

**This PDF packet serves to provide City and State information on Adult Family Homes**

**If you have additional questions please feel free to contact City Hall at 425.649.4444 ext. 144 or via e-mail at [sarahv@ci.newcastle.wa.us](mailto:sarahv@ci.newcastle.wa.us)**

**18.06.016 Adult family home.**

A regular family abode in which a person or persons provides 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. (Ord. 2005-311 § 1).

**18.08.030**

NMC <u>18.08.030</u>		ZONE	LIMITED USE, OPEN SPACE	MIXED USE, MU-C & MU-R	URBAN RESIDENTIAL	NEIGHBORHOOD BUSINESS	COMMUNITY BUSINESS	OFFICE	MIXED USE/INDUSTRIAL
A. RESIDENTIAL LAND USES									
KEY									
P - Permitted Use									
C - Conditional Use									
S - Special Use									
SIC #	SPECIFIC LAND USE	LOS	MU	R-1-8	R-12-48	NB	CB	O	MU/I
	DWELLING UNITS, TYPES								
*	Single detached			P	P15				
	Cottage housing		P16, 17	P16	P16				
*	Multifamily		P11, 15	P1	P15		P11, 15	P3	P11, 15
*	Mobile home park			C	C15				
*	Senior citizen assisted		C15	C	C15	C	C15	C	C15
	Adult family home		P15	P	P15	P	P15	P	P15
	GROUP								

NMC 18.08.030

A. RESIDENTIAL  
LAND USES

ZONE

MIXED  
LIMITED USE,  
OPEN MU-C  
SPACE & MU-  
R

URBAN  
RESIDENTIAL

NEIGHBORHOOD  
BUSINESS

COMMUNITY  
BUSINESS

OFFICE

MIXED  
USE/INDUSTRIAL

KEY

P - Permitted Use

C - Conditional  
Use

S - Special Use

SIC #	SPECIFIC LAND USE	LOS	MU	R-1-8	R-12-48	NB	CB	O	MU/I
	RESIDENCES								
*	Community residential facility-I		C15	C	C15	C	C15	C	C15
*	Community residential facility-II		C15	C	C15	C	C15	C	C15
*	Dormitory		C6, 15		C6, 15		C6, 15		C6, 15
*	Secure community transition facilities				S2, 15				
	ACCESSORY USES								
*	Accessory uses, residential		C15	P7	P7, 15	P7	P7, 15	P7	C15
*	Home occupation, Type I and II		P15	P	P15	P	P15	P	P15
*	Home industry		P15	C					P15

NMC <u>18.08.030</u>									
A. RESIDENTIAL LAND USES		ZONE	LIMITED OPEN SPACE	MIXED USE, MU-C & MU- R	URBAN RESIDENTIAL	NEIGHBORHOOD BUSINESS	COMMUNITY BUSINESS	OFFICE	MIXED USE/INDUSTRIAL
KEY									
P - Permitted Use									
C - Conditional Use									
S - Special Use									
SIC #	SPECIFIC LAND USE	LOS	MU	R-1-8	R-12- 48	NB	CB	O	MU/I
	TEMPORARY LODGING								
7011	Hotel/motel	C3	P15				C15		P15
*	Bed and breakfast guesthouse	C3	P10, 15	P10	P10, 15				P10, 15

**RCW 70.128.130****Adult family homes — Requirements.**

(1) The provider is ultimately responsible for the day-to-day operations of each licensed adult family home.

(2) The provider shall promote the health, safety, and well-being of each resident residing in each licensed adult family home.

(3) Adult family homes shall be maintained internally and externally in good repair and condition. Such homes shall have safe and functioning systems for heating, cooling, hot and cold water, electricity, plumbing, garbage disposal, sewage, cooking, laundry, artificial and natural light, ventilation, and any other feature of the home.

(4) In order to preserve and promote the residential home-like nature of adult family homes, adult family homes licensed after August 24, 2011, shall:

(a) Have sufficient space to accommodate all residents at one time in the dining and living room areas;

(b) Have hallways and doorways wide enough to accommodate residents who use mobility aids such as wheelchairs and walkers; and

(c) Have outdoor areas that are safe and accessible for residents to use.

(5) The adult family home must provide all residents access to resident common areas throughout the adult family home including, but not limited to, kitchens, dining and living areas, and bathrooms, to the extent that they are safe under the resident's care plan.

(6) Adult family homes shall be maintained in a clean and sanitary manner, including proper sewage disposal, food handling, and hygiene practices.

(7) Adult family homes shall develop a fire drill plan for emergency evacuation of residents, shall have working smoke detectors in each bedroom where a resident is located, shall have working fire extinguishers on each floor of the home, and shall not keep nonambulatory patients above the first floor of the home.

(8) The adult family home shall ensure that all residents can be safely evacuated in an emergency.

(9) Adult family homes shall have clean, functioning, and safe household items and furnishings.

(10) Adult family homes shall provide a nutritious and balanced diet and shall recognize residents' needs for special diets.

(11) Adult family homes shall establish health care procedures for the care of residents including medication administration and emergency medical care.

(a) Adult family home residents shall be permitted to self-administer medications.

(b) Adult family home providers may administer medications and deliver special care only to the extent authorized by law.

(12) Adult family home providers shall either: (a) Reside at the adult family home; or (b) employ or otherwise contract with a qualified resident manager to reside at the adult family home. The department

may exempt, for good cause, a provider from the requirements of this subsection by rule.

(13) A provider will ensure that any volunteer, student, employee, or person residing within the adult family home who will have unsupervised access to any resident shall not have been convicted of a crime listed under RCW 43.43.830 or 43.43.842, or been found to have abused, neglected, exploited, or abandoned a minor or vulnerable adult as specified in RCW 74.39A.056(2). A provider may conditionally employ a person pending the completion of a criminal conviction background inquiry, but may not allow the person to have unsupervised access to any resident.

(14) A provider shall offer activities to residents under care as defined by the department in rule.

(15) An adult family home must be financially solvent, and upon request for good cause, shall provide the department with detailed information about the home's finances. Financial records of the adult family home may be examined when the department has good cause to believe that a financial obligation related to resident care or services will not be met.

(16) An adult family home provider must ensure that staff are competent and receive necessary training to perform assigned tasks. Staff must satisfactorily complete department-approved staff orientation, basic training, and continuing education as specified by the department by rule. The provider shall ensure that a qualified caregiver is on-site whenever a resident is at the adult family home; any exceptions will be specified by the department in rule. Notwithstanding RCW 70.128.230, until orientation and basic training are successfully completed, a caregiver may not provide hands-on personal care to a resident without on-site supervision by a person who has successfully completed basic training or been exempted from the training pursuant to statute.

(17) The provider and resident manager must assure that there is:

(a) A mechanism to communicate with the resident in his or her primary language either through a qualified person on-site or readily available at all times, or other reasonable accommodations, such as language lines; and

(b) Staff on-site at all times capable of understanding and speaking English well enough to be able to respond appropriately to emergency situations and be able to read and understand resident care plans.

[2012 c 164 § 704; 2011 1st sp.s. c 3 § 206; 2000 c 121 § 6; 1995 c 260 § 6; 1989 c 427 § 26.]

**Notes:**

**Finding -- Intent -- Rules -- Effective date -- 2012 c 164:** See notes following RCW 18.88B.010.

**Finding -- Intent -- 2011 1st sp.s. c 3:** See note following RCW 70.128.005.

**RCW 70.128.120****Adult family home provider, applicant, resident manager — Minimum qualifications.**

Each adult family home provider, applicant, and each resident manager shall have the following minimum qualifications, except that only applicants are required to meet the provisions of subsections (10) and (11) of this section:

(1) Twenty-one years of age or older;

(2) For those applying after September 1, 2001, to be licensed as providers, and for resident managers whose employment begins after September 1, 2001, a United States high school diploma or high school equivalency certificate as provided in RCW 28B.50.536 or any English or translated government documentation of the following:

(a) Successful completion of government-approved public or private school education in a foreign country that includes an annual average of one thousand hours of instruction over twelve years or no less than twelve thousand hours of instruction;

(b) A foreign college, foreign university, or United States community college two-year diploma;

(c) Admission to, or completion of coursework at, a foreign university or college for which credit was granted;

(d) Admission to, or completion of coursework at, a United States college or university for which credits were awarded;

(e) Admission to, or completion of postgraduate coursework at, a United States college or university for which credits were awarded; or

(f) Successful passage of the United States board examination for registered nursing, or any professional medical occupation for which college or university education preparation was required;

(3) Good moral and responsible character and reputation;

(4) Literacy and the ability to communicate in the English language;

(5) Management and administrative ability to carry out the requirements of this chapter;

(6) Satisfactory completion of department-approved basic training and continuing education training as required by RCW 74.39A.074, and in rules adopted by the department;

(7) Satisfactory completion of department-approved, or equivalent, special care training before a provider may provide special care services to a resident;

(8) Not been convicted of any crime that is disqualifying under RCW 43.43.830 or 43.43.842, or department rules adopted under this chapter, or been found to have abused, neglected, exploited, or abandoned a minor or vulnerable adult as specified in RCW 74.39A.056(2);

(9) For those applying to be licensed as providers, and for resident managers whose employment begins after August 24, 2011, at least one thousand hours in the previous sixty months of successful, direct caregiving experience obtained after age eighteen to vulnerable adults in a licensed or contracted setting

prior to operating or managing an adult family home. The applicant or resident manager must have credible evidence of the successful, direct caregiving experience or, currently hold one of the following professional licenses: Physician licensed under chapter 18.71 RCW; osteopathic physician licensed under chapter 18.57 RCW; osteopathic physician assistant licensed under chapter 18.57A RCW; physician assistant licensed under chapter 18.71A RCW; registered nurse, advanced registered nurse practitioner, or licensed practical nurse licensed under chapter 18.79 RCW;

(10) For applicants, proof of financial solvency, as defined in rule; and

(11) Applicants must successfully complete an adult family home administration and business planning class, prior to being granted a license. The class must be a minimum of forty-eight hours of classroom time and approved by the department. The department shall promote and prioritize bilingual capabilities within available resources and when materials are available for this purpose.

[2013 c 39 § 21; 2012 c 164 § 703; 2011 1st sp.s. c 3 § 205; 2006 c 249 § 1; 2002 c 223 § 1; 2001 c 319 § 8; 2000 c 121 § 5; 1996 c 81 § 1; 1995 1st sp.s. c 18 § 117; 1995 c 260 § 5; 1989 c 427 § 24.]

### **Notes:**

**Finding -- Intent -- Rules -- Effective date -- 2012 c 164:** See notes following RCW 18.88B.010.

**Finding -- Intent -- 2011 1st sp.s. c 3:** See note following RCW 70.128.005.

**Effective date -- 2002 c 223 § 1:** "Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 28, 2002]." [2002 c 223 § 7.]

**Effective date -- 1996 c 81:** "This act shall take effect July 1, 1996." [1996 c 81 § 7.]

**Conflict with federal requirements -- Severability -- Effective date -- 1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.



**WAC 51-51-0325****Section R325—Adult family homes.****SECTION R325  
ADULT FAMILY HOMES**

**R325.1 General.** This section shall apply to all newly constructed adult family homes and all existing single family homes being converted to adult family homes. This section shall not apply to those adult family homes licensed by the state of Washington department of social and health services prior to July 1, 2001.

**R325.2 Submittal standards.** In addition to those requirements in Section 106.1, the submittal shall identify the project as a Group R-3 Adult Family Home Occupancy. A floor plan shall be submitted identifying the means of egress and the components in the means of egress such as stairs, ramps, platform lifts and elevators. The plans shall indicate the rooms used for clients and the sleeping room classification of each room.

**R325.3 Sleeping room classification.** Each sleeping room in an adult family home shall be classified as:

1. Type S - Where the means of egress contains stairs, elevators or platform lifts.
2. Type NS1 - Where one means of egress is at grade level or a ramp constructed in accordance with R325.9 is provided.
3. Type NS2 - Where two means of egress are at grade level or ramps constructed in accordance with R325.9 are provided.

**R325.4 Types of locking devices and door activation.** All bedroom and bathroom doors shall be openable from the outside when locked.

Every closet shall be readily openable from the inside.

Operable parts of door handles, pulls, latches, locks and other devices installed in adult family homes shall be operable with one hand and shall not require tight grasping, pinching or twisting of the wrist. Pocket doors shall have graspable hardware available when in the closed or open position.

The force required to activate operable parts shall be 5.0 pounds (22.2 N) maximum. Required exit doors shall have no additional locking devices.

Required exit door hardware shall unlock inside and outside mechanisms when exiting the building allowing reentry into the adult family home without the use of a key, tool or special knowledge.

**R325.5 Smoke and carbon monoxide alarm requirements.** All adult family homes shall be equipped with smoke and carbon monoxide alarms installed as required in Sections R314 and R315.1. Alarms shall be installed in such a manner so that the detection device warning is audible from all areas of the dwelling upon activation of a single alarm.

**R325.6 Escape windows and doors.** Every sleeping room shall be provided with emergency escape and rescue windows as required by Section R310. No alternatives to the sill height such as steps, raised platforms or other devices placed by the openings will be approved as meeting this requirement.

**R325.7 Fire apparatus access roads and water supply for fire protection.** Adult family homes shall be served by fire apparatus access roads and water supplies meeting the requirements of the local jurisdiction.

**R325.8 Grab bar general requirements.** Where facilities are designated for use by adult family home clients, grab bars for water closets, bathtubs and shower stalls shall be installed according to this section.

**R325.8.1 Grab bar cross section.** Grab bars with a circular cross section shall have an outside diameter of 1 1/4 inches minimum and 2 inches maximum. Grab bars with noncircular cross section shall have a cross section dimension of 2 inches maximum and a perimeter dimension of 4 inches minimum and 4 5/8 inches maximum.

**R325.8.2 Grab bar installation.** Grab bars shall have a spacing of 1 1/2 inches between the wall and the bar. Projecting objects, control valves and bathtub or shower stall enclosure features above, below and at the ends of the grab bar shall have a clear space of 1 1/2 inches to the grab bar.

EXCEPTION: Swing-up grab bars shall not be required to meet the 1 1/2 inch spacing requirement.

Grab bars shall have a structural strength of 250 pounds applied at any point on the grab bar, fastener, mounting device or supporting structural member. Grab bars shall not be supported directly by any residential grade fiberglass bathing or showering unit. Acrylic bars found in bathing units shall be removed.

Fixed position grab bars, when mounted, shall not rotate, spin or move and have a graspable surface finish.

**R325.8.3 Grab bars at water closets.** Water closets shall have grab bars mounted on both sides. Grab bars can be a combination of fixed position and swing-up bars. Grab bars shall meet the requirements of R325.8. Grab bars shall mount between 33 inches and 36 inches above floor grade. Centerline distance between grab bars, regardless of type used, shall be between 25 inches minimum and 30 inches maximum.

**R325.8.3.1 Fixed position grab bars.** Fixed position grab bars shall be a minimum of 36 inches in length and start 12 inches from the rear wall.

**R325.8.3.2 Swing-up grab bars.** Swing-up grab bars shall be a minimum of 28 inches in length from the rear wall.

**R325.8.4 Grab bars at bathtubs.** Horizontal and vertical grab bars shall meet the requirements of R325.8.

**R325.8.4.1 Vertical grab bars.** Vertical grab bars shall be a minimum of 18 inches long and installed at the control end wall and head end wall. Grab bars shall mount within 4 inches of the exterior of the bath tub edge or within 4 inches within the bath tub. The bottom end of the bar shall start between 36 inches and 42 inches above floor grade.

EXCEPTION: The required vertical grab bar can be substituted with a floor to ceiling grab bar meeting the requirements of R325.8 at the control end and head end entry points.

**R325.8.4.2 Horizontal grab bars.** Horizontal grab bars shall be provided at the control end, head end, and the back wall within the bathtub area. Grab bars shall be mounted between 33 inches and 36 inches above floor grade. Control end and head end grab bars shall be 24 inches minimum in length. Back wall grab bar shall be 36 inches minimum in length.

**R325.8.5 Grab bars at shower stalls.** Where shower stalls are provided to meet the requirements for bathing facilities, grab bars shall meet the requirements of R325.8.

EXCEPTION: Shower stalls with permanent built-in seats are not required to have vertical or horizontal grab bars at the seat end wall. A vertical floor to ceiling grab bar shall be installed within 4 inches of the exterior of the shower aligned with the nose of the built-in seat.

**R325.8.5.1 Vertical grab bars.** Vertical grab bars shall be 18 inches minimum in length and installed at the control end wall and head end wall. Vertical bars shall be mounted within 4 inches of the exterior of the shower stall or within 4 inches inside the shower stall. The bottom end of vertical bars mount between 36 inches and 42 inches above floor grade.

**R325.8.5.2 Horizontal grab bars.** Horizontal grab bars shall be installed on all sides of the shower stall mounted between 33 inches and 36 inches above the floor grade. Horizontal grab bars shall be a maximum of 6 inches from adjacent walls. Horizontal grab bars shall not interfere with shower control valves.

**R325.9 Ramps.** All interior and exterior ramps, when provided, shall be constructed in accordance with Section R311.8 with a maximum slope of 1 vertical to 12 horizontal. The exception to R311.8.1 is not allowed for adult family homes. Handrails shall be installed in accordance with R325.9.1.

**R325.9.1 Handrails for ramps.** Handrails shall be installed on both sides of ramps between the slope of 1 vertical to 12 horizontal and 1 vertical and 20 horizontal in accordance with R311.6.3.1 through R311.6.3.3.

**R325.10 Stair treads and risers.** Stair treads and risers shall be constructed in accordance with R311.7.4. Handrails shall be installed in accordance with R325.10.1.

**R325.10.1 Handrails for treads and risers.** Handrails shall be installed on both sides of treads and risers numbering from one riser to multiple risers. Handrails shall be installed in accordance with R311.7.7

through R311.7.7.4.

**R325.11 Shower stalls.** Where provided to meet the requirements for bathing facilities, the minimum size of shower stalls for an adult family home shall be 30 inches deep by 48 inches long.

[Statutory Authority: RCW 19.27.031 and chapters 19.27 and 34.05 RCW. WSR 13-04-068, § 51-51-0325, filed 2/1/13, effective 7/1/13. Statutory Authority: Chapter 19.27 RCW. WSR 10-18-036, § 51-51-0325, filed 8/25/10, effective 9/25/10. Statutory Authority: RCW 19.27.190, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 09-04-023, § 51-51-0325, filed 1/27/09, effective 7/1/10. Statutory Authority: RCW 19.27.074, 19.27.020, and chapters 19.27 and 34.05 RCW. WSR 07-01-090, § 51-51-0325, filed 12/19/06, effective 7/1/07. Statutory Authority: RCW 19.27.031 and 19.27.074. WSR 04-01-109, § 51-51-0325, filed 12/17/03, effective 7/1/04.]



**RCW 70.128.010****Definitions.**

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Adult family home" means a residential home in which a person or persons 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.

(2) "Provider" means any person who is licensed under this chapter to operate an adult family home. For the purposes of this section, "person" means any individual, partnership, corporation, association, or limited liability company.

(3) "Department" means the department of social and health services.

(4) "Resident" means an adult in need of personal or special care in an adult family home who is not related to the provider.

(5) "Adults" means persons who have attained the age of eighteen years.

(6) "Home" means an adult family home.

(7) "Imminent danger" means serious physical harm to or death of a resident has occurred, or there is a serious threat to resident life, health, or safety.

(8) "Special care" means care beyond personal care as defined by the department, in rule.

(9) "Capacity" means the maximum number of persons in need of personal or special care permitted in an adult family home at a given time. This number shall include related children or adults in the home and who received special care.

(10) "Resident manager" means a person employed or designated by the provider to manage the adult family home.

(11) "Adult family home licensee" means a provider as defined in this section who does not receive payments from the medicaid and state-funded long-term care programs.

[2007 c 184 § 7. Prior: 2001 c 319 § 6; 2001 c 319 § 2; 1995 c 260 § 2; 1989 c 427 § 16.]

**Notes:**

**Part headings not law -- Severability -- Conflict with federal requirements -- 2007 c 184:** See notes following RCW 41.56.029.



**OPINIONS**

Ken Eikenberry | 1981-1992 | Attorney General of Washington

**CITIES AND TOWNS--ZONING--PREEMPTION--Preemption of Zoning Ordinances Related to Residential Care Facilities Licensed by the State**

1. RCW 70.128.175(2) provides that adult family homes shall be permitted uses in all areas zoned for residential or commercial purposes. This statute preempts local zoning ordinances that prohibit the location of an adult family home within a certain distance of other similar facilities.
2. The State licenses residential care facilities, other than adult family homes. The fact that the State licenses these facilities does not in and of itself preempt local zoning ordinances that prohibit the location of such facilities within a certain distance of other similar facilities.

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October 20, 1992

Honorable Linda Smith  
 State Senator, District 18  
 201 Institutions Building  
 Post Office Box 40418  
 Olympia, Washington 98504-0418

Cite as: AGO 1992 No. 25

Dear Senator Smith:

By letter previously acknowledged, you asked the following paraphrased question:

Do state laws authorizing (state) licensing of residential care facilities preempt a city from adopting a zoning ordinance that prohibits such facilities from being located within a certain distance of a similar facility?

We answer your question in the affirmative for adult family homes, and in the negative for other types of facilities, as set forth in our analysis.

**BACKGROUND**

You have asked about state preemption of the authority of a city to enact zoning ordinances with regard to residential care facilities licensed by the State.<sup>[1]</sup> Your letter specifically asks about domestic violence shelters (chapter 70.123 RCW), home health agencies (chapter 70.127 RCW), adult family homes (chapter 70.128 RCW), private establishments for care of the mentally incompetent, and alcoholic (chapter 71.12 RCW), and day training centers and group training homes (chapter 71A.22 RCW). Other residential care facilities not mentioned in your letter include boarding homes (chapter 18.20 RCW), nursing homes (chapter 18.51 RCW), and homes for dependent children, expectant mothers, and developmentally-disabled persons (chapter 74.15 RCW).

More specifically, you asked whether a city may enact a zoning ordinance that prohibits the location of these facilities within a distance (e.g., 1,000 feet) of other similar facilities. Stated another way, for example: Can a city prohibit the location of an adult

family home within 1,000 feet of another adult family home?

Your letter suggests that the stated purpose of such an ordinance is to protect residential neighborhoods from a concentration of residential care facilities, and to assure that these facilities are appropriately dispersed throughout the city.

### ANALYSIS

In answering your question, we start with article 11, section 11 of the Washington Constitution, which grants a city the power to "make and enforce within its limits all such local police, sanitary and other regulations as are not in conflict with general laws." This means that when a state statute and a municipal ordinance on the same subject matter cannot be harmonized, the municipal ordinance must yield. State v. Seattle, 94 Wn.2d 162, 166, 615 P.2d 461 (1980); Spokane v. J-R Distrib. Inc., 90 Wn.2d 722, 730, 585 P.2d 784 (1978).

An ordinance conflicts with a state statute if the statute clearly and explicitly preempts the power of local government to legislate in a particular area. State ex rel. Schillberg v. Everett Dist. Justice Court, 92 Wn.2d 106, 108, 594 P.2d 448 (1979). An ordinance also is in conflict if it attempts to authorize what the state statute forbids, or forbids what the statute authorizes. Bellingham v. Schampera, 57 Wn.2d 106, 109, 356 P.2d 292 (1960). Whether there is a conflict depends on the legislative intent derived from an analysis of the statute involved. Lenci v. Seattle, 63 Wn.2d 664, 669, 388 P.2d 926 (1964).

With these principles in mind, we now consider whether a zoning ordinance of the type described in your letter is preempted by state law.

1. **Adult Family Homes:** Adult family homes are family abodes of persons who are providing personal care, room, and board to more than one but not more than four unrelated adults. RCW 70.128.010. The state Department of Social and Health Services licenses adult family homes. RCW 70.128.040. RCW 70.128.175(2) states as follows:

An adult family home shall be considered a residential use of property for zoning purposes. Adult family homes shall be a permitted use in all areas zoned for residential or commercial purposes, including areas zoned for single family dwellings.

(Emphasis added.) The issue is whether RCW 70.128.175(2) prohibits a city from requiring that adult family homes be a certain distance (e.g., 1,000 feet) from other residential care facilities.

In State v. Seattle, supra, an ordinance empowered the city to approve any plan to alter or destroy landmark buildings. A state statute, RCW 28B.20.392(2)(b)(i), (ii), empowered the University Board of Regents to "raze, reconstruct, alter, remodel or add to existing buildings" located within the university tract. In ruling that the ordinance did not apply to buildings in the university tract, the court held:

The city's landmarks ordinance as applied cannot coexist with RCW 28B.20.392(2)(b)(ii). The effect of applying the landmarks ordinance to the Tract would be to forbid alterations of the nominated properties without Board approval and subject designated structures to controls imposed by the city council, while RCW 28B.20.392(2)(b)(ii) expressly permits the Board of Regents to alter and even demolish Tract buildings. The legislature has clearly shown its intent that the decision-making power as to preservation or destruction of Tract buildings rests with the Board of Regents.



94 Wn.2d at 166 (citations omitted).

In Snohomish County v. State, 97 Wn.2d 646, 648 P.2d 430 (1982), the Legislature selected a particular site and appropriated money to build a prison. In ruling that a county zoning ordinance was unenforceable to prohibit building the prison, the court stated:

The conclusion to be drawn from these provisions is clear. The Legislature in balancing the interests involved determined that the decision as to the new prison's location on the grounds of the state reformatory was to be made by the State and the agency responsible for the facility. The decision was not one to be controlled by local authorities. If it were so controlled, it is conceivable state prisons would not be permitted in any county. Accordingly, the Legislature unequivocally expressed its intent to preempt the County's zoning regulation insofar as it conflicted with the State's decision regarding the prison's location. We note that there are instances where the Legislature specifically allows local authorities to exercise control over State projects. For example, RCW 19.27 provides that local authorities are to enforce minimum building code requests and any amendments adopted by the local government. The provisions specifically apply to state buildings. In contrast, the zoning regulation in the instant case cannot be harmonized with the legislative enactments. Thus, Const. art. 11, § 11 requires that the local regulation yield to the general laws of the state.

Id. at 650 (emphasis added).

RCW 70.128.175(2) states that adult family homes are permitted uses in "all areas" zoned for residential or commercial uses. An adult family home is not a permitted use in "all areas" if it cannot be operated within a distance (e.g., 1,000 feet) of another residential facility. Thus, such an ordinance conflicts with RCW 70.128.175(2) in that it attempts to prohibit what the statute allows. State v. Seattle, supra. Moreover, in our opinion, by enacting RCW 70.128.175(2) the Legislature intended to preempt the city's zoning power to treat adult family homes more restrictively than other residential or commercial uses. Snohomish County v. State, supra. For these reasons, we believe such an ordinance, as applied to adult family homes licensed under chapter 70.128 RCW, is preempted by state law and is unenforceable.[2]

**2. Other Residential Care Facilities:** In addition to adult family homes, you have also asked about other state-licensed residential care facilities. These include boarding homes (chapter 18.20 RCW), nursing homes (chapter 18.51 RCW), domestic violence shelters (chapter 70.123 RCW), home health agencies (chapter 70.127 RCW), private establishments for care of the mentally ill, mentally incompetent, or alcoholic (chapter 71.12 RCW), day care training centers and group training homes (chapter 71A.22 RCW), and homes for dependent children, expectant mothers, and developmentally-disabled persons (chapter 74.15 RCW). These statutes grant a state agency (either the Department of Social and Health Services or the Department of Health) the power to license the particular residential care facility so long as minimum licensing standards are met.

The respective licensing statutes governing operation of these residential care facilities do not include a provision similar to RCW 70.128.175(2) which limits the zoning power of local government. Nor do these statutes grant the licensing state agencies any authority to decide the location of the facilities. Neither legislative intent to preempt local regulation nor a conflict with state statute can be inferred from the mere fact that the state regulates the facilities. For example, in Lenci, supra, the court found no conflict

between an ordinance requiring an eight-foot view-obscuring wall for a wrecking yard and RCW 46.80.130 which required only a "wall, fence or wire enclosure" for a wrecking yard. Quoting from State ex rel. Isham v. Spokane, 2 Wn.2d 392, 398, 98 P.2d 306 (1940), the court stated:

It is well-settled that a city may enact local legislation upon subjects already covered by state legislation so long as its enactments do not conflict with the state legislation; and the fact that a city charter provision or ordinance enlarges upon the provisions of a statute by requiring more than the statute requires, does not create a conflict unless the statute expressly limits the requirements.

Lenci, 63 Wn.2d at 670 (emphasis added) (citations omitted).

In State ex rel. Schillberg v. Everett Dist. Justice Court, *supra*, 92 Wn.2d at 108, the court held that there was no conflict between chapter 88.12 RCW which governs the safe operation of motor boats, and a county ordinance which prohibits the use of internal combustion motors on a certain lake. The court said: "There being no express statement nor words from which it could be fairly inferred that motor boats are permitted on all waters of the state, no conflict exists and the ordinance is valid."

Based on these cases, we find no conflict between an ordinance which prohibits one residential care facility from being located within a distance (e.g., 1,000 feet) of another residential care facility, and the state statutes which allow these facilities to operate if licensed by the state.[3] Hence, operation of such an ordinance is not preempted by state law as applied to residential care facilities other than adult family homes.[4]

We trust this opinion will be of assistance to you.

Very truly yours,

KENNETH O. EIKENBERRY  
Attorney General

RICHARD A. McCARTAN  
Assistant Attorney General

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[1] Conceivably, certain federal laws might also preempt local zoning decisions. See, e.g., Americans with Disabilities Act, 42 U.S.C. § 12101, et seq.; Fair Housing Act, 42 U.S.C. § 3604, et seq.; Older Americans Act, 42 U.S.C. § 3001, et seq. However, this is not necessarily the case. For example, in Familystyle v. St. Paul, 923 F.2d 91 (8th Cir. 1991), the court ruled that a state statute which required homes for the mentally impaired to be located at least one quarter mile apart, did not violate the Fair Housing Act. The application of federal law falls outside the scope of your question and we do not consider it in this opinion.

[2] Similarly, on preemption grounds, courts in other jurisdictions have struck down zoning ordinances which attempt to ban residential care facilities from residential zones when a state statute, like RCW 70.128.175(2), mandates such facilities be considered "residential" for zoning purposes. Residential Management Sys. Inc. v. Jefferson County Plan Comm'n, 542 N.E. 2d 227 (Ind. App. 1989); Mahrt v. Kalispell, 690 P.2d 418 (Mont. 1984); Nichols v. Tullahoma Open Door, Inc., 640 S.W.2d 13 (Tenn.

App. 1982); Costley v. Caromin House, Inc., 313 N.W.2d 21 (Minn. 1981); Mental Health Ass'n v. Elizabeth, 180 N.J. Super. 304, 434 A.2d 688 (1981); Mongony v. Bevilacqua, 432 A.2d 661 (R.I. 1981); Los Angeles v. Department of Health, 63 Cal. App. 3d 473, 133 Cal. Rptr. 771 (1976).

[3] Our analysis assumes that this ordinance would not have the effect of completely prohibiting these residential care facilities. If this were the practical effect of the ordinance, we might reach a different conclusion. In Second Amendment Found. v. Renton, 35 Wn. App. 583, 668 P.2d 596 (1983), the Court of Appeals, Division I, ruled that an ordinance which made it unlawful to carry firearms in any premise where alcoholic beverages are dispensed by the drink was not preempted by the Uniform Firearms Act, chapter 9.41 RCW. However, in dicta, the court noted that an absolute and unqualified local prohibition against possession of firearms might conflict with state law. Id. at 589. The applicability of the subject ordinance to a particular situation is beyond the scope of this opinion.

[4] Besides complying with article 11, section 11 of the Washington Constitution, a zoning ordinance also must promote the public health, safety, and welfare, and bear a reasonable and substantial relation to accomplishing the purpose pursued. Duckworth v. Bonney Lake, 91 Wn.2d 19, 26-27, 586 P.2d 860 (1978). Your question does not require us to address this issue with respect to the subject ordinance. We note, however, that courts have reached different conclusions on this issue. See Chestnut Hill Co. v. Snohomish, 76 Wn.2d 741, 458 P.2d 891 (1969) (upholding as reasonable an ordinance zoning nursing homes out of residential neighborhoods to maintain the residential character of the neighborhood); Verland C.L.A., Inc. v. Zoning Hearing Bd., 556 A.2d 4 (Pa. 1989) (upholding as reasonable minimum distance requirements between homes for mentally-retarded persons). But cf. J.W. v. Tacoma, 720 F.2d 1126 (9th Cir. 1983) (striking down as unreasonable the denial of a special use permit to operate a home for former mental patients in a residential zone); Northwest Residence, Inc. v. Brooklyn Center, 352 N.W.2d 764 (Minn. App. 1984) (striking down as unreasonable denial of special permit to operate home for mentally ill).



# Title 388 WAC

## SOCIAL AND HEALTH SERVICES, DEPARTMENT OF

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### Chapter 388-06 WAC

#### BACKGROUND CHECKS

#### WAC

388-06-0010	What is the purpose of this chapter?
388-06-0020	What definitions apply to WAC 388-06-0100 through 388-06-0260 of this chapter?
388-06-0110	Who must have background checks?
388-06-0130	Does the background check process apply to new and renewal licenses, certification, contracts, and authorizations to have unsupervised access to children or individuals with a developmental disability?
388-06-0150	What does the background check cover?
388-06-0160	Who pays for the background check?
388-06-0180	Are there other criminal convictions that will prohibit me from working with children or individuals with a developmental disability?
388-06-0250	Is the background check information released to my employer or prospective employer?
388-06-0525	When are individuals eligible for the one hundred twenty-day provisional hire?
388-06-0700	What definitions apply to WAC 388-06-0710 through 388-06-0720?
388-06-0710	Who may submit a background check to the background check central unit?
388-06-0720	Who receives the results of a background check conducted by the background check central unit?

**WAC 388-06-0010** What is the purpose of this chapter? (1) The purpose of this chapter is to establish rules for background checks conducted by children's administration (CA), and the division of developmental disabilities (DDD) at the department of social and health services (DSHS). The department does background checks on individuals who are licensed, certified, contracted, or authorized to care for or have unsupervised access to children and to individuals with a developmental disability. Background checks are conducted to find and evaluate any history of criminal convictions or civil adjudication proceedings, including those involving abuse, abandonment, financial exploitation, or neglect of a child or vulnerable adult.

(2) This chapter also defines when the one hundred twenty-day provisional hire is allowed by DSHS. WAC 388-06-0500 through 388-06-0540 apply to all DSHS administrations.

(3) WAC 388-06-0600 through 388-06-0640 of this chapter includes the background check requirements for

**individual provider or home care agency provider?** The department, AAA, or department designee will deny payment for the services of a home care agency provider if the services are provided by an employee of the home care agency who is related by blood, marriage, adoption, or registered domestic partnership to the client.

The department, AAA, or department designee will deny payment for the services of an individual provider or home care agency provider who:

(1) Is the client's spouse, per 42 C.F.R. 441.360(g), except in the case of an individual provider for a chore services client. Note: For chore spousal providers, the department pays a rate not to exceed the amount of a one-person standard for a continuing general assistance grant, per WAC 388-478-0030;

(2) Is the natural/step/adoptive parent of a minor client aged seventeen or younger receiving services under medicaid personal care;

(3) Is a foster parent providing personal care to a child residing in their licensed foster home;

(4) Has been convicted of a disqualifying crime, under RCW 43.43.830 and 43.43.842 or of a crime relating to drugs as defined in RCW 43.43.830;

(5) Has abused, neglected, abandoned, or exploited a minor or vulnerable adult, as defined in chapter 74.34 RCW;

(6) Has had a license, certification, or a contract for the care of children or vulnerable adults denied, suspended, revoked, or terminated for noncompliance with state and/or federal regulations;

(7) Does not successfully complete the training requirements within the time limits required in WAC 388-71-05665 through 388-71-05865;

(8) Is already meeting the client's needs on an informal basis, and the client's assessment or reassessment does not identify any unmet need; and/or

(9) Is terminated by the client (in the case of an individual provider) or by the home care agency (in the case of an agency provider).

In addition, the department, AAA, or department designee may deny payment to or terminate the contract of an individual provider as provided under WAC 388-71-0546, 388-71-0551, and 388-71-0556.

[Statutory Authority: RCW 74.08.090, 74.09.520, 2009 c 571, and Washington state 2009-11 budget, section 206(17). 10-06-112, § 388-71-0540, filed 3/3/10, effective 4/3/10. Statutory Authority: RCW 74.08.090, 74.09.520. 07-24-026, § 388-71-0540, filed 11/28/07, effective 1/1/08. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.010 and 74.39A.020, 06-05-022, § 388-71-0540, filed 2/6/06, effective 3/9/06. Statutory Authority: RCW 74.08.090, 74.09.520. 05-11-082, § 388-71-0540, filed 5/17/05, effective 6/17/05. Statutory Authority: Chapter 74.39A RCW and 2000 c 121. 02-10-117, § 388-71-0540, filed 4/30/02, effective 5/31/02. Statutory Authority: RCW 74.08.090, 74.09.520, 43.20A.050, 43.43.842, 74.39A.-090, 43.20A.710, 74.39.050, 43.43.830, 74.39.095. 01-11-019, § 388-71-0540, filed 5/4/01, effective 6/4/01. Statutory Authority: RCW 74.08.090, 74.09.520, 43.20A.050, 43.43.842, 74.39A.090, 43.20A.710, 74.39.050, 43.43.830. 00-03-043, § 388-71-0540, filed 1/13/00, effective 2/13/00.]

## Chapter 388-76 WAC

### ADULT FAMILY HOME MINIMUM LICENSING REQUIREMENTS

#### WAC

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[2011 WAC Supp—page 24]

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#### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

388-76-10155	Unsupervised access to vulnerable adults—Prohibited. [Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10155, filed 10/16/07, effective 1/1/08.] Repealed by 10-16-082, filed 7/30/10, effective 1/1/11. Statutory Authority: RCW 70.128.040, chapter 74.39A RCW.
388-76-10173	Disclosure of employee information—Employer immunity—Rebuttable presumption. [Statutory Authority: RCW 70.128.040. 09-03-030, § 388-76-10173, filed 1/12/09, effective 2/12/09.] Repealed by 10-16-082, filed 7/30/10, effective 1/1/11. Statutory Authority: RCW 70.128.040, chapter 74.39A RCW.
388-76-10185	Employment—Certain criminal history—Permitted. [Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10185, filed 10/16/07, effective 1/1/08.] Repealed by 10-04-008, filed 1/22/10, effective 2/22/10. Statutory Authority: RCW 70.128.040.
388-76-10190	Adult family home—Compliance with regulations—Required. [Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10190, filed 10/16/07, effective 1/1/08.] Repealed by 10-03-064, filed 1/15/10, effective 2/15/10. Statutory Authority: RCW 70.128.040.

**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 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 a licensed operator, resident manager, or caregiver, who resides in the home.

(2) As used in this chapter, 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. 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"** 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.

**"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 a provider who is or will be 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 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.42.100.

**"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 who is licensed to operate an adult family home and meets the requirements of this chapter; 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.

**"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 to manage the adult family home and who meets the requirements of this chapter.

**"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, to provide 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 individual 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.

[Statutory Authority: RCW 70.128.040, chapter 74.39A RCW. 10-16-082, § 388-76-10000, filed 7/30/10, effective 1/1/11. Statutory Authority: RCW 70.128.040. 10-03-064, § 388-76-10000, filed 1/15/10, effective 2/15/10; 09-03-029, § 388-76-10000, filed 1/12/09, effective 2/12/09. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10000, filed 10/16/07, effective 1/1/08.]

**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.

[Statutory Authority: RCW 70.128.040. 10-03-064, § 388-76-10002, filed 1/15/10, effective 2/15/10.]

**WAC 388-76-10003 Department access.** (1) The applicant must allow the department staff to inspect the entire premises including all of the home's rooms, buildings, grounds, and equipment and all pertinent records 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.

[Statutory Authority: RCW 70.128.040. 10-03-064, § 388-76-10003, filed 1/15/10, effective 2/15/10.]

**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, this chapter and other applicable laws and regulations including chapter 74.39A RCW; and

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

[Statutory Authority: RCW 70.128.040. 10-03-064, § 388-76-10015, filed 1/15/10, effective 2/15/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10015, filed 10/16/07, effective 1/1/08.]

**WAC 388-76-10020 License—Ability to provide care and services.** The provider must have the:

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

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

[Statutory Authority: RCW 70.128.040. 10-03-064, § 388-76-10020, filed 1/15/10, effective 2/15/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10020, filed 10/16/07, effective 1/1/08.]

**WAC 388-76-10030 License capacity.** (1) The adult family home capacity includes:

(a) The number of residents which is the resident capacity; plus

(b) The number of related children or adults in the home who receives personal or special care services.

(2) 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) Number and qualifications of staff;

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

(i) Related children and adults; and

(ii) Other household members;

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

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

(3) The resident capacity number will be listed on the adult family home license and the home must ensure that the number of residents in the home does not exceed the resident capacity.

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

[Statutory Authority: RCW 70.128.040. 10-03-064, § 388-76-10030, filed 1/15/10, effective 2/15/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10030, filed 10/16/07, effective 1/1/08.]

**WAC 388-76-10035 License requirements—Multiple family home providers.** To be licensed to operate more than one adult family home, the applicant must have:

(1) Evidence of successful completion of the forty-eight hour residential care administrator's training to meet the applicable requirements of chapter 388-112 WAC.

(2) Operated an adult family home in Washington for at least one year without a significant violation of chapters 70.128, 70.129 or 74.34 RCW, this chapter or other applicable laws and regulations; and

(3) The ability to operate more than one home.

(4) The following plans for each home the applicant intends to operate:

(a) A twenty-four hour a day, seven day a week staffing plan;

(b) A plan for managing the daily operations of each home; and

(c) A plan for emergencies, deliveries, staff and visitor parking.

(5) A credit history considered if the history relates to the ability to provide care and services.

(6) An entity representative or a resident manager at each home who is responsible for the care of each resident at all times.

[Statutory Authority: RCW 70.128.040. 10-04-008, § 388-76-10035, filed 1/22/10, effective 2/22/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10035, filed 10/16/07, effective 1/1/08.]

**WAC 388-76-10036 License requirements—Multiple adult family home management.** When there is more than one home licensed to a provider, the adult family home must ensure that:

(1) Each home has one person responsible for managing the overall delivery of care to all residents in the home;

(2) The designated responsible person is the provider, entity representative or a resident manager; and

(3) Each responsible person is designated to manage only one adult family home at a given time.

[Statutory Authority: RCW 70.128.040. 10-04-008, § 388-76-10036, filed 1/22/10, effective 2/22/10; 09-03-030, § 388-76-10036, filed 1/12/09, effective 2/12/09.]

**WAC 388-76-10040 License requirements—Qualified person must live-in or be on-site.** (1) The adult family home provider or entity representative must:

(a) Live in the home; or  
 (b) Employ or contract with a resident manager who lives in the home and is responsible for the care and services of each resident at all times.

(2) The provider, entity representative, or resident manager is exempt from the requirement to live in the home if:

(a) The home has twenty-four hour staffing coverage; and  
 (b) A staff person who can make needed decisions is always present in the home.

[Statutory Authority: RCW 70.128.040, 10-04-008, § 388-76-10040, filed 1/22/10, effective 2/22/10; 09-03-030, § 388-76-10040, filed 1/12/09, effective 2/12/09. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10040, filed 10/16/07, effective 1/1/08.]

**WAC 388-76-10050 License—Relinquishment.** (1) If an adult family home does not have any residents, it may relinquish its license at any time.

(2) The home must relinquish its license if it has not provided care and services to residents for twenty-four months.

(3) The department may revoke the adult family home license if:

(a) The home does not relinquish the license as required under subsection (2); and

(b) There is no credible evidence that residents were cared for in the home during the period of time specified in subsection (2).

[Statutory Authority: RCW 70.128.040, 10-03-064, § 388-76-10050, filed 1/15/10, effective 2/15/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10050, filed 10/16/07, effective 1/1/08.]

**WAC 388-76-10055 Application—Generally.** The applicant must send an application to the department for:

(1) An initial adult family home license;  
 (2) A change of ownership of the adult family home; or  
 (3) A change of the adult family home location or address.

[Statutory Authority: RCW 70.128.040, 10-03-064, § 388-76-10055, filed 1/15/10, effective 2/15/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10055, filed 10/16/07, effective 1/1/08.]

**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 any applicable minimum qualifications listed in WAC 388-76-10130 through 388-76-10145.

[Statutory Authority: RCW 70.128.040, 10-03-064, § 388-76-10057, filed 1/15/10, effective 2/15/10.]

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

[Statutory Authority: RCW 70.128.040, 10-03-064, § 388-76-10063, filed 1/15/10, effective 2/15/10.]

**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.

[Statutory Authority: RCW 70.128.040, 10-03-064, § 388-76-10064, filed 1/15/10, effective 2/15/10.]

**WAC 388-76-10080 Application—Coprovider.** Couples who are legally married or domestic partners under Washington state law:

(1) May not apply for separate licenses; and  
 (2) May apply jointly to be coproviders.

[Statutory Authority: RCW 70.128.040, 10-03-064, § 388-76-10080, filed 1/15/10, effective 2/15/10; 09-03-030, § 388-76-10080, filed 1/12/09, effective 2/12/09. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10080, filed 10/16/07, effective 1/1/08.]

**WAC 388-76-10090 Application—Entity application.** An entity submitting an application must:

(1) Include a list of all facilities or homes in which the applicant or persons affiliated with the applicant, managerial employee, or owner of five percent or more of the entity provided care and services to children or vulnerable adults within the last ten years;

(2) Designate an entity representative who:

(a) Is responsible for the daily operations of the adult family home;

(b) Will be considered the department's primary contact person; and

(c) May act as both the entity representative and the resident manager in only one home.

(3) Designate a resident manager for the home if the entity representative is not the designated resident manager in subsection (2)(c) of this section.

[Statutory Authority: RCW 70.128.040, 10-04-008, § 388-76-10090, filed 1/22/10, effective 2/22/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10090, filed 10/16/07, effective 1/1/08.]

**WAC 388-76-10105 Application—Change of ownership.** (1) Under this section, "control of the provider" means the possession, directly or indirectly, of the power to direct the management, operation and/or policies of the adult family home, whether through ownership, voting control, by agreement, by contract or otherwise.

(2) A change of ownership of an adult family home requires both a new license application and a new license.

(3) A change of ownership occurs when there is a change in:

(a) The provider; or

(b) The control of a provider.  
 (4) Events which constitute a change of ownership include, but are not limited to:

(a) The form of legal organization of the adult family home is changed, such as when an adult family home forms:

- (i) A partnership;
- (ii) A corporation;
- (iii) A limited liability company; or
- (iv) When it merges with another legal organization.

(b) The adult family home transfers business operations and management responsibility to another party, whether or not there is a partial or whole transfer of real property, personal property, or both.

(c) Two people are both licensed as a married couple or domestic partners to operate an adult family home and an event, such as a separation, divorce, or death, results in only one person operating the home.

(d) Dissolution of a business partnership that is licensed to operate the adult family home.

(e) If the adult family home is a corporation and the corporation:

- (i) Is dissolved;
- (ii) Merges with another corporation, resulting in a change in the control of the provider; or
- (iii) Consolidates with one or more corporations to form a new corporation;

(iv) Whether by a single transaction or multiple transactions within a continuous twenty-four month period, transfers fifty percent or more of its shares to one or more of the following:

- (A) New or former shareholders; or
- (B) Present shareholders, each having less than five percent of the shares before the initial transaction.

(f) Any other event or combination of events that results in a substitution, elimination, or withdrawal of the provider's control of the adult family home.

(5) The new owner:

(a) Must obtain a new license from the department before transfer of ownership;

(b) Must not begin operation of the adult family home until the department has granted the license;

(c) Must correct all deficiencies that exist at the time of the ownership change;

(d) Is subject to the provisions of chapters 70.128, 70.129, 74.34 RCW, this chapter and other applicable laws and regulations; and

(e) Must provide the department with a copy of the written notice of the change of ownership that was given to each resident, or applicable resident representatives.

[Statutory Authority: RCW 70.128.040, 10-14-058, § 388-76-10105, filed 6/30/10, effective 7/31/10; 10-04-008, § 388-76-10105, filed 1/22/10, effective 2/22/10; 09-03-030, § 388-76-10105, filed 1/12/09, effective 2/12/09. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW, 07-21-080, § 388-76-10105, filed 10/16/07, effective 1/1/08.]

**WAC 388-76-10106 Change of ownership—Notice to department and residents.** (1) The current adult family home owner must provide written notice to the department, residents or applicable resident representatives, sixty calendar days prior to the date of the proposed change of ownership; and

(2) The home must include the following information in the written notice:

- (a) Names of the present owner and prospective owner;
- (b) Name and address of the adult family home for which the ownership is being changed;
- (c) Date of proposed change;
- (d) The resident's right to decide whether they want to stay or move; and

(e) Any change in the home's policies or operations that could impact a resident's ability to continue to live in the home. For example, if the new owner will be changing the home's policy on serving medicaid eligible residents, that change might impact a resident's ability to continue receiving services in the home.

[Statutory Authority: RCW 70.128.040, 10-14-058, § 388-76-10106, filed 6/30/10, effective 7/31/10.]

**WAC 388-76-10107 Change of ownership—Priority processing.** In order to prevent disruption to residents, currently licensed providers may request in writing that the department give priority processing to an applicant seeking to be licensed as the new provider for the adult family home.

[Statutory Authority: RCW 70.128.040, 10-14-058, § 388-76-10107, filed 6/30/10, effective 7/31/10.]

**WAC 388-76-10110 Application—Change of location or address.** (1) A change of the adult family home location or address requires both a new license application and a new license.

(2) The home must not start operations of the home at a new location until the department has granted the license for the new location.

(3) The home must notify each resident or resident representative, in writing at least thirty days before the effective date of the change of the home location or address.

[Statutory Authority: RCW 70.128.040, 10-04-008, § 388-76-10110, filed 1/22/10, effective 2/22/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW, 07-21-080, § 388-76-10110, 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 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 convictions and other circumstances described in WAC 388-76-10120 and 388-76-10125 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 may have unsupervised access to residents in the home; and
- (g) Any person who lives in the home and is not a resident.

[Statutory Authority: RCW 70.128.040, 10-03-064, § 388-76-10115, filed 1/15/10, effective 2/15/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW, 07-21-080, § 388-76-10115, filed 10/16/07, effective 1/1/08.]

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

(1) 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) 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 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), (d), (e), (f), or (g) 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 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); or

(iv) Violation of the Uniform Precursor Drug Act (VUPDA).

(f) Has been convicted of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;

(g) Has been convicted of criminal mistreatment;

(h) Has been found to have abused, neglected, exploited, or abandoned a minor or vulnerable adult by court of law or a disciplining authority, including the department of health. 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 74.34 RCW;

(i) Has a finding of abuse or neglect of a child that is:

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

(ii) Disclosed by the individual, except for findings made before December, 1998.

(j) Has a finding of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult that is:

(i) Listed on any registry, including the department's registry;

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

(iii) Disclosed by the individual, except for adult protective services findings made before October, 2003.

[Statutory Authority: RCW 70.128.040, 10-03-064, § 388-76-10120, filed 1/15/10, effective 2/15/10; 09-03-028, § 388-76-10120, filed 1/12/09, effective 2/12/09. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW, 07-21-080, § 388-76-10120, filed 10/16/07, effective 1/1/08.]

**WAC 388-76-10125 License—May be denied.** The adult family home license may be denied if 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.

[Statutory Authority: RCW 70.128.040, 10-03-064, § 388-76-10125, filed 1/15/10, effective 2/15/10; 09-03-028, § 388-76-10125, filed 1/12/09, effective 2/12/09. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10125, filed 10/16/07, effective 1/1/08.]

**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.

[Statutory Authority: RCW 70.128.040, 10-03-064, § 388-76-10129, filed 1/15/10, effective 2/15/10.]

**WAC 388-76-10130 Qualifications—Provider, entity representative and resident manager.** The adult family home must ensure that the provider, entity representative and resident manager have the following minimum qualifications:

(1) Be twenty-one years of age or older;

(2) Have a United States high school diploma or general education development certificate, or any English translated government document of the following:

(a) Successful completion of government approved public or private school education in a foreign country that includes an annual average of one thousand hours of instruction a year for twelve years, or no less than twelve thousand hours of instruction;

(b) Graduation from a foreign college, foreign university, or United States community college with a two-year diploma, such as an associate's degree;

(c) Admission to, or completion of course work at a foreign or United States college or university for which credit was awarded;

(d) Graduation from a foreign or United States college or university, including award of a bachelor's degree;

(e) Admission to, or completion of postgraduate course work at, a United States college or university for which credits were awarded, including award of a master's degree; or

(f) Successful passage of the United States board examination for registered nursing, or any professional medical occupation for which college or university education was required.

(3) Completion of the training requirements that were in effect on the date they were hired, including the requirements described in chapter 388-112 WAC;

(4) Have good moral and responsible character and reputation;

(5) Be literate in the English language, or meet alternative requirements by assuring that a person is on staff and available at the home who is:

(a) Able to communicate or make provisions for communicating with the resident in his or her primary language; and

(b) Capable of understanding and speaking English well enough to be able to respond appropriately to emergency situations and be able to read, understand and implement resident negotiated care plans.

(6) Be able to carry out the management and administrative requirements of chapters 70.128, 70.129 and 74.34 RCW, this chapter and other applicable laws and regulations;

(7) Have completed at least three hundred and twenty hours of successful direct care experience obtained after age eighteen to vulnerable adults in a licensed or contracted setting before operating or managing a home;

(8) Have no criminal convictions listed in RCW 43.43.830 or 43.43.842 or state or federal findings of abandonment, abuse, neglect or financial exploitation;

(9) Obtain and keep valid cardiopulmonary resuscitation (CPR) and first-aid card or certificate as required in chapter 388-112 WAC; and

(10) Have tuberculosis screening to establish tuberculosis status per this chapter.

[Statutory Authority: RCW 70.128.040, chapter 74.39A RCW. 10-16-082, § 388-76-10130, filed 7/30/10, effective 1/1/11. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10130, filed 10/16/07, effective 1/1/08.]

**WAC 388-76-10135 Qualifications—Caregiver.** The adult family home must ensure each caregiver has the following minimum qualifications:

(1) Be eighteen years of age or older;

(2) Have a clear understanding of the caregiver job responsibilities and knowledge of each resident's negotiated care plan to provide care specific to the needs of each resident;

(3) Have basic communication skills to:

(a) Be able to communicate or make provisions to communicate with the resident in his or her primary language;

(b) Understand and speak English well enough to:

(i) Respond appropriately to emergency situations; and

(ii) Read, understand and implement resident negotiated care plans.

(4) Completion of the training requirements that were in effect on the date they were hired including requirements described in chapter 388-112 WAC;

(5) Have no criminal convictions listed in RCW 43.43.830 or 43.43.842 or state or federal findings of abandonment, abuse, neglect or financial exploitation;

(6) Have a current valid first-aid and cardiopulmonary resuscitation (CPR) card or certificate as required in chapter 388-112 WAC; and

(7) Have tuberculosis screening to establish tuberculosis status per this chapter.

[Statutory Authority: RCW 70.128.040, chapter 74.39A RCW. 10-16-082, § 388-76-10135, filed 7/30/10, effective 1/1/11. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10135, filed 10/16/07, effective 1/1/08.]

**WAC 388-76-10146 Qualifications—Training and home care aide certification.** (1) The adult family home must ensure all adult family home caregivers, entity representatives, and resident managers hired on or after January 1, 2011, meet the long-term care worker training requirements of chapter 388-112 WAC, including but not limited to:

(a) Orientation and safety;

(b) Basic;

(c) Specialty for dementia, mental illness and/or developmental disabilities when serving residents with any of those primary special needs;

(d) Cardiopulmonary resuscitation and first aid; and

(e) Continuing education.

(2) All persons listed in subsection (1) of this section, must obtain the home-care aide certification required by chapter 246-980 WAC.

(3) All adult family home applicants on or after January 1, 2011, must meet the long-term care worker training requirements of chapter 388-112 WAC and obtain the home-care aide certification required by chapter 246-980 WAC.

(4) Under RCW 18.88B.040 and chapter 246-980 WAC, certain persons including registered nurses, licensed practical nurses, certified nursing assistants or persons who are in an approved certified nursing assistant program are exempt from long-term care worker training requirements.

(5) The adult family home must ensure that all staff receive the orientation and training necessary to perform their job duties.

[Statutory Authority: RCW 70.128.040, chapter 74.39A RCW. 10-16-082, § 388-76-10146, filed 7/30/10, effective 1/1/11.]

**WAC 388-76-10160 Background check—General.** Background checks conducted by the department and required in this chapter include but are not limited to:

(1) Washington state background checks including:

(a) Department and department of health findings; and

(b) Criminal background check information from the Washington state patrol and the Washington state courts.

(2) After January 1, 2012, a national fingerprint-based check in accordance with RCW 74.39A.055.

(3) Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the adult family home.

(4) In addition to chapter 70.128 RCW, these rules are authorized by RCW 43.20A.710, 43.43.830 through 43.43.842 and RCW 74.39A.050(8).

[Statutory Authority: RCW 70.128.040, chapter 74.39A RCW. 10-16-082, § 388-76-10160, filed 7/30/10, effective 1/1/11. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10160, filed 10/16/07, effective 1/1/08.]

**WAC 388-76-10161 Background check—Washington state—Who is required to have.** (1) An adult family home applicant and anyone affiliated with an applicant must have a Washington state background check before licensure.

(2) The adult family home must ensure the following individuals employed directly or by contract, have Washington state background checks:

(a) Caregivers, including volunteers and students who may have unsupervised access to residents;

(b) Entity representatives;

- (c) Resident managers; and
- (d) All household members over the age of eleven who may have unsupervised access to residents.

[Statutory Authority: RCW 70.128.040, chapter 74.39A RCW. 10-16-082, § 388-76-10161, filed 7/30/10, effective 1/1/11.]

**WAC 388-76-10162 Background check—National fingerprint checks—Who is required to have.** (1) After January 1, 2012, an adult family home applicant and anyone affiliated with an applicant, must have a background check that includes a national fingerprint-based background check.

(2) The adult family home must ensure that all caregivers, entity representatives and resident managers hired after January 1, 2012 have a background check that includes a national fingerprint-based background check.

[Statutory Authority: RCW 70.128.040, chapter 74.39A RCW. 10-16-082, § 388-76-10162, filed 7/30/10, effective 1/1/11.]

**WAC 388-76-10163 Background check—Process.** Before the adult family home employs, directly or by contract, a resident manager, entity representative or caregiver, or accepts as a caregiver any volunteer or student, or allows a household member over the age of eleven unsupervised access to residents, the home must:

- (1) Require the person to complete a DSHS background authorization form; and
- (2) Send the completed form to the department's background check central unit (BCCU), including any additional documentation and information requested by the department.

[Statutory Authority: RCW 70.128.040, chapter 74.39A RCW. 10-16-082, § 388-76-10163, filed 7/30/10, effective 1/1/11.]

**WAC 388-76-10164 Background check—Results.** (1) The adult family home must not allow persons listed in WAC 388-76-10161(2) to have unsupervised access to residents until the adult family home receives background check results from the department verifying that the person does not have convictions, or findings described in WAC 388-76-10180.

(2) If the background check results show that the person has a conviction or finding that is not disqualifying under WAC 388-76-10180, then the adult family home must determine whether the person has the character, suitability and competence to work with vulnerable adults in long-term care.

(3) The adult family home must:

- (a) Inform the person of the results of the background check;
- (b) Inform the person that they may request a copy of the results of the background check. If requested, a copy of the background check results must be provided within ten days of the request; and

(c) Notify the department and the other appropriate licensing or certification agency of any person resigning or terminated as a result of having a conviction record.

[Statutory Authority: RCW 70.128.040, chapter 74.39A RCW. 10-16-082, § 388-76-10164, filed 7/30/10, effective 1/1/11.]

**WAC 388-76-10165 Background check—Valid for two years.** A Washington state background check is valid for

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two years from the initial date it is conducted. The adult family home must ensure:

(1) A new DSHS background authorization form is submitted to the BCCU every two years for individuals listed in WAC 388-76-10161;

(2) There is a valid Washington state background check for all individuals listed in WAC 388-76-10161.

[Statutory Authority: RCW 70.128.040, chapter 74.39A RCW. 10-16-082, § 388-76-10165, filed 7/30/10, effective 1/1/11. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10165, filed 10/16/07, effective 1/1/08.]

**WAC 388-76-10170 Background check—Confidentiality—Use restricted—Retention.** The adult family home must establish and implement procedures that ensure all background authorization forms, background check results, related information, and all copies are:

- (1) Kept in a confidential and secure manner;
- (2) Used for employment purposes only;
- (3) Not disclosed to any person except:
  - (a) The person about whom the home made the disclosure or background check;
  - (b) Licensed facilities, an employer of an authorized program, or an in-home services agency employer identified in WAC 388-76-10174;
  - (c) Authorized state and federal employees; and
  - (d) The Washington state patrol auditor.
- (4) Kept for two years after the date an employee either quits or is terminated.

[Statutory Authority: RCW 70.128.040, chapter 74.39A RCW. 10-16-082, § 388-76-10170, filed 7/30/10, effective 1/1/11. Statutory Authority: RCW 70.128.040. 09-03-030, § 388-76-10170, filed 1/12/09, effective 2/12/09. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10170, filed 10/16/07, effective 1/1/08.]

**WAC 388-76-10174 Background check—Disclosure of information—Sharing of background information by health care facilities.** In accordance with RCW 43.43.832 a health care facility may share Washington state background check results with other health care facilities under certain circumstances. Results of the national fingerprint-based background check may not be shared. For the purposes of this section health care facility means a nursing home licensed under chapter 18.51 RCW, a boarding home licensed under chapter 18.20 RCW, or an adult family home licensed under chapter 70.128 RCW.

(1) A health care facility may, upon request from another health care facility, share completed Washington state background check results only if:

(a) The health care facility sharing the background check information is reasonably known to be the person's most recent employer;

(b) No more than twelve months has elapsed between the date the person was last employed at a licensed health care facility and the date of the person's current employment application; and

(c) The background check is no more than two years old.

(2) If background check information is shared, the health care facility employing the subject of the check must require the applicant to sign a disclosure statement indicating that there has been no conviction or finding as described in WAC



388-76-10180 since the completion date of the most recent background check.

(3) Any health care facility that knows or has reason to believe that an applicant has or may have a disqualifying conviction or finding as described in WAC 388-76-10180, after the completion date of their most recent background check:

(a) Cannot rely on the applicant's previous employer's background check information; and

(b) Must request a new background check as required by this chapter.

(4) Health care facilities that share background check information shall be immune from any claim of defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of this information in accordance with this section.

(5) Health care facilities must send and receive the background check information in a manner that reasonably protects the subject's rights to privacy and confidentiality.

(6) In accordance with RCW 74.39A.210, a home that discloses information about a former or current employee to certain types of prospective employers is presumed to act in good faith and is immune from civil and criminal liability for such disclosure or its consequences.

[Statutory Authority: RCW 70.128.040, chapter 74.39A RCW. 10-16-082, § 388-76-10174, filed 7/30/10, effective 1/1/11. Statutory Authority: RCW 70.128.040. 09-03-030, § 388-76-10174, filed 1/12/09, effective 2/12/09.]

**WAC 388-76-10175 Background check employment—Conditional hire—Pending results.** An adult family home may conditionally employ a person directly or by contract, pending the result of a background check, provided the home:

(1) Requests the background check no later than one business day after conditional employment;

(2) Requires the individual to sign a disclosure statement and the individual denies having been convicted of a disqualifying crime or a disqualifying finding under WAC 388-76-10180;

(3) Does not allow the individual to have unsupervised access to any resident;

(4) Ensures direct supervision, of the individual, as defined in WAC 388-76-10000; and

(5) Ensures the individual is competent and receives the necessary training to perform assigned tasks and meets the staff training requirements under chapter 388-112 WAC.

[Statutory Authority: RCW 70.128.040, chapter 74.39A RCW. 10-16-082, § 388-76-10175, filed 7/30/10, effective 1/1/11. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10175, filed 10/16/07, effective 1/1/08.]

**WAC 388-76-10180 Background check—Employment—Disqualifying information.** Unless hired conditionally as specified in WAC 388-76-10175, the adult family home must not use or employ anyone, directly or by contract, who is listed in WAC 388-76-10161 if the individual has:

(1) Any of the convictions, history, or findings, described below:

(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 (c), (d), (e), (f), or (g) 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 convicted of:

(i) Violation of the Imitation Controlled Substances Act (VICSA);

(ii) Violation of the Uniform Controlled Substances Act (VUCSA);

(iii) Violation of the Uniform Legend Drug Act (VULDA); or

(iv) Violation of the Uniform Precursor Drug Act (VUPDA).

(f) Has been convicted of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;

(g) Has been convicted of criminal mistreatment;

(h) Has been found to have abused, neglected, financially exploited, or abandoned a minor or vulnerable adult by court of law or a disciplining authority, including the department of health. 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 74.34 RCW;

(i) Has a finding of abuse or neglect of a child that is:

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

(ii) Disclosed by the individual, except for findings made before December, 1998.

(j) Has a finding of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult that is:

(i) Listed on any registry, including the department's registry;

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

(iii) Disclosed by the individual, except for adult protective services findings made before October, 2003.

(2) Nothing in this section should be interpreted as requiring the employment of any person against the better judgment of the adult family home.

[Statutory Authority: RCW 70.128.040, chapter 74.39A RCW. 10-16-082, § 388-76-10180, filed 7/30/10, effective 1/1/11. Statutory Authority: RCW 70.128.040. 10-03-064, § 388-76-10180, filed 1/15/10, effective 2/15/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10180, filed 10/16/07, effective 1/1/08.]

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

(1) Obtain liability insurance upon licensure and maintain the 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.

[Statutory Authority: RCW 70.128.040. 10-03-064, § 388-76-10191, filed 1/15/10, effective 2/15/10.]

**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.

[Statutory Authority: RCW 70.128.040. 10-03-064, § 388-76-10192, filed 1/15/10, effective 2/15/10.]

**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.

[Statutory Authority: RCW 70.128.040. 10-03-064, § 388-76-10193, filed 1/15/10, effective 2/15/10.]

**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 are available in the home to meet the needs of each resident, except as provided in 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.

[Statutory Authority: RCW 70.128.040. 10-03-064, § 388-76-10195, filed 1/15/10, effective 2/15/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10195, filed 10/16/07, effective 1/1/08.]

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**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.

[Statutory Authority: RCW 70.128.040. 10-03-064, § 388-76-10198, filed 1/15/10, effective 2/15/10.]

**WAC 388-76-10200 Adult family home—Staff—Availability—Contact information.** In addition to other licensing requirements for staff availability, the adult family home must:

(1) Ensure at least one caregiver is present in the home whenever one or more residents are present in the home, unless the resident has been assessed as being safe when left unattended for a specific period of time, and that information is included in the negotiated care plan;

(2) Designate an experienced, staff member who is capable of responding on behalf of the adult family home by phone or pager at all times.

(3) Give residents the telephone or pager number for the contact required in subsection (2) of this section;

(4) Ensure the provider, entity representative or resident manager is readily available to:

(a) Each resident;

(b) Residents' representatives;

(c) Caregivers; and

(d) Authorized state staff.

[Statutory Authority: RCW 70.128.040. 10-04-008, § 388-76-10200, filed 1/22/10, effective 2/22/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10200, 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) 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 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.

[Statutory Authority: RCW 70.128.040, 10-03-064, § 388-76-10225, filed 1/15/10, effective 2/15/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10225, 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 either:

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

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

(b) By a trained professional; or

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

[Statutory Authority: RCW 70.128.040, 10-03-064, § 388-76-10270, filed 1/15/10, effective 2/15/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10270, filed 10/16/07, effective 1/1/08.]

**WAC 388-76-10275 Tuberculosis—No 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 skin test, with ten or more millimeters induration;

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

(3) Documented evidence of:

(a) Adequate therapy for active disease; or

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

[Statutory Authority: RCW 70.128.040, 10-03-064, § 388-76-10275, filed 1/15/10, effective 2/15/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10275, filed 10/16/07, effective 1/1/08.]

**WAC 388-76-10280 Tuberculosis—One test.** The adult family home is only required to have a person take one test if the person has any of the following:

(1) A documented history of a negative result from a previous two step test done no more than one to three weeks apart; or

(2) A documented negative result from one skin or blood test in the previous twelve months.

[Statutory Authority: RCW 70.128.040, 10-03-064, § 388-76-10280, filed 1/15/10, effective 2/15/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10280, 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 one test, the adult family home, choosing to do skin testing, must ensure that each person has the following two-step skin testing:

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

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

[Statutory Authority: RCW 70.128.040, 10-03-064, § 388-76-10285, filed 1/15/10, effective 2/15/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10285, filed 10/16/07, effective 1/1/08.]

**WAC 388-76-10290 Tuberculosis—Positive test result.** When there is a positive result to tuberculosis skin or blood testing the adult family home must:

(1) Ensure that the person has a chest X ray within seven days;

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

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

[Statutory Authority: RCW 70.128.040, 10-03-064, § 388-76-10290, filed 1/15/10, effective 2/15/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10290, filed 10/16/07, effective 1/1/08.]

**WAC 388-76-10295 Tuberculosis—Negative test result.** The adult family home may be required by the public health provider or licensing authority to ensure that persons with negative test results have follow-up testing in certain circumstances, such as:

(1) After exposure to active tuberculosis;

(2) When tuberculosis symptoms are present; or

(3) For periodic testing as determined by the health provider.

[Statutory Authority: RCW 70.128.040, 10-03-064, § 388-76-10295, filed 1/15/10, effective 2/15/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10295, filed 10/16/07, effective 1/1/08.]

**WAC 388-76-10300 Tuberculosis—Declining a skin test.** The adult family home must ensure that a person take the blood test for tuberculosis if they decline the skin test.

[Statutory Authority: RCW 70.128.040, 10-03-064, § 388-76-10300, filed 1/15/10, effective 2/15/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW. 07-21-080, § 388-76-10300, filed 10/16/07, effective 1/1/08.]

**WAC 388-76-10305 Tuberculosis—Reporting required.** The adult family home must:

- (1) Report any person or resident with tuberculosis symptoms or a positive chest X ray to the appropriate health care provider or public health provider;
- (2) Follow the infection control and safety measures ordered by the person's health care provider, including a public health provider; and
- (3) Institute appropriate infection control measures.

[Statutory Authority: RCW 70.128.040, 10-03-064, § 388-76-10305, filed 1/15/10, effective 2/15/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW, 07-21-080, § 388-76-10305, filed 10/16/07, effective 1/1/08.]

**WAC 388-76-10310 Tuberculosis—Test records.** The adult family home must:

- (1) Keep the records of tuberculin test results, reports of X-ray findings, and any physician or public health provider orders in the adult family home;
- (2) Make the records readily available to the appropriate health authority and licensing agency;
- (3) Provide the employee a copy of his/her testing results; and
- (4) Retain the records for eighteen months after the date an employee either quits or is terminated.

[Statutory Authority: RCW 70.128.040, 10-03-064, § 388-76-10310, filed 1/15/10, effective 2/15/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW, 07-21-080, § 388-76-10310, filed 10/16/07, effective 1/1/08.]

**WAC 388-76-10415 Food services.** The adult family home must:

- (1) Ensure that the safe food handling training requirements of chapter 388-112 WAC are met; and
- (2) Serve meals:
  - (a) In the home where each resident lives; and
  - (b) That accommodate each resident's:
    - (i) Preferences;
    - (ii) Food allergies and sensitivities;
    - (iii) Caloric needs;
    - (iv) Cultural and ethnic background; and
    - (v) Physical condition that may make food intake difficult such as being hard for the resident to chew or swallow.

[Statutory Authority: RCW 70.128.040, 10-04-008, § 388-76-10415, filed 1/22/10, effective 2/22/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW, 07-21-080, § 388-76-10415, 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;

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(4) Serve nutrient concentrates, supplements, and modified diets only with written approval of the resident's physician;

(5) Only serve pasteurized milk;

(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.

[Statutory Authority: RCW 70.128.040, 10-03-064, § 388-76-10420, filed 1/15/10, effective 2/15/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW, 07-21-080, § 388-76-10420, 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 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.

[Statutory Authority: RCW 70.128.040, 10-03-064, § 388-76-10455, filed 1/15/10, effective 2/15/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW, 07-21-080, § 388-76-10455, 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 disposal of unused or expired resident medications. 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.

[Statutory Authority: RCW 70.128.040, 10-03-064, § 388-76-10490, filed 1/15/10, effective 2/15/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW, 07-21-080, § 388-76-10490, filed 10/16/07, effective 1/1/08.]

**WAC 388-76-10505 Specialty care—Admitting and retaining residents.** The adult family home must not admit or keep a resident with specialty care needs, such as developmental disability, mental illness, or dementia as defined in WAC 388-76-10000, if the provider, entity representative, resident manager and staff have not completed the specialty care training required by chapter 388-112 WAC.

[Statutory Authority: RCW 70.128.040, 10-04-008, § 388-76-10505, filed 1/22/10, effective 2/22/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW, 07-21-080, § 388-76-10505, 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 adult family home will accept medicaid or other public funds as a source of payment for services.

[Statutory Authority: RCW 70.128.040, 10-03-064, § 388-76-10520, filed 1/15/10, effective 2/15/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW, 07-21-080, § 388-76-10520, filed 10/16/07, effective 1/1/08.]

**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.

[Statutory Authority: RCW 70.128.040, 10-03-064, § 388-76-10522, filed 1/15/10, effective 2/15/10.]

**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 and a certified health plan, health or disability insurer, health maintenance organization, managed care organization, or similar entities.

(8) If the home requires 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.

[Statutory Authority: RCW 70.128.040, 10-03-064, § 388-76-10540, filed 1/15/10, effective 2/15/10. Statutory Authority: RCW 70.128.040 and chapters 70.128 and 74.34 RCW, 07-21-080, § 388-76-10540, filed 10/16/07, effective 1/1/08.]

**WAC 388-76-10550 Resident rights—Adult family home staffing—Notification required.** The adult family home must provide the following information to prospective residents and current residents:

(1) Information about the provider, entity representative and resident manager, if there is a resident manager:

(a) Availability in the home, including a general statement about how often he or she is in the home;

(b) Education and training relevant to resident caregiving;

(c) Caregiving experience;

(d) His or her primary responsibilities, including whether he or she makes daily general care management decisions; and

(e) How to contact the provider, entity representative or resident manager when he or she is not in the home.

(2) Information about a licensed practical nurse or registered nurse, if there is one, who is in any way involved in the care of residents:

(a) Who the licensed practical nurse or registered nurse is employed by;

(b) The specific routine hours that the licensed practical nurse or registered nurse is on-site, if they are on-site routinely;

(c) His or her primary responsibilities, including whether he or she makes daily general care management decisions;

(d) The nonroutine times when the licensed practical nurse or registered nurse will be available, such as on-call; and

(e) A description of what the provider or entity representative will do to make available the services of a licensed nurse in an emergency or change in a resident's condition.

(3) A statement indicating whether the provider, caregiver or staff is qualified or willing to become qualified to perform nurse delegation as allowed under state law.

**WAC 388-78A-2463 Background check—National fingerprint checks—Who is required to have.** (1) After January 1, 2012, applicants for a boarding home license must have a background check that includes a national fingerprint-based background check.

(2) The boarding home must ensure that all caregivers hired after January 1, 2012 have a background check that includes a national fingerprint-based background check.

(3) For the purpose of this section, the term "caregiver" has the same meaning as the term "long-term care worker" as defined in RCW 74.39A.009.

[Statutory Authority: Chapters 18.20 and 74.39A RCW. 10-16-085, § 388-78A-2463, filed 7/30/10, effective 1/1/11.]

**WAC 388-78A-2464 Background check—Process.**

(1) Before the boarding home employs, directly or by contract, an administrator, staff person or caregiver, or accepts as a caregiver, any volunteer who is not a resident, or student, the home must:

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

(b) Send the completed form to the department's background check central unit (BCCU), including any additional documentation and information requested by the department.

(2) For purposes of this section, the administrator is presumed to provide direct care.

[Statutory Authority: Chapters 18.20 and 74.39A RCW. 10-16-085, § 388-78A-2464, filed 7/30/10, effective 1/1/11.]

**WAC 388-78A-2465 Background check—Results.**

(1) The boarding home must not allow the persons listed in WAC 388-78A-2462(2) to have unsupervised access to residents until the boarding home receives background check results from the department verifying that the person does not have any convictions, or findings described in WAC 388-78A-2470.

(2) If the background check results show that the person has a conviction or finding that is not disqualifying under WAC 388-78A-2470, then the boarding home must determine whether the person has the character, suitability and competence to work with vulnerable adults in long-term care.

(3) The boarding home must:

(a) Inform the person of the results of the background check;

(b) Inform the person that they may request a copy of the results of the background check. If requested, a copy of the background check results must be provided within ten days of the request; and

(c) Notify the department and other appropriate licensing or certification agency of any person resigning or terminated as a result of having a conviction record.

[Statutory Authority: Chapters 18.20 and 74.39A RCW. 10-16-085, § 388-78A-2465, filed 7/30/10, effective 1/1/11.]

**WAC 388-78A-2466 Background check—Valid for two years.** A Washington state background check is valid for two years from the initial date it is conducted. The boarding home must ensure:

(1) A new DSHS background authorization form is submitted to BCCU every two years for individuals listed in WAC 388-78A-2462; and

(2) There is a valid Washington state background check for all individuals listed in WAC 388-78A-2462.

[Statutory Authority: Chapters 18.20 and 74.39A RCW. 10-16-085, § 388-78A-2466, filed 7/30/10, effective 1/1/11.]

**WAC 388-78A-2467 Background check—Sharing by health care facilities.** In accordance with RCW 43.43.832 a health care facility may share Washington state background check results with other health care facilities under certain circumstances. Results of the national fingerprint checks may not be shared. For the purposes of this section health care facility means a nursing home licensed under chapter 18.51 RCW, a boarding home license under chapter 18.20 RCW, or an adult family home licensed under chapter 70.128 RCW.

(1) The health care facility may, upon request from another health care facility, share completed Washington state background check results only if:

(a) The health care facility sharing the background check information is reasonably known to be the person's most recent employer;

(b) No more than twelve months has elapsed between the date the individual was last employed at a licensed health care facility and the date of the individual's current employment application;

(c) The background check is no more than two years old; and

(d) The boarding home has no reason to believe the individual has or may have a disqualifying conviction or finding as described in WAC 388-78A-2470.

(2) The boarding home may also establish, maintain and follow a written agreement with home health, hospice, or home care agencies licensed under chapter 70.127 RCW or nursing pools registered under chapter 18.52C RCW in order to ensure that the agency or pool staff meet the requirements of WAC 388-78A-2470.

[Statutory Authority: Chapters 18.20 and 74.39A RCW. 10-16-085, § 388-78A-2467, filed 7/30/10, effective 1/1/11.]

**WAC 388-78A-2468 Background check—Conditional hire—Pending results.** The boarding home may conditionally hire an individual described in WAC 388-78A-2462, directly or by contract, pending the result of a background check, provided that the boarding home:

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

(2) Requires the individual to sign a disclosure statement, and the individual denies having been convicted of a disqualifying crime or have a disqualifying finding under WAC 388-78A-2470;

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

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

(5) Ensures direct supervision, of the individual, as defined in RCW 18.20.270; and

(6) Ensures that the person is competent, and receives the necessary training to perform assigned tasks.

[Statutory Authority: Chapters 18.20 and 74.39A RCW. 10-16-085, § 388-78A-2468, filed 7/30/10, effective 1/1/11.]

(1) Keep the records of tuberculin test results, reports of X-ray findings, and any physician or public health provider orders in the boarding home;

(2) Make the records readily available to the appropriate health provider and licensing agency,

(3) Retain the records for at least two years after the date the staff person either quits or is terminated; and

(4) Provide the staff person a copy of his/her test results.

[Statutory Authority: Chapter 18.20 RCW. 10-03-066, § 388-78A-2489, filed 1/15/10, effective 2/15/10.]

**WAC 388-78A-2490 Specialized training for developmental disabilities.** The boarding home must ensure completion of specialized training, consistent with chapter 388-112 WAC, to serve residents with developmental disabilities, whenever at least one of the residents in the boarding home has a developmental disability as defined in WAC 388-823-0040, that is the resident's primary special need.

[Statutory Authority: Chapters 18.20 and 74.39A RCW. 10-16-085, § 388-78A-2490, filed 7/30/10, effective 1/1/11. Statutory Authority: RCW 18.20.090. 06-01-047, § 388-78A-2490, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. 04-16-065, § 388-78A-2490, filed 7/30/04, effective 9/1/04.]

**WAC 388-78A-2500 Specialized training for mental illness.** The boarding home must ensure completion of specialized training, consistent with chapter 388-112 WAC, to serve residents with mental illness, whenever at least one of the residents in the boarding home has a mental illness that is the resident's primary special need and is a person who has been diagnosed with or treated for an Axis I or Axis II diagnosis, as described in the *Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision*, and:

(1) Who has received the diagnosis or treatment within the previous two years; and

(2) Whose diagnosis was made by, or treatment provided by, one of the following:

- (a) A licensed physician;
- (b) A mental health professional;
- (c) A psychiatric advanced registered nurse practitioner;

or

- (d) A licensed psychologist.

[Statutory Authority: Chapters 18.20 and 74.39A RCW. 10-16-085, § 388-78A-2500, filed 7/30/10, effective 1/1/11. Statutory Authority: RCW 18.20.090. 06-01-047, § 388-78A-2500, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. 04-16-065, § 388-78A-2500, filed 7/30/04, effective 9/1/04.]

**WAC 388-78A-2510 Specialized training for dementia.** The boarding home must ensure completion of specialized training, consistent with chapter 388-112 WAC, to serve residents with dementia, whenever at least one of the residents in the boarding home has a dementia that is the resident's primary special need and has symptoms consistent with dementia as assessed per WAC 388-78A-2090(7).

[Statutory Authority: Chapters 18.20 and 74.39A RCW. 10-16-085, § 388-78A-2510, filed 7/30/10, effective 1/1/11. Statutory Authority: RCW 18.20.090. 06-01-047, § 388-78A-2510, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. 04-16-065, § 388-78A-2510, filed 7/30/04, effective 9/1/04.]

**WAC 388-78A-2520 Administrator qualifications—General.** (1) The licensee must appoint an administrator who is:

- (a) At least twenty-one years old;
- (b) Not a resident of the boarding home; and
- (c) Qualified to perform the administrator's duties specified in WAC 388-78A-2560.

(2) The licensee must only appoint as a boarding home administrator an individual who meets the requirements of at least one of the following sections in WAC 388-78A-2522 through 388-78A-2527.

[Statutory Authority: Chapter 18.20 RCW. 10-03-066, § 388-78A-2520, filed 1/15/10, effective 2/15/10. Statutory Authority: RCW 18.20.090. 06-01-047, § 388-78A-2520, filed 12/15/05, effective 1/15/06. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. 04-16-065, § 388-78A-2520, filed 7/30/04, effective 9/1/04.]

**WAC 388-78A-2521 Certification of training.** As used in WAC 388-78A-2522 through 388-78A-2527, an individual obtains certification of training as follows. The individual has certification of completing a recognized administrator training course that consists of a minimum of twenty-four hours of instruction or equivalent online training, or certification of passing an administrator examination from or endorsed by a department-recognized national accreditation health or personal care organization such as:

- (1) The American association of homes and services for the aging;
- (2) The American college of health care administrators;
- (3) The American health care association;
- (4) The assisted living federation of America; or
- (5) The national association of board of examiners of long term care administrators.

[Statutory Authority: Chapter 18.20 RCW. 10-03-066, § 388-78A-2521, filed 1/15/10, effective 2/15/10.]

**WAC 388-78A-2522 Administrator qualifications—Prior to 2004.** The individual was actively employed as a boarding home administrator and met existing qualifications on September 1, 2004.

[Statutory Authority: Chapter 18.20 RCW. 10-03-066, § 388-78A-2522, filed 1/15/10, effective 2/15/10.]

**WAC 388-78A-2523 Administrator qualifications—NH administrator license.** The individual holds a current Washington state nursing home administrator license in good standing.

[Statutory Authority: Chapter 18.20 RCW. 10-03-066, § 388-78A-2523, filed 1/15/10, effective 2/15/10.]

**WAC 388-78A-2524 Administrator qualifications—Certification of training, and three years experience.** Prior to assuming duties as a boarding home administrator, the individual has met the following qualifications:

(1) Obtained certification of completing a recognized administrator training as referenced in WAC 388-78A-2521; and

- (2) Has three years paid experience:
  - (a) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family

home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or

(b) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living.

[Statutory Authority: Chapter 18.20 RCW. 10-03-066, § 388-78A-2524, filed 1/15/10, effective 2/15/10.]

**WAC 388-78A-2525 Administrator qualifications—Associate degree, certification of training, and two years experience.** The individual holds an associate degree in a related field of study such as health, social work, or business administration and meets the qualifications listed in either subsection (1), (2) or (3) of this section:

(1) Obtains certification of completing a recognized administrator training course as referenced in WAC 388-78A-2521 within six months of beginning duties as the administrator; or

(2) Has two years paid experience:

(a) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or

(b) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; or

(3) Has completed a qualifying administrator training program supervised by a qualified administrator according to WAC 388-78A-2530.

[Statutory Authority: Chapter 18.20 RCW. 10-03-066, § 388-78A-2525, filed 1/15/10, effective 2/15/10.]

**WAC 388-78A-2526 Administrator qualifications—Bachelor's degree, certification of training, and one year experience.** The individual holds a bachelor's degree in a related field of study such as health, social work, or business administration and meets the qualifications listed in either subsection (1), (2) or (3) of this section.

(1) Obtains certification of completing a recognized administrator training course and referenced in WAC 388-78A-2521 within six months of beginning duties as the administrator; or

(2) Has one year paid experience:

(a) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or

(b) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or

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adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; or

(3) Has completed a qualifying administrator training program supervised by a qualified administrator according to WAC 388-78A-2530.

[Statutory Authority: Chapter 18.20 RCW. 10-03-066, § 388-78A-2526, filed 1/15/10, effective 2/15/10.]

**WAC 388-78A-2527 Administrator qualifications—Five years experience.** Before assuming duties as an administrator, the individual has five years of paid experience:

(1) Providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living; and/or

(2) Managing persons providing direct care to vulnerable adults in a setting licensed by a state agency for the care of vulnerable adults, such as a nursing home, boarding home, or adult family home, or a setting having a contract with a recognized social service agency for the provision of care to vulnerable adults, such as supported living.

[Statutory Authority: Chapter 18.20 RCW. 10-03-066, § 388-78A-2527, filed 1/15/10, effective 2/15/10.]

**WAC 388-78A-2540 Administrator requirements.** The licensee must ensure the boarding home administrator:

(1) Meets the training requirements under chapter 388-112 WAC; and

(2) Knows and understands how to apply Washington state statutes and administrative rules related to the operation of a boarding home; and

(3) Meets the administrator qualification requirements referenced in WAC 388-78A-2520 through 388-78A-2527.

[Statutory Authority: Chapter 18.20 RCW. 10-03-066, § 388-78A-2540, filed 1/15/10, effective 2/15/10. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. 04-16-065, § 388-78A-2540, filed 7/30/04, effective 9/1/04.]

**WAC 388-78A-2550 Administrator training documentation.** The boarding home must maintain for department review, documentation of the administrator completing:

(1) Training required by chapter 388-112 WAC;

(2) Department training in an overview of Washington state statutes and administrative rules related to the operation of a boarding home;

(3) As applicable, certification from a department-recognized national accreditation health or personal care organization; and

(4) As applicable, the qualifying administrator-training program.

[Statutory Authority: Chapters 18.20 and 74.39A RCW. 10-16-085, § 388-78A-2550, filed 7/30/10, effective 1/1/11. Statutory Authority: RCW 18.20.090 (2004 c 142 § 19) and chapter 18.20 RCW. 04-16-065, § 388-78A-2550, filed 7/30/04, effective 9/1/04.]

**WAC 388-78A-2590 Management agreements—General.** (1) If the proposed or current licensee uses a manager, the licensee must have a written management agree-



vulnerable adult from family, friends, 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.

**"Associated with the applicant"** means any person listed on the application as a partner, officer, director, or majority owner of the applying entity, or who is the spouse or domestic partner of the applicant.

**"Case manager"** means the division of developmental disabilities case resource manager or social worker assigned to a client.

**"Certification"** means a process used by the department to determine if an applicant or service provider complies with the requirements of this chapter and is eligible to provide certified community residential services and support to clients.

**"Chaperone agreement"** means a plan or agreement that describes who will supervise a community protection program client when service provider staff is not present. This plan or agreement is negotiated with other agencies and individuals who support the client, including the client's legal representative and family.

**"Chemical restraint"** means the use of psychoactive medications for discipline or convenience and not prescribed to treat the client's medical symptoms.

**"Client"** means a person who has a developmental disability as defined in RCW 71A.10.020(3) and who also has been determined eligible to receive services by the division of developmental disabilities under chapter 71A.16 RCW. For purposes of informed consent and decision making requirements, the term "client" includes the client's legal representative to the extent of the representative's legal authority.

**"Client services"** means instruction and support services that service providers are responsible to provide as identified in the client's individual support plan.

**"Crisis diversion"** means temporary crisis residential services and supports provided to clients at risk of psychiatric hospitalization and authorized by the division of developmental disabilities.

**"Crisis diversion bed services"** means crisis diversion that is provided in a residence maintained by the service provider.

**"Crisis diversion support services"** means crisis diversion that is provided in the client's own home.

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

**"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 the vulnerable adult's profit or advantage.

**"Functional assessment"** means a comprehensive evaluation of a client's challenging behavior(s). This evaluation is the basis for developing a positive behavior support plan.

**"Group home"** means a residence that is licensed as either a boarding home or an adult family home by the department under chapters 388-78A or 388-76 WAC. Group

homes provide community residential instruction, supports, and services to two or more clients who are unrelated to the provider.

**"Group training home"** means a certified nonprofit residential facility that provides full-time care, treatment, training, and maintenance for clients, as defined under RCW 71A.22.020(2).

**"Immediate"** or **"immediately"** means within twenty-four hours for purposes of reporting abandonment, abuse, neglect, or financial exploitation of a vulnerable adult.

**"Individual financial plan"** means a plan describing how a client's funds will be managed when the service provider is responsible for managing any or all of the client's funds.

**"Individual instruction and support plan"** means a plan developed by the service provider and the client. The individual instruction and support plan:

(1) Uses the information and assessed needs documented in the individual support plan to identify areas the client would like to develop;

(2) Includes client goals for instruction and support that will be formally documented during the year; and

(3) Must contain or refer to other applicable support or service information that describes how the client's health and welfare needs are to be met (e.g. individual financial plan, positive behavior support plan, cross system crisis plan, individual support plan, individual written plan, client-specific instructions).

**"Individual support plan"** means a document that authorizes and identifies the division of developmental disabilities paid services to meet a client's assessed needs.

**"Instruction"** means goal oriented teaching that is designed for acquiring and enhancing skills.

**"Instruction and support services staff"** means long-term care workers of the service provider whose primary job function is the provision of instruction and support services to clients. Instruction and support services staff shall also include employees of the service provider whose primary job function is the supervision of instruction and support services staff. In addition, both applicants, prior to initial certification, and administrators, prior to assuming duties, who may provide instruction and support services to clients shall be considered instruction and support services staff for the purposes of the applicable training requirements of chapter 388-112 WAC.

**"Legal representative"** means a person's legal guardian, a person's limited guardian when the subject matter is within the scope of the limited guardianship, a person's attorney at law, a person's attorney in fact, or any other person who is authorized by law to act for another person.

**"Managing client funds"** means that the service provider:

(1) Has signing authority for the client;

(2) Disperses the client's funds; or

(3) Limits the client's access to funds by not allowing funds to be spent.

**"Mechanical restraint"** means a device or object, which the client cannot remove, applied to the client's body that restricts his/her free movement.

**"Medication administration"** means the direct application of a prescribed medication whether by injection, inha-

- (ii) Anyone associated with the applicant; and
- (iii) The individual or individuals designated to serve as administrator of the proposed program.

(2) The applicant must submit a revised application, if any information on the application changes before the initial certification is issued.

(3) The department will only process a completed application.

(4) Each person named in the application for initial certification is considered separately and jointly by the department.

(5) Based on the documentation received, the department will notify the applicant in writing regarding the department's certification decision.

(6) The applicant must comply with additional requirements identified in this chapter if intending to support community protection clients.

[Statutory Authority: RCW 71A.12.080, chapter 74.39A RCW. 10-16-084, § 388-101-3050, filed 7/30/10, effective 1/1/11. Statutory Authority: Chapter 71A.12 RCW. 08-02-022, § 388-101-3050, filed 12/21/07, effective 2/1/08.]

**WAC 388-101-3060 Change of ownership.** (1) To apply for a change of ownership, an applicant must submit an application and the required reports and documents to the department when there is a change of:

- (a) The business entity ownership; or
- (b) The form of legal organization.

(2) When applying for a change of ownership, an applicant may be required to provide any or all items listed in WAC 388-101-3050.

(3) For group homes, applicants must also meet the applicable change of ownership requirements found in:

(a) WAC 388-76-10105 for licensed adult family homes; or

(b) WAC 388-78A-2770 through 388-78A-2787 for licensed boarding homes.

(4) If the applicant is not a current service provider, the applicant must apply for initial certification.

[Statutory Authority: RCW 71A.12.080. 10-03-065, § 388-101-3060, filed 1/15/10, effective 2/15/10. Statutory Authority: Chapter 71A.12 RCW. 08-02-022, § 388-101-3060, filed 12/21/07, effective 2/1/08.]

**WAC 388-101-3080 The department may deny—Application.** The department may deny the application for initial certification or change of ownership if any person named in the application has:

(1) Shown a lack of the understanding, character, ability, or emotional stability that is necessary to meet the identified needs of vulnerable adults;

(2) Had a contract terminated or a certification or license revoked or denied by the department, or has been subjected to department enforcement actions;

(3) Had a contract terminated, or a certification or license revoked or denied in another state, or has been subjected to an enforcement action in another state;

(4) Obtained or attempted to obtain a license or certification by fraudulent means or misrepresentation;

(5) Relinquished or been denied a license or license renewal to operate a home or facility that was licensed for the care of children or vulnerable adults;

(6) Refused to permit authorized department representatives to interview clients or to have access to client records;

(7) Been convicted of a drug-related conviction within the past five years without evidence of rehabilitation, unless denial is required under WAC 388-06-0180(4); or

(8) Been convicted of an alcohol-related conviction within the past five years without evidence of rehabilitation.

(9) Been convicted of any felony that the department determines is reasonably related to the competency of the person to be involved in the ownership or operation of the service provider.

[Statutory Authority: RCW 71A.12.080. 10-03-065, § 388-101-3080, filed 1/15/10, effective 2/15/10. Statutory Authority: Chapter 71A.12 RCW. 08-02-022, § 388-101-3080, filed 12/21/07, effective 2/1/08.]

**WAC 388-101-3090 The department must deny—Application.** (1) The department must deny an application for initial certification or change of ownership if any person named in the application has:

(a) Been convicted of a crime listed under WAC 388-06-0170(1);

(b) Been convicted of a disqualifying crime under WAC 388-06-0180;

(c) Been found by a court in a criminal proceeding, a protection proceeding, or a civil damages lawsuit under chapter 74.34 RCW, to have abused, neglected, abandoned, or financially exploited a vulnerable adult;

(d) Been found to have abused, neglected, financially exploited, or abandoned a minor or vulnerable adult by a court of law or a disciplining authority, including the department of health. 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;

(e) A substantiated finding of abuse or neglect of a child that is:

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

(ii) Disclosed by the individual, except for findings made before December 1998; or

(f) A substantiated finding of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult that is:

(i) Listed on any registry, including the department's registry;

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

(iii) Disclosed by the individual, except for adult protective services findings made before October 2003.

(2) The department must deny an application for initial certification or change of ownership if any person named in the application has a pending charge for a crime that is disqualifying under this section.

[Statutory Authority: RCW 71A.12.080. 10-03-065, § 388-101-3090, filed 1/15/10, effective 2/15/10. Statutory Authority: Chapter 71A.12 RCW. 08-02-022, § 388-101-3090, filed 12/21/07, effective 2/1/08.]

**WAC 388-101-3165 Access to certification evaluation report and plan of correction.** The service provider must make the certification evaluation report and related plan of correction available to anyone upon request.

(6) The service provider must renew the Washington state background check at least every thirty-six months and keep current background check results for each administrator, employee, volunteer, student, or subcontractor of a service provider.

(7) Licensed boarding homes or adult family homes must adhere to the current regulations in this chapter and in the applicable licensing laws.

(8) Service providers must prevent unsupervised access to clients by any administrator, employee, subcontractor, student, or volunteer who has a disqualifying conviction, pending criminal charge, or finding described in WAC 388-101-3090.

[Statutory Authority: RCW 71A.12.080, chapter 74.39A RCW. 10-16-084, § 388-101-3250, filed 7/30/10, effective 1/1/11. Statutory Authority: RCW 71A.12.080, 10-03-065, § 388-101-3250, filed 1/15/10, effective 2/15/10. Statutory Authority: Chapter 71A.12 RCW. 08-02-022, § 388-101-3250, filed 12/21/07, effective 2/1/08.]

**WAC 388-101-3253 National fingerprint-based background checks—Required.** In addition to background checks required under WAC 388-101-3250:

(1) After January 1, 2012, applicants for initial certification and applicants for change of ownership that are not current providers, must have a background check that includes a national fingerprint-based background check.

(2) The service provider must ensure that staff who provide instruction and support services to clients, and are hired on or after January 1, 2012, submit a background check that includes a national fingerprint-based background check.

[Statutory Authority: RCW 71A.12.080, chapter 74.39A RCW. 10-16-084, § 388-101-3253, filed 7/30/10, effective 1/1/11.]

**WAC 388-101-3255 Background checks—Provisional hire—Pending results.** (1) Persons identified in WAC 388-101-3250(2) who are hired on or before January 1, 2012 and who have lived in Washington state less than three years, or who are otherwise required to complete a fingerprint-based background check, may be hired for a one hundred twenty-day provisional period when:

(a) The person is not disqualified based on the initial results of the background check from the department; and

(b) A national fingerprint-based background is pending.

(2) Persons identified in WAC 388-101-3250(2) who are hired after January 1, 2012, may be hired for a one hundred twenty-day provisional period when:

(a) The person is not disqualified based on the initial result of the background check from the department; and

(b) A national fingerprint-based background check is pending.

[Statutory Authority: RCW 71A.12.080, chapter 74.39A RCW. 10-16-084, § 388-101-3255, filed 7/30/10, effective 1/1/11.]

**WAC 388-101-3258 Training requirements for staff hired before January 1, 2011.** The service provider must ensure that staff hired before January 1, 2011 have met the training requirements under WAC 388-101-3260 through 388-101-3300.

[Statutory Authority: RCW 71A.12.080, chapter 74.39A RCW. 10-16-084, § 388-101-3258, filed 7/30/10, effective 1/1/11.]

**WAC 388-101-3302 Certified community residential services and supports—General training requirements.**

(1) On or after January 1, 2011, the service provider must ensure the following instruction and support services staff meet the training requirements under chapter 388-112 WAC, including orientation and safety training, and basic training:

(a) Administrators, hired on or after the effective date, who may provide instruction and support services to clients or may supervise instruction and support services staff; and

(b) Instruction and support services staff including their supervisors, who are hired on or after the effective date.

(2) On or after January 1, 2011, applicants for initial certification and applicants for change of ownership that are not current providers, who may provide instruction and support services to clients or may supervise instruction and support services staff must meet the training requirements of chapter 388-112 WAC, including orientation and safety training, and basic training.

(3) Under RCW 18.88B.040 and chapter 246-980 WAC, certain persons including registered nurses, licensed practical nurses, certified nursing assistants or persons who are in an approved certified nursing assistant program are exempt from long-term care worker training requirements.

[Statutory Authority: RCW 71A.12.080, chapter 74.39A RCW. 10-16-084, § 388-101-3302, filed 7/30/10, effective 1/1/11.]

**WAC 388-101-3372 Medical devices.** (1) For purposes of this section the term "medical device" means any piece of medical equipment used to treat a client's assessed need.

(2) Use of some medical devices poses a safety risk for clients. Examples of medical devices with known safety risks are transfer poles, helmets, straps and belts on wheelchairs or beds, and bed side rails.

(3) Medical devices with known safety risks must not be used by the service provider:

(a) As a restraint; or

(b) For staff convenience.

(4) Before using medical devices with known safety risks for any client, the service provider must:

(a) Review the client's assessment to identify the client's need;

(b) Identify and implement interventions that might decrease the need for the use of a medical device;

(c) Document the use of less restrictive and less invasive options, successful or not;

(d) Provide the client and client's family or legal representative with information about the anticipated benefits and safety risks of using the device to enable them to make an informed decision about whether or not to use the device;

(e) Obtain a current physician's order that describes the medical necessity for use of the device and the anticipated duration of use; and

(f) Provide written instructions to staff regarding safe and proper use of the device.

[Statutory Authority: RCW 71A.12.080, 10-03-065, § 388-101-3372, filed 1/15/10, effective 2/15/10.]

**WAC 388-101-3520 Shared expenses and client related funds.** (1) For purposes of this section "common household expenses" means costs for rent, shared food and household supplies, and utilities, including but not limited to

of a conflict between the provisions of this chapter and chapter 388-02 WAC, the provisions of this chapter shall prevail.

(2) The administrative law judge shall determine whether the preliminary finding is supported by a preponderance of the evidence.

[Statutory Authority: RCW 71A.12.080. 10-03-065, § 388-101-4310, filed 1/15/10, effective 2/15/10. Statutory Authority: Chapter 71A.12 RCW. 08-02-022, § 388-101-4310, filed 12/21/07, effective 2/1/08.]

**WAC 388-101-4320 Appeal of the initial order.** (1) If the individual 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 chapters 34.05 RCW and 388-02 WAC.

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

[Statutory Authority: RCW 71A.12.080. 10-03-065, § 388-101-4320, filed 1/15/10, effective 2/15/10. Statutory Authority: Chapter 71A.12 RCW. 08-02-022, § 388-101-4320, filed 12/21/07, effective 2/1/08.]

**WAC 388-101-4330 Finalizing a preliminary finding.**

(1) A preliminary finding becomes a final finding when:

(a) The department gives the individual notice of the preliminary finding under WAC 388-101-4270 and the individual does not request an administrative hearing;

(b) The administrative law judge:

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

(ii) Issues an initial order upholding the finding and the individual fails to appeal the initial order to the department's board of appeals; or

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

(2) The final finding is permanent and will only be removed from the department's records if it is rescinded following judicial review.

[Statutory Authority: RCW 71A.12.080. 10-03-065, § 388-101-4330, filed 1/15/10, effective 2/15/10. Statutory Authority: Chapter 71A.12 RCW. 08-02-022, § 388-101-4330, filed 12/21/07, effective 2/1/08.]

**WAC 388-101-4340 Reporting final findings.** (1) The department will report a final finding of abandonment, abuse, neglect, or financial exploitation within ten working days to the following:

(a) The individual against whom the final finding was made;

(b) The service provider that was associated with the individual during the time of the incident;

(c) The service provider that is currently associated with the individual against whom the final finding was made, if known;

(d) The appropriate licensing, contracting, or certification authority; and

(e) Any federal or state registry or list of individuals found to have abandoned, abused, neglected, or financially exploited a vulnerable adult.

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

[Statutory Authority: RCW 71A.12.080. 10-03-065, § 388-101-4340, filed 1/15/10, effective 2/15/10. Statutory Authority: Chapter 71A.12 RCW. 08-02-022, § 388-101-4340, filed 12/21/07, effective 2/1/08.]

**WAC 388-101-4350 Notice—Service complete.** Service of the department notices is complete when:

(1) Personal service is made;

(2) The notice is addressed to the service provider or to 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.

[Statutory Authority: RCW 71A.12.080. 10-03-065, § 388-101-4350, filed 1/15/10, effective 2/15/10.]

**WAC 388-101-4360 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 service provider 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.

[Statutory Authority: RCW 71A.12.080. 10-03-065, § 388-101-4360, filed 1/15/10, effective 2/15/10.]

**Chapter 388-105 WAC**

**MEDICAID RATES FOR CONTRACTED HOME AND COMMUNITY RESIDENTIAL CARE SERVICES**

**WAC**

388-105-0005 The daily medicaid payment rates for clients assessed using the comprehensive assessment reporting evaluation (CARE) tool and that reside in adult family homes (AFH) and boarding homes contracted to provide assisted living (AL), adult residential care (ARC), and enhanced adult residential care (EARC) services.

**WAC 388-105-0005 The daily medicaid payment rates for clients assessed using the comprehensive assessment reporting evaluation (CARE) tool and that reside in adult family homes (AFH) and boarding homes contracted to provide assisted living (AL), adult residential care (ARC), and enhanced adult residential care (EARC) services.** For contracted AFH and boarding homes contracted to provide AL, ARC, and EARC services, the department pays the following daily rates for care of a medicaid resident:

CARE CLASSIFICATION	AL Without Capital		AL With Capital			
	Add-on		Add-on	ARC	EARC	AFH
B Low	\$60.07		\$65.31	\$47.19	\$47.19	\$46.62
B Med	\$69.94		\$75.18	\$55.64	\$55.64	\$55.00
B Med-High	\$79.20		\$84.44	\$59.14	\$59.14	\$58.92
B High	\$86.42		\$91.66	\$66.84	\$66.84	\$66.64
C Low	\$64.46		\$69.70	\$50.36	\$50.36	\$49.52
C Med	\$78.74		\$83.98	\$62.65	\$62.65	\$63.07
C Med-High	\$97.40		\$102.64	\$79.92	\$79.92	\$78.70
C High	\$98.37		\$103.61	\$83.54	\$83.54	\$82.10
D Low	\$69.94		\$75.18	\$67.39	\$67.39	\$63.37
D Med	\$80.34		\$85.58	\$77.55	\$77.55	\$77.17
D Med-High	\$103.24		\$108.48	\$98.08	\$98.08	\$92.52
D High	\$105.73		\$110.97	\$105.73	\$105.73	\$105.10
E Med	\$127.27		\$132.51	\$127.27	\$127.27	\$126.64
E High	\$148.81		\$154.05	\$148.81	\$148.81	\$148.19

\*\* Nonmetropolitan counties: Adams, Asotin, Chelan, Clallam, Columbia, Cowlitz, Douglas, Ferry, Garfield, Grant, Grays Harbor, Jefferson, Kittitas, Klickitat, Lewis, Lincoln, Mason, Okanogan, Pacific, Pend Orielle, San Juan, Skagit, Skamania, Stevens, Wahkiakum, Walla Walla and Whitman.

[Statutory Authority: RCW 74.39A.030(3) and 2010 c 37 § 206 (19)(a), 10-21-035, § 388-105-0005, filed 10/12/10, effective 10/29/10. Statutory Authority: RCW 74.39A.030(3), 18.20.290, and 2009 c 564 § 206(4), 09-20-011, § 388-105-0005, filed 9/25/09, effective 10/26/09. Statutory Authority: RCW 74.39A.030 (3)(a), 09-11-053, § 388-105-0005, filed 5/13/09, effective 6/13/09. Statutory Authority: Chapter 74.39A RCW, RCW 18.20.290, 2006 c 372, 260, and 64.06-19-017, § 388-105-0005, filed 9/8/06, effective 10/9/06. Statutory Authority: Chapter 74.39A RCW, 06-07-013, § 388-105-0005, filed 3/3/06, effective 4/3/06. Statutory Authority: RCW 74.39A.030, 2003 c 231, 04-09-092, § 388-105-0005, filed 4/20/04, effective 5/21/04. Statutory Authority: 2002 c 371, 02-22-058, § 388-105-0005, filed 10/31/02, effective 12/1/02. Statutory Authority: 2001 c 7 § 206, 01-21-077, § 388-105-0005, filed 10/18/01, effective 11/18/01. Statutory Authority: Chapter 74.39A RCW, 01-14-056, § 388-105-0005, filed 6/29/01, effective 7/30/01.]

**Chapter 388-106 WAC  
LONG-TERM CARE SERVICES**

**WAC**

- 388-106-0010 What definitions apply to this chapter?
- 388-106-0125 If I am age twenty-one or older, how does CARE use criteria to place me in a classification group for in-home care?
- 388-106-0126 If I am under age twenty-one, how does CARE use criteria to place me in a classification group for in-home care?
- 388-106-1303 What responsibilities do I have as a client of the department?
- 388-106-1400 What services may I receive under New Freedom consumer directed services (NFCDS)?
- 388-106-1405 What services are not covered under New Freedom consumer directed services (NFCDS)?
- 388-106-1422 What happens to my New Freedom service dollar budget if I am temporarily hospitalized, placed in a nursing facility or intermediate care facilities for the mentally retarded (ICF/MR)?
- 388-106-1435 Who can direct New Freedom consumer directed services (NFCDS)?
- 388-106-1445 How is the amount of the individual budget determined?
- 388-106-1455 What happens to unused funds from my individual budget?

**WAC 388-106-0010 What definitions apply to this chapter? "Ability to make self understood"** means how you make yourself understood to those closest to you; express or communicate requests, needs, opinions, urgent problems and social conversations, whether in speech, writing, sign language, symbols, or a combination of these including use of a communication board or keyboard:

- (a) Understood: You express ideas clearly;
- (b) Usually understood: You have difficulty finding the right words or finishing thoughts, resulting in delayed

responses, or you require some prompting to make self understood;

(c) Sometimes understood: You have limited ability, but are able to express concrete requests regarding at least basic needs (e.g. food, drink, sleep, toilet);

(d) Rarely/never understood. At best, understanding is limited to caregiver's interpretation of client specific sounds or body language (e.g. indicated presence of pain or need to toilet.)

"Activities of daily living (ADL)" means the following:

(a) Bathing: How you take a full-body bath/shower, sponge bath, and transfer in/out of tub/shower.

(b) Bed mobility: How you move to and from a lying position, turn side to side, and position your body while in bed, in a recliner, or other type of furniture.

(c) Body care: How you perform with passive range of motion, applications of dressings and ointments or lotions to the body and pedicure to trim toenails and apply lotion to feet. In adult family homes, contracted assisted living, enhanced adult residential care, and enhanced adult residential care-specialized dementia care facilities, dressing changes using clean technique and topical ointments must be performed by a licensed nurse or through nurse delegation in accordance with chapter 246-840 WAC. Body care excludes:

(i) Foot care if you are diabetic or have poor circulation; or

(ii) Changing bandages or dressings when sterile procedures are required.

(d) Dressing: How you put on, fasten, and take off all items of clothing, including donning/removing prosthesis.

(e) **Eating:** How you eat and drink, regardless of skill. Eating includes any method of receiving nutrition, e.g., by mouth, tube or through a vein.

(f) **Locomotion in room and immediate living environment:** How you move between locations in your room and immediate living environment. If you are in a wheelchair, locomotion includes how self-sufficient you are once in your wheelchair.

(g) **Locomotion outside of immediate living environment including outdoors:** How you move to and return from more distant areas. If you are living in a boarding home or nursing facility (NF), this includes areas set aside for dining, activities, etc. If you are living in your own home or in an adult family home, locomotion outside immediate living environment including outdoors, includes how you move to and return from a patio or porch, backyard, to the mailbox, to see the next-door neighbor, etc.

(h) **Walk in room, hallway and rest of immediate living environment:** How you walk between locations in your room and immediate living environment.

(i) **Medication management:** Describes the amount of assistance, if any, required to receive medications, over the counter preparations or herbal supplements.

(j) **Toilet use:** How you use the toilet room, commode, bedpan, or urinal, transfer on/off toilet, cleanse, change pad, manage ostomy or catheter, and adjust clothes.

(k) **Transfer:** How you move between surfaces, i.e., to/from bed, chair, wheelchair, standing position. Transfer does not include how you move to/from the bath, toilet, or vehicle.

(l) **Personal hygiene:** How you maintain personal hygiene, including combing hair, brushing teeth, shaving, applying makeup, washing/drying face, hands (including nail care), and perineum (menses care). Personal hygiene does not include hygiene in baths and showers.

**"Aged person"** means a person sixty-five years of age or older.

**"Agency provider"** means a licensed home care agency or a licensed home health agency having a contract to provide long-term care personal care services to you in your own home.

**"Application"** means a written request for medical assistance or long-term care services submitted to the department by the applicant, the applicant's authorized representative, or, if the applicant is incompetent or incapacitated, someone acting responsibly for the applicant. The applicant must submit the request on a form prescribed by the department.

**"Assessment details"** means a summary of information that the department entered into the CARE assessment describing your needs.

**"Assessment or reassessment"** means an inventory and evaluation of abilities and needs based on an in-person interview in your own home or your place of residence, using CARE.

**"Assistance available"** means the amount of informal support available if the need is partially met. The department determines the amount of the assistance available using one of four categories:

- (a) Less than one-fourth of the time;
- (b) One-fourth to one-half of the time;

(c) Over one-half of the time to three-fourths of the time;

or  
(d) Over three-fourths but not all of the time.

**"Assistance with body care"** means you need assistance with:

- (a) Application of ointment or lotions;
- (b) Trimming of toenails;
- (c) Dry bandage changes; or
- (d) Passive range of motion treatment.

**"Assistance with medication management"** means you need assistance managing your medications. You are scored as:

(a) Independent if you remember to take medications as prescribed and manage your medications without assistance.

(b) Assistance required if you need assistance from a nonlicensed provider to facilitate your self-administration of a prescribed, over the counter, or herbal medication, as defined in chapter 246-888 WAC. Assistance required includes reminding or coaching you, handing you the medication container, opening the container, using an enabler to assist you in getting the medication into your mouth, alteration of a medication for self-administration, and placing the medication in your hand. This does not include assistance with intravenous or injectable medications. You must be aware that you are taking medications.

(c) Self-directed medication assistance/administration if you are a person with a functional disability who is capable of and who chooses to self-direct your medication assistance/administration.

(d) Must be administered if you must have medications placed in your mouth or applied or instilled to your skin or mucus membrane. Administration must either be performed by a licensed professional or delegated by a registered nurse to a qualified caregiver (per chapter 246-840 WAC). Intravenous or injectable medications may never be delegated. Administration may also be performed by a family member or unpaid caregiver if facility licensing regulations allow.

**"Authorization"** means an official approval of a departmental action, for example, a determination of client eligibility for service or payment for a client's long-term care services.

**"Blind person"** means a person determined blind as described under WAC 388-511-1105 by the division of disability determination services of the medical assistance administration.

**"Categorically needy"** means the status of a person who is eligible for medical care under Title XIX of the Social Security Act. See WAC 388-475-0100 and chapter 388-513 WAC.

**"Client"** means an applicant for service or a person currently receiving services from the department.

**"Current"** means a behavior occurred within seven days of the CARE assessment date, including the day of the assessment. Behaviors that the department designates as current must include information about:

- (a) Whether the behavior is easily altered or not easily altered; and
- (b) The frequency of the behavior.

**"Decision making"** means your ability and actual performance in making everyday decisions about tasks or activ-

**"New Freedom consumer directed services (NFCDS) participant"** means a participant who is an applicant for or currently receiving services under the NFCDS waiver.

**"New Freedom spending plan (NFSP)"** means the plan developed by you, as a New Freedom participant, within the limits of an individual budget, that details your choices to purchase specific NFCDS and provides required federal medicaid documentation.

**"Own home"** means your present or intended place of residence:

(a) In a building that you rent and the rental is not contingent upon the purchase of personal care services as defined in this section;

(b) In a building that you own;

(c) In a relative's established residence; or

(d) In the home of another where rent is not charged and residence is not contingent upon the purchase of personal care services as defined in this section.

**"Past"** means the behavior occurred from eight days to five years of the assessment date. For behaviors indicated as past, the department determines whether the behavior is addressed with current interventions or whether no interventions are in place.

**"Personal aide"** is defined in RCW 74.39.007.

**"Personal care services"** means physical or verbal assistance with activities of daily living (ADL) and instrumental activities of daily living (IADL) due to your functional limitations. Assistance is evaluated with the use of assistive devices.

**"Physician"** is defined under WAC 388-500-0005.

**"Plan of care"** means assessment details and service summary generated by CARE.

**"Provider or provider of service"** means an institution, agency, or person:

(a) Having a signed department contract to provide long-term care client services; and

(b) Qualified and eligible to receive department payment.

**"Reasonable cost"** means a cost for a service or item that is consistent with the market standards for comparable services or items.

**"Representative"** means a person who you have chosen, or has been appointed by a court, whose primary duty is to act on your behalf to direct your service budget to meet your identified health, safety, and welfare needs.

**"Residential facility"** means a licensed adult family home under department contract or licensed boarding home under department contract to provide assisted living, adult residential care or enhanced adult residential care.

**"Self performance for ADLs"** means what you actually did in the last seven days before the assessment, not what you might be capable of doing. Coding is based on the level of performance that occurred three or more times in the seven-day period and does not include support provided as defined in WAC 388-106-0010. Your self performance level is scored as:

(a) Independent if you received no help or oversight, or if you needed help or oversight only once or twice;

(b) Supervision if you received oversight (monitoring or standby), encouragement, or cueing three or more times;

(c) Limited assistance if you were highly involved in the activity and given physical help in guided maneuvering of limbs or other nonweight bearing assistance on three or more occasions. For bathing, limited assistance means physical help is limited to transfer only;

(d) Extensive assistance if you performed part of the activity, but on three or more occasions, you needed weight bearing support or you received full performance of the activity during part, but not all, of the activity. For bathing, extensive assistance means you needed physical help with part of the activity (other than transfer);

(e) Total dependence if you received full caregiver performance of the activity and all subtasks during the entire seven-day period from others. Total dependence means complete nonparticipation by you in all aspects of the ADL; or

(f) Activity did not occur if you or others did not perform an ADL over the last seven days before your assessment. The activity may not have occurred because:

(i) You were not able (e.g., walking, if paralyzed);

(ii) No provider was available to assist; or

(iii) You declined assistance with the task.

**"Self performance for IADLs"** means what you actually did in the last thirty days before the assessment, not what you might be capable of doing. Coding is based on the level of performance that occurred three or more times in the thirty-day period. Your self performance is scored as:

(a) Independent if you received no help, set-up help, or supervision;

(b) Set-up help/arrangements only if on some occasions you did your own set-up/arrangement and at other times you received help from another person;

(c) Limited assistance if on some occasions you did not need any assistance but at other times in the last thirty days you required some assistance;

(d) Extensive assistance if you were involved in performing the activity, but required cueing/supervision or partial assistance at all times;

(e) Total dependence if you needed the activity fully performed by others; or

(f) Activity did not occur if you or others did not perform the activity in the last thirty days before the assessment.

**"Service summary"** is CARE information which includes: Contacts (e.g. emergency contact), services the client is eligible for, number of hours or residential rates, personal care needs, the list of formal and informal providers and what tasks they will provide, a provider schedule, referral needs/information, and dates and agreement to the services.

**"SSI-related"** is defined under WAC 388-475-0050.

**"Status"** means the amount of informal support available. The department determines whether the ADL or IADL is:

(a) Met, which means the ADL or IADL will be fully provided by an informal support;

(b) Unmet, which means an informal support will not be available to provide assistance with the identified ADL or IADL;

(c) Partially met, which means an informal support will be available to provide some assistance, but not all, with the identified ADL or IADL; or

(d) Client declines, which means you do not want assistance with the task.

(ii) You rent all or a part of your residence and the total rent you charge all others in your home is more than your total rent.

(f) Running an adult family home;

(g) Providing services such as a massage therapist or a professional escort;

(h) Retainer fees to reserve a bed for a foster child;

(i) Selling items you make or items that are supplied to you;

(j) Selling or donating your own biological products such as providing blood or reproductive material for profit;

(k) Working as an independent contractor; and

(l) Running a business or trade either on your own or in a partnership.

(5) For medical programs, we do not count receipt of money by a member of a federally recognized tribe from exercising federally protected rights or extraction of exempt resources as self-employment income (such as fishing, shell-fishing, or selling timber from protected tribal land). We count this as conversion of a resource. See WAC 388-450-0040.

(6) If you are an employee of a company or person who does the activities listed in subsection (2) above as a part of your job, we do not count the work you do as self-employment.

(7) Self-employment income is counted as earned income as described in WAC 388-450-0030 except as described in subsection (8).

(8) For cash assistance and Basic Food there are special rules about renting or leasing out property or real estate that you own.

(a) We count the income you get as unearned income unless you spend at least twenty hours per week managing the property.

(b) For TANF/SFA, we count the income as unearned income unless the use of the property is a part of your approved individual responsibility plan.

[Statutory Authority: RCW 74.08.090 and ARRA of 2009, Public Law 111-5, Section 5006(b); 42 C.F.R. 435.601, EEOICPA of 2000, Public Law 106398, Sec. 1, app., Title XXXVI (Oct. 30, 2000) (section 1 adopting as Appendix H.R. 5408), Section 3646 of the Appendix. 10-15-069, § 388-450-0080, filed 7/16/10, effective 8/16/10. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090. 06-15-049, § 388-450-0080, filed 7/12/06, effective 9/1/06. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, and 74.04.510. 03-13-045, § 388-450-0080, filed 6/11/03, effective 8/1/03. Statutory Authority: RCW 74.08.090 and 74.04.510. 01-19-020, § 388-450-0080, filed 9/11/01, effective 10/1/01; 99-16-024, § 388-450-0080, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-450-0080, filed 7/31/98, effective 9/1/98.]

**WAC 388-450-0140 How does the income of an ineligible assistance unit member affect my eligibility and benefits for Basic Food?** The department decides who must be in your assistance unit (AU) under WAC 388-408-0035. If an AU member is ineligible for Basic Food under WAC 388-408-0035, this affects your AU's eligibility and benefits as follows:

(1) We do not count the ineligible member(s) to determine your AU size for the gross monthly income limit, net monthly income limit, or maximum allotment under WAC 388-478-0060.

(2) If an AU member is ineligible because they are disqualified for an intentional program violation (IPV), they failed to meet work requirements under chapter 388-444 WAC, or they are ineligible fleeing felons under WAC 388-442-0010:

(a) We count all of the ineligible member's gross income as a part of your AU's income; and

(b) We count all of the ineligible member's allowable expenses as part of your AU's expenses.

(3) If an AU member is an ineligible ABAWD under WAC 388-444-0030, is ineligible due to their alien status, failed to sign the application to state their citizenship or alien status, or refused to get or provide us a Social Security number:

(a) We allow the twenty percent earned income disregard for the ineligible member's earned income;

(b) We prorate the remaining income of the ineligible member among all the AU members by excluding the ineligible member's share and counting the remainder to the eligible members; and

(c) We divide the ineligible member's allowable expenses evenly among all members of the AU when the ineligible member has income except that we do not divide the standard utility allowance (SUA). We allow the full SUA based on the total number of members in your AU.

[Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, 74.08.090, and 7 U.S.C. 2014 (e)(7); 7 C.F.R. § 273.9 (d)(6). 10-15-044, § 388-450-0140, filed 7/13/10, effective 8/1/10. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510, and 2004 c 54. 04-14-040, § 388-450-0140, filed 6/29/04, effective 7/30/04. Statutory Authority: RCW 74.04.057, 74.04.500, 74.04.510. 02-06-089, § 388-450-0140, filed 3/1/02, effective 3/26/02; 01-21-060, § 388-450-0140, filed 10/16/01, effective 12/1/01. Statutory Authority: RCW 74.08.090 and 74.04.510. 99-16-024, § 388-450-0140, filed 7/26/99, effective 9/1/99. Statutory Authority: RCW 74.04.050, 74.04.055, 74.04.057 and 74.08.090. 98-16-044, § 388-450-0140, filed 7/31/98, effective 9/1/98.]

**WAC 388-450-0156 When am I exempt from deeming?** (1) If you meet any of the following conditions, you are **permanently** exempt from deeming and we do not count your sponsor's income or resources against your benefits:

(a) The Immigration and Nationality Act (INA) does not require you to have a sponsor. Immigrants who are not required to have a sponsor include those with the following status with Immigration and Naturalization Service (INS):

(i) Refugee;

(ii) Parolee;

(iii) Asylee;

(iv) Cuban entrant; or

(v) Haitian entrant.

(b) You were sponsored by an organization or group as opposed to an individual;

(c) You do not meet the alien status requirements to be eligible for benefits under chapter 388-424 WAC;

(d) You have worked or can get credit for forty qualifying quarters of work under Title II of the Social Security Act. We do not count a quarter of work toward this requirement if the person working received TANF, food stamps, Basic Food, SSI, CHIP, or nonemergency medicaid benefits. We count a quarter of work by the following people toward your forty qualifying quarters:

(i) Yourself;



"**Medicaid personal care**" is the provision of medically necessary personal care tasks as defined in chapter 388-106 WAC.

"**Residential habilitation center**" or "**RHC**" means a state-operated facility certified to provide ICF/MR and/or nursing facility level of care for persons with developmental disabilities.

"**Residential programs**" means provision of support for persons in community living situations. Residential programs include DDD certified community residential services and support, both facility-based such as licensed group homes, and nonfacility based, such as supported living and state-operated living alternatives (SOLA). Other residential programs include alternative living (as described in chapter 388-829A WAC, companion homes (as described in chapter 388-829C WAC), adult family homes, adult residential care services, children's foster homes, group care and staffed residential homes.

"**Respite care**" means short-term intermittent relief for persons normally providing care for the individuals.

"**Secretary**" means the secretary of the department of social and health services or the secretary's designee.

"**State supplementary payment (SSP)**" is the state paid cash assistance program for certain DDD eligible SSI clients.

[Statutory Authority: RCW 71A.12.030 and 71A.12.040. 10-02-101, § 388-825-020, filed 1/6/10, effective 2/6/10. Statutory Authority: RCW 71A.10.015, 71A.12.020, 71A.12.030, and Title 71A RCW. 08-11-072, § 388-825-020, filed 5/19/08, effective 6/19/08. Statutory Authority: RCW 71A.12.030, 71A.10.020 and 2002 c 371. 04-02-014, § 388-825-020, filed 12/29/03, effective 1/29/04. Statutory Authority: RCW 71A.16.010, 71A.16.030, 71A.12.030, chapter 71A.20 RCW, RCW 72.01.090, and 72.33.125. 02-16-014, § 388-825-020, filed 7/25/02, effective 8/25/02. Statutory Authority: RCW 71A.12.030 and 71A.12.040. 99-23-021, amended and recodified as § 388-825-020, filed 11/9/99, effective 12/10/99. Statutory Authority: RCW 71A.12.030. 99-04-071, § 275-27-020, filed 2/1/99, effective 3/4/99. Statutory Authority: RCW 74.12A.030 and 71A.16.030. 98-20-044, § 275-27-020, filed 9/30/98, effective 10/7/98. Statutory Authority: RCW 71A.14.030 and 71A.16.020. 92-09-115 (Order 3373), § 275-27-020, filed 4/21/92, effective 5/22/92. Statutory Authority: RCW 71A.16.020. 91-17-005 (Order 3230), § 275-27-020, filed 8/9/91, effective 9/9/91. Statutory Authority: RCW 71.20.070. 89-06-049 (Order 2767), § 275-27-020, filed 2/28/89; 84-15-058 (Order 2124), § 275-27-020, filed 7/18/84. Statutory Authority: RCW 72.01.090, 72.33.040, 72.33.125 and 72.33.165. 78-04-033 (Order 1280), § 275-27-020, filed 3/16/78; Order 1143, § 275-27-020, filed 8/11/76.]

**WAC 388-825-068 What medicaid state plan services can DDD authorize?** DDD may authorize the following medicaid state plan services:

- (1) Medicaid personal care, per chapter 388-106 WAC;
- (2) Private duty nursing for adults age eighteen and older; per chapter 388-106 WAC;
- (3) Private duty nursing for children under the age of eighteen, per WAC 388-551-3000;
- (4) Adult day health for adults, per chapter 388-106 WAC; and
- (5) ICF/MR services, per chapters 388-835 and 388-837 WAC.

[Statutory Authority: RCW 71A.12.030, 71A.12.040, 71A.14.030, 2009 c 564, section 205 (1)(j), and section 1915(i) of the Social Security Act. 10-04-002, § 388-825-068, filed 1/21/10, effective 2/21/10. Statutory Authority: RCW 71A.10.015, 71A.12.020, 71A.12.030, and Title 71A RCW. 08-11-072, § 388-825-068, filed 5/19/08, effective 6/19/08.]

**WAC 388-825-081 Can I receive state-only funded services that are not available in a DDD HCBS waiver?** You may be authorized to receive state-only funded services that are available in other DSHS rules as defined below:

- (1) Adult day care (WAC 388-106-0800);
- (2) Attendant care (WAC 388-825-082);
- (3) Childcare for foster children (chapter 388-826 WAC);
- (4) Chore services (chapter 388-106 WAC);
- (5) Individual and family assistance by the county (WAC 388-825-082);
- (6) Information and education by the county (WAC 388-825-082);
- (7) Medical and dental services (WAC 388-825-082);
- (8) Psychological counseling (WAC 388-825-082);
- (9) Reimbursement through the individual and family support program to families for the purchase of approved items or service (chapter 388-832 WAC);
- (10) State supplementary payments (chapter 388-827 WAC); and
- (11) Transportation reimbursement for an escort (WAC 388-825-082).

[Statutory Authority: RCW 71A.12.030 and 71A.12.040. 10-02-101, § 388-825-081, filed 1/6/10, effective 2/6/10. Statutory Authority: RCW 71A.10.-015, 71A.12.020, 71A.12.030, and Title 71A RCW. 08-11-072, § 388-825-081, filed 5/19/08, effective 6/19/08.]

**WAC 388-825-083 Is there a comprehensive list of waiver and state-only DDD services?** For medicaid state plan services authorized by DDD, see WAC 388-825-068. The following is a list of waiver and state-only services that DDD can authorize and those services that can be either a waiver or a state-only service:

(1) **Waiver personal care services that are not available with state-only funds include:**

- (a) In-home services;
- (b) Adult family home; and
- (c) Adult residential care.

(2) **Waiver services that can be funded as state-only services:**

- (a) Behavior management and consultation;
- (b) Community transition;
- (c) Environmental accessibility adaptations;
- (d) Medical equipment and supplies;
- (e) Occupational therapy;
- (f) Physical therapy;
- (g) Respite care;
- (h) Sexual deviancy evaluation;
- (i) Skilled nursing;
- (j) Specialized medical equipment or supplies;
- (k) Specialized psychiatric services;
- (l) Speech, hearing and language therapy;
- (m) Staff/family consultation and training;
- (n) Transportation/mileage;
- (o) Residential habilitation services (RHS), including:
  - (i) Alternative living;
  - (ii) Companion homes;
  - (iii) Supported living;
  - (iv) Group home;
  - (v) Child foster care;
  - (vi) Child group care;

(f) Persons who were previously on an HCBS waiver since April 2004 and lost waiver eligibility per WAC 388-845-0060 (1)(i).

(3) For the Basic waiver only, DDD may consider persons who need the waiver services available in the Basic waiver to maintain them in their family's home or in their own home.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. 10-22-088, § 388-845-0045, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. 08-20-033, § 388-845-0045, filed 9/22/08, effective 10/23/08; 07-20-050, § 388-845-0045, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0045, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0050 How do I request to be enrolled in a waiver?** (1) You can contact DDD and request to be enrolled in a waiver or to enroll in a different waiver at any time.

(2) If you are assessed as meeting ICF/MR level of care as defined in WAC 388-845-0070 and chapter 388-828 WAC, your request for waiver enrollment will be documented by DDD in a statewide data base.

(3) For the Children's Intensive In-Home Behavioral Support (CIIBS) waiver only, if you are assessed as meeting both ICF/MR level of care and CIIBS eligibility as defined in WAC 388-845-0030 and chapter 388-828 WAC, your request for waiver enrollment will be documented by DDD in a statewide data base.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. 10-22-088, § 388-845-0050, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.120 and Title 71A RCW. 07-20-050, § 388-845-0050, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0050, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0055 How do I remain eligible for the waiver?** Once you are enrolled in a DDD HCBS waiver, you can remain eligible if you continue to meet eligibility criteria in WAC 388-845-0030, and:

(1) You complete a reassessment with DDD at least once every twelve months to determine if you continue to meet all of these eligibility requirements; and

(2) You must either receive a waiver service at least once in every thirty consecutive days, as specified in WAC 388-513-1320 (3)(b), or your health and welfare needs require monthly monitoring, which will be documented in your client record; and

(3) You complete an in-person DDD assessment/reassessment interview administered in your home per WAC 388-828-1520.

(4) In addition, for the Children's Intensive In-Home Behavioral Supports waiver, you must:

- (a) Be under age twenty-one;
- (b) Live with your family; and

(c) Have an annual participation agreement signed by your parent/guardian(s) and primary caregiver(s), if other than parent/guardian(s).

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. 10-22-088, § 388-845-0055, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.-

120 and Title 71A RCW. 07-20-050, § 388-845-0055, filed 9/26/07, effective 10/27/07. Statutory Authority: RCW 71A.12.030, 71A.12.12 [71A.12.-120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0055, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0065 What happens if I am terminated or choose to disenroll from a waiver?** If you are terminated from a waiver or choose to disenroll from a waiver, DDD will notify you.

(1) DDD cannot guarantee continuation of your current services, including medicaid eligibility.

(2) Your eligibility for nonwaiver state-only funded DDD services is based upon availability of funding and program eligibility for a particular service.

(3) If you are terminated from the CIIBS waiver due to turning age twenty-one, DDD will assist with transition planning at least twelve months prior to your twenty-first birthday.

[Statutory Authority: RCW 71A.12.030, 71A.12.120, 2009 c 194, and 2008 c 329 § 205 (1)(i), and Title 71A RCW. 10-22-088, § 388-845-0065, filed 11/1/10, effective 12/2/10. Statutory Authority: RCW 71A.12.030, 71A.12.-12 [71A.12.120] and chapter 71A.12 RCW. 06-01-024, § 388-845-0065, filed 12/13/05, effective 1/13/06.]

**WAC 388-845-0100 What determines which waiver I am assigned to?** If there is capacity, DDD will assign you to the waiver with the minimum service package necessary to meet your health and welfare needs, based on its evaluation of your DDD assessment as described in chapter 388-828 WAC and the following criteria:

(1) For the Basic waiver:

- (a) You must live with your family or in your own home;
- (b) Your family/caregiver's ability to continue caring for you can be maintained with the addition of services provided in the Basic waiver; and
- (c) You do not need out-of-home residential services.

(2) For the Basic Plus waiver, your health and welfare needs exceed the amount allowed in the Basic waiver or require a service that is not contained in the Basic waiver; and

- (a) You are at high risk of out-of-home placement or loss of your current living situation; or
- (b) You require out-of-home placement and your health and welfare needs can be met in an adult family home or adult residential care facility.

(3) For the Core waiver:

- (a) You are at immediate risk of out-of-home placement; and/or

(b) You have an identified health and welfare need for residential services that cannot be met by the Basic Plus waiver.

(4) For the Community Protection waiver, refer to WAC 388-845-0105 and chapter 388-831 WAC.

(5) For the Children's Intensive In-Home Behavioral Support waiver, you:

- (a) Are age eight or older and under age eighteen;
- (b) Live with your family;
- (c) Are assessed at high or severe risk of out of home placement due to challenging behavior per chapter 388-828 WAC; and

(d) You have a signed participation agreement from your parent/guardian(s) and primary caregiver(s), if other than parent/guardian(s).