

Chapter 388-111 WAC

RESIDENTIAL HABILITATION CENTERS—COMPLIANCE STANDARDS

WAC

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WAC 388-111-0001 Definitions. "Abandonment" means action or inaction by an individual or entity with a duty of care for a vulnerable adult that leaves the vulnerable individual without the means or ability to obtain necessary food, clothing, shelter, or health care.

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

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

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

(3) **"Sexual abuse"** means any form of nonconsensual sexual contact, including, but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual contact may include interactions that do not involve touching, including but not limited to sending a resident sexually

explicit messages, or cuing or encouraging a resident to perform sexual acts. Sexual abuse includes any sexual contact between a staff person and a resident, whether or not it is consensual.

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

"Administrative hearing" is a formal hearing proceeding before a state administrative law judge that gives an individual an opportunity to appeal a finding of abandonment, abuse, neglect or financial exploitation of a resident.

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

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

"Facility":

(1) Except as defined in subsection (2) of this definition, the term "facility" means an intermediate care facility for persons with intellectual disabilities (ICF/ID).

(2) When used in the definition of "mandated reporter", the term "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; or chapter 71A.20 RCW, residential habilitation centers; or any other facility licensed by the department.

"Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any individual or entity for any individual's or entity's profit or advantage other than the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.020(6).

"Individual" means anyone used by the facility to provide services to residents, who is alleged to have abandoned, abused, neglected, misappropriated property of, or financially exploited a resident. "Individual" includes, but is not limited to, employees, contractors and volunteers. "Individual" also includes a person used by the certified nursing facility portion of a residential habilitation center operated under chapter 71A.20 RCW.

"Intermediate care facility for persons with intellectual disabilities (ICF/ID)" means an institution certified under chapter 42 C.F.R., Part 483, Subpart I, unless the facility is licensed as a nursing home under chapter 18.51 RCW or as a boarding home under chapter 18.20 RCW.

"Mandated reporter" is an employee of the department; law enforcement officer; social worker; professional school personnel; individual provider; an employee of a facility; an operator of a facility; an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency; county coroner or medical examiner; Christian Science practitioner; or health care provider subject to chapter 18.130 RCW.

"Neglect" means that an individual or entity with a duty to care for residents has:

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

(2) Through conduct or inaction, or a pattern of conduct or inaction, failed to provide a resident with the goods and services that maintain physical or mental health of a vulnerable adult, or that failed to avoid or prevent physical harm, pain, mental anguish, or mental illness.

"Resident" means an individual residing in a facility or in the certified nursing facility portion of a residential habilitation center operated under chapter 71A.20 RCW.

"Willful" means the deliberate, or nonaccidental, action or inaction by an individual that he or she knew or reasonably should have known could cause a negative outcome, including harm, injury, pain or anguish.

[Statutory Authority: Chapter 74.34 RCW, RCW 74.08.090 and 71A.12.030. WSR 12-01-001, § 388-111-0001, filed 12/7/11, effective 1/7/12; WSR 11-07-025, § 388-111-0001, filed 3/10/11, effective 4/10/11.]

WAC 388-111-0010 Mandated reporting to the department. Mandated reporters, including the facility and staff:

(1) Must comply with reporting requirements under chapter 74.34 RCW and this chapter;

(2) Must immediately make mandated reports to the department's centralized toll free complaint telephone number or fax number when:

(a) There is reasonable cause to believe that a vulnerable adult, as defined in chapter 74.34 RCW, has been abandoned, abused, neglected, or financially exploited; or

(b) There is a reason to suspect physical or sexual assault.

(3) Must make any other written and oral reports as required by the department; and

(4) Must protect the alleged victim and others from further abuse, neglect, abandonment, and financial exploitation.

[Statutory Authority: Chapter 74.34 RCW, RCW 74.08.090, and 71A.12.-030. WSR 11-07-025, § 388-111-0010, filed 3/10/11, effective 4/10/11.]

WAC 388-111-0020 Mandated reporting to law enforcement. Mandated reporters, including the facility and staff, must immediately report to the appropriate law enforcement agency if there is reason to suspect that any of the following has occurred:

(1) Sexual assault - Any alleged or suspected sexual assault;

(2) Physical assault (nonclient to client) - Any suspected physical assault as well as any act that causes fear of imminent harm; and

(3) Physical assault (client to client) - Any suspected physical assault that causes bodily injury requiring more than first aid, or in the event of:

(a) Injuries that appear on the back, face, head, neck, chest, breasts, groin, inner thigh, buttock, genital, or anal area;

(b) Fractures;

(c) Choking attempts;

(d) Patterns of physical assault between the same vulnerable adults or involving the same vulnerable adults;

(e) A reasonable cause to believe that an act has caused fear of imminent harm; and

(f) Any incident, regardless of injury, if requested by the client, his/her legal representative, or family member.

[Statutory Authority: Chapter 74.34 RCW, RCW 74.08.090, and 71A.12.-030. WSR 11-07-025, § 388-111-0020, filed 3/10/11, effective 4/10/11.]

WAC 388-111-0030 Mandated reporting policies and procedures. (1) The facility must develop, train staff on, and implement written policies and procedures for:

(a) Immediately reporting mandated reporting incidents to:

(i) The department and law enforcement;

(ii) The facility; and

(iii) The alleged victim's legal representative.

(b) Protecting clients;

(c) Preserving evidence when necessary; and

(d) Initiating an outside review or investigation.

(2) The facility must not have or implement any policies or procedures that interfere with a mandated reporter's obligation to report.

[Statutory Authority: Chapter 74.34 RCW, RCW 74.08.090, and 71A.12.-030. WSR 11-07-025, § 388-111-0030, filed 3/10/11, effective 4/10/11.]

WAC 388-111-0040 Resident and client protection program—Investigation of reports of abandonment, abuse, neglect, or financial exploitation. (1) The department will review all allegations that an individual abandoned, abused, neglected, or financially exploited a resident as those terms are defined in this chapter, RCW 74.34.020 or 42 C.F.R. 488.301.

(2) If, after the review of an allegation, the department concludes that there is reason to believe that an individual has abandoned, abused, neglected, or financially exploited a resident, then the department will initiate an investigation.

(3) The department's investigation may include, but is not limited to:

(a) The review of facility and state agency records;

(b) Interviews with anyone who may have relevant information about the allegation; and

(c) The collection of any evidence deemed necessary by the investigator.

[Statutory Authority: Chapter 74.34 RCW, RCW 74.08.090, and 71A.12.-030. WSR 11-07-025, § 388-111-0040, filed 3/10/11, effective 4/10/11.]

WAC 388-111-0050 Resident and client protection program—Notice to individual of preliminary findings.

(1) The department will serve notice of the preliminary finding as provided in WAC 388-111-0130.

(2) The department may establish proof of service as provided in WAC 388-111-0140.

[Statutory Authority: Chapter 74.34 RCW, RCW 74.08.090, and 71A.12-030. WSR 11-07-025, § 388-111-0050, filed 3/10/11, effective 4/10/11.]

WAC 388-111-0060 Resident and client protection program—Notice to others of preliminary findings. Consistent with confidentiality requirements concerning the resident, witnesses, and the reporter, the department may provide notification of a preliminary finding to:

- (1) Other divisions within the department;
- (2) The facility where the incident occurred;
- (3) The employer or program that is currently associated with the individual;
- (4) Law enforcement;
- (5) Other entities as authorized by law, including chapter 74.34 RCW and this chapter; and
- (6) The appropriate licensing agency.

[Statutory Authority: Chapter 74.34 RCW, RCW 74.08.090, and 71A.12-030. WSR 11-07-025, § 388-111-0060, filed 3/10/11, effective 4/10/11.]

WAC 388-111-0070 Resident and client protection program—Disputing a preliminary finding. (1) The individual may request an administrative hearing to challenge a preliminary finding made by the department.

(2) The request must be made in writing to the office of administrative hearings and include the following information:

- (a) The individual's full legal name, current mailing address and the telephone number;
- (b) A brief explanation of why the individual disagrees with the preliminary finding;
- (c) A description of any assistance needed in the administrative appeal process by the individual, including a foreign language or sign interpreter or any reasonable accommodation for a disability; and
- (d) The individual's signature.

(3) The office of administrative hearings must receive the individual's written request for an administrative hearing within thirty calendar days of the date of the notice of the preliminary finding; except under the circumstances described in WAC 388-111-0080.

[Statutory Authority: Chapter 74.34 RCW, RCW 74.08.090, and 71A.12-030. WSR 11-07-025, § 388-111-0070, filed 3/10/11, effective 4/10/11.]

WAC 388-111-0080 Resident and client protection program—Disputing a preliminary finding—Hearing procedures. (1) If an individual requests a hearing within one hundred eighty days of the date of the notice of the preliminary finding and the individual can demonstrate good cause for failing to request a hearing within thirty days, the office of administrative hearings may grant the request. Under these circumstances, the finding against the individual will remain on the department's registry pending the outcome of the hearing.

(12/7/11)

(2) The hearing, and any subsequent appeals, will be governed by this chapter, chapter 34.05 RCW, and chapter 388-02 WAC.

(3) If a conflict exists between the provisions of this chapter and chapter 388-02 WAC, the provisions of this chapter prevail.

[Statutory Authority: Chapter 74.34 RCW, RCW 74.08.090, and 71A.12-030. WSR 11-07-025, § 388-111-0080, filed 3/10/11, effective 4/10/11.]

WAC 388-111-0090 Resident and client protection program—Finalizing the preliminary finding. (1) The preliminary finding becomes a final finding when:

(a) The department notifies the individual of a preliminary finding and the individual does not ask for an administrative hearing within the time frame provided under WAC 388-111-0080.

(b) The individual requests an administrative hearing to appeal the preliminary finding and the administrative law judge:

- (i) Dismisses the appeal following withdrawal of the appeal or default; or
- (ii) Issues an initial order upholding the finding.

(c) The board of appeals reverses an administrative law judge's initial order and issues a final order upholding the preliminary finding.

(2) A final finding is permanent, except under the circumstances described in subsection (3) of this section.

(3) A final finding may be removed from the department's registry and, as appropriate, any other department lists under the following circumstances:

- (a) The department determines the finding was made in error;
- (b) The finding is rescinded following judicial review; or
- (c) The department is notified of the individual's death.

[Statutory Authority: Chapter 74.34 RCW, RCW 74.08.090, and 71A.12-030. WSR 11-07-025, § 388-111-0090, filed 3/10/11, effective 4/10/11.]

WAC 388-111-0100 Resident and client protection program—Reporting final findings. The department will report a final finding of abandonment, abuse, neglect or financial exploitation of a resident, within ten working days to the following:

- (1) The individual;
- (2) The current superintendent of the facility in which the incident occurred;
- (3) The superintendent or administrator of the facility that currently employs the individual, if known;
- (4) The department's registry;
- (5) The appropriate licensing authority; and
- (6) Any other lists maintained by a state or federal agency, as appropriate.

[Statutory Authority: Chapter 74.34 RCW, RCW 74.08.090, and 71A.12-030. WSR 11-07-025, § 388-111-0100, filed 3/10/11, effective 4/10/11.]

WAC 388-111-0110 Resident and client protection program—Appeal of administrative law judge's initial order or finding. (1) If the individual or the department disagrees with the administrative law judge's decision, either party may appeal this decision by filing a petition for review

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with the department's board of appeals as provided under chapters 34.05 RCW and 388-02 WAC.

(2) If the individual appeals the administrative law judge's decision, the finding will remain on the department's registry or other lists, unless removal is required under WAC 388-111-0090(3).

[Statutory Authority: Chapter 74.34 RCW, RCW 74.08.090, and 71A.12.-030. WSR 11-07-025, § 388-111-0110, filed 3/10/11, effective 4/10/11.]

WAC 388-111-0120 Resident and client protection program—Disclosure of investigative and finding information. (1) Information obtained during the investigation into allegations of abandonment, abuse, neglect, or financial exploitation of a resident, and any documents generated by the department will be maintained and disseminated with regard for the privacy of the resident and any reporting individuals and in accordance with laws and regulations regarding confidentiality and privacy.

(2) Confidential information provided to the individual by the department must be kept confidential and may only be used by the individual to challenge findings through the appeals process.

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

[Statutory Authority: Chapter 74.34 RCW, RCW 74.08.090, and 71A.12.-030. WSR 11-07-025, § 388-111-0120, filed 3/10/11, effective 4/10/11.]

WAC 388-111-0130 Notice—Service complete. Service of the department notices is complete when:

- (1) Personal service is made;
- (2) The notice is addressed to the facility 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: Chapter 74.34 RCW, RCW 74.08.090, and 71A.12.-030. WSR 11-07-025, § 388-111-0130, filed 3/10/11, effective 4/10/11.]

WAC 388-111-0140 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 facility 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: Chapter 74.34 RCW, RCW 74.08.090, and 71A.12.-030. WSR 11-07-025, § 388-111-0140, filed 3/10/11, effective 4/10/11.]