an allied field and five years social service experience working with adults who have severe behavioral issues; or

(c) Has a valid Washington state license to practice as a nurse under chapter 18.79 RCW and three years of clinical nursing experience working with adults who have severe behavioral issues; or

(d) Is currently a licensed physician, including an osteopathic physician, in Washington state with experience working with adults who have severe behavioral issues; or

(e) Is a licensed psychologist or psychiatrist; or

(f) Is a professional appropriately credentialed or qualified to provide chemical dependency, mental health, organic or traumatic brain injury and/or functional or cognitive services and work experience with adults who have severe behavioral issues.

(2) The facility must ensure that an assessor who meets the requirements of subsections (1)(a), (b), (c), (d), (e), or (f) of this section does not have unsupervised access to any resident unless the assessor has:

(a) A current criminal history background check; and

(b) Has no disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113 WAC, or a negative action that is disqualifying under WAC 388-107-1290, unless the individual is eligible for an exception under chapter 388-113 WAC.

**Individual Treatment Plan**

NEW SECTION

**WAC 388-107-0100 Enhanced services facility team.** The facility will identify a team for each resident. The team will:

(1) Include the resident and any support persons identified by the resident, as well as a mental health professional, nursing staff, and other persons identified by the facility;

(2) Ensure a coordinated approach to the development, implementation and evaluation of the individual treatment plan for the resident; and

(3) Meet at least monthly to review and modify the individual treatment plan as needed.

NEW SECTION

**WAC 388-107-0110 Initial individual treatment plan.** The enhanced services facility team must develop the initial individual treatment plan, using information from the resident, the resident's representative if the resident has one, the Comprehensive Assessment Reporting Evaluation (CARE) assessment, and the preadmission assessment, prior to admitting the resident to the facility. The enhanced services facility team must ensure that each resident has an initial individual treatment plan that includes:

- (1) The resident's immediate specific problems and needs (physical, mental and behavioral) identified in the CARE assessment and the pre-assessment;
- (2) Direction to staff and caregivers relating to the resident's immediate needs, capabilities, and preferences;
- (3) The needs for which the resident chooses not to accept or refuses care or services;
- (4) What the facility will do to ensure the resident's health and safety related to the refusal of any care or service;
- (5) Resident defined goals and preferences;
- (6) How the facility will provide behavioral support to prevent a crisis and maintain placement in the facility; and
- (7) Identifying factors that will prevent the resident from accessing less restrictive community based services and developing a plan regarding when and how the resident may be able to transfer or transition from the enhanced services facility to a more independent living situation in the community.

NEW SECTION

**WAC 388-107-0120 Comprehensive individual treatment plan.** The enhanced services facility team must integrate the information obtained in the resident's preadmission assessment, CARE assessment information from the department's case manager, comprehensive assessment and initial individual treatment plan to develop a written comprehensive individual treatment plan. The enhanced services facility team must ensure each resident's comprehensive individual treatment plan includes:

- (1) A list of the care and services to be provided;
- (2) Identification of who will provide the care and services;
- (3) When and how the care and services will be provided;
- (4) How medications will be managed, including how the resident will get medications when the resident is not in the facility;
- (5) The resident's daily activities preferences, interests, strengths and needs and how the facility will meet those within the behavioral challenges of the resident;
- (6) Other preferences and choices about issues important to the resident, including, but not limited to:
  - (a) Food;
  - (b) Daily routine;
  - (c) Grooming; and
  - (d) How the enhanced services facility will accommodate the preferences and choices.

(7) A behavioral support plan to prevent crisis and maintain placement in the facility by:

(a) A crisis prevention and response protocol that outlines specific indicators which may signal a potential crisis for the resident;

(b) Specific interventions and pre-crisis prevention strategies for each of the resident's indicators of a potential crisis;

(c) A crisis prevention and response protocol that outlines steps to be taken if the prevention or intervention strategies are unsuccessful in diverting the crisis including the community crisis responder's coordination plan; and

(d) A plan on how to respond to a resident's refusal of care or treatment, including when the resident's physician or practitioner should be notified of the refusal.

(8) Identification of any communication barriers the resident may have and how the home will use behaviors and nonverbal gestures to communicate with the resident;

(9) A hospice care plan if the resident is receiving services for hospice care delivered by a licensed hospice agency.

(10) Advance directives, if the resident chooses, that are validly executed pursuant to chapters 70.122 RCW and 71.32 RCW, as applicable;

(11) A plan regarding how the facility will work with the Department of Corrections (DOC) if the resident is under the supervision of DOC, collaborating to maximize treatment outcomes and reduce the likelihood of re-offense.

(12) A plan which maximizes the opportunities for independence, maintaining health and safety, recovery, employment, the resident's participation in treatment decisions, collaboration with peer-supported services and care and treatment provided in the least restrictive manner appropriate to the resident and to any relevant court orders with which the resident must comply.

(13) A discharge plan that addresses factors and barriers that prevent a resident from being placed in a less restrictive community placement and assist the resident in the transition. This plan will include an assessment of all current medications and the resident's ability to self-medicate in a more independent living situation.

(14) The enhanced services facility must complete the comprehensive individual treatment plan within fourteen days of the resident's move-in date.

#### NEW SECTION

**WAC 388-107-0130 On-going comprehensive individual treatment plan.** (1) The enhanced services facility team will review and update each resident's comprehensive individual treatment plan, as follows:

(a) Within a reasonable time consistent with the needs of the resident following any change in the resident's physical, mental, emotional or behavioral functioning; and

(b) Whenever the comprehensive individual treatment plan no longer adequately addresses the resident's current assessed needs and preferences; and

(c) Following every full comprehensive assessment.

(2) The process of developing and updating the comprehensive individual treatment plan will include the following:

- (a) The resident;
  - (b) The resident's representative to the extent he or she is willing and capable, if the resident has one;
  - (c) Other individuals the resident wants included;
  - (d) The department's case manager; and
  - (e) Staff designated by the enhanced services facility.
- (3) The enhanced services facility team will ensure:
- (a) Individuals participating in developing the resident's comprehensive individual treatment plan:
    - (i) Discuss the resident's assessed needs, capabilities, and preferences; and
    - (ii) Negotiate, if possible and feasible, an agreed upon comprehensive individual treatment plan which would support the resident; and
  - (b) Staff persons document in the resident's record the agreed upon plan for services.

NEW SECTION

**WAC 388-107-0140 Implementation of the individual treatment plan.** (1) The enhanced services facility must provide the care and services as agreed upon or outlined in the initial and comprehensive individualized treatment plan to each resident unless a deviation from the plan is mutually agreed upon between the enhanced services facility team, the department's case manager, and the resident or the resident's representative at the time the care or services are scheduled.

(2) The details of any deviation from the plan must be clearly documented in the resident record.

NEW SECTION

**WAC 388-107-0150 Comprehensive individual treatment plan sent to the state.** Because each resident's services are paid for by the department, the enhanced services facility must give the department case manager a copy of the comprehensive individual treatment plan each time it is completed or updated and after it has been signed and dated. The department's case manager will:

- (1) Review the individual treatment plan;
- (2) Sign, date, and return the individual treatment plan to the facility;
- (3) Document the review in the resident record, indicating it was signed and approved; and
- (4) Schedule a department reassessment.

NEW SECTION

**WAC 388-107-0160 Behavioral support plan.** The enhanced services facility will ensure that each resident's individual treatment plan

has interventions for behavioral support that are used first when a resident's behavior is escalating, including but not limited to the following:

(1) Specific indicators which may signal a potential crisis for the individual or that left unaddressed in the past has led to a behavioral crisis. Examples include but are not limited to typical challenging behaviors the individual displays when escalating, actions the resident may typically take before a behavioral outburst, or words or phrases the individual has been known to express during a time of escalation.

(2) Specific interventions and pre-crisis prevention strategies for each of the indicators identified above.

(3) Steps to be taken by each of the facility team members if the prevention or intervention strategies are unsuccessful in diverting the individual from a behavior or action that leads to crisis.

(4) A plan to ensure coordination with community crisis responders in regard to each resident's treatment plan as part of a regular, routine protocol for crisis prevention and intervention.

(5) A resident may not be secluded or isolated as part of the behavior support plan.

### **Resident Rights**

#### NEW SECTION

##### **WAC 388-107-0170 Resident dignity and accommodation of needs.**

(1) The enhanced services facility must ensure that:

(a) Resident care is provided in a manner to enhance each resident's dignity and quality of life including a safe, clean, comfortable and homelike environment, and to respect and recognize his or her individuality; and

(b) Each resident's personal care needs and behavioral health treatment are provided in a manner that protects resident's dignity and privacy.

(2) 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.

#### NEW SECTION

**WAC 388-107-0180 Self-determination and participation.** Except when the health or safety of the individual or other residents would be endangered and consistent with the individual treatment plan, each resident has the right to:

(1) Choose activities, schedules, and health care consistent with his or her interests, assessments, and individual treatment plan;

(2) Interact with members of the community both inside and outside the enhanced services facility;

(3) Make choices about aspects of his or her 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 enhanced services facility.

NEW SECTION

**WAC 388-107-0190 Rights of residents.** (1)(a) Each resident of an enhanced services facility is entitled to all the rights set forth in this chapter, and chapters 71.05 and 70.96A RCW, and must retain all rights not denied him or her under these chapters.

(b) The enhanced services facility will only consider a resident's competence as determined or withdrawn under the provisions of chapters 10.77 or 11.88 RCW.

(c) The facility must give each resident, at the time of his or her treatment planning meeting, a written statement setting forth the substance of this section.

(2) Every resident of an enhanced services facility has the right to adequate care and individualized treatment.

(3) The provisions of this chapter must not be construed to deny to any resident treatment by spiritual means through prayer in accordance with the tenets and practices of a church or religious denomination.

(4) Each resident of an enhanced services facility must have, in addition to other rights not specifically withheld by law, the rights enumerated in (a) through (l) below, unless exercise of these rights creates a danger to the resident or to others. The facility must prominently post a list of these rights in a place accessible to residents and must make this list available to residents without need of request. The resident has the right:

(a) To wear his or her own clothes and to keep and use his or her own personal possessions, except when deprivation of same is essential to protect the safety of the resident or other persons;

(b) To have access to fluids and snacks of choice;

(c) To keep and be allowed to spend a reasonable sum of his or her own money for canteen expenses and small purchases;

(d) To have access to individual storage space for his or her private use;

(e) To have visitors at reasonable times;

(f) To have reasonable access to a telephone, both to make and receive confidential calls, consistent with an effective treatment program;

(g) To have ready access to letter writing materials, including stamps, and to send and receive uncensored correspondence through the mails;

(h) To discuss and actively participate in treatment plans and decisions with professional persons;

(i) To a clean, comfortable and home-like environment;

(j) Not to have psychosurgery performed on him or her under any circumstances;

(k) To dispose of property and sign contracts unless the resident has been adjudicated an incompetent in a court proceeding directed to that particular issue; and

(l) To complain about rights violations or conditions and request the assistance of a mental health ombuds or representative of Washing-

ton protection and advocacy. The facility may not prohibit or interfere with a resident's decision to consult with an advocate of his or her choice.

(5) Nothing contained in this chapter must prohibit a resident from petitioning by writ of habeas corpus for release.

(6) Nothing in this section permits any person to knowingly violate a no-contact order or a condition of an active judgment and sentence or active supervision by the department of corrections.

(7) A resident has a right to refuse placement in an enhanced services facility. No person must be denied other department services solely on the grounds that he or she has made such a refusal.

(8) A resident has a right to appeal the decision of the department that he or she is eligible for placement at an enhanced services facility, and must be given notice of the right to appeal in a format that is accessible to the resident with instructions regarding what to do if the resident wants to appeal.

### Quality of Care

#### NEW SECTION

**WAC 388-107-0200 Quality of care.** (1) Consistent with resident rights, the enhanced services facility must provide each resident with the necessary care and services to attain or maintain the highest practicable physical, mental and psychosocial well-being, self-care and independence in accordance with his or her comprehensive assessment and individual treatment plan.

(2) Based on the comprehensive assessment of a resident, the enhanced services facility must ensure that:

(a) A resident's abilities in activities of daily living do not decline unless circumstances of the resident's clinical condition demonstrate that the decline was unavoidable. This includes the resident's ability to:

(i) Bathe, dress, and groom;

(ii) Transfer and ambulate;

(iii) Toilet;

(iv) Eat; and

(v) Use speech, language, or other functional communication systems.

(b) A resident is given the appropriate treatment and services to maintain or improve the resident's abilities in activities of daily living specified in subsection (2)(a) of this section; and

(c) A resident who is unable to carry out activities of daily living receives the necessary services to maintain good nutrition, grooming, and personal and oral hygiene.

(3) The enhanced services facility must ensure that the appropriate care and services are provided to the resident in a minimum of the following areas, as applicable in accordance with the resident's individualized assessments and individual treatment plan:

(a) Mental health treatment;

(b) Chemical dependency treatment;

(c) Vision and hearing;

(d) Skin;

- (e) Continence;
- (f) Range of motion;
- (g) Mental and psychosocial functioning and adjustment;
- (h) Nutrition;
- (i) Hydration;
- (j) Special needs, including but not limited to:
  - (i) Injections;
  - (ii) Parenteral and enteral fluids;
  - (iii) Colostomy, ureterostomy, or ileostomy care;
  - (iv) Tracheostomy care and/or tracheal suctioning;
  - (v) Respiratory care;
  - (vi) Dental care;
  - (vii) Foot care; and
  - (viii) Prostheses.
- (k) Medications, including freedom from:
  - (i) Unnecessary drugs; and
  - (ii) Significant medication errors; and
- (l) Independent living skills.

NEW SECTION

**WAC 388-107-0210 Care and services.** The enhanced services facility must develop and implement a program to meet the needs of each resident and to ensure each resident receives:

- (1) The care and services identified in the individualized treatment plan.
- (2) The necessary care and services to help the resident reach the highest level of physical, mental, and psychosocial well-being consistent with resident choice, current functional status and potential for improvement or decline.
- (3) The care and services in a manner and in an environment that:
  - (a) Actively supports, maintains or improves each resident's quality of life;
  - (b) Actively supports the safety of each resident; and
  - (c) Reasonably accommodates each resident's individual needs and preferences except when the accommodation endangers the health or safety of the individual or another resident.
- (4) Services by the appropriate professionals based upon the resident's assessment and individualized treatment plan.

**Quality Improvement**

NEW SECTION

**WAC 388-107-0220 Quality improvement.** (1) To ensure the proper delivery of services and the maintenance and improvement in quality of care through self-review, any enhanced services facility licensed under this chapter must maintain a quality improvement committee.

- (2) The quality improvement committee will include a multi-disciplinary team.

(3) The quality improvement committee will plan one continuous quality improvement project annually, beginning in the second contract year for completion by the end of the second calendar year.

### **Nursing Services and Staffing**

#### NEW SECTION

**WAC 388-107-0230 Sufficient staffing.** An enhanced services facility must have sufficient numbers of staff with the appropriate credentials and training to provide residents with the identified care and treatment needs. At a minimum the facility must have staff to provide:

- (1) Mental health and/or chemical dependency treatment;
- (2) Medication management services;
- (3) Personal care, assistance with the activities of daily living;
- (4) Medical treatment, including psychiatric;
- (5) Activities;
- (6) Social service support;
- (7) Negotiated services;
- (8) Dietary services; and
- (9) Security.

#### NEW SECTION

**WAC 388-107-0240 Staffing ratios.** (1) The enhanced services facility must ensure that:

(a) Sufficient numbers of appropriately qualified and trained staff are available to provide necessary care and services consistent with residents' negotiated service agreements safely under routine conditions, as well as during fire, emergency, and disaster situations; and

(b) At least two staff are on duty in the facility at all times if there are any residents in the facility.

(2) A licensed nurse must be on duty in the facility at all times.

(a) A registered nurse must be on duty at least eight hours per day; and

(b) A registered nurse must be on call during any shift that a licensed practical nurse is on duty.

(3) A mental health professional must be on-site at least sixteen hours per day.

NEW SECTION

**WAC 388-107-0250 Staffing credentials and qualifications.** (1)

The enhanced services facility must ensure the staffing ratios are met with the following credentialed staff, who are in good professional standing:

- (a) Registered nurse;
- (b) Licensed practical nurse;
- (c) Nursing Assistant Certified or Certified Home Care Aide; and
- (d) Mental health professional.

(2) The enhanced services facility must ensure that any caregiver, excluding professional licensed nursing staff:

- (a) Must be at least 18 years of age;
- (b) Has successfully completed a department-approved certified nursing assistant training program; or
- (c) Meets the long-term worker training and certification requirements of Chapter 388-112 WAC.

NEW SECTION

**WAC 388-107-0260 Staffing for medically fragile residents.** If

an enhanced services facility serves one or more medically fragile residents, the facility must ensure that a registered nurse is on site for at least sixteen hours per day. A registered nurse or a doctor must be on-call during the remaining eight hours.

NEW SECTION

**WAC 388-107-0270 Providing care and services.** The enhanced

services facility must ensure that all staff, including management, provide care and services consistent with:

- (1) Empowering each resident to attain or maintain the highest practicable physical, mental, and psychosocial well-being, self-care and independence;
- (2) Respecting resident rights; and
- (3) Enhancing each resident's quality of life.

**Operations**

NEW SECTION

**WAC 388-107-0280 Transfer and discharge.** (1) Upon completion of

the annual reassessment and/or significant change assessment by both case management and enhanced services facility staff, the enhanced services team will review each resident for possible discharge. The team will determine if the resident:

(a) No longer needs the level of behavioral support provided by the enhanced services facility;

(b) Behaviors are now mitigated by changed medical or personal care needs;

(c) Expresses the desire to move to a different type of community based setting and has demonstrated the ability or capacity to be successful; or

(d) Is a good candidate for relocation and recommends other community based programs to the resident.

(2) The enhanced services facility, with input from the team, will meet with case management staff to identify residents with potential for discharge or transfer to a less restrictive program, and will participate in discharge planning for each resident who meets the above criteria for potential discharge from the facility.

(3) The enhanced services facility must provide a thirty (30) day notice before discharging a resident unless the situation is emergent and the case manager is involved in the decision.

### **Services Provided**

#### NEW SECTION

**WAC 388-107-0290 Activities.** The enhanced services facility must:

(1) Provide space and staff support necessary for:

(a) Each resident, at any time, to engage in independent or self-directed activities that are appropriate to the setting, consistent with the resident's assessed interests, choices, functional abilities, preferences, and individualized treatment plan; and

(b) Group activities at least five times per week that may be planned and facilitated by caregivers consistent with the collective interests of a group of residents.

(2) Make available routine supplies and equipment necessary for activities described in subsection (1) of this section.

#### NEW SECTION

**WAC 388-107-0300 Admission and continuation of services.** The enhanced services facility must only admit or continue to provide services to a resident when:

(1) The department has determined that the individual is eligible for placement in an enhanced services facility.

(2) The facility can safely and appropriately meet the assessed needs and preferences of the resident:

(a) With available staff; and

(b) Through reasonable accommodation.

(3) Admitting the resident does not negatively affect the ability of the facility to:

(a) Meet the needs, and does not endanger the safety, of other residents; or

(b) Safely evacuate all people in the facility during an emergency according to the approved fire safety and evacuation plans appropriate to the occupancy type of the building.

NEW SECTION

**WAC 388-107-0310 Medical and/or adaptive equipment.** The enhanced services facility is responsible to meet the needs of residents through qualified and trained staff, services, medical and/or adaptive equipment and building design.

NEW SECTION

**WAC 388-107-0320 Medication services.** (1) An enhanced services facility providing medication service, either directly or indirectly, must:

(a) Meet the requirements of chapter 69.41 RCW regarding legend and prescription drugs, and other applicable statutes and administrative rules;

(b) Develop and implement systems that support and promote safe medication service for each resident; and

(c) Ensure that each resident is monitored for desired responses and undesirable side effects of prescribed drugs.

(2) The enhanced services facility must ensure residents receive their medications as prescribed.

NEW SECTION

**WAC 388-107-0330 Pharmacy services.** (1) The enhanced services facility must:

(a) Obtain routine and emergency drugs and biologicals for its residents under an agreement with a licensed pharmacy;

(b) Ensure that pharmaceutical services:

(i) Meet the needs of each resident;

(ii) Establish and monitor systems for the accurate acquiring, receiving, dispensing and administering of all drugs and biologicals; and

(c) Employ or obtain the services of a license pharmacist who must:

(i) Provide consultation on all aspects of the provision of pharmacy services in the enhanced services facility;

(ii) Determine that enhanced services facility drug records are in order;

(iii) Perform regular reviews at least once each month of each resident's drug therapy; and

(iv) Document and report drug irregularities to the attending physician.

(2) Drugs and biologicals used in the enhanced services facility must be labeled and stored in accordance with applicable state and federal laws.

(3) The enhanced services facility must provide pharmaceutical services that meet recognized and accepted standards of pharmacy practice.

(4) The enhanced services facility must ensure:

(a) Education and training for enhanced services facility staff by the licensed pharmacist on drug-related subjects including, but not limited to:

(i) Recognized and accepted standards of pharmacy practice and applicable pharmacy laws and rules;

(ii) Appropriate monitoring of residents to determine desired effect and undesirable side effects of drug regimens; and

(iii) Use of psychotropic drugs.

(b) Reference materials regarding medication administration, adverse reactions, toxicology, and poison center information are readily available;

(c) Pharmacist monthly drug review reports are acted on in a timely and effective manner;

(d) Accurate detection, documentation, reporting and resolution of drug errors and adverse drug reactions; and

(e) Only individuals authorized by state law to do so will receive drug orders and administer drugs.

(5) The resident has the right to a choice of pharmacies when purchasing prescription and nonprescription drugs as long as the following conditions are met to ensure the resident is protected from medication errors:

(a) The medications are delivered in a unit of use compatible with the established system of the facility for dispensing drugs; and

(b) The medications are delivered in a timely manner to prevent interruption of dose schedule.

#### NEW SECTION

**WAC 388-107-0340 Prescribed medication authorizations.** (1) Before the enhanced services facility may provide medication administration to a resident for prescribed medications, the enhanced services facility must have one of the following:

(a) A prescription label completed by a licensed pharmacy;

(b) A written order from the prescriber;

(c) A facsimile or other electronic transmission of the order from the prescriber; or

(d) Written documentation by a nurse of a telephone order from the prescriber.

(2) The documentation required above in subsection (1) of this section must include the following information:

(a) The name of the resident;

(b) The name of the medication;

(c) The dosage and dosage frequency of the medication; and

(d) The name of the prescriber.

NEW SECTION

**WAC 388-107-0350 Medication refusal.** (1) When a resident who is receiving medication administration services from the enhanced services facility chooses to not take his or her medications, the enhanced services facility must:

(a) Respect the resident's right to choose not to take medication;

(b) Document the time, date and medication the resident did not take;

(c) Notify the physician of the refusal and follow any instructions provided, unless there is a staff person available who, acting within his or her scope of practice, is able to evaluate the significance of the resident not getting his or her medication, and such staff person;

(i) Conducts an evaluation; and

(ii) Takes the appropriate action, including notifying the prescriber or primary care practitioner when there is a consistent pattern of the resident choosing to not take his or her medications.

(2) The enhanced services facility must comply with subsection (1) of this section, unless the prescriber or primary care practitioner has provided the enhanced services facility with:

(a) Specific directions for addressing the refusal of the identified medication;

(b) The enhanced services facility documents such directions; and

(c) The enhanced facility is able to fully comply with such directions.

NEW SECTION

**WAC 388-107-0360 Medication refusal-Antipsychotics.** (1) When a resident who is being administered antipsychotic medication, chooses to not take his or her medications after two or three attempts, the enhanced services facility must:

(a) Respect the resident's right to choose not to take medication;

(b) Document the time, date and medication the resident did not take; and

(c) Notify the physician within eight hours of the refusal.

(2) The enhanced services facility cannot give the antipsychotic medication in an override of the resident's refusal.

NEW SECTION

**WAC 388-107-0370 Treatment services.** The enhanced services facility must:

(1) Provide for diagnostic and therapeutic services prescribed by the attending clinical staff that meet all of the resident needs identified in the individual treatment plan, to include mental health and chemical dependency treatment;

(2) Ensure that each resident's individual treatment plan has interventions for behavioral support in accordance with WAC 388-107-0160.

(3) Ensure that all services are provided by specific program professionals, such as mental health professionals and chemical dependency professionals.

NEW SECTION

**WAC 388-107-0380 Use of psychopharmacologic medications.** (1) The enhanced services facility must ensure that each resident is free from psychopharmacologic drugs used for discipline, to restrain, or for convenience of the staff.

(2) The facility must ensure that when a psychopharmacologic medication is used the resident assessment indicates that the use is necessary to treat the resident's medical symptoms.

NEW SECTION

**WAC 388-107-0390 Use of routine psychopharmacologic medications.** When the resident is using a psychopharmacological drug on a routine basis, the facility must ensure that the:

(1) Drug is prescribed by a physician or health care professional with prescriptive authority;

(2) Resident's individual treatment plan includes strategies and modifications of the environment and staff behavior to address the symptoms for which the medication is prescribed;

(3) Changes in medication only occur when the prescriber decides it is medically necessary;

(4) The resident's record includes documentation about the specific symptom or behavior that caused the physician to order the medication and what the resident needs to be able to do or stop doing in order to discontinue the medication.

(5) Documentation includes that the resident, guardian or legal representative, if any, was informed of the need for the psychopharmacologic medication.

NEW SECTION

**WAC 388-107-0400 Use of as needed psychopharmacologic medications.** If the physician has ordered an as-needed psychopharmacologic medication for a resident, the facility must ensure that the:

(1) Order details the circumstances under which the medication may be used and the medication is given only as specifically ordered;

(2) Resident's individual treatment plan includes behavioral intervention strategies and modifications of the environment and staff behavior to address the symptoms for which the medication is prescribed;

(3) Documentation in the resident record is done on the specific symptom or behavior that caused the need for the medication and what the results of the use is; and

(4) Documentation includes that the resident, guardian or legal representative, if any, was informed of the need for the medication.

#### NEW SECTION

**WAC 388-107-0410 Management of escalating behaviors.** (1) An enhanced services facility must have a specific procedure for de-escalating, preventing and redirecting aggressive and challenging behavior. This protocol must always be the first approach and strategy in resolving behavioral issues. The protocol must include:

(a) Training on prevention of escalation of behavior before it reaches the stage of physical assault;

(b) Techniques for staff to use in response to challenging client behaviors;

(c) Evaluation of the safety of the physical environment;

(d) Issues of respect and dignity of the resident; and

(e) Use of the least restrictive physical and behavioral interventions depending upon the situation;

(2) If the facility uses holding techniques as a last resort to physically restrain residents in emergency situations and as part of behavioral intervention protocols, the facility must:

(a) Use other established resident-specific behavioral interventions first to attempt to de-escalate the situation;

(b) Limit the holding technique to specific emergent situations where behavioral interventions have not been successful in de-escalating a situation and the resident is at imminent risk of harm to self or others due to aggressive behavior;

(c) Limit the time used to only until the arrival of emergency personnel;

(d) Release residents from the holding technique as soon as possible;

(e) Instruct observers on how to support signs of:

(i) Distress by the client; and

(ii) Fatigue by the staff.

(f) Document:

(i) The reason for use of the holding technique;

(ii) Other behavioral interventions attempted prior to the use of the holding technique;

(iii) The duration of the use of the holding technique; and

(iv) The condition of the resident at the time of release from the holding technique.

#### **Restraints**

NEW SECTION

**WAC 388-107-0420 Mechanical restraints.** The enhanced services facility must ensure:

(1) Each resident's right to be free from mechanical restraints used for discipline, behavioral intervention, or staff convenience;

(2) That mechanical restraints are only used for medical purposes; for example to prevent the resident from pulling out a catheter, tube or stitches;

(3) That before using the mechanical restraint, less restrictive alternatives have been tried and found not effective and this has been documented in the resident record;

(4) That before mechanical restraints are used, the resident has been assessed as needing the restraint to treat the emergent medical symptoms and to prevent the resident from self-harm;

(5) That if physical restraints are used, the restraints are applied and immediately supervised on-site by a:

(a) Licensed registered nurse;

(b) Licensed practical nurse; or

(c) Licensed physician; and

(d) For the purposes of this subsection, immediately supervised means that the licensed person is in the facility and quickly and easily available;

(6) When any mechanical restraint is used per (2) above:

(a) A staff person is in the presence of the resident at all times when the restraint is in use;

(b) A physician's order is obtained within eight hours;

(c) The order includes treatments to assist in resolving the emergency situation and eliminating the need for the restraint; and

(d) The use of the mechanical restraint is documented:

(i) On the specific medical issue that caused the need for restraint and what the resident needs to do or stop doing in order to discontinue the restraint; and

(ii) That the resident, guardian or legal representative, if any, was informed of the need for restraint.

**Food Services**

NEW SECTION

**WAC 388-107-0430 Food Services.** The enhanced services facility must provide or contract out food services for residents. If the facility chooses to contract out the food service, the contracted services must meet all of the applicable food codes and requirements.

1) The enhanced services facility must:

(a) Provide a minimum of three meals a day;

(b) Provide snacks;

(i) Between meals and in the evening at regular intervals; and

(ii) With no more than fourteen hours between the evening meal and breakfast, unless the enhanced services facility provides a nutritious snack after the evening meal and before breakfast.

(c) Provide access to fluids and snacks at all times;

- (d) Provide sufficient time and staff support for residents to consume meals;
- (e) Ensure all menus:
  - (i) Are written at least one week in advance and delivered to residents' rooms or posted where residents can see them, except as specified in (h) of this subsection;
  - (ii) Indicate the date, day of week, month and year;
  - (iii) Include all food and snacks served that contribute to nutritional requirements;
  - (iv) Are kept at least six months;
  - (v) Provide a variety of foods;
  - (vi) Provide foods at safe and appropriate temperatures; and
  - (vii) Are not repeated for at least three weeks, except that breakfast menus in enhanced services facilities that provide a variety of daily choices of hot and cold foods are not required to have a minimum three-week cycle.
- (f) Prepare food on-site, or provide food through a contract with a food service establishment located in the vicinity that meets the requirements of chapter 246-215 WAC regarding food service;
- (g) Serve nourishing, palatable and attractively served meals adjusted for:
  - (i) Age, gender and activities, unless medically contraindicated; and
  - (ii) Individual preferences to the extent reasonably possible.
- (h) Substitute foods of equal nutrient value, when changes in the current day's menu are necessary, and record changes on the original menu;
  - (i) Make available and give residents alternate choices in entrees for midday and evening meals that are of comparable quality and nutritional value. The enhanced services facility is not required to post alternate choices in entrees on the menu one week in advance, but must record on the menus the alternate choices in entrees that are served;
  - (j) Develop, make known to residents, and implement a process for residents to express their views and comment on the food services; and
  - (k) Maintain a dining area or areas approved by the department with a seating capacity for seventy-five percent or more of the residents per meal setting, or ten square feet times the licensed resident bed capacity, whichever is greater.
- (2) The enhanced services facility must plan in writing, prepare on-site or provide through a contract with a food service establishment located in the vicinity that meets the requirements of chapter 246-215 WAC, and serve to each resident as ordered:
  - (a) Prescribed general low sodium, general diabetic, and mechanical soft food diets according to a diet manual. The enhanced services facility must ensure the diet manual is:
    - (i) Available to and used by staff persons responsible for food preparation;
    - (ii) Approved by a dietitian; and
    - (iii) Reviewed and updated as necessary or at least every five years.
  - (b) Prescribed nutrient concentrates and supplements when prescribed in writing by a health care practitioner.
- (3) The enhanced services facility may provide to a resident at his or her request and as agreed upon in the resident's comprehensive individual treatment plan, non-prescribed:
  - (a) Modified or therapeutic diets; and

(b) Nutritional concentrates or supplements.

(4) The enhanced services facility must have a means for those residents whose individual treatment plan indicates they have the ability to make or select their own snacks and beverages an opportunity to do so without having to ask a staff member for assistance.

### **Infection Control**

#### NEW SECTION

**WAC 388-107-0440 Infection control system.** (1) The enhanced services facility must:

(a) Establish and maintain an effective infection control program designed to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of disease and infection;

(b) Prohibit any employee with a communicable disease or infected skin lesion from direct contact with residents or their food, if direct contact could transmit the disease; and

(c) Require staff to wash their hands after each direct resident contact for which hand-washing is indicated by accepted professional practice.

(2) Under the infection control system, the enhanced services facility must:

(a) Investigate, control and prevent infections in the facility;

(b) Decide what procedures should be applied in individual circumstances; and

(c) Maintain a record of incidence of infection and corrective action taken.

(3) Enhanced services facility personnel must handle, store, process, and transport linens so as to prevent the spread of infection.

(4) The enhanced services facility must develop and implement effective methods for the safe storage, transport and disposal of garbage, refuse and infectious waste, consistent with all applicable local, state, and federal requirements for such disposal.

(5) The enhanced services facility must provide areas, equipment, and supplies to implement an effective infection control program and ensure:

(a) Ready availability of hand cleaning supplies and appropriate drying equipment or material at each sink;

(b) Safe use of disposable and single service supplies and equipment;

(c) Effective procedures for cleaning, disinfecting or sterilizing according to equipment use;

(d) Chemicals and equipment used for cleaning, disinfecting, and sterilizing, including chemicals used to launder personal clothing, are used in accordance with manufacturer's directions and recommendations; and

(e) Safe and effective procedures for disinfecting all therapy tubs and bathing and shower facilities between each resident use.

NEW SECTION

**WAC 388-107-0450 Early identification and management of individuals with active tuberculosis.** (1) The enhanced services facility must develop and implement policies and procedures that comply with nationally recognized tuberculosis standards set by the Centers for Disease Control, and applicable state law. Such policies and procedures include, but are not limited to, the following:

(a) Evaluation of any resident or employee with symptoms suggestive of tuberculosis whether tuberculosis test results were positive or negative;

(b) Identifying, and following up on, residents and personnel with suspected or confirmed tuberculosis, in a timely manner; and

(c) Identifying, and following up on, volunteers with symptoms suggestive of tuberculosis.

(2) The enhanced services facility must comply with chapter 49.17 RCW, Washington Industrial Safety and Health Act (WISHA) requirements to protect the health and safety of employees.

NEW SECTION

**WAC 388-107-0460 Tuberculosis-Testing-Required.** (1) The enhanced services facility must develop and implement a system to ensure each staff person is screened for tuberculosis within three days of employment.

(2) For purposes of WAC 388-107-0460 through 388-107-0540, "staff person" means any enhanced services facility employee or temporary employee of the enhanced services facility, excluding volunteers and contractors.

NEW SECTION

**WAC 388-107-0465 Testing method-Required.** The enhanced services facility must ensure that all tuberculosis testing is done through either:

(1) Tuberculin skin test with results read:

(a) Within forty-eight to seventy-two hours of the test; and

(b) By a qualified professional; or

(2) An FDA approved blood test for tuberculosis.

NEW SECTION

**WAC 388-107-0470 Tuberculosis-No testing.** The enhanced services facility is not required to have a staff person tested for tuberculosis if the staff person has:

(1) A documented history of a previous positive tuberculin skin test;

- (2) A documented history of a previous positive FDA approved blood test; or
- (3) Documented evidence of:
  - (a) Adequate therapy for active disease; or
  - (b) Completion of treatment for latent tuberculosis infection.

NEW SECTION

**WAC 388-107-0480 Tuberculosis—One test.** The enhanced services facility is only required to have a staff person take one tuberculosis test if the staff person has any of the following:

- (1) A documented history of a negative result from a previous two-step tuberculin skin test; or
- (2) A documented negative result from one tuberculin skin test in the previous twelve months; or
- (3) A documented negative FDA approved TB blood test.

NEW SECTION

**WAC 388-107-0490 Tuberculosis—Two-step skin testing.** Unless the staff person meets the requirement for having no skin testing or only one test, the enhanced services facility choosing to do skin testing must ensure that each staff person has the following two-step tuberculin skin testing:

- (1) An initial tuberculin skin test within three days of employment; and
- (2) A completed two-step tuberculin skin test within four weeks of employment.

NEW SECTION

**WAC 388-107-0500 Tuberculosis—Positive test result.** When there is a positive result to tuberculin skin or FDA approved blood testing, the enhanced services facility must:

- (1) Ensure that the staff person has a chest radiograph within seven days of a positive tuberculosis test result;
- (2) Ensure each resident or staff person with a positive test result undergoes ongoing observation for signs and symptoms of tuberculosis;
- (3) Follow the recommendation of the resident or staff person's health care provider; and
- (4) Annually screen employees and residents for symptoms.

NEW SECTION

**WAC 388-107-0510 Tuberculosis—Negative test result.** The enhanced services facility may be required by the health care provider or licensing authority to ensure that staff persons with negative test results have follow-up testing in certain circumstances, such as:

- (1) After exposure to active tuberculosis; or
- (2) When tuberculosis symptoms are present.

NEW SECTION

**WAC 388-107-0520 Tuberculosis—Declining a skin test.** The enhanced services facility must ensure that a staff person take an FDA approved blood test for tuberculinosis if they decline the tuberculin skin test.

NEW SECTION

**WAC 388-107-0530 Tuberculosis—Reporting—Required.** The enhanced services facility must:

- (1) Report any staff person or resident with tuberculosis symptoms or a positive chest radiograph to the appropriate health care provider in accordance with chapter 246-101 WAC;
- (2) Follow the infection control and safety measures ordered by the staff person's health care provider;
- (3) Institute appropriate infection control measures;
- (4) Apply living or work restrictions where residents or staff persons are, or may be, infectious and pose a risk to other residents and staff persons; and
- (5) Ensure that staff persons caring for a resident with suspected tuberculosis comply with the WISHA standard for respiratory protection found in chapter 296-842 WAC.

NEW SECTION

**WAC 388-107-0540 Tuberculosis—Test records.** The enhanced services facility must:

- (1) Keep the records of tuberculin skin test results, reports of chest radiograph findings, and any physician or health care provider orders in the enhanced services facility;
- (2) Make the records readily available to the appropriate health provider and licensing agency;
- (3) Retain the records for at least two years after the date the staff person either quits or is terminated; and
- (4) Provide the staff person with a copy of his/her test results.

## Administration

### NEW SECTION

**WAC 388-107-0550 Contracted basic services.** If the provider does not intend to provide basic services in-house, the provider must contract with an outside source to provide those services. The provider must ensure that the contracted services, at a minimum, meet applicable state, local, and licensing standards. Basic services include, but are not limited to:

- (1) Housekeeping services;
- (2) Food services; and
- (3) Laundry services.

### NEW SECTION

**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 least the following:

(a) Resident identification and sociological data, including the name and address of the individual or individuals the resident designates as significant;

- (b) Medical information;
- (c) Physician's orders;
- (d) Assessments;
- (e) Individual treatment plans;
- (f) Services provided;
- (g) Progress notes;
- (h) Medications administered;
- (i) Consents, authorizations, releases;
- (j) Allergic responses;
- (k) Laboratory, X-ray, and other findings; and
- (l) Other records as appropriate.

NEW SECTION

**WAC 388-107-0570 Resident records-System.** (1) The enhanced services facility 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 enhanced services facility must ensure the register includes discharges and transfers to other treatment facilities in excess of twenty-four hours.

(2) The enhanced services facility 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.

NEW SECTION

**WAC 388-107-0580 Resident records-Maintenance and retention.**

(1) In cases where the enhanced services facility maintains records by computer rather than hard copy, the facility must:

(a) Have in place safeguards to prevent unauthorized access; and

(b) Provide for reconstruction of information.

(2) The enhanced services facility must:

(a) Retain health records for a period of no less than eight years following the most recent discharge of the resident;

(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 an enhanced services facility ceases operation, make arrangements prior to cessation, as approved by the department, for preservation of the clinical records. The enhanced services facility licensee must provide a plan for preservation of clinical records to the department's designated local office no later than seven days after the date of notice of the facility closure 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.

### **Reporting Requirements**

#### NEW SECTION

**WAC 388-107-0590 Reporting abuse and neglect.** (1) The enhanced services facility must ensure that each staff person:

(a) Makes a report to the department's Aging and Long-Term Support Administration Complaint Resolution Unit hotline consistent with chapter 74.34 RCW in all cases where the staff person has reasonable cause to believe that abandonment, abuse, financial exploitation, or neglect of a vulnerable adult has occurred; and

(b) Makes an immediate report to the appropriate law enforcement agency and the department consistent with chapter 74.34 RCW of all incidents of suspected sexual abuse or physical abuse of a resident.

(2) The enhanced services facility must prominently post so it is readily visible to staff, residents and visitors, the department's toll-free telephone number for reporting resident abuse and neglect.

#### NEW SECTION

**WAC 388-107-0600 Reporting significant change in a resident's condition.** (1) The enhanced services facility must consult with the resident's representative, the resident's physician, the resident's department case manager, and other individuals designated by the resident within 24 hours when:

(a) There is a significant change in the resident's condition;

(b) The resident is relocated to a hospital or other health care facility;

(c) The resident's condition improved and the resident no longer needs the care and services provided by the enhanced services facility; or

(d) The resident dies.

(2) Whenever any of the conditions in subsection (1) of this section occurs, the enhanced services facility must document in the resident's records:

(a) The date and time each individual was contacted; and

(b) The individual's relationship to the resident.

(3) In case of a resident's death, the enhanced services facility must notify the coroner if required by RCW 68.50.010.

#### NEW SECTION

**WAC 388-107-0610 Reporting fires and incidents.** The enhanced services facility must immediately report to the department:

(1) Any accidental or unintended fire, or any deliberately set but improper fire, such as arson, in the enhanced services facility;

(2) Any missing resident, once the initial search for the resident is completed and 911 is notified;

(3) Any unusual incident that requires implementation of the enhanced services facility's disaster plan, including any evacuation of all or part of the residents to another area of the enhanced services facility or to another address; and

(4) Circumstances which threaten the enhanced services facility's ability to ensure continuation of services to residents.

#### NEW SECTION

**WAC 388-107-0620 Retaliation or discrimination prohibited.** (1) The enhanced services facility must not discriminate or retaliate in any manner against a resident or employee in its enhanced services facility who has initiated or participated in any action or proceeding authorized under enhanced services facility licensing law.

(2) For purposes of this chapter, "**retaliation**" or "**discrimination**" against a resident means an act including, but not limited to:

(a) Verbal or physical harassment or abuse;

(b) Any attempt to expel the resident from the facility;

(c) Non-medically indicated social, dietary, or mobility restrictions;

(d) Lessening of the level of care when not medically appropriate;

(e) Non-voluntary relocation within an enhanced services facility without appropriate medical, psychosocial, or nursing justification;

(f) Neglect or negligent treatment;

(g) Withholding privileges;

(h) Monitoring resident's phone, mail or visits without resident's permission;

(i) Withholding or threatening to withhold food or treatment unless authorized by a terminally ill resident or the resident's representative;

(j) Persistently delaying responses to resident's request for services or assistance; or

(k) Infringement on a resident's rights described in this chapter.

(3) For purposes of this chapter, "**retaliation**" or "**discrimination**" against an employee means an act including, but not limited to:

(a) Harassment;

(b) Unwarranted firing;

- (c) Unwarranted demotion;
  - (d) Unjustified disciplinary action;
  - (e) Denial of adequate staff to perform duties;
  - (f) Frequent staff changes;
  - (g) Frequent and undesirable office changes;
  - (h) Refusal to assign meaningful work;
  - (i) Unwarranted and unsubstantiated report of misconduct under Title 18 RCW;
  - (j) Unsubstantiated letters of reprimand;
  - (k) Unsubstantiated unsatisfactory performance evaluations;
  - (l) Denial of employment;
  - (m) A supervisor or superior encouraging coworkers to behave in a hostile manner toward the whistleblower; or
  - (n) Workplace reprisal or retaliatory action as defined in RCW 74.34.180(3)(b).
- (4) If, within one year of the complaint by or on behalf of a resident, the resident is involuntarily discharged from the enhanced services facility, or is subjected to any type of discriminatory treatment, there will be a presumption that the action was in retaliation for the filing of the complaint. Under these circumstances, the enhanced services facility will have the burden of establishing that the action was not retaliatory, in accordance with RCW 74.34.180(2).

### **Training Requirements**

#### NEW SECTION

**WAC 388-107-0630 Training and home care aide certification requirements.** (1) Under RCW 18.88B.041 and chapter 246-980 WAC, certain individuals including registered nurses, licensed practical nurses, certified nursing assistants, or persons who are in an approved certified nursing assistant program are exempt from long-term care worker training requirements.

(2) Continuing education requirements are outlined in chapter 388-112 WAC; registered nurses and licensed practical nurses are exempt from the long-term care worker continuing education requirement.

(3) The enhanced services facility must ensure staff persons meet training requirements in effect on the date hired, including requirements in chapter 388-112 WAC, unless exempt under RCW 18.88B.041.

(4) The enhanced services facility must ensure all enhanced services facility administrators, or their designees, and caregivers who are not exempt under subsection (1) of this section meet the long-term care worker training requirements of chapter 388-112 WAC, including but not limited to:

- (a) Orientation and safety;
- (b) Basic;
- (c) Specialty for dementia and, mental illness and/or developmental disabilities when serving residents with any of those primary special needs;
- (d) Cardiopulmonary resuscitation and first aid; and
- (e) Continuing education.

(5) The enhanced services facility must ensure that all staff receive appropriate training and orientation to perform their specific job duties and responsibilities.

(6) The enhanced services facility must ensure the following staff obtain home care aide certification, unless exempt under WAC 246-980-070:

- (a) All long-term care workers, within two hundred days of hire;
- (b) All enhanced services facility applicants, before licensure;
- (c) All enhanced services facility administrators within two hundred days of hire, and
- (d) Any other staff who will provide direct care and services to residents.

#### NEW SECTION

**WAC 388-107-0640 Staff development trainings.** (1) The enhanced services facility must have a staff development program that is under the direction of a designated registered nurse or licensed practical nurse or mental health professional.

(2) The enhanced services facility must:

(a) Ensure each employee receives initial orientation to the facility and its policies and is initially assigned only to duties for which the employee has demonstrated competence;

(b) Ensure all employees receive appropriate in-service and continuing education to maintain a level of knowledge appropriate to, and demonstrated competence in, the performance of ongoing job duties consistent with the principle of assisting the resident to attain or maintain the highest practicable physical, mental, and psychosocial well-being. To this end, the enhanced services facility must:

(i) Assess the specific training needs of each employee and address those needs;

(ii) Determine the special needs of the enhanced services facility's resident population which may require training emphasis; and

(iii) Ensure that each employee is trained on de-escalating challenging behaviors, including the use of a manual technique intended to interrupt or stop a behavior from occurring.

(c) Comply with other applicable training requirements, such as, but not limited to, the blood borne pathogen standard.

#### NEW SECTION

**WAC 388-107-0650 Specialized training.** (1) The enhanced services facility must ensure all staff who have any interaction with the residents successfully complete the mental health and dementia specialized trainings, consistent with chapter 388-112 WAC, prior to working in the enhanced services facility.

(2) The facility must ensure all staff who have interaction with the residents complete any other specialty trainings to meet the needs of the residents being served, such as developmental disabilities.

NEW SECTION

**WAC 388-107-0660 Continuing education requirements for the home care aide certified staff.** All home care aide certified staff must have ten of their twelve hours of annual continuing education cover relevant education regarding the population served in the enhanced services facility.

NEW SECTION

**WAC 388-107-0670 In-service education requirements for nursing assistant certified staff.** All nursing assistant certified staff must have ten of their twelve hours of annual continuing education cover relevant education regarding the population served in the enhanced services facility.

NEW SECTION

**WAC 388-107-0680 Quarterly staff education requirements.** In addition to the annual continuing education requirements for individual staff, the enhanced services facility must provide three hours of training per quarter relevant to the needs of the population being served.

NEW SECTION

**WAC 388-107-0690 Facility-based trainers.** If the enhanced services facility provides continuing education, in-service education or quarterly staff education, the educators must be approved by the department prior to educational intervention, in accordance with chapter 388-112 WAC.

**Physical Plant Basic Requirements**

NEW SECTION

**WAC 388-107-0700 General.** (1) The Department of Health Construction Review Services will review the following general, code, program submittal and minimum requirements to ensure that the facility is in compliance with enhanced services facility physical plant basic requirements.

(2) The enhanced services facility must be on the ground floor.

(3) For the purposes of the physical plant sections, the use of the term facility also means applicant where applicable.

(4) The department may not exempt any physical environment requirements established in law but may exempt the enhanced services facility from meeting other specific requirements related to the physical environment if the department determines the exemption will not:

(a) Jeopardize the health or safety of residents;

(b) Adversely affect the residents' quality of life; or

(c) Change the fundamental nature of the enhanced services facility operation into something other than an enhanced services facility.

(5) An enhanced services facility wishing to request an exemption must submit a written request to the department, including:

(a) A description of the requested exemption; and

(b) The specific WAC requirement for which the exemption is sought.

(6) If a physical plant requirement, such as an isolation or seclusion room, is not included or addressed in this chapter, it is not allowed.

#### NEW SECTION

**WAC 388-107-0710 Conversion of a currently licensed facility to an enhanced services facility.** (1) If the department licenses part or all of a currently licensed nursing home under chapter 18.51 RCW, assisted living facility under chapter 18.20 RCW, or adult family home under chapter 70.128 RCW, as an enhanced services facility, the facility is deemed to meet the applicable state and local rules, regulations, permits, and code requirements, with the exceptions of subsections (2), (3), (4) and (5) of this section.

(2) If the facility's previous construction has the potential to jeopardize resident health and safety, the department may require compliance with enhanced services facility physical plant new construction rules.

(3) Only portions of an existing building that are on the ground floor can be converted for use as an enhanced services facility.

(4) If the facility does construction to meet enhanced services facility requirements, that construction has to be reviewed and approved by construction review services and applicable local and state building officials.

(5) The enhanced services facility must also meet specific new construction requirements related to the safety of any residents with complex needs that the facility is choosing to serve.

(6) All other facilities or new facilities must meet all enhanced services facility new construction requirements, including the applicable state and local rules, regulations, permits, and code requirements.

NEW SECTION

**WAC 388-107-0720 Types of new construction.** New construction includes but is not limited to:

- (1) New structures:
  - (a) A new building to be licensed as an ESF; or
  - (b) An addition to a building currently licensed as an ESF.
- (2) Existing buildings:
  - (a) Conversion of another building to an ESF;
  - (b) Change in the use of space for access by residents within an existing ESF; and
  - (c) Alterations, additions, or modifications of an existing facility including but not limited to:
    - (i) Physical structure;
    - (ii) Electrical fixtures or systems;
    - (iii) Mechanical equipment or systems;
    - (iv) Fire alarm fixtures or systems;
    - (v) Fire sprinkler fixtures or systems;
    - (vi) Wall coverings 1/28 thick or thicker;
    - (vii) Floor coverings; or
    - (viii) Kitchen or laundry equipment.
  - (d) A change in the department-approved use of an existing facility or portion of a facility; and
  - (e) An existing building or portion thereof to be converted for the approved use.

NEW SECTION

**WAC 388-107-0730 Applicable codes—New construction.** New construction of enhanced services facilities must:

- (1) Through its design, construction and necessary permits demonstrate compliance with this chapter, the following codes and local jurisdiction standards.
- (2) Obtain all local permits before construction and maintain on file at the facility.
- (3) Comply with the International Building Code, and International Building Code Standards, as published by the International Conference of Building Officials as amended and adopted by the Washington state building code council and published as chapter 51-50 WAC, or successor laws.
- (4) Identify the planned types of residents served at the point of initial licensure to determine occupancy consistent with nursing homes, assisted living facilities or adult family homes;
- (5) Comply with the International Mechanical Code, including chapter 22, Fuel Gas Piping, Appendix B, as published by the International Conference of Building Officials and the International Association of Plumbing and Mechanical Officials as amended and adopted by the Washington state building code council and published as chapter 51-52 WAC, or successor laws;
- (6) Comply with the International Fire Code, and International Fire Code Standards, as published by the International Conference of Building Officials and the Western Fire Chiefs Association as amended

and adopted by the Washington state building code council and published as chapter 51-54 WAC, or successor laws;

(7) Comply with the Uniform Plumbing Code, and Uniform Plumbing Code Standards, as published by the International Association of Plumbing and Mechanical Officials, as amended and adopted by the Washington state building code council and published as chapters 51-56 and 51-57 WAC, or successor laws;

(8) Ensure that all electrical wiring complies with state and local electrical codes including chapter 296-46B WAC and the National Electric Code of the National Fire Protection Association (NFPA-70) as adopted by the Washington state department of labor and industries.

(9) Ensure conformance to the approved plans during construction.

#### NEW SECTION

**WAC 388-107-0740 Required review of building plans.** (1) The facility must submit plans to construction review services as directed by the department of health construction review services for approval prior to beginning any construction or conversion of an existing facility or a portion of an existing facility. The approved plans must be conformed to during construction.

(2) The facility must notify construction review services of all planned new construction regarding the facility prior to beginning work on any of the following:

(a) A new building or portion thereof to be used as a facility;

(b) An addition of, or modification or alteration to an existing facility, including, but not limited to, the facility's:

(i) Physical structure;

(ii) Electrical fixtures or systems;

(iii) Mechanical equipment or systems;

(iv) Fire alarm fixtures or systems;

(v) Fire sprinkler fixtures or systems;

(vi) Wall coverings 1/28 thick or thicker;

(vii) Floor coverings; or

(viii) Kitchen or laundry equipment.

(c) A change in the department-approved use of an existing facility or portion of a facility; and

(d) An existing building or portion thereof to be converted for the approved use.

(3) The facility does not need to notify construction review services of the following:

(a) Repair or maintenance of equipment, furnishings or fixtures;

(b) Replacement of equipment, furnishings or fixtures with equivalent equipment, furnishings, or fixtures;

(c) Repair or replacement of damaged construction if the repair or replacement is performed according to construction documents approved by construction review services within eight years preceding the current repair or replacement;

(d) Painting; or

(e) Cosmetic changes that do not affect resident activities, services, or care and are performed in accordance with the current edition of the building code.

NEW SECTION

**WAC 388-107-0750 Document submittal requirements.** The facility must:

- (1) Provide one copy of the functional program;
- (2) Provide an analysis of likely adverse impacts on current residents and plans to eliminate or mitigate such adverse impacts;
- (3) Provide for the health, safety, and comfort of residents during construction projects;
- (4) Ensure that construction documents include two copies of the following:
  - (a) Drawings prepared, stamped, and signed by an architect licensed by the state of Washington under chapter 18.08 RCW. The services of a consulting engineer licensed by the state of Washington may be used for the various branches of the work, if appropriate; and
  - (b) Drawings with coordinated architectural, mechanical, and electrical work drawn to scale showing complete details for construction, including:
    - (i) Site plan(s) showing streets, driveways, parking, vehicle and pedestrian circulation, utility line locations, and location of existing and new buildings;
    - (ii) Dimensioned floor plan(s) with the function of each room and fixed/required equipment designated;
    - (iii) Elevations, sections, and construction details;
    - (iv) Schedule of floor, wall, and ceiling finishes;
    - (v) Schedules of doors and windows - sizes and type, and door finish hardware;
    - (vi) Mechanical systems - plumbing and heating/venting/air conditioning; and
    - (vii) Electrical systems, including lighting, power, and communication/notification systems.
  - (c) Specifications that describe with specificity the workmanship and finishes;
  - (d) Shop drawings and related equipment specifications for:
    - (i) An automatic fire sprinkler system when required by other codes; and
    - (ii) An automatic fire alarm system when required by other codes.
- (5) Submit addenda, change orders, construction change directives or any other deviation from the approved plans prior to their installation; and
- (6) Provide a written construction project completion notice to the Department of Health Construction Review Services indicating:
  - (a) The completion date; and
  - (b) The actual construction cost.

NEW SECTION

**WAC 388-107-0760 Functional Program.** The facility must implement a functional program. The functional program must clearly define the level, type and scope of care provided. The functional program will cover, but is not limited to the following:

- (1) Scope of the project;
- (2) Type of residents to be admitted to the facility;

- (3) Services offered;
- (4) Activities provided;
- (5) Transportation;
- (6) Staffing;
- (7) Emergency and disaster planning;
- (8) Type of rooms;
- (9) Resident rooms;
- (10) Outdoor spaces;
- (11) Laundry services;
- (12) Janitorial services;
- (13) Food services;
- (14) Communication systems;
- (15) Security systems; and
- (16) Other components.

### **Common Elements**

#### NEW SECTION

**WAC 388-107-0770 Environment of care.** The facility must ensure that:

(1) The facility is designed to provide the level of security appropriate for the specific type of service or program provided as well as the age level, acuity, and risk of the residents served (e.g., geriatric, acute psychiatric, or forensic).

(2) Facility spaces accessible to residents must be designed to minimize locations where residents are out of the line of sight of staff.

(3) All rooms with lockable doors, including but not limited to resident sleeping rooms and bathrooms, have a readily accessible means of rapid access for all staff.

(4) Perimeter security addresses elopement prevention, prevention of contraband smuggling, visitor access control, and exit process and procedures.

(5) Openings in the perimeter security system (e.g., windows, doors, and gates) are controlled by locks (manual, electric, or magnetic) when required by the functional program.

#### NEW SECTION

**WAC 388-107-0780 Electronic monitoring equipment—Audio monitoring and video monitoring.** (1) Except as provided in this section or in WAC 388-107-0790, the facility must not use the following in the facility:

- (a) Audio monitoring equipment; or
- (b) Video monitoring equipment if it includes an audio component.

(2) The facility may video monitor and video record activities in the facility, without an audio component, only in the following areas:

- (a) Entrances and exits if the cameras are:
  - (i) Focused only on the entrance or exit doorways; and

- (ii) Not focused on areas where residents gather.
- (b) Outdoor areas not commonly used by residents; and
- (c) Designated smoking areas, 25 feet away from the facility, subject to the following conditions:
  - (i) Residents are assessed as needing supervision for smoking;
  - (ii) A staff person watches the video monitor at any time the area is used by such residents;
  - (iii) The video camera is clearly visible;
  - (iv) The video monitor is not viewable by the general public; and
  - (v) The facility notifies all residents in writing of the video monitoring equipment.

NEW SECTION

- WAC 388-107-0790 Electronic monitoring equipment—Resident requested use.** (1) The facility must not use audio or video monitoring equipment to monitor any resident unless:
- (a) The resident has requested the monitoring; and
  - (b) The monitoring is only used in the sleeping room of the resident who requested the monitoring.
- (2) If the resident requests audio or video monitoring, before any electronic monitoring occurs the facility must ensure:
- (a) That the electronic monitoring does not violate chapter 9.73 RCW;
  - (b) The resident has identified a threat to the resident's health, safety or personal property; and
  - (c) The resident and the facility have agreed upon a specific duration for the electronic monitoring documented in writing.
- (3) The facility must:
- (a) Reevaluate the need for the electronic monitoring with the resident at least quarterly; and
  - (b) Have each reevaluation in writing signed and dated by the resident.
- (4) The facility must immediately stop electronic monitoring if the:
- (a) Resident no longer wants electronic monitoring; or
  - (b) Resident becomes unable to give consent.
- (5) For the purposes of consenting to video electronic monitoring, without an audio component, the term "resident" includes the resident's decision maker.
- (6) For the purposes of consenting to audio electronic monitoring, the term "resident" includes only:
- (a) The resident residing in the facility; or
  - (b) The resident's court-appointed guardian or attorney-in-fact who has obtained a court order specifically authorizing the court-appointed guardian or attorney-in-fact to consent to audio electronic monitoring of the resident.
- (7) If the resident's decision maker consents to audio electronic monitoring as specified in subsection (6) above, the facility must maintain a copy of the court order authorizing such consent in the resident's record.

NEW SECTION

**WAC 388-107-0800 Equipment.** The facility must have adequate equipment, supplies, and space to carry out all functions and responsibilities of the facility.

NEW SECTION

**WAC 388-107-0810 Resident room.** The facility must ensure that each resident sleeping room:

- (1) Meets the following standards:
  - (a) Maximum capacity of one resident.
  - (b) May be locked by the resident:
    - (i) Unless otherwise indicated by an identified need in the Individual Treatment Plan; and
    - (ii) All staff have a readily accessible means of unlocking the room when the door is locked.
  - (c) Minimum clear floor area of 100 square feet.
  - (d) Has one or more outside windows that:
    - (i) If used for ventilation, are easily opened;
    - (ii) Have break-away adjustable shades, blinds, or equivalent installed for visual privacy and are designed to meet the safety needs of the resident; and
- (2) Is adjacent to bathing and toilet facilities;
- (3) Is designed to offer visual privacy from casual observation by other residents and visitors. The design for privacy must not restrict resident access to the entrance, hand-washing station, or toilet.
- (4) Is accessible, clean, and well-maintained with sufficient space, light, and comfortable furnishings for sleeping and personal activities including, but not limited to:
  - (a) A minimum of a three-foot clear access aisle from the entry door, along at least one side of the bed, and in front of all storage equipment;
  - (b) Enough room for medical equipment and for a resident to move about freely with mobility aides, such as wheelchairs; and
  - (c) Direct access to a hallway, living room, lounge, the outside, or other common use area without going through a laundry or utility area, a bath or toilet room, or another resident's bedroom.
- (5) Is equipped with:
  - (a) One or more waste containers;
  - (b) Furniture appropriate for the age and physical condition of each resident, including but not necessarily limited to:
    - (i) A chair, which may be used in either the bedroom or a group room interchangeably; and
    - (ii) A bed of appropriate length and size that is thirty-six or more inches wide.

NEW SECTION

**WAC 388-107-0820 Resident toilet room.** The facility will ensure:

- (1) Toilet room doors:
  - (a) Are equipped with keyed locks that allow staff to control access to the toilet room, where indicated by the resident safety risk assessment;
  - (b) Swing outward or be double-acting; and
  - (c) For accessible resident toilet rooms, provide space for facility caregivers to transfer residents to the toilet using portable mechanical lifting equipment.
- (2) One toilet and hand-washing sink for every four residents, or fraction thereof, with:
  - (a) Provisions for privacy during toileting, bathing, showering, and dressing;
  - (b) Separate toilet rooms for each sex if the toilet room contains more than one toilet; and
  - (c) Separate bathrooms for each sex if the bathroom contains more than one bathing fixture.
- (3) Toilet rooms and bathrooms are directly accessible from patient rooms or corridors, without passing through any kitchen, pantry, food preparation, food storage, or dish-washing area or from one bedroom through another bedroom.
- (4) Grab bar(s) in non-accessible toilet rooms must be installed to prevent fall and injury based on resident specific needs.
- (5) Grab bar(s) in accessible toilet rooms must be installed according to the state building code requirements for accessible toilets.

NEW SECTION

**WAC 388-107-0830 Resident bathing facilities.** The facility must provide access to a bathtub or shower for every resident. The facility will ensure that bathing facilities are designed and located for resident convenience and privacy. The facility must ensure:

- (1) At least one bathing unit for every four residents, or fraction thereof, who are located in a resident room without an adjoining bathroom;
- (2) Access to at least one bathing device for immersion;
- (3) Access to at least one roll-in shower or equivalent on each resident care unit:
  - (a) Designed and equipped for unobstructed ease of shower chair entry and use;
  - (b) With a spray attachment equipped with a backflow prevention device;
  - (c) One-half inch or less threshold that may be a collapsible rubber water barrier; and
  - (d) A minimum nominal (rough-framed) size of thirty-six inches by forty-eight.
- (4) Resident bathing equipment is smooth, cleanable, and able to be disinfected after each use.

(5) In each bathing unit containing more than one bathing facility:

(a) Each bathtub, shower, or equivalent, is located in a separate room or compartment with three solid walls;

(b) The entry wall may be a break-away "shower" type curtain or equivalent;

(c) The area for each bathtub and shower is sufficient to accommodate a shower chair, an attendant, and provide visual privacy for bathing, drying, and dressing;

(d) All shower and tub surfaces are slip-resistant; and

(e) All bathing areas are constructed of materials that are impervious to water and cleanable.

(6) Common bathing facilities must comply with the state building code requirements for accessible bathing facilities.

(7) Grab bar(s) must be installed to prevent fall and injury in bathing facilities in non-accessible resident rooms.

(8) Grab bar(s) in accessible bathing rooms must be installed according to the state building code requirements for accessible bathing rooms.

#### NEW SECTION

**WAC 388-107-0840 Locks in toilet and bathing facilities.** The facility must ensure:

(1) All staff have a readily available means of unlocking lockable toilet facilities and bathrooms from the outside; and

(2) Locks are operable from the inside with a single motion.

#### NEW SECTION

**WAC 388-107-0850 Resident storage.** The facility must ensure:

(1) Each resident has, within his or her room, a separate wardrobe (for hanging garments), locker, or closet for storing personal effects.

(2) Shelves for folded garments may be used instead of arrangements for hanging garments if acceptable to the resident.

(3) Adequate storage must be available for a seven-day supply of clothes.

#### NEW SECTION

**WAC 388-107-0860 Resident support spaces.** The facility must ensure:

(1) Private space:

(a) For the use of individual residents, family, and caregivers to discuss the specific resident's needs or private family matters;

(b) With a minimum clear floor area of 144 square feet; and

- (c) Furnished with comfortable seating to accommodate several people.
- (2) If a room for resident grooming is provided, the room will include:
  - (a) Spaces for hair-washing station(s), hair clipping and hair styling, and other grooming needs.
  - (b) A hand-washing station, mirror, work counter(s), storage shelving, and sitting area(s) for resident.
  - (3) Resident support spaces have access to a common-use toilet facility.

### **Common Areas**

#### NEW SECTION

**WAC 388-107-0870 Common Areas.** The facility must ensure that all residents have access to common areas throughout the facility including, but not limited to, dining rooms, day rooms, and activity areas.

#### NEW SECTION

- WAC 388-107-0880 Dining, dayrooms, and resident activity areas.**
- (1) The facility must provide one or more rooms designated for resident dining and activities that is:
    - (a) Well lighted;
    - (b) Well ventilated;
    - (c) Adequately furnished;
    - (d) Large enough to accommodate all residents; and
    - (e) Large enough to accommodate all resident activities.
  - (2) The facility must design space for dining rooms, dayrooms, and activity areas for resident convenience and comfort and to provide a homelike environment. The facility must:
    - (a) Ensure these rooms or areas are exterior rooms with windows that have a maximum sill height of thirty-six inches;
    - (b) Provide space for dining, day use, and activities with a minimum of one hundred fifty square feet or combined total of thirty square feet for each licensed bed, whichever is greater;
    - (c) Design any multipurpose rooms to prevent program interference with each other; and
    - (d) Provide adjoining or adjacent storage spaces for all activity and recreational equipment and supplies.

#### NEW SECTION

**WAC 388-107-0890 Outdoor recreation space and walkways.** (1) A facility must provide a safe, protected outdoor area for resident use.

(2) The facility must ensure the outdoor area:

(a) Has areas protected from direct sunshine and rain throughout the day;

(b) Is accessible and has walking surfaces which are firm, stable, and free from cracks and abrupt changes with a maximum of one inch between the sidewalk and adjoining landscape areas;

(c) Has sufficient space and outdoor furniture provided with flexibility in arrangement of the furniture to accommodate residents who use wheelchairs and mobility aids;

(d) Contains non-poisonous shrubs, natural foliage, and trees;

(e) Is surrounded by walls or fences at least seventy-two inches high; and

(f) If used as a resident courtyard, the outdoor area must not be used for public or service deliveries.

### Support Services

#### NEW SECTION

**WAC 388-107-0900 Laundry.** The facility must provide laundry and linen services on the premises, or by contract with a commercial laundry. If laundry services are provided on-site, the facility must ensure that laundry facilities, equipment, handling and processes provide residents with linen and laundered items that are clean, in good repair and adequate to meet the needs of residents. The facility:

(1) Must handle, clean, and store linen according to acceptable methods of infection control, and:

(a) Ensure all staff wear appropriate personal protective equipment and use appropriate infection control practices when handling laundry;

(b) Ensure that damp textiles or fabrics are not left in machines for longer than twelve hours;

(c) Ensure that gross soil is removed before washing and proper washing and drying procedures are used; and

(d) Ensure that contaminated textiles and fabrics are handled with minimum agitation to avoid contamination of air, surfaces and persons.

(2) Must equip the laundry area with:

(a) A utility sink;

(b) A table or counter for folding clean laundry;

(c) At least one washing machine and one clothes dryer; and

(d) Mechanical ventilation to the exterior.

(3) Must use and maintain laundry equipment according to manufacturer's instructions.

(4) Must use washing machines that have a continuous supply of hot water with a temperature of one hundred forty degrees Fahrenheit, or that automatically dispense a chemical sanitizer and detergent or wash additives as specified by the manufacturer, whenever the licensee washes:

(a) Enhanced services facility laundry;

(b) Enhanced services facility laundry combined with residents' laundry into a single load; or

(c) More than one resident's laundry combined into a single load.

(5) May allow residents to wash their individual personal laundry, separate from other laundry, at temperatures below one hundred forty degrees Fahrenheit provided chemicals suitable for low temperature washing at proper use concentration and according to the cleaning instructions of the textile, fabric or clothing.

(6) Must ventilate laundry rooms and areas to the exterior including areas or rooms where soiled laundry is held for processing by offsite commercial laundry services.

(7) Must locate laundry equipment in rooms other than those used for open food storage, food preparation or food service.

#### NEW SECTION

**WAC 388-107-0910 Janitors closets on resident care units.** The facility must ensure:

(1) There is a janitor's closet with a service sink and adequate storage space for housekeeping equipment and supplies.

(2) The janitor's closet meets the ventilation requirements in WAC 388-107-1000.

#### NEW SECTION

**WAC 388-107-0920 Kitchen.** The facility must provide food service on the premises or by contract with a commercial kitchen. If the facility provides food service on-site, the facility must ensure food service areas are in compliance with chapter 246-215 WAC, state board of health rules governing food service sanitation. The facility providing on-site food service must:

(a) Ensure food service areas are provided for the purpose of preparing, serving, and storing food and drink;

(b) Ensure food service areas are located to facilitate receiving of food supplies, disposal of kitchen waste, and transportation of food to dining and resident care areas;

(c) Locate and arrange the kitchen to avoid contamination of food, to prevent heat and noise entering resident care areas, and to prevent through traffic;

(d) Conveniently locate a hand-washing sink near the food preparation and dishwashing area, and include a waste receptacle and dispensers stocked with soap and paper towels;

(e) Adequately ventilate, light, and equip the dishwashing room or area for sanitary processing of dishes;

(f) Locate the garbage storage area in a well-ventilated room or an outside area;

(g) Provide space for an office or a desk and files for food service management located central to deliveries and kitchen operations; and

(h) Include housekeeping facilities or a janitor's closet for the exclusive use of food service with a service sink and storage space for housekeeping equipment and supplies.

NEW SECTION

**WAC 388-107-0930 Nursing station.** The facility must have a kitchenette to give residents access to fluids and snacks, including those of nutritive value, to meet resident wants and needs. The kitchenette will include:

- (1) A sink with hot and cold running water;
- (2) A soap dispenser; and
- (3) A refrigerator.

**Building Elements**

NEW SECTION

**WAC 388-107-0940 Resident safety and suicide prevention.** The enhanced services facility must be designed to prevent injury and suicide prevention, with special design considerations to details, finishes, and equipment. The facility must ensure:

- (1) Ceilings
  - (a) In resident bathrooms are secured to prevent resident access. Ceiling systems of a non-secured (non-clipped down) lay-in ceiling tile design are not permitted.
  - (b) In resident bedrooms and bathrooms, are designed to eliminate tie-off point(s) or at nine feet in height to prevent resident access.
- (2) Doors and door hardware:
  - (a) Doorways are at least 36" wide;
  - (b) Door swings for private resident bathrooms or shower areas swing out to allow for staff emergency access.
    - (i) Door closers will not be used unless required by the building code. If required on the resident room door, the closer will be mounted on the public side of the door rather than the private resident's side of the door.
- (3) Door hinges:
  - (a) Are designed to minimize points for hanging (i.e., cut hinge type); and
  - (b) Are consistent with the level of care for the resident.
- (4) Door lever handles are specifically designed anti-ligature hardware.
- (5) All hardware has tamper-resistant fasteners.
- (6) Windows:
  - (a) Located in areas accessible to residents are designed to limit the opportunities for breakage;
  - (b) All glazing, both interior and exterior, and glass mirrors are fabricated with laminated safety glass or equal;
  - (c) Use of tempered glass for interior windows is permitted.
  - (d) Break-away window coverings for visual privacy; and
  - (e) The anchorage of windows and window assemblies, including frames, is designed to resist impact loads applied from the inside and must be tested in accordance with ANSI Z97.1. Where operable windows are used, the hinges and locking devices must also be tested.
- (7) Bathroom hardware and accessories

(a) Special design considerations for injury and suicide prevention must be given to shower, bath, toilet, and sink hardware and accessories, including grab bars and toilet paper holders.

(b) Grab bars:

(i) Where grab bars are provided in resident rooms, resident toilet rooms, resident bathing rooms or other non-public space, the space between the bar and the wall must be filled to prevent the grab bar from becoming a ligature point.

(8) An overall design for anti-ligature including, but not limited to, grab bars, towel hooks, levers, handles, sprinkler heads, and other protrusions.

(9) Towel bars and shower curtain rods are not permitted.

(10) In unsupervised resident areas, sprinkler heads must be recessed or of a design to minimize resident access.

(11) In resident bathrooms, lighting fixtures, sprinkler heads, electrical outlets, and other fixtures must be the tamper-resistant type.

#### NEW SECTION

**WAC 388-107-0950 Safety-handrails.** The facility must:

(1) Provide handrails on each side of all corridors and stairwells accessible to residents and ensure that:

(a) Ends of handrails are returned to the walls;

(b) Handrails are mounted thirty to thirty-four inches above the floor; and

(c) Handrails terminate not more than six inches from a door.

(2) Equip stairways with more than one riser and ramps with slopes greater than one in twenty with handrails on both sides. Ensure that ends of handrails are designed in a manner that eliminates a hooking hazard.

#### NEW SECTION

**WAC 388-107-0960 Plumbing-water supply.** The facility must:

(1) Provide:

(a) Water meeting the provisions of chapter 246-290 WAC, Group A public water supplies or chapter 246-291 WAC, Group B public water systems;

(b) Hot and cold water under adequate pressure readily available throughout the enhanced services facility;

(c) Labels or color codes for nonpotable water supplies as "unsafe for domestic use."

(2) Provide faucet controls in lavatories and sinks with:

(a) Either anti-ligature fixtures or fixtures with at least four-inch wrist blades or single-levers based on a risk assessment made by the facility;

(b) Sufficient space for full open and closed operation; and

(c) Color-coding and labels to indicate "hot" and "cold".

(3) Ensure that all lavatories and sinks have gooseneck spouts, without aerators in areas requiring infection control. Locations de-

terminated by the facility's risk assessment must be permitted to have anti-ligature devices.

- (4) Provide shower heads that are of the flash-mounted type.

NEW SECTION

**WAC 388-107-0970 Sinks-water temperature.** The facility must provide all sinks in resident rooms, toilet rooms and bathrooms, and bathing fixtures used by residents with hot water between one hundred five degrees (105°) Fahrenheit and one hundred twenty degrees (120°) Fahrenheit at all times.

NEW SECTION

**WAC 388-107-0980 Mechanical-heating systems.** The facility must ensure:

- (1) The heating system is capable of maintaining a temperature of seventy-five degrees Fahrenheit for areas occupied by residents and seventy degrees Fahrenheit for non-resident areas.
- (2) Resident rooms must have individual temperature control which may be covered, locked, or placed in an inconspicuous place.
- (3) Electric resistant wall heat units are prohibited.
- (4) The heating system must be connected to an alternate source of power, or an alternate source of heating must be provided to maintain the temperature in resident rooms or in a room to which all residents can be moved.

NEW SECTION

**WAC 388-107-0990 Mechanical-cooling systems.** The facility must have:

- (1) A mechanical cooling system capable of maintaining a temperature of seventy-five degrees Fahrenheit for areas occupied by residents; and
- (2) A cooling system that has mechanical refrigeration equipment to provide summer air conditioning to resident areas, food preparation areas, laundry, medication rooms, and therapy areas by either a central system with distribution ducts or piping, or packaged room or zonal air conditioners.

NEW SECTION

**WAC 388-107-1000 Mechanical-ventilation systems.** The facility must ensure:

(1) Ventilation of all rooms is designed to prevent objectionable odors, condensation, and direct drafts on the residents;

(2) All habitable space is mechanically ventilated including air supply and air exhaust systems;

(3) Installation of air-handling duct systems according to the requirements of the International Mechanical Code and chapter 51-52 WAC;

(4) Installation of supply registers and return air grilles at least three inches above the floor;

(5) Installation of exhaust grilles on or near the ceiling; and

(6) Outdoor air intakes located a minimum of twenty-five feet from the exhaust from any ventilating system, combustion equipment, or areas which may collect vehicular exhaust and other noxious fumes, and a minimum of ten feet from plumbing vents. The facility must locate the bottom of outdoor air intakes serving central systems a minimum of three feet above the adjoining grade level or, if installed through the roof, three feet above the highest adjoining roof level.

(7) Minimum ventilation requirements meet the pressure relationship and ventilation rates per the following table:

PRESSURE RELATIONSHIPS AND VENTILATION OF CERTAIN AREAS				
Function Area	Pressure Relationship To Adjacent Areas <sup>1,2</sup>	Minimum Air Changes of Outdoor Air Per Hour Supplied To Room	Minimum Total Air Changes Per Hour Supplied To Room	All Air Exhausted Directly To Outdoors
<b>RESIDENT CARE</b>				
Resident room (holding room)	±			
Resident corridor	±			
Toilet room	N			
Resident gathering (dining, activity)	±	2	4	Optional
<b>DIAGNOSTIC AND TREATMENT</b>		Optional	2	Optional
Examination room	±	Optional	10	Yes
Physical therapy <sup>3</sup>	N	2	4	Optional
Occupational therapy <sup>3</sup>	N			
Soiled workroom or soiled holding	N	2	6	Optional
Clean workroom or clean holding	P	2	6	Optional
<b>STERILIZING AND SUPPLY</b>		2	6	Optional
Sterilizer exhaust room	N	2	10	Yes
Linen and trash chute room	N	2	4	Optional
Laundry, general <sup>3</sup>	±			
Soiled linen sorting and storage	N	Optional	10	Yes
Clean linen storage	P	Optional	10	Yes
<b>SERVICE</b>		2	10	Yes

PRESSURE RELATIONSHIPS AND VENTILATION OF CERTAIN AREAS				
Function Area	Pressure Relationship To Adjacent Areas <sup>1,2</sup>	Minimum Air Changes of Outdoor Air Per Hour Supplied To Room	Minimum Total Air Changes Per Hour Supplied To Room	All Air Exhausted Directly To Outdoors
Food preparation center <sup>3</sup>	±	Optional	10	Yes
Washing room <sup>3</sup>	N	Optional	2	Yes
Dietary day storage	±			
Janitor closet	N	2	10	Yes
Bathroom	N	Optional	10	Yes
Personal services (barber/salon)	N	Optional	2	Yes

<sup>1</sup>/P=Positive N=Negative ± = Continuous directional control not required.

<sup>2</sup>/Whether positive or negative, pressure must be a minimum of seventy cubic feet per minute (CFM).

<sup>3</sup>/The volume of air may be reduced up to fifty percent in these areas during periods of nonuse. The soiled holding area of the general laundry must maintain its full ventilation capacity at all times.

### Communication

#### NEW SECTION

**WAC 388-107-1001 Call systems on resident care units.** The facility must provide a system that meets the following standards:

(1) A wired or wireless communication system that notifies at the staff work station. The system must be equipped to receive resident calls from:

- (a) The bedside of each resident;
- (b) Every common area, dining and activity areas, common use toilet rooms, and other areas used by residents; and
- (c) Resident toilet, bath and shower rooms.

- (2) The call system may be adapted to meet the resident needs.
- (3) The call system may not utilize any cords.
- (4) Provisions must be made for easy removal or covering of call buttons.
- (5) All hardware must have tamper-resistant fasteners.

#### NEW SECTION

**WAC 388-107-1010 Telephone on resident care units.** The facility must provide twenty-four hour access to a telephone for resident use which:

- (1) Provides auditory privacy;
- (2) Is accessible to a resident with a disability and accommodates a resident with sensory impairment;

- (3) Is not located in a staff office or at a nurse's station;
- (4) Does not require payment for local calls; and
- (5) Does not utilize any cords.

### **Electrical - Special Provisions**

#### NEW SECTION

**WAC 388-107-1020 General.** In areas accessed by residents, the facility must have:

- (1) Electrical receptacles that are tamper-resistant or equipped with ground fault circuit interrupters.
- (2) Lights designed to prevent unauthorized access and tampering.

#### NEW SECTION

**WAC 388-107-1030 Backup power.** (1) The facility must have an alternate source of power and automatic transfer equipment to connect the alternate source within ten seconds of the failure of the normal source.

- (2) The facility must ensure the alternate source is a generator:
  - (a) With on-site fuel supply;
  - (b) That is permanently fixed in place;
- (3) The facility must ensure the backup power supply is coordinated with the facility's emergency plan. The system must provide a minimum of four hours of effective power for lighting for night lights, exit corridors, stairways, dining and recreation areas, work stations, medication preparation areas and boiler rooms.
- (4) A facility must have alternate power supplied to:
  - (a) Communication systems and all alarm systems; and
  - (b) Electrical outlets located in medication preparation areas, pharmacy dispensing areas, staff work stations, dining areas, and resident corridors.
- (5) The alternate power equipment must meet the:
  - (a) Earthquake standards for the facility's geographic locale; and
  - (b) Requirements in NFPA 110, Generators; and
  - (c) Requirements in NFPA 99.

### **Licensing**

#### NEW SECTION

**WAC 388-107-1040 License and contract.** An enhanced services facility must:

- (1) Be licensed by the department; and
- (2) Be granted a contract by the department; and

(3) Admit and keep only those residents whose care is paid for under a department contract.

### **License Required/Unlicensed Operator**

#### NEW SECTION

**WAC 388-107-1050 Unlicensed operation—Application of consumer protection act.** Operation of a facility without a license in violation of this chapter and discrimination against medicaid recipients is a matter vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Operation of an enhanced services facility without a license in violation of this chapter is not reasonable in relation to the development and preservation of business. Such a violation is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

#### NEW SECTION

**WAC 388-107-1060 Unlicensed operation—Criminal penalty.** A person operating or maintaining a facility without a license under this chapter is guilty of a misdemeanor and each day of a continuing violation after conviction must be considered a separate offense.

#### NEW SECTION

**WAC 388-107-1070 Unlicensed operation—Injunction or other remedies.** Notwithstanding the existence or use of any other remedy, the department may, in the manner provided by law, maintain an action in the name of the state for an injunction, civil penalty, or other process against a person to restrain or prevent the operation or maintenance of a facility without a license issued under this chapter.

#### NEW SECTION

**WAC 388-107-1080 Licensing fees.** The enhanced services facility must:

- (1) Submit an annual per bed license fee of \$1,040 based on the licensed bed capacity;
- (2) Submit an additional late fee in the amount of ten dollars per day from the license renewal date until the date of mailing the fee, as evidenced by the postmark; and

(3) Submit to construction review services a fee for the review of the construction documents per the review fee schedule.

NEW SECTION

**WAC 388-107-1090 License valid and not transferable.** (1) The enhanced services facility is not required to renew the license each year.

(2) The license remains valid unless:

(a) The department takes enforcement action to suspend or revoke the license per law;

(b) The facility voluntarily surrenders the license and closes the facility;

(c) The facility relinquishes the license; or

(d) The facility fails to pay the annual licensing fee.

(3) The facility license is:

(a) Not transferable; and

(b) Valid only for the provider and address listed on the license.

NEW SECTION

**WAC 388-107-1100 Licensee's responsibilities.** (1) The enhanced services facility licensee is responsible for:

(a) The operation of the enhanced services facility;

(b) Complying at all times with the requirements of this chapter, chapter 70.97 RCW, and other applicable laws and rules; and

(c) The care and services provided to the enhanced services facility residents.

(2) The licensee must:

(a) Maintain the occupancy level at or below the licensed resident bed capacity of the enhanced services facility;

(b) Maintain and post in a size and format that is easily read, in a conspicuous place on the enhanced services facility premises:

(i) A current enhanced services facility license, including any related conditions on the license;

(ii) The name, address and telephone number of:

(A) The department;

(B) Appropriate resident advocacy groups; and

(C) The state and local long-term care ombuds with a brief description of ombuds services.

(iii) A copy of the report, including the cover letter, and plan of correction of the most recent full inspection conducted by the department.

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

(3) The licensee must not delegate to any person responsibilities that are so extensive that the licensee is relieved of responsibility

for the daily operations and provisions of services in the enhanced services facility.

(4) The licensee must act in accord with any department-approved management agreement, if the licensee has entered into a management agreement.

(5) The licensee must appoint an enhanced services facility administrator.

NEW SECTION

**WAC 388-107-1110 Liability insurance required.** The enhanced services facility must:

(1) Obtain liability insurance upon licensure and maintain the insurance as required in WAC 388-107-1120 and 388-107-1130; and

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

NEW SECTION

**WAC 388-107-1120 Liability insurance required—Commercial general liability insurance or business liability insurance— Coverage.** The enhanced services facility must have commercial general liability insurance or business liability insurance that includes:

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

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

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

(4) Minimum limits of:

(a) Each occurrence at one million dollars; and

(b) General aggregate at two million dollars.

NEW SECTION

**WAC 388-107-1130 Liability insurance required—Professional liability insurance coverage.** The enhanced services facility must have professional liability insurance or error and omissions insurance if the enhanced services facility licensee has a professional license, or employs professionally licensed staff. The insurance must include:

(1) Coverage for losses caused by errors and omissions of the enhanced services facility, its employees, and volunteers; and

(2) Minimum limits of:

(a) Each occurrence at one million dollars; and

(b) Aggregate at two million dollars.

## Initial License Application

### NEW SECTION

**WAC 388-107-1140 Licensee qualifications.** (1) The department must consider separately and jointly as applicants each person named in the application for an enhanced services facility license.

(2) If the department finds any person unqualified according to regulations of this chapter, the department must deny, terminate, or not renew the license.

### NEW SECTION

**WAC 388-107-1150 Application process.** (1) To apply for an enhanced services facility license, a person must:

(a) Submit to the department a complete license application on forms designated by the department at least sixty days prior to the proposed effective date of the license;

(b) Submit all relevant attachments specified in the application;

(c) Submit department background authorization forms;

(d) Sign the application;

(e) Submit the application fee;

(f) Submit verification that construction plans have been approved by construction review services and the state fire marshal;

(g) Submit a revised application before the license is issued if any information has changed since the initial license application was submitted;

(h) Submit a revised application containing current information about the proposed licensee or any other persons named in the application, if a license application is pending for more than one year; and

(i) If the licensee's agent prepares an application on the licensee's behalf, the licensee must review, sign and attest to the accuracy of the information contained in the application.

(2) A currently licensed facility converting to an enhanced services facility must:

(a) Give up its current license before applying; and

(b) Meet all requirements in subsection (1) above.

(3) A currently licensed facility converting a wing, or portion of the facility, to an enhanced services facility must:

(a) Change the current license to reflect the new facility structure and capacity of the existing facility;

(b) Apply for an enhanced services facility license and meet all requirements in subsection (1) above;

(c) Create a new business entity separate from the existing business structure of the current licensee; and

(d) Provide the department with enough information to show that the enhanced services facility will be operated independently from the currently licensed entity, with no shared services, separate indoor and outdoor space, separate staffing, and separate administrative structure.

(3) A license must be issued only to the person who applied for the license.

(4) A license may not exceed twelve months in duration and expires on a date set by the department.

NEW SECTION

**WAC 388-107-1160 Necessary information.** In making a determination whether to issue an enhanced services facility license, in addition to the information for each person named in the application, the department may review other documents and information the department deems relevant, including inspection and complaint investigation findings for each facility with which the applicant or any partner, officer, director, managerial employee, or owner of five percent or more of the applicant has been affiliated.

NEW SECTION

**WAC 388-107-1170 Department access.** (1)The applicant must allow department staff to inspect the entire premises including all of the facility's rooms, buildings, grounds, and equipment and all pertinent records during the initial licensing of the facility.

(2) During inspections and complaint investigations, the enhanced services facility must give department staff access to:

(a) The entire premises;

(b) Examine all areas and articles in the facility that are used to provide care or support to residents, including the physical premises and residents' records and accounts;

(c) All records related to the residents or operation of the facility; and

(d) Interview anyone determined to have information pertinent to the inspection or investigation, including but not limited to the provider, staff, family members, individuals residing in the facility, and residents.

NEW SECTION

**WAC 388-107-1180 Administrator qualifications--General.** The licensee must appoint an administrator who:

(1) Is at least twenty-one years old;

(2) Has a Bachelor's degree in social sciences, social services, human services, behavioral sciences, or an allied medical field;

(3) Meets the training requirements under chapter 388-112 WAC and has specialized training in the provision of the care and services required for vulnerable adults with dementia, mental health and behavioral issues;

(4) Has at least one year of full-time experience working with vulnerable populations with complex personal care and behavioral needs;

(5) Knows and understands how to apply Washington state statutes and administrative rules related to the operation of a long-term care facility; and

(6) Is qualified to perform the administrator's responsibilities specified in WAC 388-107-1190.

#### NEW SECTION

**WAC 388-107-1190 Administrator responsibilities.** The licensee must ensure the administrator:

(1) Directs and supervises the overall twenty-four-hour-per-day operation of the enhanced services facility;

(2) Ensures residents receive the care and services identified in their individual treatment plan and assessment;

(3) Is readily accessible to meet with residents;

(4) Complies with the enhanced services facility's policies;

(5) When not available on the premises, either:

(a) Is available by telephone or electronic pager; or

(b) Designates a person approved by the licensee to act in place of the administrator. The designee must be:

(i) Qualified by experience to assume designated duties; and

(ii) Authorized to make necessary decisions and direct operations of the enhanced services facility during the administrator's absence.

#### NEW SECTION

**WAC 388-107-1200 Notification of change in administrator** The licensee must notify the department in writing within ten calendar days of the effective date of a change in the enhanced services facility administrator. The notice must include the full name and qualifications of the new administrator and the effective date of the change.

### **Criminal History Background Check**

#### NEW SECTION

**WAC 388-107-1205 Background Checks - General.** (1) Background checks conducted by the department and required in this chapter include:

(a) Washington state name and date of birth background checks; and

(b) After January 7, 2012, a national fingerprint background check in accordance with RCW 74.39A.056.

(2) Nothing in this chapter should be interpreted as requiring the employment of a person against the better judgment of the enhanced services facility. In addition to chapter 70.97 RCW, these rules are authorized by RCW 43.20A.710, RCW 43.43.830 through 43.43.842 and RCW 74.39A.051.

NEW SECTION

**WAC 388-107-1210 Background checks—Who is required to have.** (1) Applicants for an enhanced services facility license must have the following background checks before licensure:

(a) A Washington state name and date of birth background check;  
and

(b) A national fingerprint background check.

(2) The enhanced services facility must ensure that the administrator and all caregivers employed directly or by contract after January 7, 2012, have the following background checks:

(a) A Washington state name and date of birth background check;  
and

(b) A national fingerprint background check.

(3) The enhanced services facility must ensure that the following individuals have a Washington state name and date of birth background check:

(a) Volunteers who are not residents, and students who may have unsupervised access to residents;

(b) Staff persons who are not caregivers or administrators;

(c) Managers who do not provide direct care to residents; and

(d) Contractors other than the administrator and caregivers who may have unsupervised access to residents.

(4) Any individual who is required to have a background check must not have a disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113 WAC, or a negative action that is disqualifying under WAC 388-107-1290, unless the individual is eligible for an exception under chapter 388-113 WAC.

NEW SECTION

**WAC 388-107-1215 Background checks—Process—Background authorization form.** Before the enhanced services facility employs, directly or by contract, an administrator, staff person or caregiver, or accepts any volunteer, or student, the home must:

(1) Require the person to complete a DSHS background authorization form;

(2) Submit to the department's background check central unit, including any additional documentation and information requested by the department.

NEW SECTION

**WAC 388-107-1220 Background checks—Washington state name and date of birth background check.** If the results of the Washington state name and date of birth background check indicate the person has a disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113 WAC, or a negative action that is disqualifying under WAC 388-107-1290, unless the individual is eligible for an exception under chapter 388-113 WAC, then the enhanced services facility must:

- (1) Not employ, directly or by contract, a caregiver, administrator, or staff person; and
- (2) Not allow a volunteer or student to have unsupervised access to residents.

NEW SECTION

**WAC 388-107-1230 Background checks—National fingerprint background check.** (1) Administrators and all caregivers who are hired after January 7, 2012, and are not disqualified by the Washington state name and date of birth background check, must complete a national fingerprint background check and follow department procedures.

(2) After receiving the results of the national fingerprint background check, the enhanced services facility must not employ, directly or by contract, an administrator or caregiver who has a disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113 WAC, or a negative action that is disqualifying under WAC 388-107-1290, unless the individual is eligible for an exception under chapter 388-113 WAC.

(3) The enhanced services facility may accept a copy of the national fingerprint background check results letter and any additional information from the department's background check central unit from an individual who previously completed a national fingerprint check through the department's background check central unit, provided the national fingerprint background check was completed after January 7, 2012.

NEW SECTION

**WAC 388-107-1240 Background check—Results—Inform.** (1) After receiving the results of the Washington state name and date of birth background check, the enhanced services facility must:

- (a) Inform the person of the results of the background check;
- (b) Inform the person that they may request a copy of the results of the background check. If requested, a copy of the background check results must be provided within ten days of the request; and
- (c) Notify the department and other appropriate licensing or certification agencies of any person resigning or terminated as a result of having a disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113 WAC, or a negative action

that is disqualifying under WAC 388-107-1290, unless the individual is eligible for an exception under chapter 388-113 WAC.

(2) After receiving the result letter for the national fingerprint background check, the enhanced services facility must inform the person:

(a) Of the national fingerprint background check result letter;

(b) That they may request a copy of the national fingerprint check result letter; and

(c) That any additional information requested can only be obtained from the department's background check central unit.

#### NEW SECTION

**WAC 388-107-1250 Background checks—Washington state name and date of birth background check—Valid for two years—National fingerprint background check—Valid indefinitely.** (1) A Washington state name and date of birth background check is valid for two years from the initial date it is conducted. The enhanced services facility must ensure:

(a) A new DSHS background authorization form is submitted to the department's background check central unit every two years for all administrators, caregivers, staff persons, volunteers and students; and

(b) There is a valid Washington state name and date of birth background check for all administrators, caregivers, staff persons, volunteers and students.

(2) A national fingerprint background check is valid for an indefinite period of time. The enhanced services facility must ensure there is a valid national fingerprint background check completed for all administrators and caregivers hired after January 7, 2012. To be considered valid, the national fingerprint background check must be initiated and completed through the department's background check central unit after January 7, 2012.

#### NEW SECTION

**WAC 388-107-1260 Background checks—Employment—Conditional hire—Pending results of Washington state name and date of birth background check.** The enhanced services facility may conditionally hire an administrator, caregiver, or staff person directly or by contract, pending the result of the Washington state name and date of birth background check, provided that the enhanced services facility:

(1) Submits the background authorization form for the person to the department no later than one business day after he or she starts working;

(2) Requires the person to sign a disclosure statement indicating if they have a disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113 WAC, or a negative action that is disqualifying under WAC 388-107-1290, unless the individual is eligible for an exception under chapter 388-113 WAC;

(3) Has received three positive references for the person;

(4) Does not allow the person to have unsupervised access to any resident;

(5) Ensures direct supervision of the administrator, all caregivers, and staff persons; and

(6) Ensures that the person is competent, and receives the necessary training to perform assigned tasks and meets the training requirements under chapter 388-112 WAC.

NEW SECTION

**WAC 388-107-1270 Background checks—Employment—Provisional hire—Pending results of national fingerprint background check.** The enhanced services facility may provisionally employ a caregiver and an administrator hired after January 7, 2012, for one hundred twenty-days and allow the caregiver or administrator to have unsupervised access to residents when:

(1) The caregiver or administrator is not disqualified based on the results of the Washington state name and date of birth background check; and

(2) The results of the national fingerprint background check are pending.

NEW SECTION

**WAC 388-107-1280 Background check—Disclosure statement.** (1) The enhanced services facility must require each administrator, caregiver, staff person, volunteer and student, prior to starting his or her duties, to make disclosures of any crimes or findings consistent with RCW 43.43.834(2). The disclosures must be in writing and signed by the person under penalty of perjury.

(2) The department may require the enhanced services facility or any administrator, caregiver, staff person, volunteer or student to complete additional disclosure statements or background authorization forms if the department has reason to believe that the individual has a disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113 WAC, or a negative action that is disqualifying under WAC 388-107-1290, unless the individual is eligible for an exception under chapter 388-113 WAC.

NEW SECTION

**WAC 388-107-1290 Background check—Employment-disqualifying information.** The enhanced services facility must not employ or allow an administrator, caregiver, or staff person, to have unsupervised access to residents, as defined in RCW 43.43.830, if the person has:

(1) A disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113 WAC, or a negative action

that is disqualifying under WAC 388-107-1290, unless the individual is eligible for an exception under chapter 388-113 WAC.

(2) Has a court ordered permanent restraining order or order of protection, either active or expired, against the individual that was based upon abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult.

(3) Has a registered sex offender status.

(4) Has been convicted of a crime in any federal or state court, and the department determines that the conviction is equivalent to a conviction under chapter 388-113 WAC.

(5) has been convicted of a crime in any federal or state court, and the department determines that the conviction is equivalent to a conviction under WAC 388-113.

(6) Has one of the following negative actions:

(a) Is on a registry based upon a final finding of abuse, neglect, or financial exploitation, or abandonment of a vulnerable adult, unless the finding was made by Adult Protective Services prior to October 2003;

(b) Has a founded finding of abuse or neglect unless the finding was made by Child Protective Services prior to October 1, 1998;

(c) Has had a contract or license denied, terminated, revoked or suspended due to abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult; or

(d) Has relinquished a license or terminated a contract because an agency was taking an action related to abuse, neglect, financial exploitation or mistreatment.

#### NEW SECTION

**WAC 388-107-1300 Background checks—Employment—Non-disqualifying information.** (1) If the background check results show that an employee or prospective employee has a disqualifying criminal conviction or pending charge for a disqualifying crime under chapter 388-113 WAC, or a negative action that is disqualifying under WAC 388-107-1290, unless the individual is eligible for an exception under chapter 388-113 WAC, then the enhanced services facility must determine whether the person has the character, competence and suitability to work with vulnerable adults in long-term care.

(2) Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the enhanced services facility.

#### NEW SECTION

**WAC 388-107-1310 Background check—Confidentiality—Use restricted—Retention.** The enhanced services facility must ensure that all disclosure statements, background authorization forms, background check results and related information are:

- (1) Maintained on-site in a confidential and secure manner;
- (2) Used for employment purposes only;

(3) Not disclosed to anyone except to the individual, authorized state and federal employees, the Washington state patrol auditor, persons or health care facilities authorized by chapter 43.43 RCW; and

(4) Retained and available for department review during the individual's employment or association with a facility and for at least two years after termination of the employment or association.

### **Annual Renewal of License/Change in Bed Capacity**

#### NEW SECTION

**WAC 388-107-1320 Annual renewal.** To renew an enhanced services facility license, the enhanced services facility must:

(1) Submit a completed license renewal application on forms designated by the department, at least thirty days prior to the license expiration date;

(2) Sign the application;

(3) Submit the annual license fee; and

(4) If the licensee's agent prepares a renewal application on the licensee's behalf, the licensee must review, sign and attest to the accuracy of the information contained on the renewal application.

#### NEW SECTION

**WAC 388-107-1330 Changes in licensed bed capacity.** To change the licensed bed capacity in an enhanced services facility, the enhanced services facility must:

(1) Be sixteen beds or less;

(2) Have met the applicable building requirements;

(3) Submit a completed request for approval to the department at least one week before the intended change;

(4) Submit the prorated fee for additional beds if applicable; and

(5) Post an amended license obtained from the department, indicating the new bed capacity.

### **Change of Licensee/Ownership**

#### NEW SECTION

**WAC 388-107-1340 Change in licensee/change of ownership—When change in licensee is required.** The licensee of an enhanced services facility must change whenever the following events occur:

(1) The licensee's form of legal organization is changed (e.g., a sole proprietor forms a partnership or corporation);

(2) The licensee transfers ownership of the enhanced services facility business enterprise to another party regardless of whether own-

ership of some or all of the real property and/or personal property assets of the enhanced services facility is also transferred;

(3) The licensee dissolves, consolidates or merges with another legal organization and the licensee's legal organization does not survive;

(4) If, during any continuous twenty-four-month period, fifty percent or more of the "licensed entity is transferred, whether by a single transaction or multiple transactions, to:

(a) A different person (e.g., new or former shareholders or partners); or

(b) A person that had less than a five percent ownership interest in the enhanced services facility at the time of the first transaction.

(5) Any other event or combination of events that results in a substitution, elimination, or withdrawal of the licensee's control of the enhanced services facility. As used in this section, "**control**" means the possession, directly or indirectly, of the power to direct the management, operation and/or policies of the licensee or enhanced services facility, whether through ownership, voting control, by agreement, by contract or otherwise.

#### NEW SECTION

**WAC 388-107-1350 Change in licensee/change of ownership—When change in licensee not required.** The licensee is not required to change when only the following, without more, occur:

(1) The licensee contracts with a party to manage the enhanced services facility enterprise for the licensee pursuant to an agreement as specified in WAC 388-107-1630; or

(2) The real property or personal property assets of the enhanced services facility are sold or leased, or a lease of the real property or personal property assets is terminated, as long as there is not a substitution or substitution of control of the licensee or enhanced services facility.

#### NEW SECTION

**WAC 388-107-1360 Change in licensee/change of ownership—Application.** (1) The prospective licensee must complete, sign and submit to the department a change of ownership application prior to the proposed date of change in licensee.

(2) The annual enhanced services facility license fee, if a license fee is due, must accompany the change in ownership application.

(3) The prospective licensee must submit, along with the change of ownership application, the following information:

(a) Evidence of control of the real estate on which the enhanced services facility is located, such as a purchase and sales agreement, lease contract, or other appropriate document; and

(b) Any other information requested by the department.

(4) The prospective licensee must submit the completed application to the department within the applicable timeframes of WAC 388-107-1400 or 388-107-1410.

NEW SECTION

**WAC 388-107-1370 Change in licensee/change of ownership—Revised application.** The prospective licensee must submit a revised application to the department if:

- (1) Any information included on the original application is no longer accurate; or
- (2) Requested by the department.

NEW SECTION

**WAC 388-107-1380 Change in licensee/change of ownership—Notice to department and residents.** (1) In order to change the licensee of an enhanced services facility, the current licensee must notify the following in writing of the proposed change in licensee:

- (a) The department; and
  - (b) All residents, or resident representatives (if any).
- (2) The licensee must include the following information in the written notice:
- (a) Name of the present licensee and prospective licensee;
  - (b) Name and address of the enhanced services facility for which the licensee is being changed; and
  - (c) Date of proposed change.

NEW SECTION

**WAC 388-107-1390 Change in licensee/change of ownership—Relinquishment of license.** (1) On the effective date of the change in licensee, the current enhanced services facility licensee is required to relinquish their enhanced services facility license.

- (2) To relinquish a license, the licensee must mail to the department the enhanced services facility license along with a letter, addressed to the department, stating licensee's intent to relinquish the enhanced services facility license to the department.

NEW SECTION

**WAC 388-107-1400 Change in licensee/change of ownership—Ninety days' notice.** The current enhanced services facility licensee must provide written notice to the department and residents, or resident representatives (if any), ninety calendar days prior to the date of

the change of licensee, if the proposed change of enhanced services facility licensee is anticipated to result in the discharge or transfer of any resident.

NEW SECTION

**WAC 388-107-1410 Change in licensee/change of ownership—Sixty days' notice.** The current enhanced services facility licensee must provide written notice to the department and residents, or resident representatives (if any), at least sixty calendar days prior to the date of the change of licensee, if the proposed change of enhanced services facility licensee is not anticipated to result in the discharge or transfer of any resident.

NEW SECTION

**WAC 388-107-1420 Inspections.** (1) The department must make at least one inspection of each facility prior to licensure and an unannounced full inspection of facilities at least once every eighteen months. The statewide average interval between full facility inspections must be fifteen months.

(2) Any duly authorized officer, employee, or agent of the department may enter and inspect any facility at any time to determine that the facility is in compliance with this chapter and applicable rules, and to enforce any provision of this chapter. Complaint inspections must be unannounced and conducted in such a manner as to ensure maximum effectiveness. No advance notice must be given of any inspection unless authorized or required by federal law.

(3) During inspections, the facility must give the department access to areas, materials, and equipment used to provide care or support to residents, including resident and staff records, accounts, and the physical premises, including the buildings, grounds, and equipment. The department has the authority to privately interview the provider, staff, residents, and other individuals familiar with resident care and treatment.

(4) Any public employee giving advance notice of an inspection in violation of this section must be suspended from all duties without pay for a period of not less than five nor more than fifteen days.

(5) The department must prepare a written report describing the violations found during an inspection, and must provide a copy of the inspection report to the facility.

(6) The facility must develop a written plan of correction for any violations identified by the department and provide a plan of correction to the department within ten working days from the receipt of the inspection report.

NEW SECTION

**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, or managing employee 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) 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.

(7) 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.

NEW SECTION

**WAC 388-107-1440 Enforcement orders-Hearings.** (1) All orders of the department denying, suspending, or revoking the license or assessing a monetary penalty must become final twenty days after the same has been served upon the applicant or licensee unless a hearing is requested.

(2) All orders of the department imposing stop placement, temporary management, emergency closure, emergency transfer, or summary license suspension must be effective immediately upon notice, pending any hearing.

(3) Subject to the requirements of subsection (2) of this section, all hearings under this chapter and judicial review of such determinations must be in accordance with the administrative procedure act, chapter 34.05 RCW.

**Resident Protection Program**

NEW SECTION

**WAC 388-107-1450 Resident protection program definition.** As used in WAC 388-107-1460 through 388-107-1550, the term "**individual**," means anyone used by the enhanced services facility to provide services to residents who is alleged to have abandoned, abused, neglected,

or misappropriated property of a resident or financially exploited a resident. "Individual" includes, but is not limited to, employees, contractors, and volunteers.

NEW SECTION

**WAC 388-107-1460 Investigation of mandated reports.** (1) The department will review all allegations of resident abandonment, abuse, neglect, or financial exploitation, or misappropriation of resident property, as those terms are defined in chapter RCW 74.34.020.

(2) If, after the review of an allegation, the department concludes that there is reason to believe that an individual has abandoned, abused, neglected, or financially exploited a resident, or has misappropriated a resident's property, then the department will initiate an investigation.

(3) The department's investigation may include, but is not limited to:

(a) The review of facility and state agency records;

(b) Interviews with anyone who may have relevant information about the allegation; and

(c) The collection of any evidence deemed necessary by the investigator.

NEW SECTION

**WAC 388-107-1470 Preliminary finding.** If, after review of the results of the investigation, the department determines that an individual has abandoned, abused, neglected, or financially exploited a resident, or has misappropriated a resident's property, the department will make a preliminary finding to that effect. However, a preliminary finding of neglect will not be made if the individual demonstrates that the neglect was caused by factors beyond the control of the individual.

NEW SECTION

**WAC 388-107-1480 Notice to individual of preliminary findings.**

(1) The department will serve notice of the preliminary finding as provided in WAC 388-107-1560.

(2) The department may establish proof of service as provided in WAC 388-107-1570.

NEW SECTION

**WAC 388-107-1490 Notice to others of preliminary findings.** Consistent with confidentiality requirements concerning the resident, witnesses, and the reporter, the department may provide notification of a preliminary finding to:

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

NEW SECTION

**WAC 388-107-1500 Disputing a preliminary finding.** (1) The individual may request an administrative hearing to challenge a preliminary finding made by the department.

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

(3) The office of administrative hearings must receive the individual's written request for an administrative hearing within thirty calendar days of the date of the notice of the preliminary finding; except under the circumstances described in subsection (4).

(4) If an individual requests a hearing within one hundred eighty days of the date of the notice of the preliminary finding and the individual can demonstrate good cause for failing to request a hearing within thirty days, the office of administrative hearings may grant the request. Under these circumstances, the finding against the individual will remain on the department's registry pending the outcome of the hearing.

NEW SECTION

**WAC 388-107-1510 Hearing procedures to dispute preliminary finding.** Upon receipt of a written request for a hearing from an individual, 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 individual 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 individual;

(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 administrative law judge finds that extenuating circumstances exist that will make it impossible to render a decision within one hundred twenty days, the administrative law judge 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 individual must be available for the hearing and other preliminary matters. If the decision is not rendered within the time limit described in subsection (1), or if appropriate under subsection (6), the administrative law judge must issue an order dismissing the appeal and the preliminary finding will become final.

#### NEW SECTION

**WAC 388-107-1520 Finalizing the preliminary finding.** (1) The preliminary finding becomes a final finding when:

(a) The department notifies the individual of a preliminary finding and the individual does not ask for an administrative hearing within the time frame provided under WAC 388-107-1510;

(b) The individual requested an administrative hearing to appeal the preliminary finding and the administrative law judge:

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

(ii) Dismisses the appeal for failure to comply with the time limits under WAC 388-107-1510; or

(iii) Issues an initial order upholding the finding; or

(c) The board of appeals reverses an administrative law judge's initial order and issues a final order upholding the preliminary 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 and, as appropriate, any other department lists under the following circumstances:

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

(b) The finding is rescinded following judicial review; or

(c) The department is notified of the individual's death.

#### NEW SECTION

**WAC 388-107-1530 Reporting final findings.** The department will report a final finding of abandonment, abuse, neglect, financial exploitation of a resident, and misappropriation of resident property within ten working days to the following:

(1) The individual;

(2) The current administrator of the facility in which the incident occurred;

- (3) The administrator of the facility that currently employs the individual, 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.

NEW SECTION

**WAC 388-107-1540 Appeal of administrative law judge's initial order or finding.** (1) If the individual or the department disagrees with the administrative law judge's decision, either party may appeal this decision by filing a petition for review with the department's board of appeals as provided under chapter 34.05 RCW and chapter 388-02 WAC.

(2) If the individual appeals the administrative law judge's decision, the finding will remain on the department's registry or other lists.

NEW SECTION

**WAC 388-107-1550 Disclosure of investigative and finding information.** (1) Information obtained during the investigation into allegations of abandonment, abuse, neglect, misappropriation of property, or financial exploitation of a resident, and any documents generated by the department will be maintained and disseminated with regard for the privacy of the resident and any reporting individuals and in accordance with laws and regulations regarding confidentiality and privacy.

(2) Confidential information about residents and mandated reporters provided to the individual by the department must be kept confidential and may only be used by the individual to challenge findings through the appeals process.

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

**General Notice Requirements**

NEW SECTION

**WAC 388-107-1560 Notice—Service complete.** Service of the department notices is complete when:

- (1) Personal service is made;

(2) The notice is addressed to the individual or facility at his or her last known address, and deposited in the United States mail;

(3) The notice is faxed and the department receives evidence of transmission;

(4) Notice is delivered to a commercial delivery service with charges prepaid; or

(5) Notice is delivered to a legal messenger service with charges prepaid.

#### NEW SECTION

**WAC 388-107-1570 Notice-Proof of service.** The department may establish proof of service by any of the following:

(1) A declaration of personal service;

(2) An affidavit or certificate of mailing to the enhanced services facility or to the individual to whom notice is directed;

(3) A signed receipt from the person who accepted the certified mail, the commercial delivery service, or the legal messenger service package; or

(4) Proof of fax transmission.

#### **Policies**

#### NEW SECTION

**WAC 388-107-1580 Policies and procedures.** (1) The enhanced services facility must develop and implement written policies and procedures for all treatment, care and services provided in the facility.

(2) The enhanced services facility must train staff persons on implementation of all the policies and procedures.

(3) The facility must ensure that the policies and procedures include, at a minimum the following:

(a) Transitioning new residents;

(b) Security precautions to meet the safety needs of the residents;

(c) Delayed egress, when used by the facility;

(d) Crisis prevention and response protocol;

(e) Discharge planning;

(f) Compliance with resident rights, consistent with WAC 388-107-0190;

(g) Suspected abandonment, abuse, neglect, exploitation, or financial exploitation of any resident;

(h) Situations in which there is reason to believe a resident is not capable of making necessary decisions and no substitute decision maker is available;

(i) Situations in which a substitute decision maker is no longer appropriate;

(j) Situations in which a resident stops breathing or a resident's heart appears to stop beating, including, but not limited to,

any action staff persons must take related to advance directives and emergency care;

(k) Response to medical emergencies;

(l) Urgent situations in the enhanced services facility requiring additional staff support;

(m) Appropriate responses to residents engaging in aggressive or assaultive behavior, including, but not limited to:

(i) Preventive actions for a behavioral crisis or violent behavior;

(ii) Actions to take to protect other residents;

(iii) When and how to seek outside intervention;

(iv) Training on de-escalation techniques for managing resident's challenging behavior before it reaches the stage of physical aggression or assault;

(v) Techniques for staff to use in response to aggressive behaviors when de-escalation techniques have not succeeded;

(vi) Evaluation of the safety of the physical environment;

(vii) Issues of respect and dignity of the client; and

(viii) Use of the least restrictive physical and behavioral interventions depending upon the situation, including use of holding techniques to physically restrain residents.

(n) Preventing and limiting the spread of infections, including tuberculosis, consistent with WACs 388-107-0440;

(o) Providing sub-acute detoxification services approved by an authorized health care provider and ensuring resident health and safety;

(p) Prohibition of restraints, except when necessary to ensure the safety of residents and others;

(q) Use of drugs, including marijuana, for staff or residents; and

(r) Presence of firearms in the facility, including provisions for keeping firearms locked and accessible only to authorized persons.

(4) The enhanced services facility must make the policies and procedures specified in subsection (3) of this section available to staff persons at all times and must inform residents and residents' representatives of their availability and make them available upon request.

#### NEW SECTION

**WAC 388-107-1590 Emergency response teams.** (1) The enhanced services facility must have a plan in place to address emergency responses to behavioral crisis in order to protect the residents and staff.

(2) The enhanced services facility must develop a policy of emergency response notification, including after-hours notification. Subjects of notification may include:

(a) Law enforcement;

(b) Chemical dependency or mental health professional;

(c) Emergency medical personnel;

(d) Program administrator and supervisor;

(e) Resident's case manager; and

(f) Facility treatment team.

NEW SECTION

**WAC 388-107-1600 Emergency disaster plan.** (1) The enhanced services facility must develop and implement detailed written plans and procedures to meet potential emergencies and disasters. At a minimum, the enhanced services facility must ensure these plans provide for:

- (a) Fire or smoke;
- (b) Severe weather;
- (c) Loss of power;
- (d) Earthquake;
- (e) Explosion;
- (f) Missing resident, elopement;
- (g) Loss of normal water supply;
- (h) Bomb threats;
- (i) Armed individuals;
- (j) Gas leak, or loss of service; and
- (k) Loss of heat supply.

(2) The enhanced services facility must train all employees in emergency procedures when they begin work in the enhanced services facility, periodically review emergency procedures with existing staff, and carry out unannounced staff drills using those procedures.

(3) The enhanced services facility must ensure emergency plans:

- (a) Are developed and maintained with the assistance of qualified fire, safety, and other appropriate experts as necessary;
- (b) Are reviewed annually;
- (c) Include plans to continue to serve and meet the needs of the residents during the emergency; and
- (d) Include evacuation routes prominently posted on each unit.

NEW SECTION

**WAC 388-107-1610 Pets.** (1) Each resident must have a reasonable opportunity to have regular contact with animals, if desired.

(2) The enhanced services facility must:

- (a) Consider the recommendations of enhanced services facility residents and staff;
- (b) Determine how to provide residents access to animals;
- (c) Determine the type and number of animals available in the facility, which the facility can safely manage. Such animals should include only those customarily considered domestic pets;
- (d) Ensure that any resident's rights, preferences, and medical needs are not compromised by the presence of an animal; and
- (e) Ensure any animal visiting or living on the premises has a suitable temperament, is healthy, and otherwise poses no significant health or safety risks to residents, staff, or visitors.

(3) Animals living on the enhanced services facility premises must:

- (a) Have regular examinations and immunizations, appropriate for the species, by a veterinarian licensed in Washington state; and
- (b) Be veterinarian certified to be free of diseases transmittable to humans.

(4) Pets must be restricted from:

- (a) Central food preparation areas; and
- (b) Residents who object to the presence of pets.

NEW SECTION

**WAC 388-107-1620 Management agreements/subcontracting staff.**

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

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

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

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

(4) The written management agreement must be submitted:

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

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

NEW SECTION

**WAC 388-107-1630 Management agreements—Licensee.** (1) The licensee is responsible for:

(a) The daily operations and provisions of services in the enhanced services facility;

(b) Ensuring the enhanced services facility is operated in a manner consistent with all laws and rules applicable to enhanced services facilities;

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

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

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

(3) The licensee and manager must act in accordance with the terms of the department-approved management agreements. If the depart-

ment determines they are not, then the department may take licensing action.

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

#### NEW SECTION

**WAC 388-107-1640 Management agreements—Terms of agreement.** Management agreements, at a minimum must:

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

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

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

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

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

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

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

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

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

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

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

#### NEW SECTION

**WAC 388-107-1650 Management agreements—Department review.** Upon receipt of a proposed management agreement, the department may require:

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

(2) Any changes necessary to:

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

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

(3) The licensee to participate in monthly meetings and quarterly on-site visits to the enhanced services facility.

NEW SECTION

**WAC 388-107-1660 Management agreements—Resident funds.** (1) If the management agreement delegates day-to-day management of resident funds to the manager, the licensee:

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

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

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

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

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

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