

388-97-0001**Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Civil adjudication proceeding" means judicial or administrative adjudicative proceeding that results in a finding of, or upholds an agency finding of, domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation or financial exploitation of a child or vulnerable adult under any provision of law, including but not limited to chapter [13.34](#), [26.44](#), or [74.34](#) RCW, or rules adopted under chapters

[18.51](#) and [74.42](#) RCW. "Civil adjudication proceeding" also includes judicial or administrative findings that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"**Disclosure statement**" means a signed statement by an individual in accordance with the requirements under RCW [43.43.834](#). The statement should include a disclosure of whether or not the individual has been convicted of certain crimes or has been found by any court, state licensing board, disciplinary board, or protection proceeding to have neglected, sexually abused, financially exploited, or physically abused any minor or adult individual.

"**Drug**" means a substance:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"Licensed practical nurse" means an individual licensed to practice as a licensed practical nurse under chapter [18.79](#) RCW;

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

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

"NFPA" means National Fire Protection Association, Inc.

"Neglect":

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

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

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

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

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

"Nursing assistant" means a nursing assistant as defined under RCW [18.88A.020](#) or successor laws.

"Nursing facility (NF)" or **"medicaid-certified nursing facility"** means a nursing home, or any portion of a hospital, veterans' home, or residential habilitation center, that is certified to provide nursing services to medicaid recipients under Section 1919(a) of the federal Social Security Act.

"Nursing home" means any facility licensed to operate under chapter [18.51](#) RCW.

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

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

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

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

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

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

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

"Pharmacist" means an individual licensed by the Washington state board of pharmacy under chapter [18.64](#) RCW.

"Pharmacy" means a place licensed under chapter [18.64](#) RCW where the practice of pharmacy is conducted.

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

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

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

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

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

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

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

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

(2) Reasonable accommodations are not required if:

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

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

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

"Receivership" is established by a court action and results in the removal of a nursing home's current licensee and the appointment of a substitute licensee to temporarily operate the nursing home.

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

"Registered nurse" means an individual licensed to practice as a registered nurse under chapter [18.79](#) RCW.

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

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

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

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

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

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

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

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

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

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

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

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

"Temporary manager" means an individual or entity appointed by the department to oversee the operation of the nursing home to ensure the health and safety of its residents, pending correction of deficiencies or closure of the facility.

"Termination" means an action taken by:

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

(2) The department of health and human services Centers for Medicare and Medicaid Services, or the nursing home, to

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cancel a nursing home's provider agreement to provide services to medicaid or medicare recipients, or both.

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

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

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

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

"Vulnerable adult" includes a person:

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

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

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW. 10-02-021, § 388-97-0001, 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, § 388-97-0001, filed 9/24/08, effective 11/1/08.]

388-97-0020

Nursing facility care.

The nursing facility must provide items, care, and services in accordance with this chapter and with federal regulations under 42 C.F.R. § 483.1 through 483.206, or successor laws, and other applicable federal requirements.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-0020, filed 9/24/08, effective 11/1/08.]

388-97-0040

Discrimination prohibited.

- (1) A nursing facility must establish and maintain identical policies and practices regarding transfer, discharge, and the provision of services covered under the state medicaid plan for all individuals regardless of source of payment.
- (2) A nursing facility must not require or request:
- (a) Residents or potential residents to waive their rights to medicare or medicaid;
 - (b) Oral or written assurance that residents or potential residents are not eligible for, or will not apply for medicare or medicaid benefits; and
 - (c) A third party guarantee of payment to the facility as a condition of admission or expedited admission, or continued stay in the facility. However, the facility may require an individual who has legal access to a resident's income or resources available to pay for facility care to sign a contract, without incurring personal financial liability, to provide facility payment from the resident's income or resources.
- (3) A nursing facility must inform, in writing, a prospective resident, and where applicable, the resident's representative, before or at the time of admission, that a third party may not be required or requested to personally guarantee payment to the nursing home, as specified in subsection (2)(c) of this section.
- (4) A nursing facility must readmit a resident, who has been hospitalized or on therapeutic leave, immediately to the first available bed in a semiprivate room if the resident:
- (a) Requires the services provided by the facility; and
 - (b) Is eligible for medicaid nursing facility services.
- (5) A nursing facility must not:
- (a) Deny or delay admission or readmission of an individual to the facility because of the individual's status as a medicaid recipient;
 - (b) Transfer a resident, except from a single room to another room within the facility, because of the resident's status as a medicaid recipient;
 - (c) Discharge a resident from a facility because of the resident's status as a medicaid recipient; or
 - (d) Charge medicaid recipients any amounts in excess of the medicaid rate from the date of eligibility, except for any supplementation that may be permitted by department regulation.
- (6) A nursing facility must maintain only one list of names of individuals seeking admission to the facility, which is ordered by the date of request for admission, and must:
- (a) Offer admission to individuals in the order they appear on the list, except as provided in subsection (7), as long as the facility can meet the needs of the individual with available staff or through the provision of reasonable accommodations required by state or federal laws;
 - (b) Retain the list of individuals seeking admission for one year from the month admission was requested; and
 - (c) Offer admission to the portions of the facility certified under medicare and medicaid without discrimination against persons eligible for medicaid, except as provided in subsection (7).
- (7) A nursing facility is permitted to give preferential admission to individuals who seek admission from a boarding home, licensed under chapter [18.20](#) RCW, or from independent retirement housing, if:
- (a) The nursing facility is owned by the same entity that owns the boarding home or independent housing; and
 - (b) They are located within the same proximate geographic area; and
 - (c) The purpose of the preferential admission is to allow continued provision of culturally or faith-based services, or services provided by a continuing care retirement community as defined in RCW [74.38.025](#).

(8) A nursing facility must develop and implement written policies and procedures to ensure nondiscrimination in accordance with this section and RCW [74.42.055](#).

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52.08-20-062, § 388-97-0040, filed 9/24/08, effective 11/1/08.]

388-97-0060

Nursing facility admission and payment requirements.

Refer to WAC [388-106-0350](#) through [388-106-0360](#).

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52.08-20-062, § 388-97-0060, filed 9/24/08, effective 11/1/08.]

388-97-0080

Discharge planning.

(1) A resident has the right to attain or maintain the highest practicable physical, mental, and psychosocial well-being, and to reside in the most independent setting. Therefore, the nursing home must:

(a) Utilize a formal resident discharge planning system with identical policies and practices for all residents regardless of source of payment;

(b) Inform the resident or resident's representative in writing of the nursing home's discharge planning system when the resident is admitted or as soon as practical after the resident's admission, including:

(i) Specific resources available to assist the resident in locating a lesser care setting;

(ii) The name of the nursing home's discharge coordinator(s);

(iii) In the case of a medicaid certified nursing facility, the address and telephone number for the department's local home and community services office; and

(iv) In the case of a resident identified through pre-admission screening and resident review (PASRR) as having a developmental disability or mental illness, the address and telephone number for the division of developmental disabilities or the mental health PASRR contractor.

(2) The nursing home must prepare a detailed, written transfer or discharge plan for each resident determined to have potential for transfer or discharge within the next three months. The nursing home must:

(a) Develop and implement the plan with the active participation of the resident and, where appropriate, the resident's representative;

(b) In the case of a medicaid resident, coordinate the plan with the department's home and community services staff;

(c) In the case of a resident identified through PASRR as having a developmental disability or mental illness, coordinate the plan with the division of developmental disabilities or the mental health PASRR contractor;

(d) Ensure the plan is an integral part of the resident's comprehensive plan of care and, as such, includes measurable

objectives and timetables for completion;

(e) Incorporate in the plan relevant factors to include, but not be limited to the:

(i) Resident's preferences;

(ii) Support system;

(iii) Assessments and plan of care; and

(iv) Availability of appropriate resources to match the resident's preferences and needs.

(f) Identify in the plan specific options for more independent placement; and

(g) Provide in the plan for the resident's continuity of care, and to reduce potential transfer trauma, including, but not limited to, pretransfer visit to the new location whenever possible.

(3) For a resident whose transfer or discharge is not anticipated in the next three months, the nursing home must:

(a) Document the specific reasons transfer or discharge is not anticipated in that time frame; and

(b) Review the resident's potential for transfer or discharge at the time of the quarterly comprehensive plan of care review. If the reasons documented under subsection (3)(a) of this section are unchanged, no additional documentation of reasons is necessary at the time of plan of care review.

(4) The nursing home must initiate discharge planning on residents described in subsection (3) of this section:

(a) At the request of the resident or the resident's representative; and

(b) When there is a change in the resident's situation or status which indicates a potential for transfer or discharge within the next three months.

(5) Each resident has the right to request transfer or discharge and to choose a new location. If the resident chooses to leave, the nursing home must assist with and coordinate the resident's transfer or discharge. The medicaid resident, resident's representative, or nursing facility may request assistance from the department's home and community services or, where applicable, the division of developmental disabilities or mental health in the transfer or discharge planning and implementation process.

(6) The nursing home must coordinate all resident transfers and discharges with the resident, the resident's representative and any other involved individual or entity.

(7) When a nursing home anticipates discharge, a resident must have a discharge summary that includes:

(a) A recapitulation of the resident's stay;

(b) A final summary of the resident's status to include items in WAC [388-97-1000](#)(1), at the time of discharge that is available for release to authorized individuals and agencies, with the consent of the resident or and surrogate decision maker; and

(c) A postdischarge plan of care that is developed with the participation of the resident and his or her family, which will assist the resident to adjust to his or her new living environment.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-0080, filed 9/24/08, effective 11/1/08.]

388-97-0100**Utilization review.**

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

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

(i) An accurate, comprehensive assessment process; and

(ii) Documentation by the resident's physician.

(b) The nursing facility is not responsible to assess under WAC [388-97-1960](#), PASSR level II screening assessment.

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

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

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

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

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

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

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

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

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

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW. 10-02-021, § 388-97-0100, 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, § 388-97-0100, filed 9/24/08, effective 11/1/08.]

388-97-0120**Individual transfer and discharge rights and procedures.**

(1) The skilled nursing facility and nursing facility must comply with all of the requirements of 42 C.F.R. § 483.10 and § 483.12, and RCW [74.42.450](#), or successor laws, and the nursing home must comply with all of the requirements of RCW [74.42.450](#) (1) through (4) and (7), or successor laws, including the following provisions and must not transfer or discharge any resident unless:

(a) At the resident's request;

(b) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

(c) The transfer or discharge is appropriate because the resident's health has improved enough so the resident no longer needs the services provided by the facility;

- (d) The safety of individuals in the facility is endangered;
- (e) The health of individuals in the facility would otherwise be endangered; or
- (f) The resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility.

(2) The following notice requirements apply if a nursing home/facility initiates the transfer or discharge of a resident. The notice must:

- (a) Include all information required by 42 C.F.R. § 483.12 when given in a nursing facility;
- (b) Be in writing, in language the resident understands;
- (c) Be given to the resident, the resident's surrogate decision maker, if any, the resident's family and to the department;
- (d) Be provided thirty days in advance of a transfer or discharge initiated by the nursing facility, except that the notice may be given as soon as practicable when the facility cannot meet the resident's urgent medical needs, or under the conditions described in (1)(c), (d), and (e) of this section; and
- (e) Be provided fifteen days in advance of a transfer or discharge initiated by the nursing home, unless the transfer is an emergency.

(3) The nursing home must:

- (a) Provide sufficient preparation and orientation to the resident to ensure safe and orderly transfer or discharge from the nursing home;
 - (b) Attempt to avoid the transfer or discharge of a resident from the nursing home through the use of reasonable accommodations unless agreed to by the resident and the requirements of WAC [388-97-0080](#) are met; and
 - (c) Develop and implement a bed-hold policy. This policy must be consistent with any bed-hold policy that the department develops.
- (4) The nursing home must provide the bed-hold policy, in written format, to the resident, and a family member, before the resident is transferred or goes on therapeutic leave. At a minimum the policy must state:
- (a) The number of days, if any, the nursing home will hold a resident's bed pending return from hospitalization or social/therapeutic leave;
 - (b) That a medicaid eligible resident, whose hospitalization or social/therapeutic leave exceeds the maximum number of bed-hold days will be readmitted to the first available semi-private bed, provided the resident needs nursing facility services. Social/therapeutic leave is defined under WAC [388-97-0001](#). The number of days of social/therapeutic leave allowed for medicaid residents and the authorization process is found under WAC [388-97-0160](#); and
 - (c) That a medicaid eligible resident may be charged if he or she requests that a specific bed be held, but may not be charged a bed-hold fee for the right to return to the first available bed in a semi-private room.

(5) The nursing facility must send a copy of the federally required transfer or discharge notice to:

- (a) The department's home and community services when the nursing home has determined under WAC [388-97-0100](#), that the medicaid resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility; and
- (b) The department's designated local office when the transfer or discharge is for any of the following reasons:
 - (i) The resident's needs cannot be met in the facility;
 - (ii) The health or safety of individuals in the facility is endangered; or
 - (iii) The resident has failed to pay for, or to have paid under medicare or medicaid, a stay at the facility.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-0120, filed 9/24/08, effective 11/1/08.]

388-97-0140

Transfer and discharge appeals for resident in medicare or medicaid certified facilities.

(1) A skilled nursing facility and a nursing facility that initiates transfer or discharge of any resident, regardless of payor status, must:

(a) Provide the required written notice of transfer or discharge to the resident and, if known or appropriate, to a family member or the resident's representative;

(b) Attach a department-designated hearing request form to the transfer or discharge notice;

(c) Inform the resident in writing, in a language and manner the resident can understand, that:

(i) An appeal request may be made any time up to ninety days from the date the resident receives the notice of transfer or discharge; and

(ii) Transfer or discharge will be suspended when an appeal request is received by the office of administrative hearings on or before the date the resident actually transfers or discharges; and

(iii) The nursing home will assist the resident in requesting a hearing to appeal the transfer or discharge decision.

(2) A skilled nursing facility or nursing facility must suspend transfer or discharge pending the outcome of the hearing when the resident's appeal is received by the office of administrative hearings on or before the date of the transfer or discharge set forth in the written transfer or discharge notice, or before the resident is actually transferred or discharged.

(3) The resident is entitled to appeal the skilled nursing facility or nursing facility's transfer or discharge decision. The appeals process is set forth in chapter [388-02](#) WAC and this chapter. In such appeals, the following will apply:

(a) In the event of a conflict between a provision in this chapter and a provision in chapter [388-02](#) WAC, the provision in this chapter will prevail;

(b) The resident must be the appellant and the skilled nursing facility or the nursing facility will be the respondent;

(c) The department must be notified of the appeal and may choose whether to participate in the proceedings. If the department chooses to participate, its role is to represent the state's interest in assuring that skilled nursing facility and nursing facility transfer and discharge actions comply substantively and procedurally with the law and with federal requirements necessary for federal funds;

(d) If a medicare certified or medicaid certified facility's decision to transfer or discharge a resident is not upheld, and the resident has been relocated, the resident has the right to readmission immediately upon the first available bed in a semi-private room if the resident requires and is eligible for the services provided by a nursing facility or skilled nursing facility;

(e) Any review of the administrative law judge's initial decision shall be conducted under WAC [388-02-0600](#)(1).

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-0140, filed 9/24/08, effective 11/1/08.]

388-97-0160**Discharge or leave of a nursing facility resident.**

(1) A nursing facility must send immediate written notification of the date of discharge or death of a medicaid resident to the department's local home and community service office.

(2) The nursing facility must:

(a) Notify the department of nursing facility discharge and readmission for all medicaid recipients admitted as hospital inpatients; and

(b) Document in the resident's clinical record all social/therapeutic leave exceeding twenty-four hours.

(3) The department will pay the nursing facility for a medicaid resident's social/therapeutic leave not to exceed a total of eighteen days per calendar year per resident.

(4) The department's home and community services may authorize social/therapeutic leave exceeding eighteen days per calendar year per resident when requested by the nursing facility or by the resident. In the absence of prior authorization from the department's home and community services, the department will not make payment to a nursing facility for leave days exceeding eighteen per calendar year per resident.

(5) An individual who is on social/therapeutic leave retains the status of a nursing facility resident.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-0160, filed 9/24/08, effective 11/1/08.]

388-97-0180**Resident rights.**

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

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

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

(4) The resident has the right to:

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

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

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

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

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

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

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-0180, filed 9/24/08, effective 11/1/08.]

388-97-0200 **Free choice.**

The resident has the right to:

- (1) Choose a personal attending physician.
- (2) Be fully informed in advance about care and treatment and of any changes in that care or treatment that may affect the resident's well-being.
- (3) Participate in planning care and treatment or changes in care and treatment.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-0200, filed 9/24/08, effective 11/1/08.]

388-97-0220 **Statute implemented in resident decision making, informed consent, and advance directives.**

WAC [388-97-0240](#), [388-97-0260](#), and [388-97-0280](#) implement the federal Patient Self-Determination Act and clarify requirements under chapters [11.94](#), [7.70](#), [70.122](#), [11.88](#) and [11.92](#) RCW.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-0220, filed 9/24/08, effective 11/1/08.]

388-97-0240 **Resident decision making.**

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

- (a) Has appointed another individual to make his or her health care, financial, or other decisions;
- (b) Has created any advance directive or other legal documents that will establish a surrogate decision maker in the future; and
- (c) Is not making his or her own decisions, and identify who has the authority for surrogate decision making, and the scope of the surrogate decision maker's authority.

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

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

- (a) Obtain copies of the legal documents that establish the surrogate decision maker's authority to act; and
- (b) Document in the resident's clinical record:
 - (i) The name, address, and telephone number of the individual who has legal authority for substitute decision making;
 - (ii) The type of decision making authority such individual has; and
 - (iii) Where copies of the legal documents are located at the facility.
- (4) In accordance with state law or at the request of the resident, the resident's surrogate decision maker is, in the case of:
 - (a) A capacitated resident, the individual authorized by the resident to make decisions on the resident's behalf;
 - (b) A resident adjudicated by a court of law to be incapacitated, the court appointed guardian; and
 - (c) A resident who has been determined to be incapacitated, but is not adjudicated incapacitated established through:
 - (i) A legal document, such as a durable power of attorney for health care; or
 - (ii) Authority for substitute decision making granted by state law, including RCW [7.70.065](#).
- (5) Determination of an individual's incapacity must be a process according to state law not a medical diagnosis only and be based on:
 - (a) Demonstrated inability in decision making over time that creates a significant risk of personal harm;
 - (b) A court order; or
 - (c) The criteria contained in a legal document, such as durable power of attorney for health care.
- (6) The nursing home must promote the resident's right to exercise decision making and self-determination to the fullest extent possible, taking into consideration his or her ability to understand and respond. Therefore, the nursing home must presume that the resident is the resident's own decision maker unless:
 - (a) A court has established a full guardianship of the individual;
 - (b) The capacitated resident has clearly and voluntarily appointed a surrogate decision maker;
 - (c) A surrogate is established by a legal document such as a durable power of attorney for health care; or
 - (d) The facility determines that the resident is an incapacitated individual according to RCW [11.88.010](#) and (5)(a) of this section.
- (7) The nursing home must honor the exercise of the resident's rights by the surrogate decision maker as long as the surrogate acts in accordance with this section and with state and federal law which govern his or her appointment.
- (8) If a surrogate decision maker exercises a resident's rights, the nursing home must take into consideration the resident's ability to understand and respond and must:
 - (a) Inform the resident that a surrogate decision maker has been consulted;
 - (b) Provide the resident with the information and opportunity to participate in all decision making to the maximum extent possible; and
 - (c) Recognize that involvement of a surrogate decision maker does not lessen the nursing home's duty to:
 - (i) Protect the resident's rights; and

(ii) Comply with state and federal laws.

(9) The nursing home must:

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

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

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

(i) The resident regains capacity;

(ii) The guardian is not respecting or promoting the resident's rights;

(iii) The guardianship should be modified; or

(iv) A different guardian needs to be appointed.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-0240, filed 9/24/08, effective 11/1/08.]

388-97-0260

Informed consent.

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

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

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

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

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

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

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

(a) The nature and character of the proposed treatment;

(b) The anticipated results of the proposed treatment;

(c) The recognized possible alternative forms of treatment;

(d) The recognized serious possible risks, complications, and anticipated benefits involved in the treatment and in the recognized possible alternative forms of treatment including nontreatment; and

(e) The right of the resident to choose not to be informed.

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

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

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52.08-20-062, § 388-97-0260, filed 9/24/08, effective 11/1/08.]

388-97-0280

Advance directives.

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

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

(3) The nursing home must:

- (a) Document in the clinical record whether or not the resident has an advance directive;
- (b) Not request or require the resident to have any advance directives and not condition the provision of care or otherwise discriminate against a resident on the basis of whether or not the resident has executed an advance directive;
- (c) In a language and words the resident understands, inform the resident in writing and orally at the time of admission, and thereafter as necessary to ensure the resident's right to make informed choices, about:
 - (i) The right to make health care decisions, including the right to change his or her mind regarding previous decisions;
 - (ii) Nursing home policies and procedures concerning implementation of advance directives; and
- (d) Review and update as needed the resident advance directive information:
 - (i) At the resident's request;
 - (ii) When the resident's condition warrants review; and
 - (iii) When there is a significant change in the resident's condition.

(4) When the nursing home becomes aware that a resident's health care directive is in conflict with facility practices and

policies which are consistent with state and federal law, the nursing home must:

- (a) Inform the resident of the existence of any nursing home practice or policy which would preclude implementing the health care directive;
- (b) Provide the resident with written policies and procedures that explain under what circumstances a resident's health care directive will or will not be implemented by the nursing home;
- (c) Meet with the resident to discuss the conflict; and
- (d) Determine, in light of the conflicting practice or policy, whether the resident chooses to remain at the nursing home:
 - (i) If the resident chooses to remain in the nursing home, develop with the resident a plan in accordance with chapter [70.122](#) RCW to implement the resident's wishes. The nursing home may need to actively participate in ensuring the execution of the plan, including moving the resident at the time of implementation to a care setting that will implement the resident's wishes. Attach the plan to the resident's directive in the resident's clinical record; or
 - (ii) If, after recognizing the conflict between the resident's wishes and nursing home practice or policy the resident chooses to seek other long-term care services, or another physician who will implement the directive, the nursing home must assist the resident in locating other appropriate services.
- (5) If a terminally ill resident, in accordance with state law, wishes to die at home, the nursing home must:
 - (a) Use the informed consent process as described in WAC [388-97-0260](#), and explain to the resident the risks associated with discharge; and
 - (b) Discharge the resident as soon as reasonably possible.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW. 10-02-021, § 388-97-0280, 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, § 388-97-0280, filed 9/24/08, effective 11/1/08.]

388-97-0300

Notice of rights and services.

- (1) The nursing home must provide the resident, before admission, or at the time of admission in the case of an emergency, and as changes occur during the resident's stay, both orally and in writing and in language and words that the resident understands, with the following information:
 - (a) All rules and regulations governing resident conduct, resident's rights and responsibilities during the stay in the nursing home;
 - (b) Advanced directives, and of any nursing home policy or practice that might conflict with the resident's advance directive if made;
 - (c) Advance notice of transfer requirements, consistent with RCW [70.129.110](#);
 - (d) Advance notice of deposits and refunds, consistent with RCW [70.129.150](#); and
 - (e) Items, services and activities available in the nursing home and of charges for those services, including any charges for services not covered under medicare or medicaid or by the home's per diem rate.
- (2) The resident has the right:
 - (a) Upon an oral or written request, to access all records pertaining to the resident including clinical records within twenty-four hours; and

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

(3) The resident has the right to:

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

(b) Accept or refuse treatment; and

(c) Refuse to participate in experimental research.

(4) The nursing home must inform each resident:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) The nursing home may retain an additional amount to cover its reasonable, actual expenses incurred as a result of a private pay resident's move, not to exceed five days per diem charges, unless the resident has given advance notice in compliance with the admission agreement.

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

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

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

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

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

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

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

(8) The nursing home must:

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

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

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

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

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-0300, filed 9/24/08, effective 11/1/08.]

388-97-0320

Notification of changes.

(1) A nursing home must immediately inform the resident, consult with the resident's physician, and if known, notify the resident's surrogate decision maker, and when appropriate, with resident consent, interested family member(s) when there is:

(a) An accident involving the resident which results in injury and has the potential for requiring physician intervention;

(b) A significant change in the resident's physical, mental, or psychosocial status (i.e., a deterioration in health, mental, or psychological status in either life-threatening conditions or clinical complications); refer to WAC [388-97-0240](#);

(c) A need to alter treatment significantly (i.e., a need to discontinue an existing form of treatment due to adverse consequences, or to commence a new form of treatment); or

(d) A decision to transfer or discharge the resident from the facility.

(2) The nursing home must also promptly notify the resident and, if known, the resident's surrogate decision maker, and when appropriate, with the resident's consent, interested family member(s) when there is:

(a) A change in room or roommate assignment, refer to the timing requirements in WAC [388-97-0580](#); or

(b) A change in resident rights under federal or state law or regulations as specified in WAC [388-97-0300](#).

(3) The nursing home must record and periodically update the address and phone number of the resident's legal surrogate decision maker and interested family member(s).

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-0320, filed 9/24/08, effective 11/1/08.]

388-97-0340

Protection of resident funds.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-0340, filed 9/24/08, effective 11/1/08.]

388-97-0360

Privacy and confidentiality.

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

(a) Accommodations;

(b) Medical treatment;

(c) Written and telephone communications;

(d) Personal care;

(e) Visits; and

(f) Meetings with family and resident groups.

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

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

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

(b) Record release is required by law.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-0360, filed 9/24/08, effective 11/1/08.]

388-97-0380**Electronic monitoring equipment — Audio monitoring and video monitoring.**

(1) Except as provided in this section or in WAC [388-97-0400](#), the nursing home must not use the following in the facility or on the premises:

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

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

- (a) Entrances and exits as long as the cameras are:
 - (i) Focused only on the entrance or exit doorways; and
 - (ii) Not focused on areas where residents gather.
- (b) Areas used exclusively by staff persons such as, medication preparation and storage areas or food preparation areas, if residents do not go into these areas;
- (c) Outdoor areas not commonly used by residents, such as, but not limited to, delivery areas; and
- (d) Designated smoking areas, subject to the following conditions:
 - (i) Residents have been 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 general public; and
 - (v) The facility notifies all residents in writing of the use of video monitoring equipment.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-0380, filed 9/24/08, effective 11/1/08.]

388-97-0400**Electronic monitoring equipment — Resident requested use.**

(1) The nursing home 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 nursing home 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;
 - (c) The resident's roommate has provided written consent to electronic monitoring, if the resident has a roommate; and
 - (d) The resident and the nursing home have agreed upon a specific duration for the electronic monitoring and the agreement is documented in writing.
- (3) The nursing home must:
- (a) Reevaluate the need for the electronic monitoring with the resident at least quarterly; and
 - (b) Have each re-evaluation in writing, signed and dated by the resident.
- (4) The nursing home must immediately stop electronic monitoring if the:
- (a) Resident no longer wants electronic monitoring;
 - (b) Roommate objects or withdraws the consent to the electronic monitoring; or
 - (c) The 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 surrogate decision maker.
- (6) For purpose of consenting to any audio electronic monitoring, the term "resident" includes:
- (a) The individual residing in the nursing home; 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 a resident's decision maker consents to audio electronic monitoring as specified in (6) above, the nursing home must maintain a copy of the court order authorizing such consent in the resident's record.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-0400, filed 9/24/08, effective 11/1/08.]

388-97-0420

Work.

The resident has the right to:

- (1) Refuse to perform services for the nursing home; and
- (2) Perform services for the nursing home, if he or she chooses, when:
 - (a) The facility has documented the need or desire for work in the plan of care;
 - (b) The plan specifies the nature of the services performed and whether the services are voluntary or paid;
 - (c) Compensation for paid services is at or above prevailing rates; and
 - (d) The resident agrees to the work arrangement described in the plan of care.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52.08-20-062, § 388-97-0420, filed 9/24/08, effective 11/1/08.]

388-97-0440

Self-administration of drugs.

A resident may self-administer drugs if the interdisciplinary team has determined that this practice is safe.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52.08-20-062, § 388-97-0440, filed 9/24/08, effective 11/1/08.]

388-97-0460

Grievance rights.

A resident has the right to:

(1) Voice grievances without discrimination or reprisal. Grievances include those with respect to treatment which has been furnished as well as that which has not been furnished.

(2) Prompt efforts by the nursing home to resolve voiced grievances, including those with respect to the behavior of other residents.

(3) File a complaint, contact, or provide information to the department, the long-term care ombudsman, the attorney general's office, and law enforcement agencies without interference, discrimination, or reprisal. All forms of retaliatory treatment are prohibited, including those listed in chapter [74.39A](#) RCW.

(4) Receive information from agencies acting as client advocates, and be afforded the opportunity to contact these agencies.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52.08-20-062, § 388-97-0460, filed 9/24/08, effective 11/1/08.]

388-97-0480

Examination of survey results.

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

(a) The most recent survey of the nursing home conducted by federal and state surveyors;

(b) Surveys related to any current or subsequent complaint investigation; and

(c) Any required accompanying plan of correction, completed or not.

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

(a) That the results of the survey or complaint investigation, or both, are available regardless of whether the plan of correction is completed or not; and

(b) Of the location of the deficiency citation reports.

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

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

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

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

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

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52.08-20-062, § 388-97-0480, filed 9/24/08, effective 11/1/08.]

388-97-0500

Resident mail.

The resident has the right and the nursing home must provide immediate access to any resident by the following:

(1) Send and promptly receive mail that is unopened; and

(2) Have access to stationary, postage and writing implements at the resident's own expense.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52.08-20-062, § 388-97-0500, filed 9/24/08, effective 11/1/08.]

388-97-0520

Access and visitation rights.

(1) The resident has the right and the nursing home must provide immediate access to any resident by the following:

(a) For medicare and medicaid residents any representative of the U.S. department of health and human services (DHHS);

(b) Any representative of the state;

(c) The resident's personal physician;

(d) Any representative of the state long term care ombudsman program (established under section 307 (a)(12) of the Older American's Act of 1965);

(e) Any representative of the Washington protection and advocacy system, or any other agency (established under part c of the Developmental Disabilities Assistance and Bill of Rights Act);

(f) Any representative of the Washington protection and advocacy system, or any agency (established under the Protection and Advocacy for Mentally Ill Individuals Act);

(g) Subject to the resident's right to deny or withdraw consent at any time, immediate family or other relatives of the resident; and

(h) Subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, others who are visiting with the consent of the resident.

(2) The nursing home must provide reasonable access to any resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

(3) The nursing home must allow representatives of the state ombudsman, described in subsection (1)(d) of this section, to examine a resident's clinical records with the permission of the resident or the resident's surrogate decision maker, and consistent with state law. The ombudsman may also, under federal and state law, access resident's records when the resident is incapacitated and has no surrogate decision maker, and may access records over the objection of a surrogate decision maker if access is authorized by the state ombudsman pursuant to 42 U.S.C. § 3058g(b) and RCW [43.190.065](#).

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-0520, filed 9/24/08, effective 11/1/08.]

388-97-0540 **Telephone.**

The resident has the right to have twenty-four hour access to a telephone which:

- (1) Provides auditory privacy;
- (2) Is accessible to an individual with a disability and accommodates an individual with sensory impairment; and
- (3) Does not include the use of telephones in staff offices and at the nurses station(s).

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-0540, filed 9/24/08, effective 11/1/08.]

388-97-0560 **Personal property.**

(1) The resident has the right, unless to do so would infringe upon the rights or health and safety of other residents, to:

- (a) Retain and use personal possessions, including some furnishings, and appropriate clothing, as space permits;
- (b) Provide his or her own bed and other furniture, if desired and space permits; and

(c) Not be required to keep personal property locked in the facility office, safe, or similar arrangement.

(2) The nursing home must:

(a) Not request or require residents to sign waivers of potential liability for losses of personal property; and

(b) Have a system in place to safeguard personal property within the nursing home that protects the personal property and yet allows the resident to use his or her property.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-0560, filed 9/24/08, effective 11/1/08.]

388-97-0580

Roommates/rooms.

(1) A resident has the right to:

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

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

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

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

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

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW. 10-02-021, § 388-97-0580, 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, § 388-97-0580, filed 9/24/08, effective 11/1/08.]

388-97-0600

Refusal of certain transfers.

In dually certified facilities all beds are medicaid certified. Therefore the beds in a certified distinct part for medicare are also nursing facility beds for medicaid.

(1) Each resident has the right to refuse a transfer to another room within the facility, if the purpose of the transfer is to relocate:

(a) A resident from the medicare distinct part of the facility to a part of the facility that is not a medicare distinct part; or

(b) A resident from the part of the facility that is not a medicare distinct part to the medicare distinct part of the facility.

(2) A resident's exercise of the right to refuse transfer under subsection (1)(a) of this section does not affect the individual's eligibility or entitlement to medicare or medicaid benefits.

(3) The skilled nursing facility or nursing facility must inform residents of their rights under subsection (1) and (2) of this section at the time of the proposed transfer or relocation.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-0600, filed 9/24/08, effective 11/1/08.]

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 [388-97-0680](#) 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, § 388-97-0700, 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, § 388-97-0720, 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:

- (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.

[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, § 388-97-0740, 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;
- (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 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.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-0780, filed 9/24/08, effective 11/1/08.]

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:

- (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.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52.08-20-062, § 388-97-0800, filed 9/24/08, effective 11/1/08.]

388-97-0820

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.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52.08-20-062, § 388-97-0820, filed 9/24/08, effective 11/1/08.]

388-97-0840

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 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.

(3) 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.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52.08-20-062, § 388-97-0840, filed 9/24/08, effective 11/1/08.]

388-97-0860**Resident dignity and accommodation of needs.**

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

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

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

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

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-0860, filed 9/24/08, effective 11/1/08.]

388-97-0880**Environment.**

The nursing home must provide and maintain:

(1) A safe, clean, comfortable, and homelike environment, allowing the resident to use his or her personal belongings to the extent possible;

(2) Housekeeping and maintenance services necessary to maintain a sanitary, orderly, and comfortable interior;

(3) Comfortable and safe temperature levels:

(a) Facilities licensed after October 1, 1990 must maintain a temperature range of seventy-one to eighty-one degrees Fahrenheit; and

(b) Regardless of external weather conditions, all nursing homes must develop and implement procedures and processes to maintain a temperature level that is comfortable and safe for residents;

(4) Comfortable sound levels, to include:

(a) Minimizing the use of the public address system to ensure each use is in the best interest of the residents; and

(b) Taking reasonable precautions with noisy services so as not to disturb residents, particularly during their sleeping time; and

(5) Lighting suitable for any task the resident chooses to do, and any task the staff must do.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-0880, filed 9/24/08, effective 11/1/08.]

388-97-0900**Self determination and participation.**

The resident has the right to:

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

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-0900, filed 9/24/08, effective 11/1/08.]

388-97-0920**Participation in resident and family groups.**

- (1) A resident has the right to organize and participate in resident groups in the nursing home.
- (2) The nursing home must provide a resident or family group, if one exists, with private space.
- (3) Staff or visitors may attend meetings only at the group's invitation.
- (4) The nursing home must provide a designated staff individual responsible for providing assistance and responding to written requests that result from group meetings.
- (5) When a resident or family group exists, the nursing home must listen to the views and act upon the grievances and recommendations of residents and families concerning proposed policy and operational decisions affecting resident care and life in the nursing home.
- (6) A resident's family has the right to meet in the nursing home with the families of other residents in the facility.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-0920, filed 9/24/08, effective 11/1/08.]

388-97-0940**Activities.**

The nursing home must:

- (1) Provide for an ongoing program of activities designed to meet, in accordance with the comprehensive assessment, the interests and the physical, mental, and psychosocial well-being of each resident;
- (2) Provide activities meaningful to the residents at various times throughout every day and evening based on each resident's need and preference; and
- (3) Ensure that the activities program is directed by a qualified professional who:

(a) Is a qualified therapeutic recreation specialist or an activities professional who is eligible for certification as a therapeutic recreation specialist or as an activities professional by a recognized accrediting body on or after October 1, 1990; or

(b) Has two years of experience in a social or recreational program within the last five years, one of which was full-time in a patient activities program in a health care setting; or

(c) Is a qualified occupational therapist or occupational therapy assistant.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-0940, filed 9/24/08, effective 11/1/08.]

388-97-0960 **Social services.**

The nursing home must:

(1) Provide medically related social services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident; and

(2) Employ a qualified social worker on a full-time basis if the nursing home has more than one hundred twenty beds. A qualified social worker is an individual with:

(a) A bachelor's degree in social work or a bachelor's degree in a human services field including but not limited to sociology, special education, rehabilitation counseling, and psychology; and

(b) One year of supervised social work experience in a health care setting working directly with patients or residents.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-0960, filed 9/24/08, effective 11/1/08.]

388-97-0980 **Pets.**

(1) Each resident must have a reasonable opportunity to have regular contact with animals, if desired.

(2) The nursing home must:

(a) Consider the recommendations of nursing home residents, resident councils, 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 nursing home 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.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-0980, filed 9/24/08, effective 11/1/08.]

388-97-1000

Resident assessment.

(1) The nursing home must:

(a) Provide resident care based on a systematic, comprehensive, interdisciplinary assessment, and care planning process in which the resident participates, to the fullest extent possible;

(b) Conduct initially and periodically a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity;

(c) At the time each resident is admitted:

(i) Have physician's orders for the resident's immediate care; and

(ii) Ensure that the resident's immediate care needs are identified in an admission assessment.

(d) Ensure that the comprehensive assessment of a resident's needs describes the resident's capability to perform daily life functions and significant impairments in functional capacity.

(2) The comprehensive assessment must include at least the following information:

(a) Identification and demographic information;

(b) Customary routine;

(c) Cognitive patterns;

(d) Communication;

(e) Vision;

(f) Mood and behavior patterns;

(g) Psychosocial well-being;

- (h) Physical functioning and structural problems;
 - (i) Continence;
 - (j) Disease diagnosis and health conditions;
 - (k) Dental and nutritional status;
 - (l) Skin conditions;
 - (m) Activity pursuit;
 - (n) Medications;
 - (o) Special treatments and procedures;
 - (p) Discharge potential;
 - (q) Documentation of summary information regarding the assessment performed; and
 - (r) Documentation of participation in assessment.
- (3) The nursing home must conduct comprehensive assessments:
- (a) No later than fourteen days after the date of admission;
 - (b) Promptly after a significant change in the resident's physical or mental condition; and
 - (c) In no case less often than once every twelve months.
- (4) The nursing home must ensure that:
- (a) Each resident is assessed no less than once every three months, and as appropriate, the resident's assessment is revised to assure the continued accuracy of the assessment; and
 - (b) The results of the assessment are used to develop, review and revise the resident's comprehensive plan of care under WAC [388-97-1020](#).
- (5) The skilled nursing facility and nursing facility must:
- (a) For the required assessment, complete the state approved resident assessment instrument (RAI) for each resident in accordance with federal requirements;
 - (b) Place copies of the completed state approved RAI in each resident's clinical record, unless all charting is computerized;
 - (c) Maintain all copies of resident assessments completed within the resident's active clinical record for fifteen months;
 - (d) Assess each resident not less than every three months, using the state approved assessment instrument; and
 - (e) Transmit all state and federally required RAI information for each resident to the department:
 - (i) In a manner approved by the department;
 - (ii) Within ten days of completion of any RAI required under this subsection; and
 - (iii) Within ten days of discharging or readmitting a resident.

388-97-1020**Comprehensive plan of care.**

(1) The nursing home must develop a comprehensive plan of care for each resident that includes measurable objectives and timetables to meet a resident's medical, nursing and mental and psychosocial needs that are identified in the comprehensive assessment.

(2) The comprehensive plan of care must:

(a) Describe the services that are to be furnished to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being as required under WAC [388-97-1060](#);

(b) Describe any services that would otherwise be required, but are not provided due to the resident's exercise of rights, including the right to refuse treatment (refer to WAC [388-97-0300](#) and [388-97-0260](#);

(c) Be developed within seven days after completion of the comprehensive assessment;

(d) Be prepared by an interdisciplinary team that includes the attending physician, a registered nurse with responsibility for the resident, and other appropriate staff in disciplines as determined by the residents needs;

(e) Consist of an ongoing process which includes a meeting if desired by the resident or the resident's representative; and

(f) Include the ongoing participation of the resident to the fullest extent possible, the resident's family or the resident's surrogate decision maker.

(3) The nursing home must implement a plan of care to meet the immediate needs of newly admitted residents, prior to the completion of the comprehensive assessment and plan of care.

(4) The nursing home must:

(a) Follow the informed consent process with the resident as specified in WAC [388-97-0260](#), regarding the interdisciplinary team's plan of care recommendations;

(b) Respect the resident's right to decide plan of care goals and treatment choices, including acceptance or refusal of plan of care recommendations;

(c) Include in the interdisciplinary plan of care process:

(i) Staff members requested by the resident; and

(ii) Direct care staff who work most closely with the resident.

(d) Respect the resident's wishes regarding which individuals, if any, the resident wants to take part in resident plan of care functions;

(e) Provide reasonable advance notice to and reasonably accommodate the resident family members or other individuals the resident wishes to have attend, when scheduling plan of care meeting times; and

(f) Where for practical reasons any individuals significant to the plan of care process, including the resident, are unable to attend plan of care meetings, provide a method for such individuals to give timely input and recommendations.

(5) The nursing home must ensure that each comprehensive plan of care:

(a) Designates the discipline of the individuals responsible for carrying out the program; and

(b) Is reviewed at least quarterly by qualified staff, as part of the ongoing process of monitoring the resident's needs and preferences.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-1020, filed 9/24/08, effective 11/1/08.]

388-97-1040 **Dementia care.**

(1) A nursing home must ensure that it provides residents with dementia with an environment designed to attain or maintain the highest level of functioning and well-being possible, taking into consideration the resident's medical condition and functional status. Therefore, the nursing home must:

(a) Have a program designed to meet the identified needs of the residents;

(b) Develop and implement program policies and procedures; and

(c) Train all staff, who have resident contact, in the special needs and care approaches applicable to residents with dementia. This training must be ongoing and consistent with requirements under WAC [388-97-1680](#) (2)(b).

(2) A nursing home that has a locked or secured dementia unit must:

(a) Always have staff present in the unit, available to meet the needs of the residents and to protect them in the event of an emergency;

(b) Have staff available to assist residents, as needed, in accessing outdoor areas;

(c) Have admission, transfer, and discharge criteria which ensures that:

(i) The process of informed consent is followed before admission to or transfer/discharge from the unit;

(ii) The resident is provided with unit specific admission or transfer/discharge criteria, prior to admission to the unit;

(iii) The resident's need for admission to the unit from another part of the nursing home, or transfer/discharge from the unit, is based on the comprehensive assessment and plan of care;

(iv) Through an evaluation prior to admission, a resident admitted directly from outside the nursing home meets the cognitive and functional criteria of the unit; and

(v) In the case of an individual admitted directly to the unit from outside the nursing home, as specified in subsection (2)(b)(iv) above, the nursing home may complete the comprehensive assessment after the individual's admission to the unit, provided that the nursing home complies with required time frames for completion of the resident assessment under WAC [388-97-1000](#).

(d) Provide private pay residents, or their surrogate decision maker written notification:

(i) If admitted from outside the nursing home, of additional charges, if any, for services, items, and activities in the unit, prior to admission; and

(ii) If admitted from another part of the nursing home, thirty days in advance of changes to those charges.

(e) Comply with physical plant requirements in WAC [388-97-2800](#) through [388-97-2920](#), for existing facilities and for new construction.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-1040, filed 9/24/08, effective 11/1/08.]

388-97-1060

Quality of care.

(1) Consistent with resident rights, the nursing home 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 plan of care.

(2) Based on the comprehensive assessment of a resident, the nursing home 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 nursing home must ensure that the appropriate care and services are provided to the resident in the following areas, as applicable in accordance with the resident's individualized assessments and plan of care:

(a) Vision and hearing;

(b) Skin;

(c) Continence;

(d) Range of motion;

(e) Mental and psychosocial functioning and adjustment;

(f) Nasogastric and gastrostomy tubes;

(g) Accident prevention;

(h) Nutrition;

(i) Hydration;

(j) Special needs, including:

(i) Injections;

- (ii) Parenteral and enteral fluids;
 - (iii) Colostomy, ureterostomy, or ileostomy care;
 - (iv) Tracheostomy care;
 - (v) Tracheal suction;
 - (vi) Respiratory care;
 - (vii) Dental care;
 - (viii) Foot care; and
 - (ix) Prostheses.
- (k) Medications, including freedom from:
- (i) Unnecessary drugs;
 - (ii) Nursing home error rate of five percent or greater; and
 - (iii) Significant medication errors.
- (l) Self-administration of medication; and
- (m) Independent living skills.

(4) The nursing home must ensure that each resident is monitored for desired responses and undesirable side effects of prescribed drugs.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-1060, filed 9/24/08, effective 11/1/08.]

388-97-1080

Nursing services.

(1) The nursing home must ensure that a sufficient number of qualified nursing personnel are available on a twenty-four hour basis seven days per week to provide nursing and related services to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident as determined by resident assessments and individual plans of care.

(2) The nursing home must:

(a) Designate a registered nurse or licensed practical nurse to serve as charge nurse, who is accountable for nursing services on each tour of duty; and

(b) Have a full time director of nursing service who is a registered nurse.

(3) The nursing home must have:

(a) A registered nurse on duty directly supervising resident care a minimum of sixteen hours per day, seven days per week; and

(b) A registered nurse or licensed practical nurse on duty directly supervising resident care the remaining eight hours per day, seven days per week. "**Directly supervising**" means the supervising individual is on the premises and is quickly and easily available to provide necessary assessments and other direct care of residents; and oversight of supervised staff.

(4) The nursing home must ensure that staff respond to each resident's requests for assistance in a manner which promptly meets the quality of life and quality of care needs of all the residents.

(5) The director of nursing services is responsible for:

(a) Coordinating the plan of care for each resident;

(b) Ensuring that registered nurses and licensed practical nurses comply with chapter [18.79](#) RCW; and

(c) Ensuring that the nursing care provided is based on the nursing process in accordance with nationally recognized and accepted standards of professional nursing practice.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52.08-20-062, § 388-97-1080, filed 9/24/08, effective 11/1/08.]

388-97-1100 **Dietary services.**

The nursing home must:

(1) Provide each resident with a nourishing, palatable, well-balanced diet that meets their daily nutritional and special dietary needs.

(2) Serve food in an attractive manner and at temperatures safe and acceptable to each resident.

(3) Ensure that food service is in compliance with chapter [246-215](#) WAC.

(4) Retain dated menus, dated records of foods received, a record of the number of meals served, and standardized recipes for at least three months for department review as necessary.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52.08-20-062, § 388-97-1100, filed 9/24/08, effective 11/1/08.]

388-97-1120 **Meal provision.**

The nursing home must:

(1) Provide a minimum of three meals in each twenty-four period, at regular times similar to normal meal times in the community;

(2) Make fresh fruits and vegetables, in season, available to residents on a daily basis;

(3) Make reasonable efforts to:

- (a) Accommodate individual mealtime preferences and portion sizes, as well as preferences for between meal and evening snacks when not medically contraindicated;
 - (b) Offer a late breakfast or an alternative to the regular breakfast for late risers; and
 - (c) Provide food consistent with the cultural and religious needs of the residents.
- (4) Use input from residents and the resident council, if the nursing home has one, in meal planning, scheduling, and the meal selection process.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-1120, filed 9/24/08, effective 11/1/08.]

388-97-1140

Individual dietary needs.

The nursing home must:

- (1) Encourage residents to continue eating independently;
- (2) Provide effective adaptive utensils as needed to promote independence;
- (3) Allow sufficient time for eating in a relaxed manner;
- (4) Provide individualized assistance as needed;
- (5) Provide table service, for all residents capable of eating at a table, in a dining area/room, located outside of the resident's room; and
- (6) Offer a substitute of similar nutritive value when a resident refuses food served.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-1140, filed 9/24/08, effective 11/1/08.]

388-97-1160

Dietary personnel.

The nursing home must have sufficient support personnel capable of carrying out the functions of dietary services and must:

- (1) Employ a qualified dietitian either full-time, part-time or on a consultant basis who must:
 - (a) Approve regular and therapeutic menus which meet the dietary allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences;
 - (b) Prepare dated menus for general and modified diets at least three weeks in advance;
 - (c) Provide services which include:

- (i) Nutrition assessment;
- (ii) Liaison with medical and nursing staff, and administrator;
- (iii) Inservice training; and
- (iv) Guidance to the director of food service, and food service staff.

(2) If a qualified dietitian is not employed full-time as the food service manager the nursing home must employ a food service manager to serve as the director of food service.

(3) The food service manager means:

(a) An individual who is a qualified dietitian; or

(b) An individual:

(i) Who has completed a dietetic technician or dietetic assistant training program, correspondence or classroom, approved by the American Dietetic Association/Dietary Manager Association; and

(ii) Receives regularly scheduled consultation from a qualified dietitian.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52.08-20-062, § 388-97-1160, filed 9/24/08, effective 11/1/08.]

388-97-1180

Dietary menus.

The nursing home must:

(1) Ensure that menus are followed;

(2) Post the current dated general menu, including substitutes, in the food service area and in a place accessible and conspicuous to residents and visitors, in print the residents can read; and

(3) Note any changes to the regular menu on the posted menu.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52.08-20-062, § 388-97-1180, filed 9/24/08, effective 11/1/08.]

388-97-1200

Dietary orders.

The nursing home must:

(1) Ensure that residents' diets are provided as prescribed by the physician. Diet modifications, for texture only, may be used as an interim measure when ordered by a registered nurse; and

(2) Provide supplementary fluid and nourishment in accordance with each resident's needs as determined by the

assessment process.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52.08-20-062, § 388-97-1200, filed 9/24/08, effective 11/1/08.]

388-97-1220 **Modified diets.**

The nursing home must review a resident's modified diet to ensure that the food form and texture are consistent with the resident's current needs and functional level:

- (1) At the request of the resident.
- (2) When the resident's condition warrants.
- (3) At the time of the plan of care review.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52.08-20-062, § 388-97-1220, filed 9/24/08, effective 11/1/08.]

388-97-1240 **Tube feedings.**

If the nursing home prepares tube feeding formula, or mixes additives to the prepared formula it must ensure that:

- (1) Each resident's tube feedings are of uniform consistency and quality; and
- (2) Tube feeding formulas are prepared, stored, distributed, and served in such a manner so as to maintain uniformity and to prevent contamination.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52.08-20-062, § 388-97-1240, filed 9/24/08, effective 11/1/08.]

388-97-1260 **Physician services.**

- (1) The nursing home must ensure that the resident is seen by the physician whenever necessary.
- (2) Except as specified in RCW [74.42.200](#), a physician must personally approve in writing a recommendation that an individual be admitted to a nursing home.
- (3) The nursing home must ensure that:
 - (a) Except as specified in RCW [74.42.200](#), the medical care of each resident is supervised by a physician;

(b) Another physician supervises the medical care of residents when their attending physician is unavailable; and

(c) Physician services are provided twenty-four hours per day, in case of emergency.

(4) The physician must:

(a) Write, sign and date progress notes at each visit;

(b) Sign and date all orders; and

(c) In medicare and medicare/medicaid certified facilities, review the resident's total program of care, including medications and treatments, at each federally required visit.

(5) Except as specified in subsections (6), (7), and (9) of this section, a physician may delegate tasks to a physician's assistant or advanced registered nurse practitioner who is:

(a) Licensed by the state;

(b) Acting within the scope of practice as defined by state law; and

(c) Under the supervision of the physician.

(6) The physician may not delegate a task when the delegation is prohibited under state law or by the facility's own policies.

(7) If the resident's primary payor source is medicare, the physician may:

(a) Alternate federally required physician visits between personal visits by:

(i) The physician; and

(ii) An advanced registered nurse practitioner or physician's assistant; and

(b) Not delegate responsibility for the initial required physician visit. This initial visit must occur within the first thirty days of admission to the facility.

(8) If the resident's payor source is medicaid, the physician may delegate any federally required physician task, including tasks which the regulations specify must be performed personally by the physician, to a physician's assistant or advanced registered nurse practitioner who is not an employee of the facility but who is working in collaboration with a physician.

(9) If the resident's payor source is not medicare or medicaid:

(a) In the medicare only certified facility or in the medicare certified area of a medicare/medicaid facility, the physician may alternate federally required physician visits between personal visits by the physician and an advanced registered nurse practitioner or physician's assistant. The physician may not delegate responsibility for the initial required physician visit.

(b) In the medicaid only certified facility or in the medicaid certified area of a medicare/medicaid facility, the physician may delegate any federally required physician task, including tasks which the regulations specify must be performed personally by the physician, to a physician's assistant or advanced registered nurse practitioner who is not an employee of the facility but who is working in collaboration with a physician.

(10) The following table describes the physician visit requirements related to medicare or medicaid certified area and payor type.

	Beds in medicare only certified area	Beds in medicare/medicaid certified area	Beds in medicaid only certified area
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Payor source: medicare	Initial by physician Physician may delegate alternate visits	Initial by physician Physician may delegate alternate visits	N/A
Payor source: medicaid	N/A	Delegate all tasks Nonemployee	Delegate all tasks Nonemployee
Payor source: Others: such as insurance, private pay, Veteran Affairs	Initial by physician Physician may delegate alternate visits	Initial by physician Physician may delegate alternate visits	Delegate all tasks Nonemployee

(11) The attending physician, or the physician-designated advanced registered nurse practitioner or physician's assistant must:

(a) Participate in the interdisciplinary plan of care process as described in WAC [388-97-1020](#);

(b) Provide to the resident, or where applicable the resident's surrogate decision maker, information so that the resident can make an informed consent to care or refusal of care (see WAC [388-97-0260](#)); and

(c) Order resident self-medication when appropriate.

(12) The nursing home must obtain from the physician the following medical information before or at the time of the resident's admission:

(a) A summary or summaries of the resident's current health status, including history and physical findings reflecting a review of systems;

(b) Orders, as necessary for medications, treatments, diagnostic studies, specialized rehabilitative services, diet, and any restrictions related to physical mobility; and

(c) Plans for continuing care and discharge.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-1260, filed 9/24/08, effective 11/1/08.]

388-97-1280

Specialized habilitative and rehabilitative services.

(1) If specialized habilitative and rehabilitative services such as, but not limited to, physical therapy, speech-language pathology, occupational therapy, and mental health rehabilitative services for mental illness and mental retardation, are required in the resident's comprehensive plan of care, the facility must:

(a) Provide the required services; or

(b) Obtain the required services from an outside provider of specialized rehabilitative services.

(2) As determined by the resident's individualized comprehensive plan of care, qualified therapists, as defined in RCW [74.46.020](#)(40), will provide specialized habilitative or rehabilitative services under the written order of the physician. According to state law and at the qualified therapist's discretion, certain services may be delegated to and provided by

support personnel under appropriate supervision.

(3) The nursing facility must:

(a) Ensure that residents who display mental or psychosocial adjustment difficulties receive appropriate treatment and services to correct the assessed problem; and

(b) Provide or arrange for the mental health or mental retardation services needed by residents that are of a lesser intensity than the specialized services defined at WAC [388-97-1960](#).

(4) The nursing home may provide specialized rehabilitative and habilitative services to outpatients on the facility premises, only if the nursing home continues to also meet the needs of current residents.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52.08-20-062, § 388-97-1280, filed 9/24/08, effective 11/1/08.]

388-97-1300

Pharmacy services.

(1) The nursing home 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 licensed pharmacist who must:

(i) Provide consultation on all aspects of the provision of pharmacy services in the nursing home;

(ii) Determine that nursing home 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 and the director of nursing.

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

(3) The nursing home must provide pharmaceutical services that:

(a) Meet recognized and accepted standards of pharmacy practice; and

(b) Comply with chapter [246-865](#) WAC, except nursing home staff administering drugs to residents may document administration at the time of pouring the drug or immediately after administration.

(4) The nursing home must ensure:

(a) Education and training for nursing home 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.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52.08-20-062, § 388-97-1300, filed 9/24/08, effective 11/1/08.]

388-97-1320

Infection control.

- (1) The nursing home 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 handwashing is indicated by accepted professional practice.
- (2) Under the infection control program, the nursing home 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) Nursing home personnel must handle, store, process, and transport linens so as to prevent the spread of infection.
- (4) The nursing home 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 nursing home 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:
 - (i) All bathing and therapy tubs between each resident use; and
 - (ii) Swimming pools, spas and hot tubs.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-1320, filed 9/24/08, effective 11/1/08.]

388-97-1340

Influenza and pneumococcal immunizations.

- (1) The nursing home shall provide residents access on-site or make available elsewhere, the ability to obtain the influenza virus immunization on an annual basis.
- (2) Upon admission, the nursing home shall inform residents or the resident's representative, verbally and in writing, of the benefits of receiving the influenza virus immunization and the pneumococcal disease immunization.
- (3) Nursing homes who rely exclusively upon treatment by nonmedical religious healing methods, including prayer, are exempt from the above rules.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-1340, filed 9/24/08, effective 11/1/08.]

388-97-1360

Surveillance, management and early identification of individuals with active tuberculosis.

(1) The nursing home must develop and implement policies and procedures that comply with nationally recognized tuberculosis standards set by the Centers for Disease Control (CDC), 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 tuberculin skin test results were positive or negative;
- (b) Identifying and following up residents and personnel with suspected or actual tuberculosis, in a timely manner; and
- (c) Identifying and following up visitors and volunteers with symptoms suggestive of tuberculosis.

(2) The nursing home must comply with chapter [49.17](#) RCW, Washington Industrial Safety and Health Act (WISHA)

requirements to protect the health and safety of employees.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52.08-20-062, § 388-97-1360, filed 9/24/08, effective 11/1/08.]

388-97-1380

Tuberculosis — Testing required.

(1) The nursing home must develop and implement a system to ensure that facility personnel and residents have tuberculosis testing within three days of employment or admission.

(2) The nursing home must also ensure that facility personnel are tested annually.

(3) For the purposes of WAC [388-97-1360](#) through [388-97-1580](#) "person" means facility personnel and residents.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52.08-20-062, § 388-97-1380, filed 9/24/08, effective 11/1/08.]

388-97-1400

Tuberculosis — Testing method — Required.

The nursing home must ensure that all tuberculosis testing is done through either:

(1) Intradermal (Mantoux) administration with test results read:

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

(b) By a trained professional; or

(2) A blood test for tuberculosis called interferon-gamma release assay (IGRA).

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW. 10-02-021, § 388-97-1400, 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, § 388-97-1400, filed 9/24/08, effective 11/1/08.]

388-97-1440

Tuberculosis — No testing.

The nursing home is not required to have a person tested for tuberculosis if the person has:

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

(2) A documented history of a previous positive blood test; or

(3) Documented evidence of:

- (a) Adequate therapy for active disease; or
- (b) Completion of treatment for latent tuberculosis infection preventive therapy.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW. 10-02-021, § 388-97-1440, 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, § 388-97-1440, filed 9/24/08, effective 11/1/08.]

388-97-1460 Tuberculosis — One test.

The nursing home is only required to have a person take one test if the person has any of the following:

- (1) A documented history of a negative result from a previous two step test done no more than one to three weeks apart;
or
- (2) A documented negative result from one skin or blood test in the previous twelve months.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW. 10-02-021, § 388-97-1460, 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, § 388-97-1460, filed 9/24/08, effective 11/1/08.]

388-97-1480 Tuberculosis — Two-step skin testing.

Unless the person meets the requirement for having no skin testing or only one test, the nursing home, choosing to do skin testing, must ensure that each person has the following two-step skin testing:

- (1) An initial skin test within three days of employment; and
- (2) A second test done one to three weeks after the first test.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW. 10-02-021, § 388-97-1480, 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, § 388-97-1480, filed 9/24/08, effective 11/1/08.]

388-97-1500 Tuberculosis — Positive test result.

When there is a positive result to tuberculosis skin or blood testing the nursing home must:

- (1) Ensure that the person has a chest X ray within seven days;
- (2) Evaluate each resident or person with a positive test result for signs and symptoms of tuberculosis; and
- (3) Follow the recommendation of the person's health care provider.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW. 10-02-021, § 388-97-1500, 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, § 388-97-1500, filed 9/24/08, effective 11/1/08.]

388-97-1520 Tuberculosis — Negative test result.

The nursing home may be required by the public health provider or licensing authority to ensure that persons with negative test results have follow-up testing in certain circumstances, such as:

- (1) After exposure to active tuberculosis;
- (2) When tuberculosis symptoms are present; or
- (3) For periodic testing as determined by the health provider.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW. 10-02-021, § 388-97-1520, 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, § 388-97-1520, filed 9/24/08, effective 11/1/08.]

388-97-1540 Tuberculosis — Declining a skin test.

The nursing home must ensure that a person take the blood test for tuberculosis if they decline the skin test.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW. 10-02-021, § 388-97-1540, 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, § 388-97-1540, filed 9/24/08, effective 11/1/08.]

388-97-1560 Tuberculosis — Reporting — Required.

The nursing home must:

- (1) Report any person with tuberculosis symptoms or a positive chest X ray to the appropriate health care provider or public health provider;
- (2) Follow the infection control and safety measures ordered by the person's health care provider, including a public health provider;
- (3) Institute appropriate measures for the control of the transmission of droplet nuclei;
- (4) Apply living or work restrictions where residents or personnel are, or may be, infectious and pose a risk to other residents and personnel; and
- (5) Ensure that personnel caring for a resident with suspected tuberculosis comply with the WISHA standard for

respiratory protection found in chapter [296-842](#) WAC.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW. 10-02-021, § 388-97-1560, 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, § 388-97-1560, filed 9/24/08, effective 11/1/08.]

388-97-1580

Tuberculosis — Test records.

The nursing home must:

- (1) Keep the records of tuberculin test results, reports of X-ray findings, and any physician or public health provider orders in the nursing home;
- (2) Make the records readily available to the appropriate health authority and licensing agency;
- (3) Retain the records for eighteen months beyond the date of employment termination; and
- (4) Provide the person a copy of his/her test results.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW. 10-02-021, § 388-97-1580, 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, § 388-97-1580, filed 9/24/08, effective 11/1/08.]

388-97-1600

Care of residents with active tuberculosis.

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

- (a) Coordinate the resident's admission, nursing home care, discharge planning, and discharge with the health care provider;
 - (b) Provide necessary education about tuberculosis for staff, visitors, and residents; and
 - (c) Ensure that personnel caring for a resident with active tuberculosis comply with the WISHA standards for respiratory protection, chapter [296-842](#) WAC.
- (2) For a resident who requires respiratory isolation for tuberculosis, the nursing home must:
- (a) Provide a private or semiprivate isolation room:
 - (i) In accordance with WAC [388-97-2480](#);
 - (ii) In which, construction review of the department of health determines that room air is maintained under negative pressure; and appropriately exhausted, either directly to the outside away from intake vents or through properly designed, installed, and maintained high efficiency particulate air (HEPA) filters, or other measures deemed appropriate to protect others in the facility;
 - (iii) However, when a semiprivate isolation room is used, only residents requiring respiratory isolation for confirmed or suspected tuberculosis are placed together.

- (b) Provide supplemental environment approaches, such as ultraviolet lights, where deemed to be necessary;
- (c) Provide appropriate protective equipment for staff and visitors; and
- (d) Have measures in place for the decontamination of equipment and other items used by the resident.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW. 10-02-021, § 388-97-1600, 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, § 388-97-1600, filed 9/24/08, effective 11/1/08.]

388-97-1620

General administration.

(1) The nursing home must be administered in a manner that enables it to use its resources effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident.

(2) The nursing home must:

(a) Be licensed under chapter [18.51](#) RCW;

(b) Operate and provide services in compliance with:

(i) All applicable federal, state and local laws, regulations, and codes;

(ii) Accepted professional standards and principles that apply to professionals providing services in nursing homes; and

(c) Have a governing body or designated individuals functioning as a governing body, that is legally responsible for establishing and implementing policies regarding the management and operation of the nursing home.

(3) The governing body of the nursing home must appoint the administrator who:

(a) Is licensed by the state;

(b) Is responsible for management of the nursing home;

(c) Keeps the licensee informed of all surveys and notices of noncompliance;

(d) Complies with all requirements of chapter [18.52](#) RCW, and all regulations adopted under that chapter;

(e) Is an on-site, full-time individual in active administrative charge at the premises of only one nursing home, a minimum of four days and an average of forty hours per week. Exception: On-site, full-time administrator with small resident populations or in rural areas will be defined as an individual in active administrative charge at the premises of only one nursing home:

(i) A minimum of four days and an average of twenty hours per week at facilities with one to thirty beds; or

(ii) A minimum of four days and an average of thirty hours per week at facilities with thirty-one to forty-nine beds.

(4) Nursing homes temporarily without an administrator may operate up to four continuous weeks under a responsible individual authorized to act as nursing home administrator designee.

(a) The designee must be qualified by experience to assume designated duties; and

(b) The nursing home must have a written agreement with a nursing home administrator, licensed in the state of Washington, who must be readily available to consult with the designee.

(c) The nursing home may make a written request to the department's designated aging and disability services administration field office for an extension of the four weeks by stating why an extension is needed, how a resident's safety or well-being is maintained during an extension and giving the estimated date by which a full-time, qualified nursing home administrator will be on-site.

(5) The nursing home must employ on a full-time, part time or consultant basis those professionals necessary to carry out the requirements of this chapter.

(6) If the nursing home does not employ a qualified professional individual to furnish a specific service to be provided by the nursing home, the nursing home must:

(a) Have that service furnished to residents by an individual or agency outside the nursing home under a written arrangement or agreement; and

(b) Ensure the arrangement or agreement referred to in (a) of this subsection specifies in writing that the nursing home assumes responsibility for:

(i) Obtaining services that meet professional standards and principles that apply to professionals providing services in nursing homes; and

(ii) The timeliness of services.

(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 [388-97-0640](#); 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.]

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.

(3) The nursing home must notify the department's aging and disability services administration of:

(a) Physical plant changes, including but not limited to:

(i) New construction;

(ii) Proposed resident area or room use change;

(iii) Resident room number changes; and

(iv) Proposed bed banking.

(b) Mechanical failure of equipment important to the everyday functioning of the nursing home, which cannot be repaired within a reasonable time frame, such as an elevator; and

(c) An actual or proposed change of ownership (CHOW).

(4) The nursing home must notify, in writing, the department's aging and disability services administration and each resident, of a loss of, or change in, the nursing home's administrator or director of nursing services at the time the loss or change occurs.

(5) The nursing home licensee must notify the department's aging and disability services administration in writing of any change in the name of the licensee, or of the nursing home, at the time the change occurs.

(6) If a licensee operates in a building it does not own, the licensee must immediately notify the department of the occurrence of any event of default under the terms of the lease, or if it receives verbal or written notice that the lease agreement will be terminated, or that the lease agreement will not be renewed.

(7) The nursing home must report any case or suspected case of a reportable disease to the appropriate department of health officer and must also notify the appropriate department(s) of other health and safety issues, according to state and local laws.

(8) The nursing home licensee must notify the department in writing of a nursing home's voluntary closure.

(a) The licensee must send this written notification sixty days before closure to the department's designated local aging and adult administration office and to all residents and resident representatives.

(b) Relocation of residents and any required notice to the Centers for Medicare and Medicaid Services and the public must be in accordance with WAC [388-97-4320](#)(2).

(9) The nursing home licensee must notify the department in writing of voluntary termination of its medicare or medicaid contract.

(a) The licensee must send this written notification sixty days before contract termination, to the department's designated

local aging and disability services administration office and to all residents and resident representatives.

(b) If the contractor continues to provide nursing facility services, the contract termination will be subject to federal law prohibiting the discharge of residents who are residing in the facility on the day before the effective date of the contract termination.

(10) The nursing home licensee must notify the Centers for Medicare and Medicaid Services of voluntary termination of its medicare provider agreement in accordance with the requirements of 42 C.F.R. 489.52 or successor regulations.

[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.]

388-97-1660

Staff and equipment.

(1) The nursing home must ensure that:

(a) Sufficient numbers of appropriately qualified and trained staff are available to provide necessary care and services safely under routine conditions, as well as fire, emergency, and disaster situations;

(b) Adequate equipment, supplies and space are available to carry out all functions and responsibilities of the nursing home;

(c) All staff, including management, provide care and services consistent with:

(i) Empowering each resident to attain or maintain the highest practicable physical, mental, and psychosocial well-being, self-care and independence;

(ii) Respecting resident rights; and

(iii) Enhancing each resident's quality of life.

(2) The nursing home must ensure that any employee giving direct resident care, excluding professionally licensed nursing staff:

(a) Has successfully completed or is a student in a DSHS-approved nursing assistant training program; and

(b) Meets other requirements applicable to individuals performing nursing related duties in a nursing home, including those which apply to minors.

(3) The nursing home must ensure:

(a) Students in an DSHS-approved nursing assistant training program:

(i) Complete training and competency evaluation within four months of beginning work as a nursing assistant;

(ii) Complete at least sixteen hours of training in communication and interpersonal skills, infection control, safety/emergency procedures including the Heimlich maneuver, promoting residents' independence, and respecting residents' rights before any direct contact with a resident; and

(iii) Wear name tags which clearly identify student or trainee status at all times in all interactions with residents and visitors in all nursing homes, including the nursing homes in which the student completes clinical training requirements and in which the student is employed.

(b) Residents and visitors have sufficient information to distinguish between the varying qualifications of nursing

assistants; and

(c) Each employee hired as a nursing assistant applies for registration with the department of health within three days of employment in accordance with chapter [18.88A](#) RCW.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-1660, filed 9/24/08, effective 11/1/08.]

388-97-1680

Staff development.

(1) The nursing home must have a staff development program that is under the direction of a designated registered nurse or licensed practical nurse.

(2) The nursing home 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 inservice 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 nursing home must:

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

(ii) Determine the special needs of the nursing home's resident population which may require training emphasis.

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

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-1680, filed 9/24/08, effective 11/1/08.]

388-97-1700

Medical director.

(1) The nursing home must designate a physician to serve as medical director.

(2) The medical director is responsible for:

(a) Implementation of resident care policies; and

(b) The coordination of medical care in the facility.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-1700, filed 9/24/08, effective 11/1/08.]

388-97-1720**Clinical records.**

- (1) The nursing home must:
- (a) Maintain clinical records on each resident in accordance with accepted professional standards and practices that are:
 - (i) Complete;
 - (ii) Accurately documented;
 - (iii) Readily accessible; and
 - (iv) Systematically organized.
 - (b) Safeguard clinical record information against alteration, loss, destruction, and unauthorized use; and
 - (c) Keep confidential all information contained in the resident's records, regardless of the form or storage method of the records, except when release is required by:
 - (i) Transfer to another health care institution;
 - (ii) Law;
 - (iii) Third party payment contract; or
 - (iv) The resident.
- (2) The nursing home must ensure the clinical record of each resident includes at least the following:
- (a) Resident identification and sociological data, including the name and address of the individual or individuals the resident designates as significant;
 - (b) Medical information required under WAC [388-97-1260](#);
 - (c) Physician's orders;
 - (d) Assessments;
 - (e) Plans of care;
 - (f) Services provided;
 - (g) In the case of the medicaid-certified nursing facility, records related to preadmission screening and resident review;
 - (h) Progress notes;
 - (i) Medications administered;
 - (j) Consents, authorizations, releases;
 - (k) Allergic responses;
 - (l) Laboratory, X ray, and other findings; and
 - (m) Other records as appropriate.

(3) The nursing home must:

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

(i) Has appropriate training and experience in clinical record management; or

(ii) Receives consultation from a qualified clinical record practitioner, such as a registered health information administrator or registered health information technician.

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

(c) Maintain the following:

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

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

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

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

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

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

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

(i) The time and date of death;

(ii) Apparent cause of death;

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

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

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

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

(b) Provide for reconstruction of information.

(6) The nursing home licensee must:

(a) Retain health records for the time period required in RCW [18.51.300](#):

(i) For a period of no less than eight years following the most recent discharge of the resident; except

(ii) That the records of minors must be retained for no less than three years following the attainment of age eighteen years, or ten years following their most recent discharge, whichever is longer.

(b) In the event of a change of ownership, provide for the orderly transfer of clinical records to the new licensee;

(c) In the event a nursing home ceases operation, make arrangements prior to cessation, as approved by the department, apps.leg.wa.gov/WAC/default.aspx?cite...

for preservation of the clinical records. The nursing home licensee must provide a plan for preservation of clinical records to the department's designated local aging and disability services administration office no later than seven days after the date of notice of nursing home closure as required by WAC [388-97-1640](#) (8) and (9) unless an alternate date has been approved by the department; and

(d) Provide a resident access to all records pertaining to the resident as required under WAC [388-97-0300](#)(2).

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52.08-20-062, § 388-97-1720, filed 9/24/08, effective 11/1/08.]

388-97-1740

Disaster and emergency preparedness.

(1) The nursing home must develop and implement detailed written plans and procedures to meet potential emergencies and disasters. At a minimum the nursing home 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 nursing home must train all employees in emergency procedures when they begin work in the nursing home, periodically review emergency procedures with existing staff, and carry out unannounced staff drills using those procedures.

(3) The nursing home 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; and
- (c) Include evacuation routes prominently posted on each unit.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52.08-20-062, § 388-97-1740, filed 9/24/08, effective 11/1/08.]

388-97-1760**Quality assessment and assurance.**

(1) The nursing home must maintain a process for quality assessment and assurance. The department may not require disclosure of the records of the quality assessment and assurance committee except in so far as such disclosure is related to ensuring compliance with the requirements of this section.

(2) The nursing home must ensure the quality assessment and assurance process:

(a) Seeks out and incorporates input from the resident and family councils, if any, or individual residents and support groups; and

(b) Reviews expressed concerns and grievances.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-1760, filed 9/24/08, effective 11/1/08.]

388-97-1780**Policies and procedures.**

(1) The nursing home must develop and implement written policies and procedures, including those specified in RCW [74.42.430](#), for all services provided in the facility.

(2) The nursing home must ensure the written policies and procedures:

(a) Promote and protect each resident's:

(i) Rights, including health care decision making;

(ii) Personal interests; and

(iii) Financial and property interests.

(b) Are readily available to staff, residents, members of residents' families, the public, and representatives of the department;

(c) Are current, and continued without interruption in the event of staff changes; and

(d) Are consistent with other state and federal laws applicable to nursing home operations.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-1780, filed 9/24/08, effective 11/1/08.]

388-97-1800**Criminal history disclosure and background inquiries.**

(1) As used in this section, the term "nursing home" includes a nursing facility and a skilled nursing facility.

(2) The nursing home must:

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

(b) Repeat the check every two years.

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

(a) The Washington state patrol;

(b) The department;

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

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

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

(5) Nursing homes must:

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

(b) Notify appropriate licensing or certification agency of any individual resigning or terminated as a result of a criminal conviction or a civil adjudication proceeding.

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

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

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

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

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

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

(a) The individual is verbally informed of the background inquiry results within seventy-two hours of receipt;

(b) All disclosure statements and background inquiry responses and all copies are maintained in a confidential and secure manner;

(c) Disclosure statements and background inquiry responses are used for employment purposes only;

(d) Disclosure statements and background inquiry responses are not disclosed to any individual except:

(i) The individual about whom the nursing home made the disclosure or background inquiry;

(ii) Authorized state employees including the department's licensure and certification staff, resident protection program

staff and background inquiry unit staff;

(iii) Authorized federal employees including those from the Department of Health and Human Services, Centers for Medicare and Medicaid Services;

(iv) The Washington state patrol auditor; and

(v) Potential employers licensed under chapters [18.51](#), [18.20](#), and [70.128](#) RCW who are making a request as provided for under subsection (1) of this section.

(e) A record of findings be retained by the nursing home for twelve months beyond the date of employment termination.

(8) 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. 10-02-021, § 388-97-1800, 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, § 388-97-1800, 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;

(b) With a finding of abuse or neglect of a child that is:

(i) Listed on the department's background check central unit (BCCU) report; or

(ii) 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.

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

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

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

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

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

- (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.
- (c) Has been convicted of:
- (i) Violation of the Imitation Controlled Substances Act (VICSA);
 - (ii) Violation of the Uniform Controlled Substances Act (VUCSA);
 - (iii) Violation of the Uniform Legend Drug Act (VULDA); or
 - (iv) Violation of the Uniform Precursor Drug Act (VUPDA).
- (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, § 388-97-1820, 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.]

388-97-1860

Laundry services.

- (1) The nursing home must meet the requirements of WAC [388-97-2780](#), and:
 - (a) Launder nursing home linens on the premises; or
 - (b) Contract with a laundry service capable of meeting quality standards, infection control, and turn-around time requirements; and
 - (c) Make provision for laundering of residents' personal clothing.
- (2) For residents' personal clothing, the nursing home:
 - (a) Must have a system in place to ensure that personal clothing is not damaged or lost during handling and laundering; and
 - (b) May use a chemical disinfectant in lieu of hot water disinfection provided that the nursing home:
 - (i) Uses the product according to the manufacturer's instructions; and
 - (ii) Has readily available, current documentation from the manufacturer that supports the claim that the product is effective as a laundry disinfectant and such documentation is based on scientific studies or other rational data. "Disinfectant" means a germicide that inactivates virtually all recognized pathogenic microorganisms (but not necessarily all microbial forms, such as bacterial spores) on inanimate objects.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-1860, filed 9/24/08, effective 11/1/08.]

388-97-1880

Short-term care, including respite services and adult day or night care.

- (1) The nursing home may provide short-term care to individuals which include:
 - (a) Respite services to provide relief care for families or other caregivers of individuals with disabilities which must:
 - (i) Provide short-term care and supervision in substitution for the caregiver;
 - (ii) Be for short-term stays up to a maximum of thirty-one days; and
 - (iii) Not be used as a short-term placement pending the individual's admission to the nursing home.
 - (b) Adult day or night care to provide short-term nursing home care:
 - (i) Not to exceed sixteen hours each day; and
 - (ii) May be on a regular or intermittent basis.

(2) The nursing home providing respite services, and adult day or night care must:

(a) Develop and implement policies and procedures consistent with this section;

(b) Ensure that individuals receiving short-term services under respite or adult day or night care are treated and cared for in accordance with the rights and choices of long-term residents, except for transfer and discharge rights which are provided under the program for short-term services which covers the individual in the nursing home;

(c) Have appropriate and adequate staff, space, and equipment to meet the individual's needs without jeopardy to the care of regular residents;

(d) Before or at the time of admission, obtain sufficient information to meet the individual's anticipated needs. At a minimum, such information must include:

(i) The name, address, and telephone number of the individual's attending physician, and alternate physician if any;

(ii) Medical and social history, which may be obtained from a respite care assessment and service plan performed by a case manager designated by an area agency on aging under contract with the department, and mental and physical assessment data; and

(iii) Physician's orders for diet, medication and routine care consistent with the individual's status on admission.

(e) Ensure the individuals have assessments performed, where needed, and where the assessment of the individual reveals symptoms of tuberculosis, follow tuberculosis testing requirements under WAC [388-97-1360](#) through [388-97-1580](#);

(f) With the participation of the individual and, where appropriate, their representative, develop a plan of care to maintain or improve their health and functional status during their stay or care in the nursing home;

(g) Provide for the individual to:

(i) Bring medications from home in accordance with nursing home policy; and

(ii) Self-medicate where determined safe.

(h) Promptly report injury, illness, or other adverse change in health condition to the attending physician; and

(i) Inquire as to the need for and comply with any request of the individual, or where appropriate, the individual's representative, to secure cash and other valuables brought to the nursing home during the stay/care.

(3) The nursing home may, in lieu of opening a new record, reopen the individual's clinical record with each period of stay or care up to one year from the previous stay or care, provided the nursing home reviews and updates the recorded information.

(4) Medicaid certified nursing facilities must complete the state-approved resident assessment instrument, within fourteen days, for any individual whose respite stay exceeds fourteen days.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-1880, filed 9/24/08, effective 11/1/08.]

388-97-1900 **Dialysis services.**

(1) The nursing home must ensure that appropriate care, treatment, and services are provided to each nursing home resident who receives dialysis in the nursing home.

(2) For the purposes of this section the following definitions apply:

(a) "Dialysis" means the process of separating crystalloids and colloids in solution by means of the crystalloids and colloids unequal diffusion through a natural or artificial semipermeable membrane. This includes both peritoneal and hemodialysis.

(b) A "kidney center" means a facility as defined and certified by the federal government to provide end stage renal (ESRD) services.

(3) The nursing home must not administer dialysis for a resident with acute renal failure in the nursing home.

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

(a) Other options have been analyzed and rejected, based on the resident's best interest; and

(b) A decision is made jointly by a team of individuals representing the kidney center and the nursing home, the resident, and the resident's nephrologist.

(5) The nursing home must ensure that a current written agreement is in effect with each kidney center responsible for the management and care of each nursing home resident undergoing dialysis. The agreement must include all aspects of how the resident's care is to be managed including:

(a) Medical and nonmedical emergencies;

(b) Development and implementation of the resident's care plan related to dialysis issues;

(c) Interchange of information useful/necessary for the care of the resident; and

(d) The responsibility for waste handling, sterilization, and disinfection of equipment for dialysis done in the nursing home.

(6) The nursing home must ensure implementation of policies and procedures developed with the kidney center that:

(a) Meet current standards of practice;

(b) Addresses both dialysis provided by or in the nursing home as well as dialysis provided by the kidney center; and

(c) Addresses all of the nursing home responsibilities related to a resident on dialysis.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW. 10-02-021, § 388-97-1900, 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, § 388-97-1900, filed 9/24/08, effective 11/1/08.]

388-97-1920

Preadmission screening — Level I.

(1) Preadmission screening (PAS) is a process by which individuals are evaluated:

(a) For the presence of a serious mental illness or a developmental disability, before admission to the nursing facility;

(b) For nursing facility level of care; and

(c) If the individual does have either a serious mental illness or a developmental disability, to determine whether there is a need for specialized services, or services of a lesser intensity.

(2) The referring hospital, physician, or other referral source must:

(a) Perform the identification screen using a standardized department-specified Level I screening form for all individuals seeking admission to a nursing facility unless they:

(i) Are being readmitted to the nursing facility from the hospital; or

(ii) Are being transferred from one nursing facility to another, with or without an intervening hospital stay.

(b) Identify whether the individual may have a serious mental illness or a developmental disability as defined under 42 C.F.R. § 483.102, or successor laws; and

(c) Refer all individuals identified as likely to have a serious mental illness or a developmental disability to the department for a nursing facility level of care assessment and a Level II screening.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-1920, filed 9/24/08, effective 11/1/08.]

388-97-1940

Advanced categorical determinations, not subject to preadmission screening — Level II.

Individuals identified as having symptoms of mental illness or a developmental disability and meeting any of the advanced categorical determinations do not need to be referred for a Level II screening. The determinations include that the individual:

(1) Is admitted to the nursing facility for respite care as defined under WAC [388-97-1880](#), or convalescent care, following treatment in an acute care hospital, not to exceed thirty days;

(2) Cannot accurately be diagnosed because of delirium. NOTE: The individual would be subject to a Level II screening when the delirium cleared;

(3) Has been certified by a physician to be terminally ill as defined under section 1861 (dd)(3)(A) of the Social Security Act;

(4) Has been diagnosed with a severe physical illness such as coma, ventilator dependence, and is functioning at a brain stem level;

(5) Has a severe level of impairment from diagnoses such as:

(a) Chronic obstructive pulmonary disease;

(b) Parkinson's disease;

(c) Huntington's chorea;

(d) Amyotrophic lateral sclerosis;

(e) Congestive heart failure; or

(6) Has a primary diagnosis of dementia, including Alzheimer's disease or a related disorder. NOTE: There must be evidence to support this determination.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-1940, filed 9/24/08, effective 11/1/08.]

388-97-1960**Preadmission screening — Level II.**

(1) For individuals likely to have a serious mental illness or developmental disability, the department must determine their need for nursing facility level of care. If they meet the nursing facility level of care, the department refers them to the department's designee, either the mental health PASRR contractor or the division of developmental disabilities, for a Level II screening.

(2) In the Level II screening, the department's designee will verify the diagnosis and determine whether the referred individuals need specialized services, or services of a lesser intensity:

(a) **"Specialized services"** for an individual with mental retardation or related conditions is defined under 42 C.F.R. § 483.120 (a)(2), and 42 C.F.R. § 483.440 (a)(1), or successor laws. These specialized services do not include services to maintain a generally independent individual able to function with little supervision or in the absence of a treatment program; and

(b) **"Specialized services"** for an individual with a serious mental illness is defined under 42 C.F.R. § 483.120 (a)(1), or successor laws. These services are generally considered acute psychiatric inpatient care, emergency respite care, or stabilization and crisis services.

(3) The need for specialized services, for a nursing facility applicant, will be determined as follows:

(a) If the individual is identified as likely to have a serious mental illness, a qualified mental health professional will verify whether the individual has a serious mental illness and, if so, will recommend whether the individual needs specialized services; and

(b) If the individual is identified as likely to have a developmental disability, a licensed psychologist will verify whether the individual has a developmental disability and, if so, staff of the division of developmental disabilities will assess and determine whether the individual requires specialized services.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-1960, filed 9/24/08, effective 11/1/08.]

388-97-1980**Resident review.**

After a resident's admission the nursing facility must:

(1) Review the Level I screening form for accuracy and make changes as needed if the resident develops a qualifying diagnosis or if the resident's symptoms were undetected or misdiagnosed;

(2) Refer residents who have qualifying diagnoses and who require further PASRR assessment to the mental health PASRR contractor or division of development disabilities;

(3) Record the identification screen information or subsequent changes on the resident assessment instrument according to the schedule required under 42 C.F.R. § 483.20;

(4) Maintain the identification screen form and PASRR assessment information, including recommendations, in the resident's active clinical record; and

(5) Promptly notify the mental health PASRR contractor or division of developmental disabilities after a significant change

in the physical or mental condition of any resident that is mentally ill or mentally retarded.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-1980, filed 9/24/08, effective 11/1/08.]

388-97-2000

Preadmission screening and resident review (PASRR) determination and appeal rights.

(1) The resident has the right to choose to remain in the nursing facility and receive specialized services if:

(a) He or she has continuously resided in a nursing facility since October 1, 1987; and

(b) The department determined, in 1990, that the resident required specialized services for a serious mental illness or developmental disability but did not require nursing facility services.

(2) In the event that residents chose to remain in the nursing facility as outlined in subsection (1) above, the department, or designee, will clarify the effect on eligibility for medicaid services under the state plan if the resident chooses to leave the facility, including its effect on readmission to the facility.

(3) An individual applying for admission to a nursing facility or a nursing facility resident who has been adversely impacted by a PASRR determination may appeal the department's determination that the individual is:

(a) Not in need of nursing facility care as defined under WAC [388-106-0350](#) through [388-106-0360](#);

(b) Not in need of specialized services as defined under WAC [388-97-1960](#); or

(c) Need for specialized services as defined under WAC [388-97-1960](#).

(4) The nursing facility must assist the individual applying for admission or resident, as needed, in requesting a hearing to appeal the department's PASRR determination.

(5) If the department's PASRR determination requires that a resident be transferred or discharged, the department will:

(a) Provide the required notice of transfer or discharge to the resident, the resident's surrogate decision maker, and if appropriate, a family member or the resident's representative thirty days or more before the date of transfer or discharge;

(b) Attach a hearing request form to the transfer or discharge notice;

(c) Inform the resident, in writing in a language and manner the resident can understand, that:

(i) An appeal request may be made any time up to ninety days from the date the resident receives the notice of transfer or discharge;

(ii) Transfer or discharge will be suspended when an appeal request is received by the office of administrative hearings on or before the date of transfer or discharge set forth in the written transfer or discharge notice; and

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

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

(B) If the resident appeals under subsection (1)(a) of this section, thirty days after the final order is entered upholding the department's decision to transfer or discharge a resident.

(6) The department's home and community services may pay for the resident's nursing facility services after the time specified in subsection (5)(c)(iii) of this section, if the department determines that a location appropriate to the resident's

medical and other needs is not available.

(7) The department will:

(a) Send a copy of the transfer/discharge notice to the resident's attending physician, the nursing facility and, where appropriate, a family member or the resident's representative;

(b) Suspend transfer or discharge:

(i) If the office of administrative hearings receives an appeal on or before the date set for transfer or discharge or before the resident is actually transferred or discharged; and

(ii) Until the office of appeals makes a determination; and

(c) Provide assistance to the resident for relocation necessitated by the department's PASRR determination.

(8) Resident appeals of PASRR determinations will be in accordance with 42 C.F.R. § 431 Subpart E, chapter [388-02](#) WAC, and the procedures defined in this section. In the event of a conflict between a provision in this chapter and a provision in chapter [388-02](#) WAC, the provision in this chapter will prevail.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-2000, filed 9/24/08, effective 11/1/08.]

388-97-2020

Intermediate care facilities for the mentally retarded.

(1) ICF/MR nursing facilities must meet the requirements of 42 C.F.R. § 483 Subpart I and the requirements of this subchapter except that in an ICF/MR nursing facility:

(a) There must be at least one registered nurse or licensed practical nurse on duty eight hours per day, and additional licensed staff on any shift if indicated. WAC [388-97-1080](#) (2)(a) and (3)(a) and (b) do not apply to ICF/MR nursing facilities; and

(b) A medical director is not required.

(2) Staff from the division of developmental disabilities will approve of social/therapeutic leave for individuals who reside in ICF/MR nursing facilities.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-2020, filed 9/24/08, effective 11/1/08.]