

Chapter 11:

Long Term Care

Facilities

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Editors Note: This chapter primarily focuses on nursing homes. For other long-term settings, please consider materials at Chapter 12, Licensure and Organization of Other Institutional Settings.

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11.1 Chapter Summary

The long term care industry is one of the most regulated industries in the United States. Indeed, nursing facilities are subject to an unusual number of both federal and state regulatory laws. Specifically, nursing facilities are subject to a three pronged statutory mandate under the federal Omnibus Budget Reconciliation Act of 1987 (OBRA '87)¹ which has been amended numerous times by Congress.

Pursuant to OBRA '87, regulations by the Centers for Medicare & Medicaid Services (CMS)² are intended to “provide the impetus for Skilled Nursing Facilities (SNF’s) and Nursing Facilities (NF’s)³ to provide more consistent quality care and maintain continued compliance with the new federal participation requirements.” OBRA '87 also mandates SNFs to provide care and services “to attain or maintain the highest practicable physical, mental, and psychological well-being” of each resident.⁴

CMS regulations setting forth the requirements of care (conditions of participation) were adopted in 1989 and 1991.⁵ In October of 1990, the Survey and Certification process rules became effective.⁶ Finally, in November of 1994, the adoption of the Survey, Certification and Enforcement regulations concluded the trilogy of OBRA '87 federal nursing home reform initiatives. The federal enforcement regulations became effective July 1, 1995 and have been modified over the years.

This chapter will provide an overview of the Washington State laws affecting nursing facilities. Washington has specific legislation and regulations which mirror and/or expand the federal laws. This chapter will cover the most common legal issues that occur in the everyday operation of a nursing facility including, but not limited to, quality of life issues, residents rights, resident restraints, infection control, resident abuse, and reimbursement issues. Finally, this chapter will briefly address Assisted Living Facilities (ALF’s) in the State of Washington.

{Editor’s Note: For a more general overview of federal and state regulatory, compliance, operational, and financial issues, please see the [Long Term Care Handbook](#), published by the American Health Lawyers Association.}

It should be kept in mind that the focus of this Chapter is Washington State law. Federal law will be referenced as needed, but a full discussion of federal law is beyond the scope of this Chapter.

11.2 Nursing Facilities

11.2.1 Licensure

All applications for nursing home licensure are subject to review under Chapter 97: Nursing Homes, WAC 388-97-550 through WAC 388-97-600. An application for a nursing home license must be received by the Department of Social and Health Services (DSHS) at least 60 days in advance of the intended licensure date⁷ and must be renewed annually thereafter.⁸ Renewals must be submitted at least 30 days prior to the expiration of the license.⁹ DSHS has designated forms for the applications and renewals.

¹ Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, 101 Stat. 1330.

² CMS was formerly known as the Health Care Financing Administration (HCFA).

³ Nursing homes participating in a state Medicaid Program are known as Nursing Facilities (NF’s).

⁴ 42 U.S.C. § 1395i-3(b)(2) (2003).

⁵ Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, 101 Stat. 1330.

⁶ These rules were revised substantially in 1999. 42 C.F.R. Part 488.

⁷ WAC 388-97-550 (1)(a).

⁸ WAC 388-97-555 (1).

⁹ WAC 388-97-555 (2)(a).

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The applicant for a nursing home license must be responsible for the daily operation of the nursing home¹⁰ and must sign the nursing home license application or the renewal application before a notary.¹¹ All applications must be complete before DSHS will review them. Failure to submit a completed application or to supply the required authorizations and documentation results in DSHS refusing to review the application.¹²

11.2.1.1 Requirements for License, Application

The following is required on any application for a nursing home license. This list is not complete:¹³

- Name and address of the proposed licensee, and any partner, officer, director, managerial employee, or owner of five percent or more of the proposed licensee;
- The names of the administrator, director of nursing services, and, if applicable, the management company;
- The specific location and the mailing address of the facility for which the license is sought;
- The number of beds to be licensed; and
- The name and address of all nursing homes that the proposed licensee or any partner, officer, director, managerial employee, or owner of five percent or more of the proposed licensee has been affiliated with in the past ten years.

11.2.1.1.1 Qualifications for Nursing Home License

Each person and entity named in an application will be considered separately and jointly for license. If any one is unqualified, the license will be denied.¹⁴

DSHS will review the information in the application and other documents it deems relevant. For instance, DSHS may review survey and complaint investigation findings in each facility the applicant (or partner, officer, director, manager, or owner of five percent or more of the applicant) has been affiliated with over the previous ten years.¹⁵

11.2.1.1.2 Change in Ownership (CHOW)

When a change in ownership¹⁶ is contemplated, the current operator shall notify DSHS and all residents and their representatives at least 60 days prior to the proposed date of transfer.¹⁷ The notice to DSHS and the residents must be in writing and shall contain:¹⁸

- Name of the proposed licensee;
- Name of the managing entity;
- Name, address, and telephone numbers of department personnel to whom comments regarding the change may be directed;
- Names or all officers and the registered agent in the state of Washington if proposed licensee is a corporation; and
- Names of all general partners if proposed licensee is a partnership.

¹⁰ WAC 388-97-550 (3)(a).

¹¹ WAC 388-97-550 (1)(c).

¹² WAC 388-97-560 (2) and WAC 388-97-565 (2).

¹³ WAC 388-97-550 (2).

¹⁴ WAC 388-97-550 (3)(b).

¹⁵ WAC 388-97-560 (4)(b).

¹⁶ See WAC 388-97-585 for definitions and/or circumstances in which DSHS considers the nursing home to have had a change in ownership.

¹⁷ WAC 388-97-585 (3).

¹⁸ RCW 18.51.530 and WAC 388-97-585 (3).

The operation or ownership of a nursing home must not be transferred until the new proposed licensee has been issued a license to operate the nursing home.¹⁹ The new operator shall comply with all licensing requirements.

11.2.1.1.3 Change in Administration or Director or Nursing Services

Any time there is a change in the administrator or the director of nursing services, the nursing home shall notify DSHS through the Aging and Adult Services Administration (AASA) and each resident of such changes.²⁰

11.2.1.1.4 Change in Name of Nursing Home

The nursing home licensee must notify DSHS through AASA in writing of any change in the name of the licensee, or of the nursing home, at the time the change occurs.²¹

11.2.1.1.5 Denial of License, Revocation, Nonrenewal

The applicant and the nursing home pursuing licensure must comply with all requirements established in RCW Chapters 18.51, Nursing Homes, and 74.42, Nursing Homes—Resident Care, Operating Standards, and the rules adopted thereunder. DSHS may deny, suspend, revoke, or fail to renew a nursing home license to any applicant (or any partner, officer, director, manager, or owner of five percent or more of the applicant) for any of the following reasons:²²

- The facility has a history of significant noncompliance with state or federal regulations in providing nursing home care;
- No credit history or a poor credit history;
- Engaged in the illegal use of drugs or the excessive use of alcohol or been convicted of crimes relating to drugs;
- Unlawfully operated a nursing home without a license or under a revoked or suspended license;
- Previously had a license revoked or suspended for the operation of a hospital or any other facility for the care of children or vulnerable adults;
- Obtained or attempted to obtain a license by fraudulent means or misrepresentation;
- Permitted, aided, or abetted the commission of any illegal act on the nursing home premises;
- Failed to meet the financial obligations as the obligations fall due in the normal course of business;
- Been convicted of a felony or a crime against a person if the conviction reasonably relates to the competency of the person to own or operate a nursing home;
- Convicted of a “crime against children or other persons” as defined under RCW 43.43.830;
- Convicted of a “crime relating to financial exploitation” as defined under RCW 43.43.830;
- Found by a court in a criminal proceeding or a protection proceeding under Chapter 74.34 RCW, or any comparable state or federal law, to have abandoned, abused, neglected, or financially exploited a vulnerable adult;
- Found in any final decision issued by a disciplinary board to have sexually or physically abused or exploited any minor or any individual with a developmental disability, or to have abused, neglected, abandoned, or financially exploited any vulnerable adult;
- Found in any dependency action to have sexually assaulted or exploited any minor or to have physically abused any minor;

¹⁹ WAC 388-97-585 (4).

²⁰ WAC 388-97-162 (4).

²¹ WAC 388-97-162 (5).

²² This list is not exhaustive. For a complete listing see WAC 388-97-570.

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- Found by a court in a domestic relations proceeding under Title 26 RCW, or any comparable state or federal law, to have sexually abused or exploited any minor or to have physically abused any minor;
- Found to have abused, neglected, abandoned, or financially exploited or mistreated residents or misappropriated their property, and that finding has been entered on a nursing assistant registry;
- Been certified pursuant to RCW 74.20A.320 as a person who is not in compliance with a child support order (license suspension only);
- Failed to report abandonment, abuse, neglect, or financial exploitation of a resident;
- Failed to pay a civil fine DSHS assesses within ten days after the assessment becomes final;
- Refused to allow department representatives or agents to inspect required books, records, and files or portions of the nursing home premises;
- Willfully prevented, interfered with, or attempted to impede the work of authorized DSHS representatives; or
- Retaliated against a resident or employee initiating a complaint with DSHS against the licensee or participating in the investigation of the licensee by DSHS.

If an applicant wishes to contest a DSHS license decision, they must file a written request for an administrative hearing within twenty days of receipt of the decision.²³ The appeals process and requirements are set forth in WAC 388-97-625.

11.2.2 Facility Physical Environment

For detailed regulations regarding the physical environment and safety of nursing facilities, please refer to Chapter 97: Nursing Homes, WAC 388-97-295 through WAC 388-97-480.

11.2.2.1 Physical Environment

The design of a nursing home must facilitate resident-centered care and services in a safe, clean, comfortable and homelike environment that allows the resident to use his or her personal belongings to the greatest extent possible.²⁴ The nursing home must ensure that each resident care unit is located to minimize through traffic to any general service, diagnostic, treatment, or administrative area and the resident care unit, and the services to support resident care and nursing needs, are designed to serve a maximum of sixty beds on the same floor.²⁵

Nursing homes must conform to minimum standards for the prevention of fire and the protection of life and property against fire.²⁶ The nursing home shall have an alternate source of power and automatic transfer equipment to connect the alternate source of power. The connection must take place within ten seconds of the failure of the normal source.²⁷ The alternate source of power must be a generator with an on-site fuel supply, permanently fixed in place and approved for emergency services.²⁸ The emergency power supply must provide a minimum of four hours of effective power for lighting, night lights, exit signs, exit corridors, stairways, recreation and dining areas, work stations, medication preparation areas, boiler rooms, electrical service room, and emergency generator locations.²⁹

²³ WAC 388-97-575.

²⁴ WAC 388-97-295.

²⁵ WAC 388-97-325.

²⁶ WAC 388-97-29520.

²⁷ WAC 388-97-315 (1).

²⁸ WAC 388-97-315 (2).

²⁹ WAC 388-97-315 (3).

11.2.2.1.1 Required Service Areas³⁰

The nursing home must ensure that each resident care unit has the following required service areas:

- A staff work station and a medicine storage and preparation area,
- Utility rooms which maintain separated clean and soiled functions,
- Storage place for linen, equipment, and other supplies; housekeeping services, and janitor closets.

Nursing facilities must provide the following:

- On each unit, the nursing home must have a staff work station appropriate to the needs of staff using the space;³¹
- Call systems;³²
- Telephones;³³
- Utility service rooms;³⁴
- Drug preparation area;³⁵
- Linen storage;³⁶

³⁰ WAC 388-97-32510.

³¹ WAC 388-97-32520. Additionally, this regulation requires, at a minimum, that the nursing home equip the area with: (a) a charting surface; (b) a rack or other storage for current health records; (c) storage for record and clerical supplies; (d) a telephone; (e) a resident call system; and (f) a clock. For new construction, the work station space must be open to the corridor. WAC 388-97-32520 (2).

³² WAC 388-97-32530. The nursing home must provide the following, or an equivalent system that meets these standards: (1) a wired or wireless communication system which registers a call by distinctive light at the room door and by distinctive light and audible tone at the staff work station. The system must be equipped to receive resident calls from: (a) the bedside of each resident; (b) every common area, dining and activity areas, common use toilet rooms, and other areas used by residents; and (c) resident toilet, bath and shower rooms.

³³ WAC 388-97-32540. This regulation also required that the nursing home must provide twenty-four hour access to a telephone for resident use which: (1) provides auditory privacy; (2) is accessible to a person with a disability and accommodates a person with sensory impairment; (3) is not located in a staff office or at a nurse's station; and (4) does not require payment for local calls.

³⁴ WAC 388-97-32550 (1). All nursing homes must: (a) provide utility rooms designed, equipped, and maintained to ensure separation of clean and sterile supplies and equipment from those that are contaminated; (b) ensure that each clean utility room has: (i) a work counter; (ii) a sink equipped with single use hand drying towels and soap for handwashing; and (iii) closed storage units for supplies and small equipment; and (c) ensure that each soiled utility room has: (i) a work counter and a sink large enough to totally submerge the items being cleaned and disinfected; (ii) storage for cleaning supplies and other items, including equipment, to meet nursing home needs; (iii) locked storage for cleaning agents, disinfectants and other caustic or toxic agents; (iv) adequate space for waste containers, linen hampers, and other large equipment; and (v) adequate ventilation to remove odors and moisture. In addition to the above, for **new construction** the nursing home must provide that a) a resident room must not be more than ninety feet from a clean utility room and a soiled utility room; (b) the clean utility room and the soiled utility room must be separate rooms; (c) each soiled utility room must contain: (i) a double-compartment sink with inside dimensions of each compartment deep enough to totally submerge items being cleaned and disinfected; (ii) sufficient, available work surface on each side of the sink to adequately process and dry equipment with a minimum of three feet of work surface on the clean side; (iii) drying/draining racks for wet equipment; (iv) work counters, sinks, and other fixed equipment arranged to prevent intermingling of clean and contaminated items during the cleaning process; and (v) a siphon jet type clinic service sink or equivalent installed on the soiled side of the utility room away from the door; (d) the nursing home's space for waste containers, linen hampers, and other large equipment, must not block work areas; and (e) the utility rooms must meet the State's ventilation requirements. WAC 388-97-32550 (2).

³⁵ WAC 388-97-32560. The nursing home must provide an area designed and equipped for drug preparation and locked storage convenient to each work station. The nursing home must ensure: (1) the drug facilities are well illuminated, ventilated, and equipped with a work counter, sink with hot and cold running water, and drug storage units; (2) the drug storage units are one or more of the following: (a) locked cabinetry constructed in accordance with board of pharmacy regulations for drug storage which has: (i) separately keyed storage for Schedule II and III controlled substances; and (ii) segregated storage of different residents' drugs, or (b) an automated medication distribution device or storage. (3) there is a refrigerator for storage of thermolabile drugs in the drug facility; (4) locks and keys for drug facilities are different from other locks and keys within the nursing home; and (5) **in new construction**, the drug facility must be a separate room.

- Janitor's closet.³⁷

11.2.2.1.2 Resident Rooms

The nursing home must ensure that each resident bedroom has access to an exit hall or corridor, is located on an exterior wall with a transparent glass window, and is located to prevent through traffic.³⁸ No more than two beds can be between any resident and an exterior wall and the maximum capacity of any resident bedroom is four beds.³⁹ The nursing home must ensure that minimum usable room space exclusive of toilet rooms, closets, lockers, wardrobes, must:

- (1) In existing facilities, be at least eighty square feet per bed in each multibed room and at least one hundred square feet for each single bed room;
- (2) In a new building or addition, be at least one-hundred and ten square feet per bed in multibed rooms, and one-hundred square feet in single bed rooms; and
- (3) In new construction, ensure that the minimum usable room space is also exclusive of vestibules.⁴⁰

The nursing home must ensure that each resident bedroom is designed or equipped to ensure full visual privacy for each resident.⁴¹

11.2.2.1.3 Resident Room Equipment

The nursing home must determine a resident's furniture and equipment needs at the time of admission and routinely thereafter to ensure resident comfort.⁴² The nursing home must provide each resident with the following items:

- (1) A comfortable bed of size and height to maximize a resident's independent functioning. Beds may be arranged to satisfy the needs and desires of the individual resident provided the arrangement does not negatively impact the health or safety of other residents;
- (2) Appropriate bedding; and
- (3) A bedside cabinet that allows for storage of small personal articles and a separate drawer or enclosed compartment for storage of resident care utensils/equipment;⁴³
- (4) A separated, enclosed wardrobe or closet for each resident's clothing and belongings accessible to the resident;⁴⁴

³⁶ WAC 388-97-32570. The nursing home must provide: (1) a clean area for storage of clean linen and other bedding. This may be an area within the clean utility room; (2) a soiled linen area for the collection and temporary storage of soiled linen. This may be within the soiled utility room; and (3) **in new construction**, storage for linen barrels and clean linen carts.

³⁷ WAC 388-97-32580. The nursing home must have a janitor's closet with a service sink and adequate storage space for housekeeping equipment and supplies convenient to each resident unit; and **In new construction** a janitor's closet must meet ventilation requirements of Table 5 WAC 388-97-47020

³⁸ WAC 388-97-330 (1). For new construction or additions the following additional requirements must be met: each resident bedroom must: Each resident bedroom must (a) have an exterior transparent glass window: (i) with an area equal to at least one-tenth of the bedroom usable floor area; (ii) located twenty-four feet or more from another building or the opposite wall of a court, or ten feet or more away from a property line, except on street sides; (iii) located eight feet or more from any exterior walkway, paved surface, or driveway; and (iv) with a sill three feet or less above the floor. Each resident bedroom must be located on a floor level at or above grade level except for earth berms. WAC 388-97-330 (2).

³⁹ WAC 388-97-33010.

⁴⁰ WAC 388-97-33020.

⁴¹ WAC 388-97-33030.

⁴² WAC 388-97-335.

⁴³ WAC 388-97-33510; In a new building or addition, an additional lockable cabinet space or drawer for storage of personal belongings for each resident bed is required.

⁴⁴ WAC 388-97-33530; In a new building or addition, each bed in each room must have a separate, enclosed wardrobe or closet accessible to the resident with: (a) minimum inside dimensions of twenty-two inches deep by a minimum of twenty-six inches

- (5) Comfortable seating for residents and visitors, not including resident care equipment, that provides proper body alignment and support;⁴⁵
- (6) A permanently mounted light or equivalent light suitable for any task the resident chooses to do or any task the staff must do;⁴⁶
- (7) A resident call signal device;⁴⁷
- (8) Flame-retardant cubicle curtains in multibed rooms that ensures full visual privacy for each resident;⁴⁸
- (9) A phone jack for each bed in each room;⁴⁹
- (10) A handwashing sink in each multibed room and a handwashing sink in each single room that does not have an adjoining toilet room containing a handwashing sink. A handwashing sink located in a resident bedroom must be located between the corridor entry door and the nearest resident bed;⁵⁰ and
- (11) Storage space.⁵¹

11.2.2.1.4 Resident Toilet and Bathing Facilities

The nursing home must ensure that:

- (1) Each resident room is equipped with or located convenient to toilet facilities;⁵²
- (2) Each resident room is equipped with or located near bathing facilities;⁵³
- (3) At least one bathing unit for no more than thirty residents that is not located in a room served by an adjoining bathroom;
- (4) At least one bathing device for immersion per floor;
- (5) At least one roll in shower or equivalent on each resident care unit: (a) Designed and equipped for unobstructed ease of shower chair entry and use; and (b) With a spray attachment equipped with a backflow prevention device.
- (6) Resident bathing equipment is smooth, cleanable, and able to be disinfected after each use.⁵⁴

wide by sixty inches high; and (b) inside space including a rod, at least fifteen inches long, and allowing for fifty-four inches of clear hanging length adjustable to meet the needs of the resident. *Id.*

⁴⁵ WAC 388-97-33540.

⁴⁶ WAC 388-97-33550.

⁴⁷ WAC 388-97-33560. The call signaling device must meet the following standards: (1) a wired or wireless communication system which registers a call by distinctive light at the room door and by distinctive light and audible tone at the staff work station. The system must be equipped to receive resident calls from: (a) the bedside of each resident; (b) every common area, dining and activity areas, common use toilet rooms, and other areas used by residents; and (c) resident toilet, bath and shower rooms. (2) an emergency signal device activated by a nonconductive pull cord, or adapted to meet the needs of the resident. The nursing home must locate the signal device for easy reach by the resident. A signal device must be adapted to meet resident needs and, in the dementia unit, may be adapted for staff and family use. WAC 388-97-32530.

⁴⁸ WAC 388-97-33570. Note additional requirements apply for new construction.

⁴⁹ WAC 388-97-33580.

⁵⁰ *Id.*

⁵¹ *Id.*; see also WAC 388-97-357, WAC 388-97-35710, and WAC 388-97-35720.

⁵² WAC 388-97-340. For new construction, a toilet room must: (a) be directly accessible from each resident room and from each bathing facility without going through or entering a general corridor while maintaining resident dignity; (b) serve two bedrooms or less; (c) be designed to accommodate a person in a wheelchair; (d) contain at least one handwashing sink; and (e) provide a properly located and securely mounted grab bar at each side and the back of each toilet fixture in each toilet room and stall. Grab bars on the open side must be located twelve to eighteen inches from the center line of the toilet. Grab bars on the open side must be able to swing up. *Id.*

⁵³ WAC 388-97-3410.

⁵⁴ WAC 388-97-34010. For new construction, in each bathing unit containing more than one bathing facility: (a) each bathtub, shower, or equivalent, is located in a separate room or compartment with three solid walls; (b) the entry wall may be a "shower"

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- (7) All lockable toilet facilities and bathrooms have a readily available means of unlocking from the outside; and
- (8) Locks are operable from the inside with a single motion.⁵⁵

11.2.2.1.5 Dining, Dayrooms, and Resident Activity Areas

The nursing home must provide one or more rooms designated for resident dining and activities that are:

- (a) Well lighted;
- (b) Well ventilated;
- (c) Adequately furnished; and
- (d) Large enough to accommodate all activities.⁵⁶

11.2.2.1.6 Laundry Services

The nursing home must ensure:

- (1) Sufficient laundry washing and drying facilities to meet the residents' care and comfort needs without delay; and
- (2) The temperature and time of the hot water cycle to disinfect nursing home linen is at least 160 degrees Fahrenheit for five minutes or 140 degrees Fahrenheit for at least fifteen minutes.⁵⁷

11.2.2.1.7 Food Service Areas

The nursing home must ensure food service areas are in compliance with state board of health rules governing food service sanitation and:

- (1) Ensure food service areas are provided for the purpose of preparing, serving, and storing food and drink unless food service is provided from another licensed food service facility;
- (2) Ensure food service areas are located to facilitate receiving of food supplies, disposal of kitchen waste, and transportation of food to dining and resident care areas;
- (3) Locate and arrange the kitchen to avoid contamination of food, to prevent heat and noise entering resident care areas, and to prevent through traffic;
- (4) Locate the receiving area for ready access to storage and refrigeration areas;
- (5) Conveniently locate a handwashing sink near the food preparation and dishwashing area, and include a waste receptacle and dispensers stocked with soap and paper towels;
- (6) Adequately ventilate, light, and equip the dishwashing room or area for sanitary processing of dishes;
- (7) Locate the garbage storage area in a well-ventilated room or an outside area;

type curtain or equivalent; (c) the area for each bathtub and shower is sufficient to accommodate a shower chair, an attendant, and provide visual privacy for bathing, drying, and dressing; (d) shower and tub surfaces are slip-resistant; (e) bathing areas are constructed of materials that are impervious to water and cleanable; and (f) grab bars are installed on all three sides of a shower with the shower head grab bar being "L" shaped. *Id.*

⁵⁵ WAC 388-97-34020.

⁵⁶ WAC 388-97-345. For new construction or for a new addition to a building, the nursing home must design space for dining rooms, dayrooms, and activity areas for resident convenience and comfort and to provide a homelike environment. These areas must be located on the same floor as the residents who will use the areas. The nursing home must: (a) ensure these rooms or areas are exterior rooms with windows that have a maximum sill height of thirty-six inches; (b) provide space for dining, day use, and activities with a minimum combined total of thirty square feet for each licensed bed; (c) design any multipurpose rooms to prevent program interference with each other; (d) locate a day room on each resident care unit; (e) provide storage spaces for all activity and recreational equipment and supplies, adjoining or adjacent to the facilities provided; and (f) locate a common use toilet facility, with handwashing sink and accessories, providing direct access from the hallway and within a maximum of forty feet from these spaces.

⁵⁷ WAC 388-97-347.

- (8) Provide hot and cold water and a floor drain connected to the sanitary sewage system in a can wash area, unless located in outside covered area;
- (9) Provide space for an office or a desk and files for food service management located central to deliveries and kitchen operations; and
- (10) Include housekeeping facilities or a janitor's closet for the exclusive use of food service with a service sink and storage of housekeeping equipment and supplies.⁵⁸

11.2.2.1.8 Lighting and Electrical

The nursing home must ensure that lighting and lighting levels:

- (1) Are adequate and comfortable for the functions being conducted in each area of the nursing home;
- (2) Are suitable for any task the resident chooses or any task the staff must do;⁵⁹
- (3) Support the independent functioning of the resident;
- (4) Provide a homelike environment;
- (5) Minimize glare;⁶⁰
- (6) Provide adequate natural or artificial light for inside illumination is provided in every useable room area, including but not limited to storerooms, attic and basement rooms, hallways, stairways, inclines, and ramps.⁶¹
- (7) In parking lots and approaches to buildings are appropriate for resident and visitor convenience and safety;
- (8) All outside areas where nursing home equipment and machinery are stored have proper lighting.⁶²

The nursing home must provide enough electrical outlets to meet the care and personal appliance needs of each resident.⁶³

11.2.2.1.9 Safety

The nursing home must provide:

- (1) A safe, functional, sanitary, and comfortable environment for the residents, staff, and the public;
- (2) Signs to designate areas of hazard;⁶⁴
- (3) That poisons and nonmedicinal chemicals are stored in containers identified with warning labels. The containers must be stored:
 - (a) In a separate locked storage when not in use by staff; and
 - (b) Separate from drugs used for medicinal purposes.⁶⁵

⁵⁸ WAC 388-97-355.

⁵⁹ For new construction, the nursing home must install in each resident room a night light that is: (1) flush mounted on the wall; (2) designed to prevent viewing the light source from thirty inches or more above the floor; (3) designed to provide a maximum illumination level of 10 footcandles; (4) located to provide safe pathway lighting for the staff and residents; and (5) controlled by a switch at each resident room entrance door or by a master switch. WAC 388-97-36050.

⁶⁰ WAC 388-97-360.

⁶¹ WAC 388-97-36010. In new buildings and additions, the nursing home must utilize: (a) windows and skylights to minimize the need for artificial light and to allow a resident to experience the natural daylight cycle; and (b) windows and skylights near entrances/exits in order to avoid difficulty in adjusting to light levels when entering or leaving the facility. *Id.*

⁶² WAC 388-97-36020.

⁶³ WAC 388-97-36070. In new construction, the nursing home must ensure: (a) there are a minimum of seven outlets: (i) four hospital grade electrical outlets located convenient to each residents' bed and centered at forty to forty-four inches above the floor, with a minimum of: (ii) two additional electrical outlets at separate, convenient locations in each resident room; and (iii) one duplex electrical outlet located adjacent to each handwashing sink intended for resident use. (b) all electrical outlets located within five feet of any sink, toilet, bath, or shower must be protected by a ground fault circuit interrupter.

⁶⁴ WAC 388-97-365.

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- (4) That the manner in which equipment and supplies are stored does not jeopardize the safety of residents, staff, or the public;⁶⁶
- (5) Handrails on each side of all corridors and stairwells accessible to residents.⁶⁷

11.2.2.1.10 Water Supply

The nursing home must ensure the hot water system maintains water temperatures at one hundred ten degrees Fahrenheit, plus or minus ten degrees Fahrenheit, at fixtures used by residents and staff.⁶⁸

11.2.2.1.11 Pest Control and Sewage and Waste Disposal

The nursing home must:

- (1) Maintain an effective pest control program so that the facility is free of pests such as rodents and insects;
- (2) Construct and maintain buildings to prevent the entrance of pests such as rodents and insects;
- (3) Provide mesh screens or equivalent with a minimum mesh of one-sixteenth inch on all windows and other openings that can be left open;⁶⁹
- (4) Ensure all sewage and liquid wastes are discharged into an approved public sewage system where such system is available; or
- (5) Sewage and liquid wastes are collected, treated, and disposed of in an on-site sewage system in accordance with state law and meets with the approval of the local health department and/or the state department of health.⁷⁰

11.2.3 Resident Rights

All residents of nursing facilities have rights guaranteed to them under federal⁷¹ and state law.⁷² Facilities must promote rights of all residents regardless of barriers that may limit the resident including, but not limited to, communication, cognitive, or hearing problems. When a resident is determined to be incapacitated or incompetent, the resident should be able to assert his/her rights based on their level of capacity.⁷³

The resident has the right to exercise his or her rights as both a resident of the facility and as a citizen of the United States.⁷⁴ When a resident has a court appointed legal guardian or a surrogate health care decision maker, either established by a legal document or by statutory law, that person may exercise rights on behalf of a resident.⁷⁵ In other words, nursing facilities must ensure that residents exercise their autonomy to the maximum extent possible allowing them to make choices about how they wish to live their lives and receive care. The resident's decisions are subject to the facility's rules, as long as the rules do not violate a regulatory requirement.

⁶⁵ WAC 388-97-36510.

⁶⁶ WAC 388-97-36520.

⁶⁷ WAC-97-36530. In new construction ensure that: (a) ends of handrails are returned to the walls; (b) handrails are mounted thirty to thirty-four inches above the floor and project not more than three and three-quarters inches from the wall; and (c) handrails terminate not more than six inches from a door. *Id.*

⁶⁸ WAC 388-97-37010.

⁶⁹ WAC 388-97-375.

⁷⁰ WAC 388-97-385.

⁷¹ 42 CFR §§ 483.10, 483.12, 483.13, and 483.15.

⁷² WAC 388-97-051.

⁷³ *See, e.g.*, WAC 388-97-051 (3).

⁷⁴ WAC 388-97-051 (4)(a).

⁷⁵ WAC 388-97-055.

Every resident has the right to be free of coercion, discrimination, and interference and reprisal from the nursing home for exercising his or her rights.⁷⁶ A few examples of actions taken by a facility to limit a resident's autonomy would be: (1) discouraging a resident from decorating their room based on a religious preference; (2) isolating residents in activities; (3) not discussing care decisions with the resident; and (4) asking the resident to sign an agreement that includes a provision that the resident waives any resident right as provided for by Washington law in the chapter of laws concerning Residents' Rights.⁷⁷

11.2.3.1 Resident's Bill of Rights

The facility must inform the resident, both orally and in writing (and in a language the resident understands) of his or her rights and all the regulations and rules governing resident conduct.⁷⁸ Notification of these rights must be made prior to admission to the facility, or in the case of an emergency, upon admission to the facility.⁷⁹ A sampling of residents' rights is discussed in the remainder of this section.

11.2.3.1.1 Fee Disclosure and Deposits

Nursing homes that require payment of an admission fee, deposit, or minimum stay fee by or on behalf of a person seeking admission to the nursing facility must provide the resident with full disclosure in writing in a language the potential resident or his or her representative understands:

- Of the nursing home's schedule of charges for items, services, and activities provided by the nursing home;
- The amount of the admissions fee, deposits, or minimum stay fees; and
- 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.⁸⁰

If a resident dies or is hospitalized or is transferred and does not return to the nursing home, the nursing home must refund any deposit or charges already paid, less the nursing 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. 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.⁸¹ 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.⁸²

The facility must inform all residents before or at the time of admission and intermittently during their stay, of services available in the facility and of charges for those services, including any charges for services not covered under Medicare, Medicaid, or by the nursing facility's per diem rate.⁸³

11.2.3.2 Medicaid Residents

⁷⁶ WAC 388-97-051 (4)(b).

⁷⁷ WAC 388-97-051 (4)(c).

⁷⁸ WAC 388-97-07005 (1).

⁷⁹ *Id.*

⁸⁰ WAC 388-97-07005 (6). If the nursing home fails to provide these disclosures in the manner prescribed by this section, the nursing home is not allowed to keep deposits, admissions fees, prepaid charges, or minimum stay fees.

⁸¹ WAC 388-97-07005 (6)(b).

⁸² WAC 388-97-07005 (6)(c).

⁸³ WAC 388-97-07005 (1)(e).

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The nursing home must inform each resident 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 that are included in nursing facility services under the Medicaid state plan and for which the resident may not be charged; and
- Of the items, services, and activities the nursing home offers and for which the resident may be charged, and the amount of charges for those services;
- That deposits, admission fees and prepayment of charges cannot be solicited or accepted from Medicare or Medicaid eligible residents; and
- That minimum stay requirements cannot be imposed on Medicare or Medicaid eligible residents.⁸⁴

11.2.3.3 Other Resident Rights

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

- A description of the manner of protecting the resident's personal funds;
- 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;
- 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
- 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.⁸⁵

The nursing home must:

- Inform each resident of the name, and specialty of the physician responsible for his or her care; and
- Provide a way for each resident to contact his or her physician.⁸⁶

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.⁸⁷

A resident may self-administer drugs if the interdisciplinary team has determined that this practice is safe.⁸⁸

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.⁸⁹ 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.⁹⁰ The notices and any survey reports must be available for viewing or examination

⁸⁴ WAC 388-97-07005 (4).

⁸⁵ WAC 388-97-07005 (7).

⁸⁶ WAC 388-97-07005 (8).

⁸⁷ WAC 388-97-07005 (9).

⁸⁸ WAC 388-97-07030.

⁸⁹ WAC 388-97-07040 (1) and (2).

⁹⁰ WAC 388-97-07040 (4).

in a place or places that are readily accessible to residents, which do not require staff interventions to access and which are in plain view of the nursing home residents, including individuals visiting those residents, and individuals who inquire about placement in the nursing home.⁹¹

11.2.3.4 Notification of Changes

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:

- An accident involving the resident which results in injury and has the potential for requiring physician intervention;
- 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);
- 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
- A decision to transfer or discharge the resident from the facility.⁹²

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 change in room or roommate assignment; or
- A change in resident rights under federal or state law or regulations.⁹³

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).⁹⁴

11.2.3.5 Protection of Resident Funds

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.⁹⁵

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.⁹⁶ 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:

- 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;
- 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
- Make the individual financial record available to the resident or his or her surrogate decision maker through quarterly statements and on request.⁹⁷

The nursing facility must notify each resident that receives Medicaid benefits:

⁹¹ WAC 388-97-07040 (5).

⁹² WAC 388-97-07010 (1).

⁹³ WAC 388-97-07010 (2).

⁹⁴ WAC 388-97-07010 (3).

⁹⁵ WAC 388-97-07015 (1).

⁹⁶ WAC 388-97-07015 (2).

⁹⁷ WAC 388-97-07015 (3).

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- When the amount in the resident's account reaches two hundred dollars less than the Supplemental Security Income (SSI) resource limit for one individual; and
- 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.⁹⁸

The nursing home must convey the resident's funds, and a final accounting of those funds, to the individual or jurisdiction administering the resident's estate, within thirty days of the death of any resident with a personal fund deposited with the nursing home. For a Medicaid resident, the funds must be sent to the state of Washington, DSHS, Office of Financial Recovery.⁹⁹

The nursing facility must purchase a surety bond, or an approved alternative, to assure security of personal funds of residents deposited with the facility.¹⁰⁰

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 Programs,¹⁰¹ may not charge a resident (or the resident's representative) for any item or service not requested by the resident; may not require a resident, or the resident's representative, to request any item or service as a condition of admission or continued stay; and must 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.¹⁰²

11.2.3.6 Privacy and Confidentiality

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.¹⁰³

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.¹⁰⁴ The resident's right to refuse release of personal and clinical records does not apply when the resident is transferred to another health care institution or record release is required by law.¹⁰⁵

The resident has the right to privacy in written communications.¹⁰⁶

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).¹⁰⁷

11.2.3.7 Grievance Rights

A resident has the right to:

⁹⁸ WAC 388-97-07015 (4).

⁹⁹ WAC 388-97-07015 (5).

¹⁰⁰ WAC 388-97-07015 (6).

¹⁰¹ WAC 388-97-07015 (7).

¹⁰² WAC 388-97-07015 (8).

¹⁰³ WAC 388-97-07020 (1).

¹⁰⁴ WAC 388-97-07020 (2).

¹⁰⁵ WAC 388-97-07020 (3).

¹⁰⁶ WAC 388-97-07045.

¹⁰⁷ WAC 388-97-07055.

- (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.
- (4) Receive information from agencies acting as client advocates, and be afforded the opportunity to contact these agencies.¹⁰⁸

11.2.3.8 Roommates

A resident has the right to share a room with his or her spouse when married residents live in the same facility and both spouses consent to the arrangement and receive three days notice of change in room or roommate.¹⁰⁹

The nursing home must make reasonable efforts to accommodate residents wanting to share the same room.¹¹⁰

11.2.3.9 Informed Consent

The nursing home must ensure that the informed consent process is followed with the resident to the maximum extent possible, taking into consideration his or her ability to understand and respond.¹¹¹ If the resident is determined to be incapacitated, the nursing home shall consult with the surrogate decision maker.¹¹² 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.¹¹³

When a surrogate decision-maker is exercising a resident's rights, the surrogate decision-maker must:

- Determine if the resident would consent or refuse the proposed or alternative treatment;
- Discuss determination of consent or refusal with the resident whenever possible; and
- 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.¹¹⁴

WAC §§ 388-97-055, 388-97-060, and 388-97-065 implement the federal Patient Self-Determination Act and clarify requirements under the following RCW Chapters:¹¹⁵

- Chapter 11.94 RCW, Power of Attorney;
- Chapter 70.122 RCW, Natural Death Act;

¹⁰⁸ WAC 388-97-07035.

¹⁰⁹ WAC 388-97-07065 (1). Note, there are two minor exceptions to this general rule.

¹¹⁰ WAC 388-97-07065 (2).

¹¹¹ WAC 388-97-060 (1)(a).

¹¹² WAC 388-97-060 (1)(b).

¹¹³ WAC 388-97-060 (2).

¹¹⁴ WAC 388-97-060 (1)(b)(i)-(iii).

¹¹⁵ WAC 388-97-053.

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- Chapter 11.88 RCW, Guardianship—Appointed, Qualification, Removal of Guardians and Limited Guardians; and
- Chapter 11.92, RCW, Guardianships—Powers and duties of guardian or limited guardian.

11.2.3.10 **Capacitated Resident/Incapacitated Resident—Decision-Making**

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:

- Has appointed another individual to make his or her health care, financial, or other decisions;
- Has created any advance directive or other legal documents that will establish a surrogate decision maker in the future; and
- 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.¹¹⁶

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

- Demonstrated inability in decision making over time that creates a significant risk of personal harm;
- A court order; or
- The criteria contained in a legal document, such as durable power of attorney for health care.¹¹⁷

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 court has established a full guardianship of the individual;
- The capacitated resident has clearly and voluntarily appointed a surrogate decision maker;
- A surrogate is established by a legal document such as a durable power of attorney for health care; or
- The facility determines that the resident is an incapacitated individual according to RCW 11.88.010 and WAC 388-97-055 (5)(a).¹¹⁸

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 state and federal law which govern his or her appointment.¹¹⁹

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:

- Inform the resident that a surrogate decision maker has been consulted;
- Provide the resident with the information and opportunity to participate in all decision making to the maximum extent possible; and
- Recognize that involvement of a surrogate decision maker does not lessen the nursing home's duty to protect the resident's rights and comply with state and federal laws.¹²⁰

PRACTICE TIP

Copies of legal documents should be kept in residents' charts. _____

¹¹⁶ WAC 388-97-055 (1).

¹¹⁷ WAC 388-97-055 (5).

¹¹⁸ WAC 388-97-055 (6).

¹¹⁹ WAC 388-97-055 (7).

¹²⁰ WAC 388-97-055 (8).

PRACTICE TIP

The facility should have the physician clearly document whether in his or her medical opinion the resident is capable of making reasoned health care decisions. Depending on the diagnosis, the physician should reassess a resident's mental capacity on a regular or intermittent basis and clearly document this assessment in the resident's chart. NOTE: a "reasoned decision" does not necessarily mean "rational" or even "realistic." Residents may make poor judgments but it does not mean that they are incapacitated to make reasoned decisions regarding their health care. For instance, a resident may wish to go home and insist on being discharged to home even though the reality of such a plan may not be possible or at best, be undesirable. This decision may be "unrealistic" but it does not render the resident incapacitated. The facility must work with the resident to ensure the resident's wishes are met in a safe manner. For example, although initially, a resident's desired discharge plan may not seem feasible, the facility must allow the resident to make decisions when possible. The facility must accurately assess the resident's ability and any alternative resources and, at a minimum, explore the possibilities in order to satisfy the resident wishes if at all possible.

PRACTICE TIP

No healthcare facility employees should be witnesses to a durable power of attorney or a living will.

PRACTICE TIP

If there is a question about the resident's capacity and the resident will be executing a document (such as a will), it is good practice to note in the resident's chart, at the time of the act, the resident's capacity. It is ideal for the physician or medical director to document his/her medical opinion of the resident's capacity; however, at a minimum, the nurse in charge should document the resident's neurologic status.

11.2.3.11 Advance Directives

The term "advance directive" 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. Examples are powers of attorney, health care directive (living will), limited or restricted treatment cardiopulmonary resuscitation (CPR), do not resuscitate (DNR), and organ tissue donation.¹²¹ The nursing home must:

- Document in the clinical record whether or not the resident has an advance directive;
- 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;
- 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 the right to make health care decisions, including the right to change his or her mind regarding previous decisions and nursing home policies and procedures concerning implementation of advance directives, including how the nursing home implements emergency responses; and

¹²¹ WAC 388-97-065 (1).

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- Review and update as needed the resident advance directive information at the resident's request, when the resident's condition warrants review and when there is a significant change in the resident's condition.¹²²

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 inform the resident of the existence of any nursing home practice or policy which would preclude implementing the health care directive and 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. The nursing facility must meet with the resident to discuss the conflict and determine, in light of the conflicting practice or policy, whether the resident chooses to remain at the nursing home.¹²³

If a terminally ill resident, in accordance with state law, wishes to die at home, the nursing home must use the informed consent process as described in WAC 388-97-060, and explain to the resident the risks associated with discharge and discharge the resident as soon as reasonably possible.¹²⁴

11.2.4 Quality of Life Issues

The nursing home must ensure that resident care is provided in a manner to enhance each resident's dignity, and to respect and recognize his or her individuality. Each resident's personal care needs must be provided in a private area free from exposure to individuals not involved in providing the care.¹²⁵

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.¹²⁶

11.2.4.1 Environment

The nursing home must provide and maintain a safe, clean, comfortable, and homelike environment, allowing the resident to use his or her personal belongings to the extent possible.¹²⁷ The nursing home must provide housekeeping and maintenance services necessary to maintain a sanitary, orderly, and comfortable interior including keeping room temperatures at a comfortable and safe levels.¹²⁸ Residents must have lighting suitable for any task the resident chooses to do, and any task the staff must do.¹²⁹

11.2.4.2 Self-Determination and Participation

The resident has the right to choose activities, schedules, and health care consistent with his or her interests, assessments, and plan of care; interact with members of the community both inside and outside the nursing home; make choices about aspects of his or her life in the facility that are significant to the resident; and participate in social, religious, and community activities that do not interfere with the rights of other

¹²² WAC 388-97-065 (3).

¹²³ WAC 388-97-065 (4). If the resident chooses to remain in the nursing home, the nursing home must develop with the resident a plan in accordance with Washington law 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 and attach the plan to the resident's directive in the resident's clinical record. 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. WAC 388-97-065(4)(d)(i) and (ii).

¹²⁴ WAC 388-97-065 (5).

¹²⁵ WAC 388-97-08010 (1)(a) and (b).

¹²⁶ WAC 388-97-08010 (2).

¹²⁷ WAC 388-97-08020 (1).

¹²⁸ WAC 388-97-08020 (2).

¹²⁹ WAC 388-97-08020 (5).

residents in the nursing home.¹³⁰ A resident has the right to organize and participate in resident groups in the nursing home. The nursing home must provide a resident or family group, if one exists, with private space.¹³¹

11.2.4.3 Activities and Social Services

The nursing home must provide for an ongoing program of activities designed to meet, in accordance with the resident's comprehensive assessment, the interests and the physical, mental, and psychosocial well-being of each resident.¹³²

The activities provided for the resident must be designed to be meaningful to the residents at various times throughout every day and evening based on the resident's need and preference.¹³³ The activities program must be directed by a qualified professional who is a qualified therapeutic recreation specialist or an activities professional recognized under Washington law.¹³⁴

The nursing home must also provide medically related social services in order to attain or maintain the *highest practicable* physical, mental, and psychosocial well being of each resident.¹³⁵ A nursing home with more than 120 beds must employ a full-time social worker. A qualified social worker under the Washington regulation is an individual with a bachelor's degree in social work or a bachelor's degree in a human service field, including but not limited to, sociology, rehabilitation counseling, psychology, or special education and one year of supervised social work experience in a health care setting working directly with patients or residents.¹³⁶

A nursing home must allow each resident a reasonable opportunity to have regular contacts with animals, if desired.¹³⁷

11.2.5 Resident Assessment and Plan of Care

11.2.5.1 Resident Assessment

The nursing home must provide resident care based on a systematic, comprehensive, interdisciplinary assessment, and care planning process in which the resident participates, to the fullest extent possible. The nursing home must conduct initially and periodically a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity.¹³⁸

At the time each resident is admitted the nursing home must have physician's orders for the resident's immediate care and ensure that the resident's immediate care needs are identified in an admission assessment.¹³⁹

¹³⁰ WAC 388-97-08030.

¹³¹ WAC 388-97-08040.

¹³² WAC 388-97-08050 (1).

¹³³ WAC 388-97-08050 (2).

¹³⁴ WAC 388-97-08050 (3).

¹³⁵ WAC 388-97-08060 (1).

¹³⁶ WAC 388-97-08060 (2).

¹³⁷ WAC 388-97-08070.

¹³⁸ WAC 388-97-085 (1) (a) and (b).

¹³⁹ WAC 388-97-085 (1)(c).

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The comprehensive assessment of a resident's needs must describe the resident's capability to perform daily life functions and significant impairments in functional capacity.¹⁴⁰ The comprehensive assessment must include at least the following information:

- Identification and demographic information;
- Customary routine;
- Cognitive patterns;
- Communication;
- Vision;
- Mood and behavior patterns;
- Psychosocial well-being;
- Physical functioning and structural problems;
- Continence;
- Disease diagnosis and health conditions;
- Dental and nutritional status;
- Skin conditions;
- Activity pursuit;
- Medications;
- Special treatments and procedures;
- Discharge potential;
- Documentation of summary information regarding the assessment performed; and
- Documentation of participation in assessment.¹⁴¹

The nursing home must conduct comprehensive assessments no later than fourteen days after the date of admission and promptly after a significant change in the resident's physical or mental condition. Notwithstanding the foregoing, the nursing home must conduct a comprehensive assessment not less often than once every twelve months.¹⁴²

The nursing home must ensure that 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 the results of the assessment are used to develop, review and revise the resident's comprehensive plan of care.¹⁴³

11.2.5.2 Comprehensive Plan of Care

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.¹⁴⁴

The comprehensive plan of care must:

- Describe the services that are to be furnished to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being;
- 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;
- Be developed within seven days after completion of the comprehensive assessment;

¹⁴⁰ WAC 388-97-085 (1)(d).

¹⁴¹ WAC 388-97-085 (2).

¹⁴² WAC 388-97-085 (3).

¹⁴³ WAC 388-97-085 (4). When conducting a required assessment, the skilled nursing facility or nursing facility must use the State approved resident assessment instrument (RAI), placing a copy of the completed RAI in each resident's clinical record. WAC 388-97-085 (5).

¹⁴⁴ WAC 388-97-090 (1).

- 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;
- Consist of an ongoing process which includes a meeting if desired by the resident or the resident's representative; and
- Include the ongoing participation of the resident to the fullest extent possible, the resident's family or the resident's surrogate decision maker.¹⁴⁵

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.¹⁴⁶

When preparing the comprehensive plan of care for a resident, the nursing facility must follow the informed consent process detailed in WAC 388-97-060 regarding the interdisciplinary team's plan of care recommendations. The nursing facility must respect the resident's right to decide plan of care goals and treatment choices including acceptance or refusal of plan of care recommendations. The nursing facility must respect the resident's wishes regarding which individuals, if any, the resident wants to take part in resident plan of care functions and 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. 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.¹⁴⁷

The nursing home must ensure that each comprehensive plan of care designates the discipline of the individuals responsible for carrying out the program and is reviewed at least quarterly by qualified staff, as part of the ongoing process of monitoring the resident's needs and preferences.¹⁴⁸

11.2.5.3 Discharge Planning

The nursing home shall ensure the resident's right to obtain and maintain the highest practical physical, mental, and psychosocial well being and to reside in the most independent setting possible. To ensure this, the nursing home must utilize a formal resident discharge planning system with identical policies and procedures for all residents regardless of source of payment. The resident and/or the resident's legal representative must be notified in writing of the nursing home's discharge planning system when the resident is admitted or as soon as practical after the resident is admitted.¹⁴⁹ The nursing home must prepare a detailed written transfer or discharge plan for each resident who is determined to have potential for a transfer or discharges within the next three months after admission.¹⁵⁰

If a resident is admitted whose transfer is not anticipated within the next three months following admission, the nursing home must document the specific reasons the transfer or discharge is not anticipated in that time frame and review for potential transfer or discharge at the time of the quarterly comprehensive care plan reviews.¹⁵¹

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

¹⁴⁵ WAC 388-97-090 (2).

¹⁴⁶ WAC 388-97-090 (3).

¹⁴⁷ WAC 388-97-090 (4).

¹⁴⁸ WAC 388-97-090 (5).

¹⁴⁹ WAC 388-97-032 (1).

¹⁵⁰ WAC 388-97-032 (2).

¹⁵¹ WAC 388-97-032 (3).

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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.¹⁵²

The nursing home must coordinate all resident transfers and discharges with the resident, the resident's representative and any other involved individual or entity.¹⁵³

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

- A recapitulation of the resident's stay;
- A final summary of the resident's status 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
- 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.¹⁵⁴

11.2.6 Quality of Care

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.¹⁵⁵

Based on the comprehensive assessment of a resident, the nursing home must ensure that 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 bathe, dress, groom ambulate, use the toilet, eat and use speech, language, or other functional communication systems.¹⁵⁶

The nursing home must ensure that 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.¹⁵⁷

The nursing home must ensure that the appropriate care and services are provided to the resident for the areas listed in WAC 388-97-110 (3), as applicable in accordance with the resident's individualized assessments and plan of care.

The nursing home must ensure that each resident is monitored for desired responses and undesirable side effects of prescribed drugs.¹⁵⁸

11.2.7 Nursing Services

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.¹⁵⁹

¹⁵² WAC 388-97-032 (5).

¹⁵³ WAC 388-97-032 (6).

¹⁵⁴ WAC 388-97-032 (7).

¹⁵⁵ WAC 388-97-110 (1).

¹⁵⁶ WAC 388-97-110 (2)(a).

¹⁵⁷ WAC 388-97-110 (2)(b).

¹⁵⁸ WAC 388-97-110 (4).

¹⁵⁹ WAC 388-97-115 (1).

The nursing home must 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 have a full time director of nursing service who is a registered nurse.¹⁶⁰

The nursing home must have a registered nurse on duty directly supervising resident care a minimum of sixteen hours per day, seven days per week and a registered nurse or licensed practical nurse on duty directly supervising resident care the remaining eight hours per day, seven days per week.¹⁶¹

The nursing home must ensure that staff responds 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.¹⁶²

The director of nursing services is responsible for coordinating the plan of care for each resident, ensuring that registered nurses and licensed practical nurses comply with Washington State law, and ensuring that the nursing care provided is based on the nursing process in accordance with nationally recognized and accepted standards of professional nursing practice.¹⁶³

11.2.8 Dietary Services

The nursing home must provide each resident with a nourishing, palatable, well-balanced diet that meets their daily nutritional and special dietary needs.¹⁶⁴ The food should be served in an attractive manner and at temperatures safe and acceptable to each resident.¹⁶⁵ The nursing home must 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.¹⁶⁶

The nursing home must provide a minimum of three meals in each twenty-four period, at regular times similar to normal meal times in the community.¹⁶⁷ When in season, the nursing home must make fresh fruits and vegetables available to residents on a daily basis.¹⁶⁸ The nursing home must make reasonable efforts to accommodate individual mealtime preferences and portion sizes, as well as preferences for between meal and evening snacks when not medically contraindicated; offer a late breakfast or an alternative to the regular breakfast for late risers; and provide food consistent with the cultural and religious needs of the residents.¹⁶⁹

The nursing home must use input from residents and the resident council, if the nursing home has one, in meal planning, scheduling, and the meal selection process.¹⁷⁰

The nursing home must:

- Encourage residents to continue eating independently;
- Provide effective adaptive utensils as needed to promote independence;

¹⁶⁰ WAC 388-97-115 (2).

¹⁶¹ WAC 388-97-115 (3). "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. *Id.*

¹⁶² WAC 388-97-115 (4).

¹⁶³ WAC 388-97-115 (5).

¹⁶⁴ WAC 388-97-120 (1).

¹⁶⁵ WAC 388-97-120 (2).

¹⁶⁶ WAC 388-97-120 (4).

¹⁶⁷ WAC 388-97-12010 (1).

¹⁶⁸ WAC 388-97-12010 (2).

¹⁶⁹ WAC 388-97-12010 (3).

¹⁷⁰ WAC 388-97-12010 (4).

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- Allow sufficient time for eating in a relaxed manner;
- Provide individualized assistance as needed;
- 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
- Offer a substitute of similar nutritive value when a resident refuses food served.¹⁷¹

The nursing home must have sufficient support personnel capable of carrying out the functions of dietary services. The nursing home must employ a qualified dietitian either full-time, part-time or on a consultant basis who must:

- 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;
- Prepare dated menus for general and modified diets at least three weeks in advance;
- Provide services which include: nutrition assessment; liaison with medical and nursing staff and administrator; in-service training; and guidance to the director of food service and food service staff.¹⁷²

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.¹⁷³

The nursing home must ensure that menus are followed, 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 note any changes to the regular menu on the posted menu.¹⁷⁴

The nursing home must ensure that residents' diets are provided as prescribed by the physician and provide supplementary fluid and nourishment in accordance with each resident's needs as determined by the assessment process.¹⁷⁵ 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.¹⁷⁶

11.2.9 Physician Services

The nursing home must ensure that the resident is seen by the physician whenever necessary.¹⁷⁷ A physician must personally approve in writing a recommendation that an individual be admitted to a nursing home.¹⁷⁸

The nursing home must ensure that:

- The medical care of each resident is supervised by a physician;
- Another physician supervises the medical care of residents when their attending physician is unavailable; and
- Physician services are provided twenty-four hours per day, in case of emergency.¹⁷⁹

¹⁷¹ WAC 388-97-12020.

¹⁷² WAC 388-97-12030 (1).

¹⁷³ WAC 388-97-12030 (2). "Food service manager" means an individual who is a qualified dietitian, or an individual who has completed a dietetic technician or dietetic assistant training program, correspondence or classroom, approved by the American Dietetic Association/Dietary Manager Association; and receives regularly scheduled consultation from a qualified dietitian.

¹⁷⁴ WAC 388-97-12040.

¹⁷⁵ WAC 388-97-12050.

¹⁷⁶ WAC 388-97-12060.

¹⁷⁷ WAC 388-97-125 (1).

¹⁷⁸ WAC 388-97-125 (2).

¹⁷⁹ WAC 388-97-125 (3).

The physician must write, sign and date progress notes at each visit; sign and date all orders; and in Medicare and Medicare/Medicaid certified facilities, review the resident's total program of care, including medications and treatments, at each federally required visit.¹⁸⁰

Except as prohibited by law,¹⁸¹ a physician may delegate tasks to a physician's assistant or advanced registered nurse practitioner who is licensed by the state, acting within the scope of practice as defined by state law, and under the supervision of the physician.¹⁸²

The attending physician, or the physician-designated advanced registered nurse practitioner or physician's assistant must participate in the interdisciplinary plan of care process; 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 decision; and order resident self-medication when appropriate.¹⁸³

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

- A summary or summaries of the resident's current health status, including history and physical findings reflecting a review of systems;
- Orders, as necessary for medications, treatments, diagnostic studies, specialized rehabilitative services, diet, and any restrictions related to physical mobility; and
- Plans for continuing care and discharge.¹⁸⁴

11.2.10 Pharmacy Services

The nursing home must obtain routine and emergency drugs and biologicals for its residents under an agreement with a licensed pharmacy. The facility must ensure that pharmaceutical services meet the needs of each resident and establish and monitor systems for the accurate acquiring, receiving, dispensing, and administering of all drugs and biologicals. The nursing home must employ or obtain the services of a licensed pharmacist who in turn must provide consultation on all aspects of the provision of pharmacy services in the nursing home and ensure that nursing home drug records are in order. In addition, the pharmacist must perform regular reviews at least once each month of each resident's drug therapy and document and report drug irregularities to the attending physician and the director of nursing.¹⁸⁵

Drugs and biologicals used in the nursing home must be labeled and stored in accordance with applicable state and federal laws.¹⁸⁶ Pharmaceutical services must meet recognized and accepted standards of pharmacy practice and 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.¹⁸⁷

The nursing home must ensure education and training for nursing home staff by the licensed pharmacist on drug-related subjects including, but not limited to: (1) recognized and accepted standards of pharmacy practice

¹⁸⁰ WAC 388-97-125 (4).

¹⁸¹ For a listing of prohibitions and qualifications see WAC 388-97-125 (6)-(9).

¹⁸² WAC 388-97-125 (5).

¹⁸³ WAC 388-97-125 (11).

¹⁸⁴ WAC 388-97-125 (12).

¹⁸⁵ WAC 388-97-135 (1).

¹⁸⁶ WAC 388-97-135 (2).

¹⁸⁷ WAC 388-97-135 (3).

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and applicable pharmacy laws and rules; (2) appropriate monitoring of residents to determine desired effect and undesirable side effects of drug regimens; and (3) use of psychotropic drugs.¹⁸⁸

The facility must ensure:

- Reference materials regarding medication administration, adverse reactions, toxicology, and poison center information are readily available;
- Pharmacist monthly drug review reports are acted on in a timely and effective manner;
- Accurate detection, documentation, reporting and resolution of drug errors and adverse drug reactions; and
- Only individuals authorized by state law to do so will receive drug orders and administer drugs.¹⁸⁹
- The resident has the right to a choice of pharmacies when purchasing prescription and nonprescription drugs as long as the medications are delivered in a unit of use compatible with the established system of the facility for dispensing drugs and the medications are delivered in a timely manner to prevent interruption of dose schedule.¹⁹⁰

11.2.11 Infection Control

The nursing home must 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.¹⁹¹ In addition, the nursing home must prohibit any employee with a communicable disease or infected skin lesion from having direct contact with residents or their food, if direct contact could transmit the disease. The nursing home must require its staff to wash their hands after each direct resident contact for which hand washing is indicated by accepted professional practice.¹⁹² The nursing home must have an infection control program that investigates, controls, and prevents infections in the facility. The nursing home must maintain a record of incidences of infection and corrective actions taken.¹⁹³

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.¹⁹⁴

The nursing home must provide areas, equipment, and supplies to implement an effective infection control program and ensure the ready availability of hand cleaning supplies and appropriate drying equipment or material at each sink; safe use of disposable and single service supplies and equipment; effective procedures for cleaning, disinfecting or sterilizing according to equipment use; 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 safe and effective procedures for disinfecting all bathing and therapy tubs between each resident use and disinfecting all swimming pools, spas and hot tubs.¹⁹⁵

11.2.12 State Inspections

11.2.12.1 Inspections

¹⁸⁸ WAC 388-97-135 (4)(a).

¹⁸⁹ WAC 388-97-135 (4)(b)-(e).

¹⁹⁰ WAC 388-97-135 (5).

¹⁹¹ WAC 388-97-140 (1)(a).

¹⁹² WAC 388-97-140 (1)(b).

¹⁹³ WAC 388-97-140 (2).

¹⁹⁴ WAC 388-97-140 (4).

¹⁹⁵ WAC 388-97-140 (5).

DSHS may inspect nursing homes at any time in order to determine compliance with State and Federal law. State inspections are categorized as preoccupancy inspections, licensing inspections, revisits, or complaint investigations.¹⁹⁶ The nursing home must ensure that the DSHS inspectors have access to all nursing home residents, staff, and all resident records. The nursing home must not willfully interfere or fail to cooperate with the inspectors. Examples of willful interference or failure to cooperate include, but are not limited to, not allowing the DSHS inspectors to talk to residents or nursing home staff in private or not allowing department staff access to resident records.¹⁹⁷

If an inspection results in any deficiencies being found, the DSHS inspectors will provide the nursing home with written documentation of the deficiencies, the requirement that each deficiency violates, and the reasons for the determination of noncompliance with the requirements.¹⁹⁸

11.2.12.2 Severity and Scope of Deficiencies

11.2.12.2.1 Severity

The DSHS inspectors will determine the severity of any deficiency found. Factors that may be considered in determining the severity of a deficiency may include, but are not limited to:

- Whether harm to the resident has occurred, or could occur, including but not limited to a violation of resident's rights;
- The impact of the actual or potential harm on the resident; and
- The degree to which the nursing home failed to meet the resident's highest practicable physical, mental, and psychosocial well-being.¹⁹⁹

The State of Washington has established four defined levels of severity:

Severity Level 4—Imminent Harm or Immediate Jeopardy

Level 4 means that a resident's health or safety is imminently threatened or immediately jeopardized as a result of deficient nursing home practice. This level includes actual harm or potential harm, or both, to resident's health or safety that has had or could have a severe negative outcome or critical impact on the resident's well-being, including death or severe injury. Severity Level 4 requires *immediate* corrective action to protect the health and safety of residents.²⁰⁰

Severity Level 3—Actual Harm²⁰¹

Level 3 means that actual harm has occurred to resident(s) as a result of a deficient nursing home practice. Level 3 is divided into three sub-categories: "serious harm," "moderate harm," or "minimal harm."

"Serious Harm" is harm that results in a negative outcome that significantly compromises the resident's ability to maintain and/or reach the highest practicable physical, mental and psychosocial well-being. Serious harm does not constitute imminent danger/immediate jeopardy (Severity Level 4).²⁰²

¹⁹⁶ WAC 388-97-605 (1).

¹⁹⁷ WAC 388-97-605 (4).

¹⁹⁸ WAC 388-97-605 (2).

¹⁹⁹ WAC 388-97-640 (1).

²⁰⁰ WAC 388-97-640 (2)(a).

²⁰¹ WAC 388-97-640 (2)(b)

²⁰² WAC 388-97-640 (2)(b)(i).

“**Moderate Harm**” is harm that results in a negative outcome that more than slightly but less than significantly compromises the resident’s ability to maintain and/or reach the highest practicable physical, mental and psychosocial well-being.²⁰³

“**Minimal Harm**” is harm that results in a negative outcome that to a small degree compromises the resident’s ability to maintain and/or reach the highest practicable physical, mental and psychosocial well-being.²⁰⁴

Severity Level 2—Potential for Harm

Level 2, “potential for harm” means that if the deficient nursing home practice is not corrected, residents may suffer actual harm.²⁰⁵

Severity Level 1—No Harm or Minimal Impact

Level 1 means a deficient nursing home practice that does not compromise the resident’s ability to maintain or reach, or both, the highest practicable physical, mental and psychosocial well-being. Deficiencies at Level 1 are those that have no direct or potential for no more than minimal impact on the resident.²⁰⁶

11.2.12.2.2 Scope of a Deficiency

“Scope of a Deficiency” means the frequency, incidence, or extent of the occurrence of the deficiency and are identified as being within one of three categories: “Isolated or Limited Scope,” “Moderate or Pattern Scope,” or “Widespread or Systemic Scope.”²⁰⁷ Determination of scope is made by DSHS within its sole discretion.²⁰⁸ When making its determination of scope, DSHS may consider the size of the nursing home, the size of its sample, the number and location of affected residents, whether the deficiency applies to all or a subset of the residents, and any other factors DSHS considers relevant to the particular circumstances.²⁰⁹

“**Isolated or limited scope**” means a relatively few number of residents have been affected or have the potential to be affected, by the deficient nursing home practice.²¹⁰

“**Moderate or pattern scope**” means more than an isolated and less than a widespread number of residents have been affected, or have the potential to be affected by the deficient nursing home practice.²¹¹

“**Widespread or systemic scope**” means most or all of the residents are affected or have the potential to be affected, by the deficient nursing home practice.²¹²

²⁰³ WAC 388-97-640 (2)(b)(ii).

²⁰⁴ WAC 388-97-640 (2)(b)(iii).

²⁰⁵ WAC 388-97-640 (2)(c).

²⁰⁶ WAC 388-97-640 (2)(d).

²⁰⁷ WAC 388-97-640 (3).

²⁰⁸ WAC 388-97-640 (5).

²⁰⁹ WAC 388-97-640 (5)(a)-(e).

²¹⁰ WAC 388-97-640 (4)(a).

²¹¹ WAC 388-97-640 (4)(b).

²¹² WAC 388-97-640 (4)(c).

11.2.12.3 Plan of Correction

Within ten *calendar days* of notification of any deficiencies, the nursing home must prepare, sign, date, and provide to DSHS a detailed written plan of correction (POC). The POC must notify DSHS of the date by which the nursing home will complete the correction of the cited deficiencies.²¹³ A plan of correction is not required for deficiencies at a severity level 1 that is found to be isolated in scope unless specifically requested by DSHS.²¹⁴

In the case of actual or imminent threat to resident health or safety/immediate jeopardy (severity level 4), DSHS may require the nursing home to submit a document alleging that the imminent threat has been removed within a time frame specified by DSHS. *This document is in addition to the POC and does not substitute for the POC.* The document must specify the steps the nursing home has taken or will take to correct the imminent harm.²¹⁵

In order to be acceptable, the POC must:

- Explain how the nursing home will take action to correct the deficiency as it relates to those affected by the deficiency;
- Address how the nursing home will identify other residents having the potential to be affected by the same deficient practice;
- Explain what measures will be put into place or systemic changes made to ensure that the deficient practice will not recur;
- Indicate how the nursing home plans to monitor its performance to make sure that solutions are sustained, including how the plan of correction will be integrated into the nursing home's quality assurance system;
- State the date by which the correction will be made and provide the title of the person who is responsible for assuring that the correction will be long-lasting.²¹⁶

PRACTICE TIP

When facilities are drafting their plan of correction they should refer to the five elements listed above and make sure that they have addressed each of these elements individually for each deficiency cited, as well as for each resident affected by the deficiency cited.

PRACTICE TIP

While it is important to address each of the five elements listed above, the facility should guard against the use of over-inclusive language in the plan of correction. Always remember that whatever the facility lists as its tasks in the plan of correction will have to actually be addressed and met. Therefore, avoid using phrases such as “the facility will review all of its procedures” when addressing just those procedures found deficient will suffice. If the facility states that it will “review all of its procedures,” DSHS will expect the facility to prove that it has, in fact, reviewed all of its procedures.

11.2.12.4 Informal Department Review

The nursing home licensee has the right to an informal department review of disputed state or federal citations, or both.²¹⁷ For Medicare or Medicaid certified nursing home, this informal department review is

²¹³ WAC 388-97-610 (1). The POC must be completed regardless of whether the nursing home requests an informal department review under WAC 388-97-620, discussed below.

²¹⁴ WAC 388-97-610 (2).

²¹⁵ WAC 388-97-610 (3).

²¹⁶ WAC 388-97-615 (1).

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the **only** opportunity for the nursing home to dispute the federal deficiency report unless a federal sanction is imposed.²¹⁸ A licensee must make a written request for an informal department review within ten calendar days of receipt of the department's written deficiency citation(s) report. The request must be directed to the department's designated local Aging and Adult Services Administration (AASA) office and must identify the deficiencies being disputed.²¹⁹

At the informal department review, the licensee or nursing home may present for consideration documentation and verbal explanations related to the disputed deficiencies.²²⁰ The department may modify or delete the disputed deficiencies. If the department does modify or delete the disputed federal or state deficiencies, or both, the licensee or nursing home **must** modify or delete the relevant portions of the plan of correction within five days of receipt of the modified or deleted deficiencies.²²¹

11.2.12.5 Remedies

11.2.12.5.1 Mandatory Remedies

The department must impose a stop placement order when the department determines that the nursing home is not in substantial compliance with applicable laws or regulations and the cited deficiencies either jeopardize the health and safety of the residents or seriously limit the nursing home's capacity to provide adequate care.²²² The department may also be required to deny Medicaid payments in some situations.²²³

11.2.12.5.2 Optional Remedies

When the department has determined that a licensee or nursing home has failed to comply with the Washington statutes applicable to nursing homes or has failed or refuses to comply with federal Medicaid requirements, the department may impose any or all of the following optional remedies:²²⁴

- Stop placement;
- Immediate closure of the nursing home and emergency transfer of residents;
- Civil fines;
- Appoint temporary management;
- Petition the court for appointment of a receiver;
- License denial, revocation, suspension, or nonrenewal;
- Denial for payment for new Medicaid admissions;
- Termination of the Medicaid provider agreement;
- Department on-site monitoring; and
- Other reasonable conditions as set by the department.

The department **must** consider the imposition of one or more optional remedies when the nursing home has:²²⁵

²¹⁷ WAC 388-97-620 (2).

²¹⁸ WAC 388-97-620 (1).

²¹⁹ WAC 388-97-620 (3).

²²⁰ WAC 388-97-620 (4).

²²¹ WAC 388-97-620 (5). If the licensee or nursing home is unwilling to provide the modified plan of correction, the department may impose a per day civil fine.

²²² WAC 388-97-630 (1).

²²³ WAC 388-97-630 (2).

²²⁴ WAC 388-97-630 (4).

²²⁵ WAC 388-97-635 (2).

- A history of being unable to sustain compliance;
- One or more deficiencies on one inspection at severity level 2 or higher;
- Been unable to provide an acceptable plan of correction after receiving assistance from the department about necessary revisions;
- One or more deficiencies cited under general administration and/or nursing services;
- One or more deficiencies related to retaliation against a resident or an employee for whistle blower activity;
- One or more deficiencies related to discrimination against a Medicare or Medicaid client;
- Willfully interfered with the performance of official duties by a long-term care ombudsman.

The department may also consider whatever other relevant factors it deems appropriate when determining what optional remedy or remedies to impose in particular circumstances.²²⁶

When the department imposes an optional remedy or remedies, the department will select more severe penalties for nursing homes that have deficiencies that are:

- Uncorrected upon revisit;
- Recurring (repeated);
- Pervasive; or
- Present a threat to the health, safety, or welfare of the residents.

The department will consider the severity and scope of cited deficiencies when determining which optional remedies to impose.²²⁷

11.2.12.6 Appeals

A licensee or nursing home may appeal the imposition of a penalty, an action by the department such as denial of a license, suspension of a license, or placing conditions on a license, or deficiencies cited on the state survey report.²²⁸ The applicant, licensee or nursing home must file a request for an administrative hearing with the Office of Administrative Hearings (OAH) within 20 days of receipt of written notification of the department's action.²²⁹

Orders of the department imposing a stop placement, license suspension, emergency closure, emergency transfer of residents, temporary management, or conditions on a license are effective immediately upon verbal or written notice and must remain in effect until they are rescinded by the department or through the state administrative appeals process.²³⁰ Deficiencies cited on the federal survey report may not be appealed through the state. If a federal remedy is imposed, the CMS will notify the nursing facility of appeal rights under the federal administrative appeals process.²³¹

11.2.13 Admission, Transfer, and Discharge

11.2.13.1 Admission

Nursing facilities must provide items, care, and services in accordance with federal and state law.²³² A nursing home must not require or request:

- Residents or potential residents to waive their rights to Medicare or Medicaid;

²²⁶ WAC 388-97-635 (3).

²²⁷ WAC 388-97-635 (5).

²²⁸ WAC 388-97-625 (2).

²²⁹ WAC 388-97-625 (5).

²³⁰ WAC 388-97-625 (6).

²³¹ WAC 388-97-625 (7).

²³² WAC 388-97-012.

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- Oral or written assurance that residents or potential residents are not eligible for, or will not apply for Medicare or Medicaid benefits; and
- A third party guarantee of payment to the facility as a condition of admission or expedited admission, or continued stay in the facility.²³³

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 requires the services provided by the facility and is eligible for Medicaid nursing facility services.²³⁴

A nursing facility must not:²³⁵

- Deny or delay admission or readmission of an individual to the facility because of the individual's status as a Medicaid recipient;
- Transfer a resident, except from a single room to another room within the facility, because of the resident's status as a Medicaid recipient;
- Discharge a resident from a facility because of the resident's status as a Medicaid recipient; or
- 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.

A nursing facility must maintain only one list of names of individuals seeking admission to the facility, which is ordered by date of request for admission. The nursing facility must offer admission to the individuals in the order they appear on the list 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 law.²³⁶

The nursing facility must retain the list of individuals seeking admission to the facility for one year from the month admission was requested²³⁷ and offer admission to the portions of the facility certified under Medicare and Medicaid without discrimination against persons eligible for Medicaid. A nursing facility must develop and implement written policies and procedures to ensure nondiscrimination.²³⁸

A nursing facility is permitted to give preferential admission to individuals who seek admission from a boarding home or from independent retirement housing if the nursing facility is owned by the same entity that owns the boarding home or independent housing and they are located in the same proximate geographic area.²³⁹

11.2.13.2 Utilization Review

To ensure 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. The

²³³ WAC 388-97-017 (2). The nursing 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. A nursing facility must inform the resident or the resident's representative, in writing, before or at the time of admission, that a third party may not be requested to personally guarantee payment to the nursing home. WAC 388-97-017 (3).

²³⁴ WAC 388-97-017 (4).

²³⁵ WAC 388-97-017 (5).

²³⁶ WAC 388-97-017 (6). There are a few noted exceptions where the facility can give a potential resident preferential admission treatment. These exceptions are discussed below.

²³⁷ WAC 388-97-017 (6)(b).

²³⁸ WAC 388-97-017 (8).

²³⁹ WAC 388-97-017 (7).

nursing facility must base its determination on an accurate, comprehensive assessment process and documentation by the resident's physician.²⁴⁰

When the nursing facility determines a resident no longer needs nursing facility care, the nursing facility must initiate transfer or discharge of the resident unless the resident voluntarily chooses to transfer or discharge.²⁴¹ Once a nursing facility initiates a transfer or discharge of a Medicaid recipient the resident will no longer be eligible for Medicaid nursing facility payment thirty days after the receipt of written notice of transfer or discharge or, 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.²⁴²

The department's home and community services may grant extension of a resident's Medicaid nursing facility payment when the department's home and community services staff determine the nursing facility is making a good faith effort to relocate the resident and a location appropriate to the resident's medical or other needs is not available.²⁴³

11.2.13.3 Transfer and Discharge Rights and Procedures

The nursing facility must comply with all federal and state laws concerning transfer or discharge of residents while a nursing home²⁴⁴ only needs to comply with state law.²⁴⁵ The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the nursing facility.²⁴⁶ A nursing facility must protect and promote the rights of each resident.²⁴⁷

A transfer or discharge of a resident from either a nursing facility or a nursing home includes the movement of a resident to a bed outside of the nursing facility whether that bed is in the same physical plant or not. Transfer and discharge does not refer to movement of a resident to a bed within the same nursing facility.²⁴⁸ A nursing facility must not transfer or discharge a resident unless:²⁴⁹

- The resident requests a transfer or discharge;
- The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;
- 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 nursing facility;
- The safety of individuals in the facility is endangered;
- The health of individuals in the facility would otherwise be endangered; or

²⁴⁰ WAC 388-97-037 (1).

²⁴¹ WAC 388-97-037 (2).

²⁴² WAC 388-97-037 (3)(a).

²⁴³ WAC 388-97-037 (3)(b).

²⁴⁴ Nursing Facilities are Medicaid certified to provide services to Medicaid recipients. Nursing homes are any facility licensed by the State of Washington under RCW 18.51 and, if Medicaid certified, would also be considered a nursing facility. WAC 388-97-005.

²⁴⁵ WAC 388-97-042 (1).

²⁴⁶ 42 C.F.R. § 483.10.

²⁴⁷ *Id.* Among other things, federal law requires that the resident be allowed to exercise their rights as a resident of the nursing facility and as a citizen of the United States; the resident be free from interference, coercion, or discrimination; the resident be notified of any changes; the resident's funds will be protected; the resident be given privacy and confidentiality; and the resident be allowed to examine any survey results.

²⁴⁸ 42 C.F.R. § 483.12.

²⁴⁹ WAC 388-97-042 (1). The listing in this WAC section mirrors the federal requirements in 42 C.F.R. § 483.12 (a)(2), except that the federal regulation also lists as a reason allowing transfer or discharge the closure of the facility.

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- The resident has failed, after reasonable and appropriate notice, to pay for a stay at the facility.

The nursing facility or nursing home must provide the resident with adequate notice prior to initiating transfer or discharge²⁵⁰ of the resident. The notice must:

- Be in writing, in a language the resident understands;
- Be given to the resident, the resident's surrogate decision maker, if any, the resident's family, and to the department;
- For nursing facilities, 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 nursing facility cannot meet the resident's urgent medical needs or (1) the resident's health has improved enough so that the resident no longer needs the services provided by the facility, or (2) the safety of individuals in the facility is endangered, or (3) the health of individuals in the facility is endangered;
- For nursing homes, be provided fifteen days in advance of a transfer or discharge initiated by the nursing home, unless the transfer is an emergency.

The nursing home must provide sufficient preparation and orientation to the resident to ensure the safe and orderly transfer or discharge of the resident from the nursing home.²⁵¹ The nursing home must also 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.²⁵²

The nursing home must develop a bed-hold policy that is consistent with any bed-hold policy that the department develops.²⁵³ The bed-hold policy must be in writing and provided to the resident and a family member before the resident is transferred or goes on therapeutic leave.²⁵⁴ The bed-hold policy must state:

- The number of day, if any, the nursing home will hold a resident's bed pending return from hospitalization or social/therapeutic leave;
- That a Medicaid-eligible resident, whose hospitalization or social/therapeutic leave exceed the maximum number of bed-hold days will be readmitted to the first available semi-private bed, provided the resident needs the nursing facility's services; and
- 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.

Nursing facilities must send a copy of the federally required transfer or discharge notice to the department.²⁵⁵

For Medicare or Medicaid certified facilities, the skilled nursing facility (SNF) or nursing facility (NF) that initiate a transfer or discharge of any resident, regardless of payor status, must:²⁵⁶

- 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;

²⁵⁰ The requirements for discharge planning are addressed in Section 11.2.13.3, at page 35-36, above.

²⁵¹ WAC 388-97-042 (3)(a).

²⁵² WAC 388-97-042 (3)(b).

²⁵³ WAC 388-97-042 (3)(c).

²⁵⁴ WAC 388-97-042 (4).

²⁵⁵ WAC 388-97-042 (5). If the discharge is due to the resident's health improving sufficiently so that they do not need the services provided by the facility, the notice must be sent to the department's home and community services section. If the discharge is due to the facility not being able to meet the resident's needs, or because the resident poses a risk to the health or safety of other individuals, or because the resident has failed to pay for, or to have paid under Medicare or Medicaid, a stay at the facility, the notice must be sent to the department's designated local office.

²⁵⁶ WAC 388-97-043 (1).

- Attach a department-designated hearing request form to the transfer or discharge notice;
- Inform the resident in writing, in a language and manner the resident can understand, that (1) 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 (2) 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 (3) the nursing home will assist the resident in requesting a hearing to appeal the transfer or discharge decision.

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.²⁵⁷

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.²⁵⁸

11.2.14 Resident Restraint and Abuse Issues

11.2.14.1 Resident Restraint

Under state and federal law, residents have a right to be free from physical or chemical restraints if these restraints are used for the purpose of the facility's discipline or convenience and not required to treat the resident's medical symptoms.²⁵⁹ If a restraint is used to treat a resident's medical symptoms, the physician should carefully document substantiating information in the resident's medical record.²⁶⁰

The nursing home must develop and implement written policies and procedures addressing:

- The emergency use of restraints;
- The use of chemical and physical restraints required for the resident's medical symptoms;
- The personnel authorized to administer restraints in an emergency; and
- Monitoring and controlling the use of restraints.²⁶¹

Physical restraints may be used in an emergency when it is determined that they are necessary to prevent a resident from inflicting injury to himself or herself or to others.²⁶² In these situations the restraint must be in the least restrictive form possible.²⁶³ A physician's order authorizing the restraints must be obtained within twenty-four hours and the physician's order must include treatments to assist in resolving the emergency situation and eliminating the need for restraints. The resident must be released from the restraint as soon as possible when the emergency no longer exists.²⁶⁴

The nursing home must ensure that any resident physically restrained is released at intervals not to exceed every two hours and for periods long enough to provide for ambulation, exercise, elimination, food and fluid intake, and socialization as independently as possible.²⁶⁵

If either chemical or physical restraints are necessary, the nursing home must ensure that:

²⁵⁷ WAC 388-97-043 (2).

²⁵⁸ WAC 388-97-047.

²⁵⁹ 42 C.F.R. § 483.13; WAC 388-97-075 (1)(a).

²⁶⁰ WAC 388-97-075 (3)(c).

²⁶¹ WAC 388-97-075 (2).

²⁶² WAC 388-97-075 (3)(a).

²⁶³ WAC 388-97-075 (3)(b).

²⁶⁴ WAC 388-97-075 (3)(c).

²⁶⁵ WAC 388-97-075 (5).

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- The informed consent process is followed;²⁶⁶
- The resident's plan of care provides approaches to reduce or eliminate the use of restraint, where possible; and
- The use of the restraint is related to a specific medical need or problem identified through a multidisciplinary assessment.²⁶⁷

The OBRA survey, certification, and enforcement regulations effective July 1, 1995 contain information and detail about psychotropic medications including but *not* limited to dosing requirements and limitations.²⁶⁸

PRACTICE TIP

In the use of chemical restraints, especially psychotropic medications, it is important to distinguish between medications that are used to treat medical symptoms and those that merely sedate the resident for convenience or discipline. Some medications may be used to treat medical symptoms, but a side effect may be heavily sedating. It is important that the physician titrate the dose to a level that enables the resident to remain as independent as possible while still treating the symptoms.

11.2.14.2 Prevention of Abuse

It is the intent of both federal and state law to ensure timely identification, investigation, and the prevention of abuse, neglect, and injuries of unknown source.

11.2.14.2.1 Federal Definitions

Effective July 1, 1995, the federal definition of resident abuse means “the willful infliction of injury, unreasonable confinement, intimidation or punishment with resulting physical harm, pain or mental anguish, or deprivation by an individual, including a caretaker of goods or services that are necessary to attain or maintain physical, mental, and psychological well-being.”²⁶⁹ Furthermore, the definition of neglect is “failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.”²⁷⁰

11.2.14.2.2 Washington State Definitions

Washington state law defines abuse or neglect as “the non-accidental physical injury or condition, sexual abuse, or negligent treatment of a state hospital patient under circumstances which indicate that the patient’s health, welfare, or safety is harmed thereby.”²⁷¹ Negligent treatment is defined as “an act or omission which evinces a serious disregard of consequences of such magnitude as to constitute a clear and present danger to the patient’s health, welfare, or safety.”²⁷²

Each nursing home resident has the right to be free from verbal, sexual, physical and mental abuse, corporal punishment, and involuntary seclusion.²⁷³ The nursing home must develop and implement *written* policies and procedures that prohibit abandonment, abuse, and neglect of

²⁶⁶ The informed consent process is detailed in WAC 388-97-060 and is discussed, above.

²⁶⁷ WAC 388-97-075 (4).

²⁶⁸ Refer to CMS Pub. 100-07, State Operations Manual, Appendix PP “Guidance to Surveyors - Long Term Care Facility,” Tags F329-331, *available at* http://cms.hhs.gov/manuals/Downloads/som107ap_pp_guidelines_tcf.pdf; 42 C.F.R. § 483.25(a)(1) and § 483.25 (1)(2) (i) and (ii).

²⁶⁹ 42 C.F.R. § 488.301.

²⁷⁰ 42 C.F.R. § 488.301.

²⁷¹ RCW 70.124.020 (8).

²⁷² RCW 70.124.020 (9).

²⁷³ WAC 388-97-076 (1).

residents, financial exploitation, and misappropriation of resident property and require staff to report possible abuse and other related incidents.²⁷⁴

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 DSHS, other appropriate officials, and the administrator of the facility. The reports must be made through established procedures in accordance with state law and guidelines.²⁷⁵

The nursing home must be able to prove that all alleged violations are thoroughly investigated.²⁷⁶ While an investigation is in progress, the nursing home must prevent any further potential abandonment, abuse, neglect, financial exploitation, or misappropriation of resident property.²⁷⁷ The results of all investigations must be reported to the administrator or his or her designated representative and to other state officials as appropriate under state law **within five days of the incident**.²⁷⁸ Appropriate action must be taken if the alleged violation is verified.²⁷⁹

11.2.15 Criminal History, Disclosure, Background Checks and Inquiries

Nursing homes must ensure that they do not employ individuals who are disqualified from nursing home employment pursuant to WAC 388-97-203.²⁸⁰ Washington law disqualifies from employment individuals who have been found by a court of law to have abused or neglected a minor or vulnerable adult; or any persons who have had a finding entered into the state nurse aide registry concerning abuse, neglect, mistreatment of residents, and misappropriation of a resident's property²⁸¹.

For each employee, whether hired directly or by agreement or contract, volunteer, or student, the nursing home must run a background inquiry request through one of the following:

- The Washington state patrol;
- DSHS;
- The most recent employer if that employer was a nursing home, boarding home, or adult family home, and the employee's termination of employment from that employer occurred within the last twelve months of the current employment application and provided the inquiry was completed by the department of the Washington state patrol within the two years of the current date of application; or
- A nurse pool agency licensed by the State of Washington provided the background inquiry was completed by the department of the Washington state patrol within two years before the current date of employment in the nursing home; and
- A nursing home may not rely on a criminal background inquiry from a former employer if the nursing home has reason to believe that the applicant has, or may have, a disqualifying conviction or finding.²⁸²

A nursing home must notify appropriate licensing or certification agencies of any individual resigning or being terminated as a result of having a conviction record.²⁸³ Before the nursing home employs an individual or

²⁷⁴ WAC 388-97-076 (2).

²⁷⁵ WAC 388-97-076 (5).

²⁷⁶ WAC 388-97-076 (6)(a).

²⁷⁷ WAC 388-97-076 (6)(b).

²⁷⁸ WAC 388-97-076 (6)(c).

²⁷⁹ *Id.*

²⁸⁰ WAC 388-97-076 (9).

²⁸¹ WAC 388-97-203.

²⁸² WAC 388-97-202 (1).

²⁸³ WAC 388-97-202 (2)(b).

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allows them to work as a volunteer, the nursing home must inform the individual that the nursing home must make a background inquiry, require the individual to sign a disclosure statement, under penalty of perjury, and require the individual to sign a statement authorizing the nursing home, DSHS, and the Washington state patrol, to make the background inquiry.²⁸⁴ The individual needs to be informed that they may request a copy of the completed background inquiry and,²⁸⁵ in any event, must be told of the background inquiry results within seventy-two hours after receipt by the nursing home.²⁸⁶

All disclosure statements and background inquiry responses must be maintained in a confidential and secure manner and can only be used for employment purposes.²⁸⁷ The nursing home must maintain a record of findings from the background inquiry for no less than twelve months beyond the date of termination of employment.²⁸⁸

11.2.16 Assisted Living Facilities and Boarding Homes

Assisted Living Facilities (ALF's) address the needs of people who need assistance with the activities of daily living²⁸⁹ but wish to live as independently as possible for as long as possible. ALF's exist to bridge the gap between independent living and living in a long-term care facility. Residents in ALF's are not able to live by themselves but do not require constant care.²⁹⁰

The number of ALF's in Washington State has increased dramatically in that last five years. Along with this dramatic increase in ALF's has come increased regulation. In Washington State, ALF's are regulated as "Boarding Homes" pursuant to Chapter 18.20 RCW, Chapter 74.39A RCW, and WAC 388-78A-2030 *et seq.* It is beyond the scope of this writing to detail fully the statutes and regulations applicable to ALF's. However, it should be noted that many of the areas regulated for long-term care facilities are similarly regulated for ALF's.

²⁸⁴ WAC 388-97-202 (3)(a) and (c).

²⁸⁵ WAC 388-97-202 (3)(b).

²⁸⁶ WAC 388-97-202 (3)(d).

²⁸⁷ WAC 388-97-202 (4)(b) and (c).

²⁸⁸ WAC 388-97-202 (4)(e).

²⁸⁹ WAC 388-78A-2030 (1)(b).

²⁹⁰ WAC 388-78A-2030 (1).