

388-97-0001 Definitions

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.

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, personal exploitation of a vulnerable adult, and improper use of restraint against a vulnerable adult which have the following meanings:

(1) means a willful verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. Mental abuse may include ridiculing, yelling, or swearing.

(2) 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, or prodding.

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

residentsexually explicit messages, or cuing or encouraging a resident to performsexual acts. Sexual abuse includes any sexual conduct between a staff personand a resident, whether or not it is consensual.

(4) means an act offorcing, compelling, or exerting undue influence over a vulnerable adultcausing the vulnerable adult to act in a way that is inconsistent with relevantpast behavior, or causing the vulnerable adult to perform services for thebenefit of another.

(5) means theinappropriate use of chemical, physical, or mechanical restraints forconvenience or discipline or in a manner that:

(a) Is inconsistent with federal or state licensing orcertification requirements for facilities, hospitals, or programs authorizedunder chapter 71A.12 RCW;

(b) Is not medically authorized; or

(c) Otherwise constitutes abuse under this section.

is a formal hearingproceeding before a state administrative law judge that gives:

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

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

means animpartial decision-maker who presides over an administrative hearing.

ALJs areemployed by the office of administrative hearings (OAH), which is a separatestate agency. ALJs are not DSHS employees or DSHS representatives.

means a nursing homeadministrator, licensed under chapter 18.52 RCW, who must be in activeadministrative charge of the nursing home, as that term is defined in the boardof nursing home administrator's regulations.

means an individual who is licensed to practice as an advancedregistered nurse practitioner under chapter 18.79 RCW.

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

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

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

means a bank of earth piled against a wall.

means the administration of any drug to manage a vulnerable adult's behavior in a way that reduces the safety risk to the vulnerable adult or others, has the temporary effect of restricting the vulnerable adult's freedom of movement, and is not standard treatment for the vulnerable adult's medical or psychiatric condition.

means judicial or administrative adjudicative proceeding that results in a finding of, or upholds an agency finding of, domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation or financial exploitation of a child or vulnerable adult under any provision of law, including but not limited to chapter 13.34, 26.44, or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative findings that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.

is a civil monetary penalty assessed against a nursing home as authorized by chapters 18.51 and 74.42 RCW. There are two types of civil fines, "per day" and "per instance."

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

(2) means a fine imposed for the occurrence of a deficiency.

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

means express written consent granted after the vulnerable adult or his or her legal representative has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

means the one-way travel time between any two points traveling on the generally fastest route without any impediments such as traffic, road work, or road closure.

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

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

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

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

or means the nursing home action(s), error(s), or lack of action(s) that provide the basis for the deficiency.

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

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

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

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

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

means the staffing domain identified and defined in the Centers for Medicare and Medicaid Service's five-star quality rating system and as reported through the Centers for Medicare and Medicaid Service's payroll-based journal.

means that the individual responsible for providing oversight to staff is on the premises and quickly and easily available to provide necessary assessments and other direct care of residents.

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

means a substance:

- (1) Recognized as a drug in the official , or any supplement to any of them; or
- (2) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease.

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

is an order by the department to immediately close a nursing home.

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

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

means a nursing home, which is the only nursing home within a commuting distance radius of at least forty minutes duration, traveling by automobile.

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

means a person with a bachelor's or master's degree in social work, who has received specialized training devoted to mental illness and treatment of older adults.

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

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

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

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

means an institution certified under chapter 42 C.F.R., Part 483, Subpart I, and

licensed under chapter 18.51RCW.

means nonessential community providers that have more than sixty licensed nursing home beds, even if some of those beds are not set up or are not in use.

is an action taken by the department to cancel a nursing home license in accordance with 18.51.060 and WAC 388-97-4220 .

is an action taken by the department to temporarily revoke a nursing home license in accordance with 18.51.060 and this chapter.

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

means an individual licensed to practice practical nursing under chapter 18.79RCW.

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

means any device attached or adjacent to the vulnerable adult's body that he or she cannot easily remove that restricts freedom of movement or normal access to his or her body. "Mechanical restraint" does not include the use of devices, materials, or equipment that are:

(1) Medically authorized, as required; and

(2) Used in a manner that is consistent with federal or state licensing or certification requirements for facilities.

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

means National Fire Protection Association, Inc.

:

(1) In a nursing home licensed under chapter 18.51 RCW, neglect means:

(a) 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

(b) An act or omission by a person or entity with a duty of care 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.

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

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

means a nursing home located within a commuting distance radius of less than forty minutes duration by automobile from another nursing home.

means a nursing assistant as defined under 18.88A.020 or successor laws.

or means a nursing home, or any portion of a hospital, veterans' home, or residential habilitation center, that is certified to provide nursing services to Medicaid recipients under section 1919(a) of the federal Social Security Act. All beds in a nursing facility

arecertified to provide medicaid services, even though one or more of the beds arealso certified to provide medicare skilled nursing facility services.

means any facility licensedto operate under chapter 18.51 RCW.

means an individual serving as anofficer of a corporation.

means:

- (1) The individual, and if applicable, the individual'sspouse, who operates, or is applying to operate, the nursing home as a soleproprietorship;
- (2) In the case of a corporation, the owner of at leastfive percent of the shares or capital stock of the corporation; or
- (3) In the case of other types of business entities, theowner of a beneficial interest in at least five percent of the capital assetsof an entity.

means an individual in apartnership owning or operating a nursing home.

means arestraining order or order of protection issued either following a hearing, orby stipulation of the parties. A "permanent" order may be in force for aspecific time period (for example, one year), after which it expires.

means any individual, firm,partnership, corporation, company, association or joint stockassociation.

means an individual licensed bythe Washington state board of pharmacy under chapter 18.64 RCW.

means a place licensed underchapter 18.64 RCW where the practice of pharmacy is conducted.

means the applicationof physical force without the use of any device for the purpose of restrainingthe free movement of a vulnerable adult's body. "Physical restraint" does notinclude briefly holding without undue force a vulnerable adult in order to calmor comfort him or her, or holding a vulnerable adult's hand to safely escort him or her from one area to another.

means a physician's assistant as defined under chapter 18.57A or 18.71A RCW or successor laws.

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

and has the meaning given in federal and state antidiscrimination laws and regulations. For the purpose of this chapter:

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

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

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

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

(2) Reasonable accommodations are not required if:

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

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

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

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

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

means an individual licensed to practice as a registered nurse under chapter 18.79

RCW.

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

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

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

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

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

or means a nursing home, a portion of a nursing home, or a long-term care wing or unit of a hospital that has been certified to provide nursing services to medicare recipients under section 1819(a) of the federal Social Security Act.

means nonessential community providers that have sixty or fewer nursing home licensed beds, even if some of those beds are not set up or are not in use.

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

means a location at which nursing and other staff perform charting and related

activities throughout the day.

or is an action taken by the department prohibiting nursing home admissions, readmissions, and transfers of patients into the nursing home from the outside.

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

means a resident representative or representatives as outlined in WAC 388-97-0240 , and as authorized by 7.70.065 .

means the same as as defined in this section.

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

means restraining order or order of protection that expired without a hearing, was dismissed following an initial hearing, or was dismissed by stipulation of the parties before an initial hearing.

means an action taken by:

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

(2) The department of health and human services Centers for Medicare and Medicaid Services, or the nursing home, to cancel a nursing home's provider agreement to provide services to medicaid or medicare recipients, or both.

means a room containing at least one toilet fixture.

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

means the same as as defined in this section.

means an individual who is a regularly scheduled individual not receiving payment

for services and having unsupervised access to a nursing home resident.

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 71A.10.020 ;
- (4) Admitted to any facility;
- (5) Receiving services from home health, hospice, or homecare agencies licensed or required to be licensed under chapter 70.127 RCW;
- (6) Receiving services from an individual provider; or
- (7) Who self directs his or her own care and receives services from a personal aide under chapter 74.39 RCW.

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