

AMENDATORY SECTION (Amending WSR 09-03-029, filed 1/12/09, effective 2/12/09)

WAC 388-76-10000 Definitions. "**Abandonment**" means action or inaction by a person or entity with a duty of care for a frail elder or vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

"**Abuse**" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult:

(1) In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain or mental anguish; and

(2) Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(a) "**Sexual abuse**" means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse includes any sexual contact between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not consensual.

(b) "**Physical abuse**" means a willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or chemical or physical restraints unless the restraints are consistent with licensing requirements, and includes restraints that are otherwise being used inappropriately.

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

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

"**Adult family home**" means:

(1) A residential home in which a person or an entity (~~(are)~~) is licensed to provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to ~~((the person or persons providing the services; and))~~ a licensed operator, resident manager, or caregiver, who resides in the home.

(2) (~~For the purposes of~~) As used in this chapter, (any person or entity who has been granted a license) the term "entity" includes corporations, partnerships and limited liability companies, and the term "adult family home" includes the person or entity that is licensed to operate an adult family home.

"Affiliated with an applicant" means any person listed on the application as a partner, officer, director, resident manager, or majority owner of the applying entity, or is the spouse or domestic partner of the applicant.

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

"Capacity" means the maximum number of persons in need of personal or special care who are permitted to reside in an adult family home at a given time (and). The capacity includes:

(1) The number of related children or adults in the home who receive personal or special care and services; plus

(2) The number of residents the adult family home may admit and retain - the resident capacity. The capacity number listed on the license is the "resident capacity".

"Caregiver" for purposes other than training, means any person eighteen years of age or older responsible for providing direct personal or special care to a resident and who is not the provider, entity representative, a student or volunteer.

"Dementia" is defined as a condition documented through the assessment process required by WAC 388-76-10335.

"Department" means the Washington state department of social and health services.

"Department case manager" means the department authorized staff person or designee assigned to negotiate, monitor, and facilitate a care and services plan for residents receiving services paid for by the department.

"Developmental disability" means:

(1) A person who meets the eligibility criteria defined by the division of developmental disabilities under WAC 388-823-0040; or

(2) A person with a severe, chronic disability which is attributable to cerebral palsy or epilepsy, or any other condition, other than mental illness, found to be closely related to mental retardation which results in impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation, and requires treatment or services similar to those required for these persons (i.e., autism); and

(a) The condition was manifested before the person reached age eighteen;

(b) The condition is likely to continue indefinitely; and

(c) The condition results in substantial functional limitations in three or more of the following areas of major life activities:

(i) Self-care;

(ii) Understanding and use of language;

(iii) Learning;

(iv) Mobility;

(v) Self-direction; and

(vi) Capacity for independent living.

"Direct supervision" means oversight by a person who has demonstrated competency in the basic training and specialty training if required, or who has been exempted from the basic

training requirements and is:

- (1) On the premises; and
- (2) Quickly and easily available to the caregiver.

"Domestic partners" means two adults who meet the requirements for a valid state registered domestic partnership as established by RCW 26.60.030 and who have been issued a certificate of state registered domestic partnership.

~~((**"Entity provider"** means any corporation, partnership, association, or limited liability company that is licensed under this chapter to operate an adult family home.))~~

"Financial exploitation" means the illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any person for any person's profit or advantage other than for the vulnerable adult's profit or advantage.

"Entity representative" means the individual designated by ~~((an entity))~~ a provider who is responsible for the daily operation of the adult family home and who meets the requirements of this chapter and chapter 388-112 WAC.

"Home" means adult family home.

"Indirect supervision" means oversight by a person who:

- (1) Has demonstrated competency in the basic training and specialty training if required; or
- (2) Has been exempted from the basic training requirements; and
- (3) Is quickly and easily available to the care giver, but not necessarily on-site.

"Inspection" means a review by department personnel to determine the adult family home's compliance with this chapter and chapters 70.128, 70.129, 74.34 RCW, and other applicable rules and regulations. The department's review may include an on-site visit.

"Management agreement" means a written, executed agreement between the adult family home and another individual or entity regarding the provision of certain services on behalf of the adult family home.

"Mandated reporter" means an employee of the department, law enforcement, officer, social worker, professional school personnel, individual provider, an employee of a facility, an employee of a social service, welfare, mental health, adult day health, adult day care, or hospice agency, county coroner or medical examiner, Christian Science practitioner, or health care provider subject to chapter 18.130 RCW. For the purpose of the definition of a mandated reporter, **"Facility"** means a residence licensed or required to be licensed under chapter 18.20 RCW (boarding homes), chapter 18.51 RCW (nursing homes), chapter 70.128 RCW (adult family homes), chapter 72.36 RCW (soldiers' homes), chapter 71A.20 RCW (residential habilitation centers), or any other facility licensed by the department.

"Medical device" as used in this chapter, means any piece of medical equipment used to treat a resident's assessed need.

- (1) A medical device is not always a restraint and should not be used as a restraint;
- (2) Some medical devices have considerable safety risks associated with use; and
- (3) Examples of medical devices with known safety risks when used are transfer poles, Posey or lap belts, and side rails.

"Medication administration" means giving resident medications

by a person legally authorized to do so, such as a physician, pharmacist or nurse.

"Medication organizer" is a container with separate compartments for storing oral medications organized in daily doses.

"Mental illness" is defined as an Axis I or II diagnosed mental illness as outlined in volume IV of the Diagnostic and Statistical Manual of Mental Disorders (a copy is available for review through the aging and disability services administration).

"Multiple facility provider" means ~~((an individual or entity))~~ a provider who is licensed to operate more than one adult family home.

"Neglect" means:

(1) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or

(2) An act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.41.100.

"Nurse delegation" means a registered nurse transfers the performance of selected nursing tasks to competent nursing assistants in selected situations. The registered nurse delegating the task retains the responsibility and accountability for the nursing care of the resident.

"Over-the-counter medication" is any medication that can be purchased without a prescriptive order, including but not limited to vitamin, mineral, or herbal preparations.

"Personal care services" means both physical assistance and/or prompting and supervising the performance of direct personal care tasks as determined by the resident's needs and does not include assistance with tasks performed by a licensed health professional.

"Physical restraint" means a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that restricts freedom of movement or access to his or her body, is used for discipline or convenience, and is not required to treat the resident's medical symptoms.

"Practitioner" includes a physician, osteopathic physician, podiatric physician, pharmacist, licensed practical nurse, registered nurse, advanced registered nurse practitioner, dentist, and physician assistant licensed in the state of Washington.

"Prescribed medication" refers to any medication (legend drug, controlled substance, and over-the-counter) that is prescribed by an authorized practitioner.

"Provider" means:

~~(1) Any person ((or entity that)) who is licensed ((under this chapter)) to operate an adult family home and meets the requirements of this chapter and chapter 388-112 WAC; or~~

~~(2) Any corporation, partnership, or limited liability company that is licensed under this chapter to operate an adult family home and meets the requirements of this chapter.~~

~~((**"Qualified staff"** means a person who:~~

~~(1) Is employed, directly or by contract, by an adult family~~

home; and

~~(2) Meets all of the requirements of a provider, entity representative, resident manager or caregiver.)~~

"Resident" means any adult unrelated to the provider who lives in the adult family home and who is in need of care. Except as specified elsewhere in this chapter, for decision-making purposes, the term "resident" includes the resident's surrogate decision maker acting under state law.

"Resident manager" means a person employed or designated by the provider ~~((or entity representative))~~ to manage the adult family home and who meets the requirements of this chapter and chapter 388-112 WAC.

"Significant change" means:

(1) A lasting change, decline or improvement in the resident's baseline physical, mental or psychosocial status;

(2) The change is significant enough so the current assessment and/or negotiated care plan do not reflect the resident's current status; and

(3) A new assessment may be needed when the resident's condition does not return to baseline within a two week period of time.

"Special care" means care beyond personal care services as defined in this section.

"Staff" means any person who:

(1) Is employed or used by an adult family home, directly or by contract, ~~((by an adult family home; and~~
~~(2))~~ to provide((s)) care and services to any resident.

(2) Staff must meet all of the requirements in this chapter and chapter 388-112 WAC.

"Unsupervised" means not in the presence of:

(1) Another employee or volunteer from the same business or organization; or

(2) Any relative or guardian of any of the children or developmentally disabled persons or vulnerable adults to which the employee, student or volunteer has access during the course of his or her employment or involvement with the business or organization.

"Usable floor space" means resident bedroom floor space exclusive of:

(1) Toilet rooms;

(2) Closets;

(3) Lockers;

(4) Wardrobes;

(5) Vestibules, and

(6) The space required for the door to swing if the bedroom door opens into the resident bedroom.

"Water hazard" means any body of water over twenty-four inches in depth that can be accessed by a resident, and includes but not limited to:

(1) In-ground, above-ground, and on-ground pools;

(2) Hot tubs, spas;

(3) Fixed-in-place wading pools;

(4) Decorative water features;

(5) Ponds; or

(6) Natural bodies of water such as streams, lakes, rivers, and oceans.

"Willful" means the deliberate or nonaccidental action or

inaction by an alleged perpetrator that he/she knew or reasonably should have known could cause a negative outcome, including harm, injury, pain or anguish.

"Vulnerable adult" includes a person:

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

NEW SECTION

WAC 388-76-10002 Department authority. Under chapter 70.128 RCW, the department is authorized to take actions in response to adult family home noncompliance or violations of requirements of this chapter or rules adopted under chapters 70.128, 70.129, and 74.34 RCW.

NEW SECTION

WAC 388-76-10003 Department access. (1) The applicant must allow the department staff to inspect all rooms in the home during the initial licensing of the home.

(2) During inspections, the adult family home must allow the department staff to examine all areas and articles in the home that are used to provide care or support to residents, including the physical premises and residents' records and accounts. The physical premises includes the buildings, grounds, and equipment. The provider's personal records unrelated to the operation of the adult family home are not subject to department review. The provider's separate bedroom will not be subject to review and inspection unless it is used to provide direct care to a resident.

(3) During complaint investigations, the adult family home must give department staff access to the entire premises and all records related to the residents or operation of the home. Department staff are authorized to interview the provider, family members, and individuals residing in the home including residents.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10015 License--Adult family home--Compliance required. (1) The licensed adult family home must comply with all the requirements established in chapters 70.128, 70.129, 74.34 RCW ~~((and))~~, this chapter ~~((or))~~ and other applicable laws and regulations including chapter 74.39A RCW; and

(2) The provider ~~((or entity representative))~~ is ultimately responsible for the operation of the adult family home.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10020 License--Ability to provide care and services. The ~~((adult family home))~~ provider must have the:

(1) Understanding, ability, emotional stability and physical health ~~((suited))~~ necessary to meet the psychosocial, personal, and special care needs of vulnerable adults; and

(2) Ability to meet all personal and business financial obligations.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10030 License capacity. (1) The ~~((department will only issue an))~~ adult family home ~~((license for))~~ capacity is more than one but not more than six, this includes residents and the number of children or adults in the home who receive personal or special care services.

(2) The resident capacity will be listed on the license and the home must not exceed the resident capacity.

(3) In determining the home's resident capacity, the department must consider the:

(a) Structural design of the house;

(b) Number and accessibility of bathrooms;

~~((c))~~ (c) Number and qualifications of staff;

~~((c))~~ (d) Total number of people living in the home who require personal or special care, including:

(i) Children; and

(ii) Other household members;

~~((d))~~ (e) The number of people for whom the home provides adult day care; and

~~((e))~~ (f) The ability for the home to safely evacuate all people living in the home.

(4) The adult family home resident capacity may be adjusted due to changes to the household mix or structure.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10050 License--Relinquishment. (1) The adult family home must relinquish ~~((the adult family home)),~~ or surrender, its license to the department:

(a) Within thirty days of the last resident leaving the home; or

(b) When the home moves all residents out of the home for purposes other than remodeling or construction; or

(c) When there has been no evidence of residents in the home during the last two inspections.

~~(2) ((The department may revoke the license if the home does not))~~ The home may not be required to relinquish or surrender the license if circumstances such as a fire or flooding, result in the adult family home discharging residents because the home is not habitable for an extended period. In this circumstance the adult family home must:

~~(a) ((Relinquish the adult family home license))~~ Inform the department that there are no residents in the home and where current residents have been relocated; ((or))

~~(b) ((Relinquish the adult family home license within the specified time frame))~~ Tell the department approximately how long it will be before the home will be able to admit residents again;

(c) Inform the department when the home has been approved by the building inspectors and the adult family home is ready to admit residents again; and

(d) Not admit residents until the department has completed an inspection.

(3) The department may revoke the license if the home does not relinquish, or surrender, the adult family home license as required.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10055 Application--Generally. ~~((1))~~ The applicant must send an application to the department for:

~~((a))~~ (1) An initial adult family home license;

~~((b))~~ (2) A change of ownership of the adult family home; or

~~((c))~~ (3) A change of the adult family home location or address.

~~((2))~~ Prior to sending the application to the department, the applicant must ensure:

~~(a) The people listed on the application meet the minimum qualifications listed in WAC 388-76-10130 through 388-76-10145 as required; and~~

~~(b) After January 1, 2007, the provider and entity representative must successfully complete the department approved forty-eight hour adult family home administration and business planning class as required in chapter 388-112 WAC.)~~

NEW SECTION

WAC 388-76-10057 Application--General qualifications. Before sending the application to the department, the applicant must ensure that the people listed on the application meet the minimum qualifications listed in WAC 388-76-10130 through 388-76-10145.

NEW SECTION

WAC 388-76-10063 Application--General training requirements. An applicant must ensure that each person listed on the application has successfully completed the training required in this chapter and chapter 388-112 WAC.

NEW SECTION

WAC 388-76-10064 Application--Forty-eight hour class training requirements. (1) The applicant, and the entity representative must successfully complete the department approved forty-eight hour adult family home administration and business planning class as required in chapter 388-112 WAC.

(2) An applicant and entity representative may not be required to take the forty-eight hour class if there is a change in ownership and the applicant and entity representative are already participants in the operation of a currently licensed home.

(3) An applicant and entity representative must take the forty-eight hour class when the application is for an additional licensed home and the forty-eight hour class has not already been successfully taken.

AMENDATORY SECTION (Amending WSR 09-03-030, filed 1/12/09, effective 2/12/09)

WAC 388-76-10080 Application--Co-provider. Couples (~~considered~~) who are legally married or domestic partners under Washington state law:

- (1) May not apply for separate licenses; and
- (2) May apply jointly (~~as~~) to be co-providers.

NEW SECTION

WAC 388-76-10103 Application--Liability insurance required.

(1) The applicant must submit insurer executed evidence of liability insurance coverage with the application.

(2) The coverage and evidence of coverage must comply with the requirements of WAC 388-76-10192 and 388-76-10193.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10115 Granting or denying a license--Generally.

In making a determination of whether to grant an adult family home license, the department must consider:

(1) Separately and jointly (~~as applicants~~) each person and entity named in an application, including each person or entity affiliated with the applicant;

(2) Information in the application;

(3) Other documents and information the department deems relevant which may include, but not be limited to:

(a) Inspection and complaint investigation findings in each facility or home in which the applicant, person affiliated with the applicant, or owner of five percent or more of the entity provided care or services to children or vulnerable adults; and

(b) Credit information.

(4) The history of (~~each individual listed on the application for negative findings identified~~) convictions and other circumstances listed in WAC 388-76-10120 and 388-76-10125(~~(7)~~) for each individual listed on the application including, but not limited to the following:

(a) Applicant;

(b) Person affiliated with the applicant;

(c) Entity representative;

(d) Caregiver;

(e) An owner who:

(i) Exercised daily control over the operations; or

(ii) Owns fifty-one percent or more of the entity.

(f) Any person who (~~has~~) would have unsupervised access to residents in the home; and

(g) Any person who lives in the home and is not a resident.

~~((5) Applicants who are licensed to care for children in the same home to determine if:~~

~~(a) It is necessary to allow a resident's child(ren) to live in the same home as the resident or allow a resident's child(ren) who turn eighteen to stay in the home;~~

~~(b) The applicant provides satisfactory evidence to the department of the home's ability to meet the needs of children and adults residing in the home; and~~

~~(c) The total number of persons receiving care and services in the home do not exceed the licensed capacity of the adult family home.)~~

WAC 388-76-10120 License--Must be denied. The adult family home license will not be granted if:

~~(1) ((The department must not grant a license until))~~ The applicant has ~~not~~ successfully completed a department-approved forty-eight hour adult family home administration and business planning class ~~except as provided in WAC 388-76-10064.~~

~~(2) ((The department must deny a license if the department finds that))~~ It has been less than twenty years since the applicant surrendered or relinquished an adult family home license after receiving notice that the department intended to deny, suspend, not renew or revoke the license.

~~(3) ((The department must deny a license if the department finds that))~~ The applicant or the applicant's spouse, domestic partner, or any partner, officer, director, managerial employee or majority owner of the applying entity:

(a) Has a history of significant noncompliance with federal or state laws or regulations in the provision of care or services to children or vulnerable adults;

(b) Has been convicted of a crime in federal court or in any other state, and the department determines that the crime is equivalent to a crime under subsections (3)(c) ~~((and))~~, (3)(d), or (3)(e) below;

(c) Has been convicted of a "crime against children or other persons" as defined in RCW 43.43.830, unless the crime is simple assault, assault in the fourth degree, or prostitution and more than three years has passed since conviction;

(d) Has been convicted of "crimes relating to financial exploitation" as defined in RCW 43.43.830, unless the crime is theft in third degree and more than three years have passed since conviction, or unless the crime is forgery or theft in the second degree and more than five years has passed since conviction;

(e) ~~Has been found convicted of:~~

(i) ~~Violation of the imitation controlled substance act (VICSA);~~

(ii) ~~Violation of the uniform controlled substances act (VUCSA);~~

(iii) ~~Violation of the uniform legend drug act (VULDA);~~

(iv) ~~Violation of the uniform precursor drug act (VUPDA); or~~

(v) ~~Sending or bringing into the state depictions of a minor engaged in sexually explicit conduct.~~

(f) ~~Has been found in any final decision issued by a disciplining authority to have abused, neglected, exploited, or abandoned a minor or vulnerable adult;~~

~~((+f))~~ (g) ~~Is listed on a state registry with a finding of abuse, neglect, financial exploitation, or abandonment of a minor or vulnerable adult; or~~

~~((+g))~~ (h) ~~Has been the subject of a finding or conclusion by a court of law, or any comparable state or federal law, that the individual abused, neglected, financially exploited or abandoned a minor or vulnerable adult. Examples of legal proceedings in which such findings could be made include juvenile court proceedings under chapter 13.34 RCW, domestic relations proceeding under Title 26 RCW, and vulnerable adult protection proceedings under chapter~~

AMENDATORY SECTION (Amending WSR 09-03-028, filed 1/12/09, effective 2/12/09)

WAC 388-76-10125 License--May be denied. The ((department)) adult family home license may ((deny a license)) be denied if ((the department finds that)) the applicant or the applicant's spouse, domestic partner, or any partner, officer, director, managerial employee or majority owner of the applying entity:

- (1) Has been convicted of:
 - (a) Simple assault, theft in third degree, assault in the fourth degree, or prostitution and more than three years has passed since conviction;
 - (b) Forgery or theft in the second degree and more than five years has passed since conviction;
 - (c) Any felony that the department determines is reasonably related to the competency of the person to be involved in the ownership or operation of an adult family home; or
 - (d) A crime involving a firearm used in commission of a felony or in any act of violence against a person.
- (2) Has engaged in the illegal use, sale or distribution of drugs or excessive use of alcohol or drugs without the evidence of rehabilitation;
- (3) Has committed an act of domestic violence toward a family or household member;
- (4) Has been found in any final decision of a federal or state agency to have abandoned, neglected, abused or financially exploited a vulnerable adult, unless such decision requires a license denial under WAC 388-76-10120;
- (5) Has had a license for the care of children or vulnerable adults denied, suspended, revoked, or not renewed;
- (6) Has a history of prior violations of chapter 70.128 RCW or any law regulating residential care facilities that resulted in revocation, suspension, or nonrenewal of a license;
- (7) Has been enjoined from operating a facility for the care and services of children or adults;
- (8) Has had a medicaid or medicare provider agreement or any other contract for the care and treatment of children or vulnerable adults, terminated, cancelled, suspended, or not renewed by any public agency, including a state Medicaid agency;
- (9) Has been the subject of a sanction or corrective or remedial action taken by federal, state, county, or municipal officials or safety officials related to the care or treatment of children or vulnerable adults;
- (10) Has obtained or attempted to obtain a license by fraudulent means or misrepresentation;
- (11) Knowingly, or with reason to know, made a false statement of material fact on his or her application for a license or any data attached to the application, or in any matter involving the department;
- (12) Permitted, aided, or abetted the commission of any

illegal act on the adult family home premises;

(13) Willfully prevented or interfered with or failed to cooperate with any inspection, investigation, or monitoring visit made by the department, including refusal to permit authorized department representatives to interview residents or have access to their records;

(14) Failed or refused to comply with:

(a) A condition imposed on a license or a stop placement order; or

(b) The requirements of chapters 70.128, 70.129, 74.34 RCW, this chapter or other applicable laws and regulations.

(15) Misappropriated property of a resident, unless such action requires a license denial under WAC 388-76-10120;

(16) Exceeded licensed capacity in the operation of an adult family home;

(17) Operated a facility for the care of children or adults without a license or with a revoked license;

(18) In connection with the operation of any facility for the care of children or adults, relinquished or returned a license, or did not seek license renewal following written notification that the licensing agency intended to deny, suspend, or revoke the license, unless such action requires a license denial under WAC 388-76-10120;

(19) When providing care to children or vulnerable adults, has had resident trust funds or assets seized by the Internal Revenue Service or a state entity for failure to pay income or payroll taxes;

(20) Failed to meet financial obligations as the obligations fell due in the normal course of owning or operating a business involved in the provision of care and services to children or vulnerable adults;

(21) Has failed to meet personal financial obligations;

(22) Interfered with a long-term care ombudsman or department staff in the performance of his or her duties;

(23) Has not demonstrated financial solvency or management experience in its currently licensed homes, or has not demonstrated the ability to meet other relevant safety, health, and operating standards pertaining to the operation of multiple homes, including ways to mitigate the potential impact of vehicular traffic related to the operation of the homes; or

(24) The home is currently licensed:

(a) As a boarding home; or

(b) To provide care for children in the same home, unless:

(i) It is necessary in order to allow a resident's child(ren) to live in the same home as the resident or to allow a resident who turns eighteen to remain in the home;

(ii) The applicant provides satisfactory evidence to the department of the home's capacity to meet the needs of children and adults residing in the home; and

(iii) The total number of persons receiving care and services in the home does not exceed the number permitted by the licensed capacity of the home.

(25) Failed to give the department access to all parts of the home as authorized under RCW 70.128.090.

NEW SECTION

WAC 388-76-10129 Qualifications--Adult family home personnel.

The adult family home must ensure that the following are qualified and meet all of the applicable requirements of this chapter and chapter 388-112 WAC:

(1) Any person employed or used by the adult family home, directly or by contract, by an adult family home; including but not limited to:

- (a) The provider;
- (b) Entity Representative;
- (c) Resident manager;
- (d) Staff; and
- (f) Caregivers.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10180 Employment--Certain criminal history--Prohibited. The adult family home must not employ any person, directly or by contract, or accept as a volunteer or student any person who may have unsupervised access to residents, or allow a household member over the age of eleven unsupervised access to any resident if the person or background inquiry discloses that the person has a history of:

(1) A stipulated finding of fact, conclusion of law, an agreed order, or finding of fact, conclusion of law, final order issued by a disciplining authority or final decision by any federal or state agency or department, a court of law, or entered into a state registry or department or agency list with a finding of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW; or

(2) ~~((Convicted of a crime against persons as defined under RCW 43.43.830 or 43.43.842))~~ Any of the convictions, or findings described in WAC 388-76-10120(3).

NEW SECTION

WAC 388-76-10191 Liability insurance required--Ongoing. The adult family home must:

(1) Maintain liability insurance as required in WAC 388-76-10192 and 388-76-10193; and

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

NEW SECTION

WAC 388-76-10192 Liability insurance required--Commercial general liability insurance or business liability insurance coverage. The adult family home must have commercial general liability insurance or business liability insurance that includes:

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

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

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

(4) Minimum limits of:

(a) Each occurrence at five hundred thousand dollars; and

(b) General aggregate at one million dollars.

NEW SECTION

WAC 388-76-10193 Liability insurance required--Professional liability insurance coverage. The adult family home must have professional liability insurance or errors and omissions insurance if the adult family home licensee has a professional license, or employs professionally licensed staff. The insurance must include:

(1) Coverage for losses caused by errors and omissions of the adult family home, its employees, and volunteers; and

(2) Minimum limits of:

(a) Each occurrence at five hundred thousand dollars; and

(b) Aggregate at one million dollars.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10195 Adult family home--Staff--Generally. The adult family home must ensure:

(1) When one or more residents are in the home, enough staff ~~((is))~~ are available in the home to meet the needs of each resident ~~((if residents are in the home or not, except as per WAC 388-76-10200))~~;

(2) Staff are readily available to meet resident needs if the home takes the resident out to another location and the resident negotiated care plan does not indicate it is safe for the resident to be left unattended for a specific time period; and

(3) All staff are skilled and able to do the tasks assigned to meet the needs of each resident.

NEW SECTION

WAC 388-76-10198 Adult family home--Personnel records. The adult family home must keep documents related to staff in a place readily accessible to authorized department staff. These documents must be available during the staff's employment, and for at least two years following employment. The documents must include but are not limited to:

- (1) Staff information such as address and contact information.
- (2) Staff orientation and training records pertinent to duties, including, but not limited to:
 - (a) Training required by chapter 388-112 WAC, including as appropriate for each staff person, orientation, basic training or modified basic training, specialty training, nurse delegation core training, and continuing education;
 - (b) Cardiopulmonary resuscitation;
 - (c) First aid; and
 - (d) HIV/AIDS training.
- (3) Tuberculosis testing results.
- (4) Criminal history disclosure and background check results as required.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10225 Reporting requirement. (1) The adult family home must ensure all staff:

- (a) Report suspected abuse, neglect, exploitation or abandonment of a resident:
 - (i) ~~((According to))~~ As required by chapter 74.34 RCW;
 - (ii) To the department by calling the complaint toll-free hotline number; and
 - (iii) To the local law enforcement agency when required by RCW 74.34.035.
- (b) Report the following to the department by calling the complaint toll-free hotline number:
 - (i) Any actual or potential event requiring any resident to be evacuated;
 - (ii) Conditions that threaten the provider's or entity representative's ability to continue to provide care or services to each resident; and
 - (iii) A missing resident.
- (2) When there is a significant change in a resident's condition, or a serious injury, trauma, or death of a resident, the adult family home must immediately notify:
 - (a) The resident's family;
 - (b) The resident's representative, if one exists;
 - (c) The resident's ~~((physician))~~ health care provider;
 - (d) Other appropriate professionals working with the resident;
 - (e) Persons identified in the negotiated care plan; and
 - (f) The resident's case manager if the resident is a department client.

- (3) Whenever an outbreak of suspected food poisoning or communicable disease occurs, the adult family home must notify:
- (a) The local public health officer; and
 - (b) The department's complaint toll-free hotline number.
- (4) The adult family home must notify the department's case management office within twenty-four hours whenever a resident, whose stay is paid for by the department is discharged for more than twenty-four hours on medical leave to a nursing home or hospital.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10270 Tuberculosis--Testing method--Required. The adult family home must ensure that all tuberculosis testing is done through ~~((a nationally recognized testing method such as by))~~ either:

(1) Intradermal (Mantoux) administration ((or a TB Gold Test and the test result is)) with test results read:

~~((+1))~~ (a) Within forty-eight to seventy-two hours of the test; and

~~((+2))~~ (b) By a trained professional; or

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

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10275 Tuberculosis--No ((skin)) testing. The adult family home is not required to have a person tested for tuberculosis if the person has:

(1) A documented history of a previous positive test, with ten or more millimeters induration; or

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

(3) Documented evidence of:

(a) Adequate therapy for active disease; or

(b) Completion of treatment for latent tuberculosis infection preventive therapy ((of infection)).

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10280 Tuberculosis--One step testing. The adult family home is only required to have a person take a one-step skin

or blood test if the person has any of the following:

(1) A ~~((positive))~~ documented history of a negative result from ~~((the person's first skin test--A person who has a positive result from an initial first step test should not have a second test))~~ previous two step testing done no more than one to three weeks apart; or

(2) A documented ~~((history of a))~~ negative result from ~~((previous two))~~ one step skin or blood testing~~(; or~~

~~(3) A documented negative result from one step testing))~~ in the previous twelve months.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10285 Tuberculosis--Two step skin testing. Unless the person meets the requirement for having no skin testing or only a one step skin test, the adult family home must ensure that each person has the following two-step testing:

(1) An initial skin test within three days of employment; and

(2) A second test done one to three weeks after the first test; except

(3) A two-step test is not required for the ~~((TB Gold Test))~~ IGRA blood test which is only a one-step test.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10290 Tuberculosis--Positive ~~((skin reaction))~~ test result. ~~((The adult family home must ensure that a person with))~~ When there is a positive ~~((reaction))~~ result to tuberculosis skin or blood testing, the adult family home must:

(1) Ensure that the individual has a chest X ray within seven days ~~((and));~~

(2) Evaluate each resident or employee with a positive test result for signs and symptoms of tuberculosis; and

(3) Follow~~((s))~~ the recommendation of the person's health care ~~((officials))~~ provider.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10295 Tuberculosis--Negative ~~((skin reaction))~~ test result. The adult family home may be required by the public health official or licensing authority to ensure that persons with

negative test results have follow-up ((~~skin~~)) testing in certain circumstances, such as:

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

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10300 Tuberculosis--Declining a skin test. The adult family home ((~~may accept a signed statement from~~)) must ensure that a person ((who has reason to decline skin testing; if:
(1) ~~The signed statement includes the reason for declining;~~
and
(2) ~~Additional evidence is provided to support the reason~~)) take the blood test for tuberculosis if the person declines the skin test.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10305 Tuberculosis--Reporting ((~~positive skin reactions--~~)) required. The adult family home must:
(1) Report any person or resident with tuberculosis symptoms or a positive chest X ray to the appropriate ((~~public~~)) health ((~~authority~~)) care provider or public health provider; ((~~and~~))
(2) Follow the infection control and safety measures ordered by ((~~the public health authority,~~)) the person's ((~~personal physician~~)) health care provider, ((~~or other licensed health care professional~~)) including a public health provider; and
(3) Institute appropriate infection control measures.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10310 Tuberculosis--((~~skin~~)) Test records. The adult family home must:
(1) Keep the records of ((~~tuberculosis~~)) tuberculin test results, reports of X-ray findings, and physician or public health orders ((~~and waivers~~)) in the adult family home;
(2) Make ((~~them~~)) the records readily available to the appropriate health authority and licensing agency; ((~~and~~))
(3) Provide the employee a copy of his/her testing results;
and

(4) (~~Keep them~~) Retain the records for eighteen months after the date an employee either quits or is terminated.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10420 Meals and snacks. The adult family home must:

- (1) Serve at least three meals:
 - (a) In each twenty-four hour period;
 - (b) At regular times comparable to normal meal times in the community; and
 - (c) That meet the nutritional needs of each resident.
- (2) Make nutritious snacks available to residents:
 - (a) Between meals; and
 - (b) In the evening.
- (3) Get input from residents in meal planning and scheduling;
- (4) Serve nutrient concentrates, supplements, and modified diets only with written approval of the resident's physician;
- (5) Only serve pasteurized milk; (~~and~~)
- (6) Process any home-canned foods served in the home, according to the latest guidelines of the county cooperative extension service; and
- (7) Ensure food is:
 - (a) In sufficient supply; and
 - (b) Safe, sanitary, and uncontaminated.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10455 Medication--Administration. For residents assessed with requiring the administration of medications, the adult family home must ensure medication administration is:

- (1) Performed by a (~~person~~) practitioner as defined in chapter 69.41 RCW; or
- (2) By nurse delegation per WAC 246-840-910 through 246-840-970; unless
- (3) Done by a family member or legally appointed resident representative.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10490 Medication disposal--Written

policy--Required. The adult family home must have and implement a written policy addressing the ~~((disposition of))~~ disposal of unused or expired resident ((prescribed)) medications ((that are unused, leftover, or remaining after the resident leaves)). Unused and expired medication must be disposed of in a safe manner for:

- (1) Current residents living in the adult family home; and
- (2) Residents who have left the home.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10520 Resident rights--General notice. The adult family home must:

(1) Inform each resident both orally and in writing in a language the resident understands of resident rights, including rights under chapter 70.129 RCW and all rules and regulations governing resident conduct and responsibilities during the stay in the home;

(2) Ask the resident to sign and date they received the information; and

(3) Provide a statement indicating whether the ~~((provider or entity representative))~~ adult family home will accept medicaid or other public funds as a source of payment for services.

NEW SECTION

WAC 388-76-10522 Resident rights--Notice--Policy on accepting medicaid as a payment source. The adult family home must fully disclose the home's policy on accepting medicaid payments. The policy must:

(1) Clearly state the circumstances under which the adult family home provides care for medicaid eligible residents and for residents who become eligible for medicaid after admission;

(2) Be provided both orally and in writing in a language that the resident understands;

(3) Be provided to prospective residents, before they are admitted to the home;

(4) Be provided to any current residents who were admitted before this requirement took effect or who did not receive copies prior to admission;

(5) Be written on a page that is separate from other documents and be written in a type font that is at least fourteen point; and

(6) Be signed and dated by the resident and be kept in the resident record after signature.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10540 Resident rights--Disclosure of fees and notice requirements--Deposits. (1) Before admission, if the adult family home requires payment of an admissions fee, deposit, or a minimum stay fee, by or on behalf of a person seeking admission, the home must give the resident full disclosure in writing in a language the resident understands.

(2) The disclosure must include:

(a) A statement of the amount of any admissions fees, deposits, prepaid charges, or minimum stay fees;

(b) The home's advance notice or transfer requirements; and

(c) The amount of the deposits, admission fees, prepaid charges, or minimum stay fees that will be refunded to the resident if the resident leaves the home.

(3) The home must ensure that the receipt of the disclosures required under subsection (1) of this section is in writing and signed and dated by the resident and the home.

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

(5) If a resident dies, is hospitalized or is transferred to another facility for more appropriate care and does not return to the home, the adult family home:

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

(b) May keep an additional amount to cover its reasonable and 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.

(6) All adult family homes covered under this section are required to refund any and all refunds due the resident within thirty days from the resident's date of discharge from the home.

(7) Nothing in this section applies to provisions in contracts negotiated between a home ((or)) and a certified health plan, health or disability insurer, health maintenance organization, managed care organization, or similar entities.

(8) If the home requires ~~((the implementation of))~~ an admission agreement by or on behalf of an individual seeking admission the home must ensure the terms of the agreement are consistent with the requirements of this section, chapters 70.128, 70.129 and 74.34 RCW, and other applicable state and federal laws.

AMENDATORY SECTION (Amending WSR 08-05-098, filed 2/15/08, effective 3/17/08)

WAC 388-76-10673 Abuse and neglect reporting--Mandated reporting to department--Required. (1) In accordance with chapter

74.34 RCW, all ((adult family home)) providers, entity representatives, resident managers, owners, caregivers, staff, and students that provide care and services to residents, are mandated reporters and must immediately report to the department when there is:

(a) A reasonable cause to believe that abandonment, abuse, exploitation, financial exploitation, or neglect of a vulnerable adult has ((been abandoned, abused, neglected, exploited or financially exploited)) occurred; or

(b) ((Suspected abandonment, abuse, neglect, exploitation, or financial exploitation)) A reason to suspect that sexual assault of a vulnerable adult has occurred.

(2) Reports must be made to:

(a) The centralized toll free telephone number provided by the department; and

(b) The appropriate law enforcement agencies, as required under chapter 74.34 RCW.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10685 Bedrooms. The adult family home must:

(1) Ensure each resident's bedroom is an outside room, which allows entrance of natural light;

(2) Ensure window and door screens:

(a) Do not hinder emergency escape; and

(b) Prevent entrance of flies and other insects.

(3) Ensure each ((resident's bedroom)) resident, including those using mobility aids such as wheelchairs and walkers has direct, unrestricted, and free access ((to)) from the bedroom through doors, hallways and corridors ((and unrestricted or free access)) to common use areas and other rooms used for care and services including bathrooms;

(4) Make separate bedrooms available for each sex;

(5) Make reasonable efforts to accommodate residents wanting to share the room;

(6) Provide each bedroom with a minimum usable floor space as required in WAC 388-76-10690.

(7) Ensure each bedroom has a closet or a wardrobe, armoire or reasonable facsimile thereof. Neither the closet nor wardrobe/armoire floor space will be considered a part of the room's usable square footage. The home must not remove a closet in order to provide additional floor space.

(8) Ensure no more than two residents to a bedroom;

((+8)) (9) Unless the resident chooses to provide their own furniture and bedding, the home must provide each resident a bed thirty-six inches or more wide with:

(a) A clean, comfortable mattress;

(b) A waterproof cover for use when needed or requested by the resident;

(c) Clean sheets and pillow cases;

(d) Adequate clean blankets to meet the needs of each

resident; and

(e) Clean pillows.

~~((9))~~ (10) Not use the upper bunk of double-deck beds for a resident's bed;

~~((10))~~ (11) Provide a call bell or intercom system if the provider, entity representative, resident manager or caregiver bedroom is not within hearing distance of each resident bedroom and the system is required by the department;

~~((11))~~ (12) Ensure that members of the household, other than residents, do not share bedrooms with residents; and

~~((12))~~ (13) Ensure a resident does not share a bedroom with a person under eighteen years of age, unless the person is the resident's own child.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10750 Safety and maintenance. The adult family home must:

(1) Keep the home both internally and externally in good repair and condition with a safe, comfortable, sanitary, homelike environment that is free of hazards;

(2) Ensure that there is existing outdoor space that is safe and usable for residents;

(3) Provide clean, functioning, safe, adequate household items and furnishings to meet the needs of each resident;

~~((3))~~ (4) Provide safe and functioning systems for:

(a) Heating;

(b) Cooling, which may include air circulating fans;

(c) Hot and cold water;

(d) Electricity;

(e) Plumbing;

(f) Garbage disposal;

(g) Sewage;

(h) Cooking;

(i) Laundry;

(j) Artificial and natural light;

(k) Ventilation; and

(l) Any other feature of the home.

~~((4))~~ (5) Ensure water temperature does not exceed one hundred twenty degrees Fahrenheit at all fixtures used by or accessible to residents, such as:

(a) Tubs;

(b) Showers; and

(c) Sinks.

~~((5))~~ (6) Provide storage for toxic substances, poisons, and other hazardous materials that is only accessible to residents under direct supervision, unless the resident is assessed for and the negotiated care plan indicates it is safe for the resident to use the materials unsupervised;

~~((6))~~ (7) Provide rapid access for all staff to any bedroom, toilet room, shower room, closet, other room occupied by each

resident;

~~((7))~~ (8) Keep all firearms locked and accessible only to authorized persons; and

~~((8))~~ (9) Keep the home free from:

- (a) Rodents;
- (b) Flies;
- (c) Cockroaches, and
- (d) Other vermin.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10820 Resident evacuation capabilities and location of resident bedrooms. (1) The adult family home must ensure each resident who ~~((has an evacuation capability of Level 2 or Level 3, as defined in WAC 388-76-10870,))~~ requires assistance for evacuation has a bedroom located on ~~((grade))~~ ground level floor and ~~((exiting the building does not require the use of))~~ can exit the home without use of:

- (a) Stairs;
- (b) Elevator; ~~((or))~~
- (c) ~~((Lift))~~ Chairlift; or
- (d) Platform lift.

(2) The home must install alternative emergency evacuation protection equipment when serving hearing or visually impaired residents.

AMENDATORY SECTION (Amending WSR 09-03-029, filed 1/12/09, effective 2/12/09)

WAC 388-76-10840 Emergency food supply. The adult family home must have an on-site emergency food supply that can be stored with other food in the home and that:

- (1) Will last for a minimum of seventy-two hours for each resident and each household member; ~~((and))~~
- (2) Meets the dietary needs of each resident, including any specific dietary restrictions any resident may have; and
- (3) Is sufficient, safe, sanitary, and uncontaminated.

AMENDATORY SECTION (Amending WSR 09-03-029, filed 1/12/09, effective 2/12/09)

WAC 388-76-10845 Emergency drinking water supply. The adult family home must have an on-site emergency supply of drinking water

that:

- (1) Will last for a minimum of seventy-two hours for each resident and each household member;
- (2) Is at least three gallons for each resident and each household member;
- (3) Is stored in well sealed food grade or glass containers;
- (4) Is ~~((chemically treated))~~ chlorinated or ~~((replaced every six months))~~ commercially bottled; ~~((and))~~
- (5) Is replaced every six months unless the commercial water bottle is labeled for a longer expiration date; and
- (6) Is stored ~~((appropriately))~~ in a cool, dry location away from direct sunlight.

AMENDATORY SECTION (Amending WSR 09-03-029, filed 1/12/09, effective 2/12/09)

WAC 388-76-10870 Resident evacuation capability levels--Identification required. The adult family home must ensure that each resident's assessment identifies, and each resident's preliminary care plan and negotiated care plan ((contains)) describes the resident's ability to evacuate the home according to the following ~~((levels))~~ descriptions:

(1) ~~((Level 1 -))~~ Independent: resident is ((able to get out of the home safely and independently without mobility aids or any assistance from another individual)) physically and mentally capable of safely getting out of the home without the assistance of another individual or the use of mobility aids. The department will consider a resident independent if capable of getting out of the home after one verbal cue;

(2) ~~((Level 2 -))~~ Assistance required: resident is not physically ((and)) or mentally capable of ((traversing a normal pathway to safety with)) getting out of the house without assistance from another individual or mobility aids((, but unable to ascend or descend stairs without the physical assistance of another individual; and

(3) ~~Level 3 -~~ resident is unable to walk or transverse [traverse] a normal pathway to safety without the physical assistance of another individual).

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10880 Emergency evacuation adult family home ((floor plan)) bedrooms. The adult family home must ensure each resident with an evacuation capability of ~~((Level 2 or Level 3))~~ "assistance required" has a bedroom on a ground-level floor which:

(1) Has at least ~~((two))~~ one means of exiting the bedroom; to the outdoors, without going through any room including the garage;

and

- (2) Exiting from the bedroom does not require the use of:
 - (a) Stairs;
 - (b) Elevators; ~~((or))~~
 - (c) Chairlift; or
 - (d) A platform lift.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10920 Inspection and investigation reports--Provided by department. The department will mail or hand deliver the department's report to the ~~((provider or entity representative))~~ adult family home:

- (1) Within ten working days of completion of the inspection process; or
- (2) Within ten calendar days of completion of the inspection if the home does not have a deficiency.

AMENDATORY SECTION (Amending WSR 09-03-028, filed 1/12/09, effective 2/12/09)

WAC 388-76-10955 Remedies--Department must impose remedies.

(1) The department must impose a remedy or remedies if the department substantiates a complaint involving harm to a resident and violation of an applicable law or rule.

(2) The department must impose a remedy or remedies if the department substantiates, after licensure, that it has been less than twenty years since the adult family home ~~((provider))~~ voluntarily surrendered or relinquished an adult family home license in lieu of department initiated denial, suspension, nonrenewal, or revocation of a license.

(3) The department must impose a remedy or remedies if the department finds any person listed in WAC 388-76-10950:

(a) Has a history of significant noncompliance with federal or state laws or regulations in the provision of care or services to children or vulnerable adults;

(b) Has been convicted of a "crime against children or other persons" as defined in RCW 43.43.830, unless the crime is simple assault, assault in the fourth degree, or prostitution and more than three years has passed since conviction;

(c) Has been convicted of "crimes relating to financial exploitation" as defined in RCW 43.43.830, unless the crime is theft in third degree and more than three years have passed since conviction, or unless the crime is forgery or theft in the second degree and more than five years has passed since conviction;

(d) Has been convicted of:

(i) Violation of the imitation controlled substances act

(VICSA);

(ii) Violation of the uniform controlled substances act (VUCSA);

(iii) Violation of the uniform legend drug act (VULDA);

(iv) Violation of the uniform precursor drug act (VUPDA); or

(v) Sending or bringing into the state depictions of a minor engaged in sexually explicit conduct.

(e) Has been found in any final decision issued by a disciplining authority to have abused, neglected, financially exploited, or abandoned a minor or vulnerable adult;

~~((e))~~ (f) Has been convicted of a crime in federal court or in the court of any other state, and the department determines that the conviction is equivalent to a conviction under subsection (3)(b) ~~((or))~~, (3)(c) or (3)(d) above;

~~((f))~~ (g) Is listed on a state registry with a finding of abuse, neglect, financial exploitation, or abandonment of a minor or vulnerable adult; or

~~((g))~~ (h) Has been the subject of a finding or conclusion by a court of law that the individual abused, neglected, financially exploited, or abandoned a minor or vulnerable adult. Examples of legal proceedings in which such findings could be made include juvenile court proceedings under chapter 13.34 RCW, domestic relations proceedings under Title 26 RCW, and vulnerable adult protection proceedings under chapter 74.34 RCW.

AMENDATORY SECTION (Amending WSR 09-03-028, filed 1/12/09, effective 2/12/09)

WAC 388-76-10960 Remedies--Department may impose remedies.

The department may impose a remedy or remedies if the department finds any person listed in WAC 388-76-10950:

(1) Has been convicted of:

(a) Any felony that the department determines is reasonably related to the competency of the person to be involved in the ownership or operation of an adult family home; or

(b) A crime involving a firearm used in the commission of a felony or in any act of violence against a person.

(2) Has engaged in the illegal use, sale or distribution of drugs or excessive use of alcohol or drugs without the evidence of rehabilitation;

(3) Has committed an act of domestic violence toward a family or household member;

(4) Has been found in any final decision of a federal or state agency to have abandoned, neglected, abused, or financially exploited a vulnerable adult, unless such decision requires imposition of a remedy under WAC 388-76-10955;

(5) Has had a license for the care of children or vulnerable adults denied, suspended, revoked, or not renewed;

(6) Has a history of violations of chapter 70.128 RCW, or any law regulating residential care facilities, that resulted in revocation, suspension, or nonrenewal of a license with the department;

- (7) Has been enjoined from operating a facility for the care and services of children or adults;
- (8) Has had a medicaid or medicare provider agreement or any other contract for the care and treatment of children or vulnerable adults, terminated, cancelled, suspended, or not renewed by any public agency, including a state medicaid agency;
- (9) Has been the subject of a sanction, corrective, or remedial action taken by federal, state, county, or municipal officials or safety officials related to the care or treatment of children or vulnerable adults;
- (10) Has obtained or attempted to obtain a license by fraudulent means or misrepresentation;
- (11) Knowingly, or with reason to know, made a false statement of material fact on his or her application for a license or any data attached to the application, or in any matter involving the department;
- (12) Permitted, aided, or abetted the commission of any illegal act on the adult family home premises;
- (13) Willfully prevented, interfered with, or failed to cooperate with any inspection, investigation, or monitoring visit made by the department, including refusal to permit authorized department representatives to interview residents or have access to their records;
- (14) Failed or refused to comply with:
- (a) A condition imposed on a license or a stop placement order; or
- (b) The requirements of chapters 70.128, 70.129, 74.34 RCW, this chapter or any other applicable laws.
- (15) Misappropriated property of a resident, unless such action requires a remedy under WAC 388-76-10955;
- (16) Exceeded licensed capacity in the operation of an adult family home;
- (17) Operated a facility for the care of children or adults without a license or with a revoked license;
- (18) In connection with the operation of any facility for the care of children or adults, relinquished or returned a license, or did not seek license renewal following written notification that the licensing agency intends to deny, suspend, cancel or revoke the license, unless such action requires imposition of a remedy under WAC 388-76-10955;
- (19) When providing care to children or vulnerable adults, has had resident trust funds or assets seized by the Internal Revenue Service or a state entity for failure to pay income or payroll taxes;
- (20) Failed to meet financial obligations as the obligations fell due in the normal course of owning or operating a business involved in the provision of care and services to children or vulnerable adults;
- (21) Has failed to meet personal financial obligations and that failure has resulted in a failure to provide necessary care and services to the residents; ((or))
- (22) Interfered with a long-term care ombudsman or department staff in the performance of his or her duties;
- (23) Failed to relinquish or surrender the license as required; or
- (24) Failed to have evidence of residents in the home for the

last two inspections.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10990 Informal dispute resolution (IDR). (1) When ~~((a provider or entity representative disagrees))~~ an adult family home disagrees with the department's finding of a violation under this chapter, the ~~((provider or entity representative shall have))~~ adult family home has the right to have the violation reviewed by the department under the department's dispute resolution process.

(2) The purpose of the review is to give the ~~((provider or entity representative))~~ adult family home an opportunity to present information ~~((which))~~ that might warrant modification or deletion of a finding of a violation.

(3) The ~~((provider or entity representative))~~ adult family home may submit a written statement for review.

(4) In addition to a written statement, the ~~((provider or entity representative))~~ adult family home may ask to present the information in person to a department designee.

(5) Requests for review must be made in writing to the department at the address provided in the department's certified letter within ten working days of receipt of the written finding of a violation.

(6) ~~((When requested by the provider or entity representative, the department must expedite the dispute resolution process to review violations upon which a department order imposing license suspension, revocation, stop placement, or condition on a license is based.~~

~~((7)))~~ Orders of the department imposing license suspension, stop placement, or conditions on a license are effective immediately upon notice and shall continue pending dispute resolution.

AMENDATORY SECTION (Amending WSR 09-03-029, filed 1/12/09, effective 2/12/09)

WAC 388-76-10995 Notice, hearing rights, and effective dates relating to imposition of remedies. (1) Chapter 34.05 RCW applies to department actions under this chapter and chapter 70.128 RCW, except that orders of the department imposing license suspension, stop placement, or conditions on license are effective immediately upon notice and must continue pending a final administrative decision.

(2) ~~((A provider))~~ An adult family home contesting ~~((any decision))~~ the imposition of any remedy by the department ~~((to impose a remedy))~~ must within twenty-eight days of receipt of the

decision:

(a) File a written application for an adjudicative proceeding by a method showing proof of receipt to the agency at the mailing address contained in the department's notice imposing the remedy; and

(b) Include in or with the application:

(i) The reasons for contesting the department decision; and

(ii) A copy of the contested department decision.

(3) Administrative proceedings are governed by chapter 34.05 RCW, RCW 43.20A.215, where applicable, this section, and chapter 388-02 WAC. If any provision in this ((section)) chapter conflicts with chapter 388-02 WAC, the provision in this ((section governs)) chapter applies.

NEW SECTION

WAC 388-76-11004 Resident protection program--Individual defined. As used in WAC 388-76-11005 through 388-76-11040, the term "individual" means anyone used by the adult family home to provide services to residents who is alleged to have abandoned, abused, neglected, or financially exploited a resident. "Individual" includes, but is not limited to employees, contractors, and volunteers.

AMENDATORY SECTION (Amending WSR 08-05-098, filed 2/15/08, effective 3/17/08)

WAC 388-76-11005 Resident protection program--Notice to individual of preliminary finding. (1) ((The department will notify the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident in writing within ten working days of making a preliminary finding of abandonment, abuse, neglect, exploitation, or financial exploitation of a resident. The written notice:

(a) Will not include the identities of the alleged victim, reporter and witnesses; and

(b) Will include the necessary information for the individual to ask for an administrative hearing to challenge the preliminary finding.

(2) The department must make a reasonable, good faith effort to find the last known address of the individual alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident.

(3) The department may extend the time frame for notification beyond ten working days for good cause.

(4)) The department will serve notice of the preliminary finding as provided in ((chapter 388-02)) WAC 388-76-11080.

(2) The department may establish proof of service as provided

in WAC 388-76-11085.

AMENDATORY SECTION (Amending WSR 08-05-098, filed 2/15/08, effective 3/17/08)

WAC 388-76-11010 Resident protection program--((Reporting))
Notice to others of preliminary finding. ~~((1) In a manner)~~
Consistent with confidentiality requirements concerning the resident, witnesses, and reporter, the department may provide notification of a preliminary finding to:

- ~~((a))~~ (1) Other divisions within the department;
- ~~((b))~~ (2) The agency or program identified under RCW 74.34.068 with which the individual ~~((alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident is))~~ was associated as an employee, volunteer or contractor;
- ~~((c))~~ (3) The employer or program that is currently associated with the individual ~~((alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident)),~~ if known;
- ~~((d))~~ (4) Law enforcement; ~~((and))~~
- ~~((e))~~ (5) Other entities as authorized by law and this chapter including investigative authorities consistent with chapter 74.34 RCW~~((~~

~~(2) The notification will identify the finding as a preliminary finding);~~ and
(6) The appropriate licensing agency.

AMENDATORY SECTION (Amending WSR 09-03-030, filed 1/12/09, effective 2/12/09)

WAC 388-76-11015 Resident protection program--Disputing a preliminary finding. (1) The individual ~~((alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident))~~ may request an administrative hearing to challenge a preliminary finding made by the department.

(2) The request must be made in writing to the office of administrative hearings.

(3) The office of administrative hearings must receive the individual's written request for an administrative hearing within thirty calendar days of the date written on the notice of the preliminary finding.

(4) The written request for a hearing must include the individual's full legal name and current mailing address and should include:

- (a) The individual's telephone number;
- (b) A brief explanation of why the individual ~~((alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident))~~ disagrees with the preliminary finding;

- (c) A description of any assistance needed in the administrative appeal process by the individual, including a foreign or sign language interpreter or any reasonable accommodation for a disability; and
- (d) The individual's signature.

AMENDATORY SECTION (Amending WSR 08-05-098, filed 2/15/08, effective 3/17/08)

WAC 388-76-11025 Resident protection program--Finalizing a preliminary finding. (1) A preliminary finding becomes a final finding when:

(a) The department notifies the individual (~~((alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident))~~) there is a preliminary finding (~~((pursuant to))~~) under WAC 388-76-11005; and

(b) The individual (~~((alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident))~~) does not ask for an administrative hearing; or

(c) The administrative law judge:

(i) Dismisses the (~~((hearing))~~) appeal following withdrawal of the appeal or default; or

(ii) Dismisses the appeal for failure to comply with the time limits under WAC 388-76-11015; or

(iii) Issues an initial order upholding the finding and the individual (~~((alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident))~~) fails to appeal the initial order to the department's board of appeals; or

(d) The board of appeals issues a final order upholding the finding.

(2) A final finding is permanent.

(3) A final finding will only be removed from the department or agency list of individuals found to have abandoned, abused, neglected, exploited, or financially exploited a vulnerable adult if it is rescinded following judicial review.

~~((4) The department may remove a single finding of neglect from its records based upon a written petition by the individual found to have neglected a resident provided that at least one calendar year must have passed between the date a request was made to remove the finding of neglect and the date the final finding was finalized and recorded.))~~

AMENDATORY SECTION (Amending WSR 08-05-098, filed 2/15/08, effective 3/17/08)

WAC 388-76-11030 Resident protection program--Appeal of ((administrative law judge's)) the initial order or finding. (1) If the individual (~~((alleged to have abandoned, abused, neglected,~~

~~exploited, or financially exploited a resident)) or the department disagrees with the administrative law judge's decision, either party may challenge this decision by filing a petition for review with the department's board of appeals under chapter 34.05 RCW, Administrative Procedure Act, and chapter 388-02 WAC.~~

(2) If the department appeals the administrative law judge's decision, the department will not change the finding in the department's records until a final hearing decision is issued.

AMENDATORY SECTION (Amending WSR 08-05-098, filed 2/15/08, effective 3/17/08)

WAC 388-76-11035 Resident protection program--Reporting final findings. The department will report a final finding of abandonment, abuse, neglect, exploitation, ~~((and))~~ or financial exploitation within ten working days to the following:

(1) ~~The individual ((found to have abandoned, abused, neglected, exploited, or financially exploited a resident and))~~ for whom there is a final finding;

(2) ~~The ((provider or entity representative))~~ adult family home that was associated with the individual ~~((alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident))~~ during the time of the incident;

(3) The adult family home or program that is currently associated with the individual, if known;

(4) The appropriate licensing, certification or registration authority;

(5) ~~((The))~~ Any federal or state ~~((department))~~ registry or ~~((agency))~~ list of individuals found to have abandoned, abused, neglected, exploited, or financially exploited a vulnerable adult; and

(6) The findings may be disclosed to the public upon request subject to applicable public disclosure laws.

AMENDATORY SECTION (Amending WSR 08-05-098, filed 2/15/08, effective 3/17/08)

WAC 388-76-11040 Resident protection program--Disclosure of investigative and finding information. (1) Confidential information about residents and mandated reporters received from the department may only be used by the individual ~~((alleged to have abandoned, abused, neglected, exploited, or financially exploited a resident))~~ to challenge findings through the appeals process. It may only be shared with persons who are involved in the appeal.

(2) Confidential information such as the name and other personal identifying information of the reporter, witnesses, or the resident will be redacted from documents unless release of that information is consistent with chapter 74.34 RCW and other

applicable state and federal laws.

MANAGEMENT AGREEMENTS

NEW SECTION

WAC 388-76-11050 Management agreements--General. As used in WAC 388-76-11050 through 388-76-11070, the term "manager" means the individual or entity providing management services under a management agreement. It does not mean a resident manager.

(1) If the adult family home uses a manager, the adult family home must have a written management agreement approved by the department that is consistent with chapter 388-76 WAC requirements.

(2) The adult family home must notify the department of its use of a manager when:

(a) Entering into a management agreement following initial application;

(b) Changing managers; or

(c) Modifying an existing management agreement.

(3) An applicant must notify the department of its use of a manager when:

(a) Applying for an adult family home license; or

(b) Entering into a management agreement prior to licensure.

(4) The adult family home must submit the written management agreement, including an organizational chart which shows the relationship between the adult family home, management company, and all related entities, including management staff.

(5) The written management agreement must be submitted:

(a) With the initial license, change of ownership, or change of location applications; and

(b) Sixty days prior to the proposed change of ownership date or the effective date of the management agreement.

(6) The adult family home must submit any amendment to an existing management agreement to the department thirty days before the amendment takes effect.

(7) The adult family home must notify current residents and their representatives sixty days before entering into a management agreement.

NEW SECTION

WAC 388-76-11055 Management agreements--Adult family home.

(1) The adult family home is responsible for:

(a) The daily operations and provision of care and services to

residents;

(b) Compliance with all applicable laws and rules;

(c) Ensuring the manager complies with the department approved management agreement; and

(d) Ensuring the manager does not represent itself as, or give the appearance that it is the provider.

(2) The adult family home must not give the manager responsibilities that are so extensive the adult family home is relieved of responsibility for the daily operations and provision of care and services to residents. If the adult family home relinquishes responsibility for daily operation and provision of care and services to residents, the department will determine that a change of ownership has occurred.

(3) The adult family home and manager must act in accordance with the terms of the department approved management agreement. If the department determines they are not, then the department may take licensing action.

(4) The adult family home may enter into a management agreement only if the management agreement creates a principal/agent relationship between the adult family home and manager.

NEW SECTION

WAC 388-76-11060 Terms of the management agreement.

Management agreements, at a minimum must:

(1) Describe the responsibilities of the adult family home and manager, including items, services, and activities to be provided;

(2) Maintain and retain all records in accordance with this chapter;

(3) Allow the department unlimited access to documentation and records according to applicable laws or regulations;

(4) Require the manager to immediately send copies of inspections and notices of noncompliance to the adult family home;

(5) Require the adult family home's governing body, board of directors or similar authority to appoint the entity representative;

(6) Require the adult family home to participate in monthly oversight meetings and at minimum, quarterly on-site visits to the home;

(7) State that the adult family home is responsible for reviewing, acknowledging and signing all initial, change of ownership, and change of location license applications;

(8) State that the adult family home and manager will review the management agreement annually and notify the department of change according to applicable regulations;

(9) Acknowledge that the adult family home is the party ultimately responsible for complying with all applicable laws and rules;

(10) Require the adult family home to oversee and maintain ultimate responsibility for:

(a) All personnel issues relating to the operation of the

home;

(b) The care, services, and safety of all residents; and

(c) Staffing plans, staff, volunteer and student orientation and training;

(11) State the manager will not represent itself or give the appearance it is the provider;

(12) State that a duly authorized manager may execute resident leases or agreements on behalf of the adult family home, however all such resident leases or agreements must be between the adult family home and the resident or the resident's representative.

NEW SECTION

WAC 388-76-11065 Management agreements--Department review.

(1) Upon receipt of a proposed management agreement, the department may require:

(a) The adult family home to provide additional information or clarification;

(b) Changes necessary to:

(i) Bring the management agreement into compliance with this chapter; and

(ii) Ensure that the adult family home has continued to have ultimate responsibility for the daily operations of the home.

NEW SECTION

WAC 388-76-11070 Management agreements--Resident funds. (1)

If the management agreement delegates day-to-day management of resident personal funds to the manager, the adult family home must:

(a) Retain all fiduciary and custodial responsibility for funds that have been deposited with the adult family home by the resident;

(b) Remain directly accountable to the residents and resident representatives for such funds; and

(c) Ensure any party responsible for holding or managing resident's personal funds:

(i) Is bonded or obtains insurance in sufficient amounts to specifically cover losses of resident funds;

(ii) Provides proof of bond or insurance; and

(iii) Provides proof of payment of the bond or insurance premium.

(2) If responsibilities for the day-to-day management of the resident funds are delegated to the manager, the manager must:

(a) Give the adult family home a monthly accounting of the residents' funds;

(b) Meet all legal requirements related to holding, and accounting for, resident funds; and

(c) Comply with all requirements under this chapter relating

to residents rights and financial affairs.

NOTICE

NEW SECTION

WAC 388-76-11080 Notice--Service complete Service of the department's notice is complete when:

- (1) Personal service is made;
- (2) The notice is addressed to the home or the individual at his or her last known address, and deposited in the United States mail;
- (3) The notice is faxed and the department receives evidence of transmission;
- (4) Notice is delivered to a commercial delivery service with charges prepaid; or
- (5) Notice is delivered to a legal messenger service with charges prepaid.

NEW SECTION

WAC 388-76-11085 Notice--Proof of service. The department may establish proof of service by any of the following:

- (1) A declaration of personal service;
- (2) An affidavit or certificate of mailing to the adult family home or to the individual to whom the notice is directed;
- (3) A signed receipt from the person who accepted the certified mail, the commercial delivery service, or the legal messenger service package; or
- (4) Proof of fax transmission.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 388-76-10190	Adult family home--Compliance with regulations--Required.
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