388-97-0620 Chemical and physical restraints.

(1) The resident has the right to be free from any physical or chemical restraint imposed for purposes of:
(a) Discipline or convenience, and not required to treat the resident's medical symptoms; or
(b) Preventing or limiting independent mobility or activity.

(2) The nursing home must develop and implement written policies and procedures governing:
(a) The emergency use of restraints;
(b) The use of chemical and physical restraints, required for the treatment of the resident's medical symptoms, not for discipline or convenience;
(c) The personnel authorized to administer restraints in an emergency; and
(d) Monitoring and controlling the use of restraints.

(3) Physical restraints may be used in an emergency only when:
(a) It has been assessed as necessary to prevent a resident from inflicting injury to self or to others;
(b) The restraint is the least restrictive form of restraint possible;
(c) A physician's order is obtained:
   (i) Within twenty-four hours; and
   (ii) The order includes treatments to assist in resolving the emergency situation and eliminating the need for the restraint.
(d) The resident is released from the restraint as soon as the emergency no longer exists.

(4) In certain situations, chemical or physical restraints may be necessary for residents with acute or chronic mental or physical impairments. When chemical or physical restraints are used the nursing home must ensure that:
(a) The use of the restraint is related to a specific medical need or problem identified through a multidisciplinary assessment;
(b) The informed consent process is followed as described under WAC 388-97-0260; and
(c) The resident's plan of care provides approaches to reduce or eliminate the use of the restraint, where possible.

(5) The nursing home must ensure that any resident physically restrained is released:
(a) At intervals not to exceed two hours; and
(b) For periods long enough to provide for ambulation, exercise, elimination, food and fluid intake, and socialization as independently as possible.

[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-0620, filed 9/24/08, effective 11/1/08.]
388-97-0640 Prevention of abuse.

(1) Each resident has the right to be free from verbal, sexual, physical and mental abuse, corporal punishment, and involuntary seclusion.

(2) The nursing home must develop and implement written policies and procedures that:
   (a) Prohibit abandonment, abuse, and neglect of residents, financial exploitation, and misappropriation of resident property; and
   (b) Require staff to report possible abuse, and other related incidents, as required by chapter 74.34 RCW, and for skilled nursing facilities and nursing facilities as required by 42 C.F.R. § 483.13.

(3) The nursing home must not allow staff to:
   (a) Engage in verbal, mental, sexual, or physical abuse;
   (b) Use corporal punishment;
   (c) Involuntarily seclude, abandon, neglect, or financially exploit residents; or
   (d) Misappropriate resident property.

(4) The nursing home must report any information it has about an action taken by a court of law against an employee to the department’s complaint resolution unit and the appropriate department of health licensing authority, if that action would disqualify the individual from employment as described in RCW 43.43.842.

(5) The nursing home must ensure that all allegations involving abandonment, abuse, neglect, financial exploitation, or misappropriation of resident property, including injuries of unknown origin, are reported immediately to the department, other applicable officials, and the administrator of the facility. The nursing home must:
   (a) Ensure that the reports are made through established procedures in accordance with state law including chapter 74.34 RCW, and guidelines developed by the department; and
   (b) Not have any policy or procedure that interferes with the requirement of chapter 74.34 RCW that employees and other mandatory reporters file reports directly with the department, and also with law enforcement, if they suspect sexual or physical assault has occurred.

(6) The nursing home must:
   (a) Have evidence that all alleged violations are thoroughly investigated;
   (b) Prevent further potential abandonment, abuse, neglect, financial exploitation, or misappropriation of resident property while the investigation is in progress; and
   (c) Report the results of all investigations to the administrator or his designated representative and to other officials in accordance with state law and established procedures (including the state survey and certification agency) within five working days of the incident, and if the alleged violation is verified appropriate action must be taken.

(7) When a mandated reporter has:
   (a) Reasonable cause to believe that a vulnerable adult has been abandoned, abused, neglected, financially exploited, or a resident's property has been misappropriated, the individual mandatory reporter must immediately report the incident to the department’s aging and disability services administration (ADSA);
   (b) Reason to suspect that a vulnerable adult has been sexually or physically assaulted, the
individual mandatory reporter must:
   (i) Immediately report the incident to the department’s aging and disability services administration (ADSA);
   (ii) Notify local law enforcement in accordance with the provisions of chapter 74.34 RCW.

(8) Under RCW 74.34.053, it is:
(a) A gross misdemeanor for a mandated reporter knowingly to fail to report as required under this section; and
(b) A misdemeanor for a person to intentionally, maliciously, or in bad faith make a false report of alleged abandonment, abuse, financial exploitation, or neglect of a vulnerable adult.

(9) The nursing home must not employ individuals who are disqualified under the requirements of WAC 388-97-1820.

[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-0640, filed 9/24/08, effective 11/1/08.]

388-97-0660 Resident protection program definition.
As used in WAC 388-97-0660 through 388-97-0840, the term "individual," means anyone, used by the nursing home to provide services to residents who is alleged to have abandoned, abused, neglected, misappropriated property of a resident or financially exploited a resident. "Individual" includes, but is not limited to, employees, contractors, and volunteers.
[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-0660, filed 9/24/08, effective 11/1/08.]

388-97-0680 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 this chapter, RCW 74.34.020 or 42 C.F.R. 488.301.

(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.

[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-0680, filed 9/24/08, effective 11/1/08.]

388-97-0700 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. [Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. 08-20-062, § 388-970700, filed 9/24/08, effective 11/1/08.]

388-97-0720 Notice to individual of preliminary findings.
(1) The department will serve notice of the preliminary finding as provided in WAC 388-97-4425.
(2) The department may establish proof of service as provided in WAC 388-97-4430. [Statutory Authority: Chapters 18.51 and 74.42 RCW. 10-02-021, § 388-97-0720, filed 12/29/09, effective 1/29/10. Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. 08-20-062, § 388-970720, filed 9/24/08, effective 11/1/08.]

388-97-0725 Notice to others of preliminary findings.
Consistent with confidentiality requirements concerning the resident, witnesses, and the reporter, the department may provide notification of a preliminary finding to:
- Other divisions within the department;
- The agency, program or employer where the incident occurred;
- The employer or program that is currently associated with the individual;
- Law enforcement;
- Other entities as authorized by law including chapter 74.34 RCW and this chapter; and
- The appropriate licensing agency. [Statutory Authority: Chapters 18.51 and 74.42 RCW. 10-02-021, § 388-97-0725, filed 12/29/09, effective 1/29/10.]

388-97-0740 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. [Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. 08-20-062, § 388-970740, filed 9/24/08, effective 11/1/08.]

388-97-0760 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; 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
(6) 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 shall issue an order dismissing the appeal and the preliminary finding will become final.

[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-0760, filed 9/24/08, effective 11/1/08.]

388-97-0780 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 388-97-0740;
(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 388-97-0760; 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;
(c) At least one year after a single finding of neglect has been finalized, the department may remove the finding of neglect from the department’s registry or department lists based upon a written petition by the individual and in accordance with requirements of federal law, 42 U.S.C. 1396r (g)(1)(D); or
(d) The department is notified of the individual’s death.
388-97-0800 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:  
(a) The individual;  
(b) The current administrator of the facility in which the incident occurred;  
(c) The administrator of the facility that currently employs the individual, if known;  
(d) The department's registry;  
(e) The appropriate licensing authority; and  
(f) Any other lists maintained by a state or federal agency as appropriate.

388-97-0820 Appeal of administrative law judge's initial order or finding.  
(a) 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.  
(b) If the individual appeals the administrative law judge's decision, the finding will remain on the department's registry or other lists.

388-97-0840 Disclosure of investigative and finding information.  
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. Confidential information about resident 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. Confidential information such as the name and other personal identifying information of the reporter, witnesses, or the resident 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.

38978-97-1620 General administration.  
...(7) The nursing home must:  
(a) Report to the local law enforcement agency and the department any individual threatening bodily harm or causing a disturbance which threatens any individual's welfare and safety;  
(b) Identify, investigate, and report incidents involving residents, according to department
established nursing home guidelines; and  
(c) Comply with "whistle blower" rules as defined in chapter 74.34 RCW.

(8) The department will:  
(a) Investigate complaints, made to the department according to established protocols including protocols described in RCW 74.39A.060;  
(b) Take action against a nursing home that is found to have used retaliatory treatment toward a resident or employee who has voiced grievances to nursing home staff or administration, or lodged a good faith complaint with the department; and  
(c) Report to local law enforcement:  
   (i) Any mandated reporter that knowingly fails to report in accordance with WAC 388-970640; and  
   (ii) Any person that intentionally, maliciously or in bad faith makes a false report of alleged abandonment, abuse, financial exploitation, or neglect of a vulnerable adult.

(9) Refer also to WAC 388-97-1840, Retaliation.  
[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-1620, filed 9/24/08, effective 11/1/08.]

388-97-1640 Required notification and reporting.  
(1) The nursing home must immediately notify the department’s aging and disability services administration of:  
(a) Any allegations of resident abandonment, abuse, or neglect, including substantial injuries of an unknown source, financial exploitation and misappropriation of a resident’s property;  
(b) Any unusual event, having an actual or potential negative impact on residents, requiring the actual or potential implementation of the nursing home’s disaster plan. These unusual events include but are not limited to those listed under WAC 388-97-1740 (1)(a) through (k), and could include the evacuation of all or part of the residents to another area of the nursing home or to another address; and  
(c) Circumstances which threaten the nursing home’s ability to ensure continuation of services to residents.

(2) Mandated reporters must notify the department and law enforcement as directed in WAC 388-97-0640, and according to department established nursing home guidelines.  
[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-1640, filed 9/24/08, effective 11/1/08.]

388-97-1820 Disqualification from nursing home employment.  
(1) The nursing home must not employ directly or by contract, or accept as a volunteer or student, any individual:  
(a) Who has been found to have abused, neglected, exploited or abandoned a minor or vulnerable adult by a court of law, by a disciplining authority, including the state department of health; With a finding of abuse or neglect of a child that is:  
   (a) Listed on the department’s background check central unit (BCCU) report; or  
   (b) Disclosed by the individual, except for findings made before December, 1998.  
(c) With a finding of abandonment, abuse, neglect, or financial exploitation of a vulnerable adult that is:
(i) Listed on any registry, including the department registry;
(ii) Listed on the department’s background check central unit (BCCU) report; or
(iii) Disclosed by the individual, except for adult protective services findings made before October, 2003.

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

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

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

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

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

(i) Theft in the second degree, or the same offense as it may hereafter be renamed, and five or more years have passed;
(ii) Theft in the third degree, or the same offense as it may hereafter be renamed, and three or more years have passed; or
(iii) Forgery, or the same offense as forgery may hereafter be renamed, and five or more years have passed.

Has been convicted of:

(i) Violation of the imitation controlled substances act (VICS);
(ii) Violation of the uniform controlled substances act (VUCS);
(iii) Violation of the uniform legend drug act (VULDA); or
(iv) Violation of the uniform precursor drug act (VUPD).

(d) Has been convicted of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct.
(e) Has been convicted of criminal mistreatment.
(f) Has been convicted in another state of a crime that is equivalent to a crime listed in subsection (2)(a) through (e) of this section.

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

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

[Statutory Authority: Chapters 18.51 and 74.42 RCW. 10-02-021, § 388-97-1820, filed 12/29/09, effective 1/29/10. Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. 08-20-062, § 388-971820, filed 9/24/08, effective 11/1/08.]
388-97-1840 Retaliation or discrimination prohibited.

(1) The licensee or the nursing home must not discriminate or retaliate in any manner against a resident or employee in its nursing home who has initiated or participated in any action or proceeding authorized under nursing home licensing law. Examples of such participation include, but are not limited to the following:
   (a) The resident, or someone acting on behalf of the resident, or the employee:
      (i) Made a complaint, including a whistle blower complaint, to the department, the department of health, the long-term care ombudsman, attorney general's office, the courts or law enforcement;
      (ii) Provided information to the department, the department of health, the long-term care ombudsman, attorney general's office, the courts or law enforcement; or
      (iii) Testified in a proceeding related to the nursing home or its staff.

(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) Nonmedically indicated social, dietary, or mobility restriction(s);
   (d) Lessening of the level of care when not medically appropriate;
   (e) Nonvoluntary relocation within a nursing home 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 terminally ill resident or the resident's representative;
   (j) Persistently delaying responses to resident's request for services of assistance; or
   (k) Infringement on a resident's rights described in chapter 74.42 RCW, RCW 74.39A.060(7), WAC 388-97-0180, and also, for medicaid and medicare certified nursing facilities, in federal laws and regulations.

(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 whistle blower; or

(n) Workplace reprisal or retaliatory action as defined in RCW 74.34.180 (3)(b).

(4) For purposes of this chapter, a "whistle blower" is defined in WAC 388-97-0001.

(5) If, within one year of the complaint by or on behalf of a resident, the resident is involuntarily discharged from the nursing home, 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 nursing home will have the burden of establishing that the action was not retaliatory, in accordance with RCW 18.51.220 and 74.34.180(2).

[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-1840, filed 9/24/08, effective 11/1/08.]