

Chapter 388-110 WAC

CONTRACTED RESIDENTIAL CARE SERVICES

WAC

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tory Authority: RCW 18.20.090, 70.128.040, 74.39A.-050, 34.05.020, 2000 c 121, and 2002 c 233.

Education and training requirements. [Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-[18.88A.]240 and 70.129.040. WSR 96-11-045 (Order 3979), § 388-110-170, filed 5/8/96, effective 6/8/96.] Repealed by WSR 04-16-063, filed 7/30/04, effective 9/1/04. Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.070, and chapter 74.39A RCW.

Nurse delegation training and registration. [Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-[18.88A.]240 and 70.129.040. WSR 96-11-045 (Order 3979), § 388-110-180, filed 5/8/96, effective 6/8/96.] Repealed by WSR 04-16-063, filed 7/30/04, effective 9/1/04. Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.070, and chapter 74.39A RCW.

Performance of delegated nursing care tasks. [Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-[18.88A.]240 and 70.129.040. WSR 96-11-045 (Order 3979), § 388-110-190, filed 5/8/96, effective 6/8/96.] Repealed by WSR 04-16-063, filed 7/30/04, effective 9/1/04. Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.070, and chapter 74.39A RCW.

Nurse delegation—Penalties. [Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.-080, 74.39A.170, 18.88A.210-[18.88A.]240 and 70.129.040. WSR 96-11-045 (Order 3979), § 388-110-200, filed 5/8/96, effective 6/8/96.] Repealed by WSR 04-16-063, filed 7/30/04, effective 9/1/04. Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.070, and chapter 74.39A RCW.

Client service eligibility. [Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-[18.88A.]240 and 70.129.040. WSR 96-11-045 (Order 3979), § 388-110-210, filed 5/8/96, effective 6/8/96.] Repealed by WSR 02-21-098, filed 10/21/02, effective 11/21/02. Statutory Authority: RCW 74.08.090, 74.09.520, and 74.39A.090.

Client eligibility. [Statutory Authority: RCW 74.39A.-010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.-170, 18.88A.210-[18.88A.]240 and 70.129.040. WSR 96-11-045 (Order 3979), § 388-110-230, filed 5/8/96, effective 6/8/96.] Repealed by WSR 02-21-098, filed 10/21/02, effective 11/21/02. Statutory Authority: RCW 74.08.090, 74.09.520, and 74.39A.090.

Client service eligibility. [Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-[18.88A.]240 and 70.129.040. WSR 96-11-045 (Order 3979), § 388-110-250, filed 5/8/96, effective 6/8/96.] Repealed by WSR 02-21-098, filed 10/21/02, effective 11/21/02. Statutory Authority: RCW 74.08.090, 74.09.520, and 74.39A.090.

PART I

ALL CONTRACTED RESIDENTIAL CARE SERVICES

WAC 388-110-005 Authority. The following rules are adopted under RCW 74.39A.010, 74.39A.020, 74.39A.060, and 74.39A.070.

[Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.-070, and chapter 74.39A RCW. WSR 04-16-063, § 388-110-005, filed 7/30/04, effective 9/1/04. Statutory Authority: RCW 74.39A.010, 74.39A.-020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-[18.88A.]240 and

70.129.040. WSR 96-11-045 (Order 3979), § 388-110-005, filed 5/8/96, effective 6/8/96.]

WAC 388-110-010 Scope and applicability. (1) These rules apply only to assisted living facilities licensed under chapter 18.20 RCW, or assisted living facilities located within the boundaries of a federally recognized Indian reservation and licensed by a tribe, that contract with the department to provide assisted living services, enhanced adult residential care, enhanced adult residential care-specialized dementia care services, or adult residential care.

(2) Only services provided to or on behalf of the assisted living services, enhanced adult residential care, enhanced adult residential care-specialized dementia care services, or adult residential care resident, and paid for fully or partially by the department shall be subject to these rules.

[Statutory Authority: Chapter 18.20 RCW. WSR 14-07-021, § 388-110-010, filed 3/7/14, effective 4/7/14. Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.070, and chapter 74.39A RCW. WSR 04-16-063, § 388-110-010, filed 7/30/04, effective 9/1/04. Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-[18.88A.]240 and 70.129.040. WSR 96-11-045 (Order 3979), § 388-110-010, filed 5/8/96, effective 6/8/96.]

WAC 388-110-020 Definitions. "Adult residential care" is a package of services provided by an assisted living facility that is licensed under chapter 18.20 RCW and that has a contract with the department under RCW 74.39A.020 to provide personal care services in accordance with Parts I and IV of this chapter.

"Applicant" means the individual, partnership, corporation or other entity which has applied for a contract with the department to provide assisted living services, enhanced adult residential care, enhanced adult residential care-specialized dementia care services, or adult residential care to state funded residents in a licensed assisted living facility.

"Assisted living facility" means any home or other institution, however named, which is advertised, announced, or maintained for the express or implied purpose of providing housing, basic services, and assuming general responsibility for the safety and well-being of the residents, and may also provide domiciliary care, consistent with this chapter to seven or more residents after July 1, 2000. However, an assisted living facility that is licensed for three to six residents prior to or on July 1, 2000, may maintain its assisted living facility license as long as it is continually licensed as an assisted living facility. "Assisted living facility" does not include facilities certified as group training homes pursuant to RCW 71A.22.040, nor any home, institution or section thereof which is otherwise licensed and regulated under the provisions of state law providing specifically for the licensing and regulation of such home, institution or section thereof. Nor shall it include any independent senior housing, independent living units in continuing care retirement communities, or other similar living situations including those subsidized by the Department of Housing and Urban Development. "Assisted living facility" may also include persons associated with the assisted living facility to carry out its duties under this chapter.

"Assisted living services" is a package of services provided by an assisted living facility that has a contract with the department under RCW 74.39A.010 to provide personal care

services, intermittent nursing services, and medication administration services in accordance with Parts I and II of this chapter. Assisted living services include housing for the resident in a private apartment-like unit.

"Case manager" means the department staff person or designee assigned to negotiate, monitor, and facilitate a service plan for residents receiving services fully or partially paid for by the department.

"Contractor" means the individual, partnership, corporation, or other entity which is licensed by the department or tribe to operate the assisted living facility and contracts with the department to provide assisted living services, enhanced adult residential care, enhanced adult residential care-specialized dementia care services, or adult residential care to state funded residents in a licensed assisted living facility.

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

"Dignity" means the quality or condition of being esteemed and respected in such a way as to validate the self-worth of the resident.

"Enhanced adult residential care" is a package of services provided by an assisted living facility that is licensed under chapter 18.20 RCW and that has a contract with the department to provide personal care services, intermittent nursing services, and medication administration services in accordance with Parts I and III of this chapter.

"Enhanced adult residential care-specialized dementia care services" is a package of service, including specialized dementia care assessment and care planning, personal care services, intermittent nursing services, medication administration services, specialized environmental features and accommodations, and activity programming. Enhanced adult residential care-specialized dementia care services are delivered only within:

(1) Contracted assisted living facilities that are dedicated solely to the care of individuals with dementia, including Alzheimer's disease, and that meet the requirements of parts I and III of this chapter; or

(2) Designated, separate units located within contracted assisted living facilities that are dedicated solely to the care of individuals with dementia, including Alzheimer's disease, and that meet the requirements of parts I and III of this chapter.

"Homelike" means an environment having the qualities of a home, including privacy, comfortable surroundings, and the opportunity to decorate one's living area and arrange furnishings to suit one's individual preferences. A homelike environment provides residents with an opportunity for self-expression, and encourages interaction with the community, family and friends.

"Independence" means free from the control of others and being able to assert one's own will, personality and preferences.

"Individuality" means the quality of being unique; the aggregate of qualities and characteristics that distinguishes one from others. Individuality is supported by modifying services to suit the needs or wishes of a specific individual.

"Medication administration" means the direct application of a prescribed medication, whether by injection, inhalation, ingestion, or any other means, to the body of a resident by a person legally authorized to do so.

"Personal care services" means the same as physical or verbal assistance with activities of daily living included under "personal care services" described in WAC 388-106-0010. Personal care services do not include assistance with instrumental activities of daily living described in WAC 388-106-0010, nor assistance with tasks that must be performed by a licensed health professional.

"Resident" means a person residing in an assisted living facility for whom services are paid for, in whole or in part, by the department under a contract for assisted living services, enhanced adult residential care, enhanced adult residential care-specialized dementia care services, or adult residential care. **"Resident"** includes former residents when examining complaints about admissions, readmissions, transfers or discharges. For decision-making purposes, the term **"resident"** includes the resident's surrogate decision maker in accordance with state law or at the resident's request.

[Statutory Authority: Chapter 18.20 RCW. WSR 14-07-021, § 388-110-020, filed 3/7/14, effective 4/7/14. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.010 and 74.39A.020. WSR 06-05-022, § 388-110-020, filed 2/6/06, effective 3/9/06. Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.070, and chapter 74.39A RCW. WSR 04-16-063 and 04-18-001, § 388-110-020, filed 7/30/04 and 8/19/04, effective 9/19/04. Statutory Authority: RCW 74.08.090, 74.09.520, and 74.39A.090. WSR 02-21-098, § 388-110-020, filed 10/21/02, effective 11/21/02. Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-[18.88A.]240 and 70.129.040. WSR 96-11-045 (Order 3979), § 388-110-020, filed 5/8/96, effective 6/8/96.]

WAC 388-110-030 Contract application. (1) In order to apply for a contract with the department to provide assisted living services, enhanced adult residential care, enhanced adult residential care-specialized dementia care services, or adult residential care, an applicant must:

(a) Have a valid assisted living facility license issued by the department or tribe, or have applied for an assisted living facility license for the assisted living facility at which the contracted services will be provided;

(b) Complete and submit a contract application on department provided forms at least ninety days before the requested effective date for the contract; and

(c) Provide information regarding any licensed care facilities with which any of the following have been affiliated within the last ten years:

(i) The applicant;

(ii) Any partner, or owner of five percent or more of the applicant; and

(iii) Any officer, director, or managerial employee of the applicant.

(2) The department must confirm that the applicant has a valid assisted living facility license issued by the department or tribe and meets the requirements of this chapter before issuing a contract.

[Statutory Authority: Chapter 18.20 RCW. WSR 14-07-021, § 388-110-030, filed 3/7/14, effective 4/7/14. Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.070, and chapter 74.39A RCW. WSR 04-16-063, § 388-110-030, filed 7/30/04, effective 9/1/04. Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-[18.88A.]240 and 70.129.040. WSR 96-11-045 (Order 3979), § 388-110-030, filed 5/8/96, effective 6/8/96.]

(2/18/16)

WAC 388-110-040 Contract qualifications. (1) The department must consider separately and jointly as applicants each person and entity named in the application for a contract for assisted living services, enhanced adult residential care, enhanced adult residential care-specialized dementia care services, or adult residential care. If the department finds any person or entity unqualified, the department must deny the contract.

(2) In making a determination whether to grant a contract, the department must review and consider:

(a) The information in the application;

(b) Other documents and information the department deems relevant, including inspection and complaint investigation findings for each licensed care facility, and each care facility that was required by law to be licensed but was not, with which any of the following have been affiliated within the last ten years:

(i) The applicant;

(ii) Any partner, or owner of five percent or more of the applicant; or

(iii) Any officer, director, or managerial employee of the applicant.

(c) The history and quality of services provided by the applicant; and

(d) Funding from the legislature available to the department to purchase residential care.

(3) The applicant and the assisted living facility for which a contract is sought must comply with all requirements established by chapter 74.39A RCW, chapter 388-78A WAC and this chapter.

(4) The department shall review the qualifications of applicants for enhanced adult residential care-specialized dementia care services contracts and may select a limited number with which to enter into contracts, based on:

(a) Which applicants are best qualified to provide specialized dementia care services, as determined by the department;

(b) The need for services in the area of the state in which the applicant is located; and

(c) Other qualifications specified in this section.

(5) The department must deny, suspend, revoke or refuse to renew a contract if an applicant or contractor or any partner, officer, director, managerial employee, or owner of five percent or more of the contractor or applicant has a history of significant noncompliance with federal or state regulations, rules or laws in providing care or services to frail elders, vulnerable adults or children. The department must consider evidence of noncompliance on a case-by-case basis.

[Statutory Authority: Chapter 18.20 RCW. WSR 14-07-021, § 388-110-040, filed 3/7/14, effective 4/7/14. Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.070, and chapter 74.39A RCW. WSR 04-16-063, § 388-110-040, filed 7/30/04, effective 9/1/04. Statutory Authority: RCW 74.39A.010, 74.39A.020 and 74.39A.080. WSR 96-21-050, § 388-110-040, filed 10/11/96, effective 11/11/96. Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-[18.88A.]240 and 70.129.040. WSR 96-11-045 (Order 3979), § 388-110-040, filed 5/8/96, effective 6/8/96.]

WAC 388-110-050 Change of contractor. (1) A change of contractor must occur when there is a change in the assisted living facility licensee per WAC 388-78A-2770.

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(2) When a change of licensee and contractor is contemplated, the current contractor must notify the department and all residents and residents' representatives at least ninety days prior to the proposed date of change. The notice must be in writing and must contain the following information:

(a) Name of the present contractor and prospective contractor;

(b) Name and address of the boarding home being changed; and

(c) Date of proposed change.

(3) The operation of an assisted living services, enhanced adult residential care, enhanced adult residential care-specialized dementia care services, or adult residential care contract must not be changed until the new operator has entered into a contract with the department. The new contractor must comply with contract application requirements in WAC 388-110-030.

[Statutory Authority: Chapter 18.20 RCW. WSR 14-07-021, § 388-110-050, filed 3/7/14, effective 4/7/14. Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.070, and chapter 74.39A RCW. WSR 04-16-063, § 388-110-050, filed 7/30/04, effective 9/1/04. Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-[18.88A.]240 and 70.129.040. WSR 96-11-045 (Order 3979), § 388-110-050, filed 5/8/96, effective 6/8/96.]

WAC 388-110-070 General service standards. The contractor must:

(1) Provide the services agreed upon in the resident's negotiated service agreement and approved by the department case manager consistent with WAC 388-78A-2150, including any reasonable accommodations required by chapter 70.129 RCW, Long-term care residents rights; and

(2) Provide the resident and case manager with a copy of the negotiated service agreement developed according to chapter 388-78A WAC.

[Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.070, and chapter 74.39A RCW. WSR 04-16-063, § 388-110-070, filed 7/30/04, effective 9/1/04. Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-[18.88A.]240 and 70.129.040. WSR 96-11-045 (Order 3979), § 388-110-070, filed 5/8/96, effective 6/8/96.]

WAC 388-110-090 Administration. The contractor must:

(1) Maintain substantial compliance with all requirements of chapters 18.20 RCW, Assisted living facilities, and 70.129 RCW, Long-term care resident rights, and chapters 388-78A WAC, Assisted living facilities licensing rules, and 388-105 WAC medicaid rates for contracted home and community residential care services;

(2) Permit department representatives to enter the assisted living facility without prior notification and cooperate with department representatives as they monitor the contract requirements under this chapter and conduct complaint investigations, including but not limited to observing and privately interviewing residents, and accessing resident records.

[Statutory Authority: Chapter 18.20 RCW. WSR 14-07-021, § 388-110-090, filed 3/7/14, effective 4/7/14. Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.070, and chapter 74.39A RCW. WSR 04-16-063, § 388-110-090, filed 7/30/04, effective 9/1/04. Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-[18.88A.]240 and 70.129.040. WSR 96-11-045 (Order 3979), § 388-110-090, filed 5/8/96, effective 6/8/96.]

WAC 388-110-100 Discharge, social leave, and bed hold. The contractor is not required to discharge (move out) and readmit a resident for absences of less than twenty-one consecutive days. The contractor must:

(1) Note an absence in a resident's record when a resident is absent from the assisted living facility for more than seventy-two consecutive hours;

(2) Obtain department approval for payment for social leave in excess of eighteen calendar days per year;

(3) Notify the department within one working day whenever the resident:

(a) Is hospitalized;

(b) Is discharged to another assisted living facility, nursing home or other health care facility;

(c) Dies; or

(d) Is missing from the assisted living facility and his or her whereabouts are unknown.

(4) Include the department's case manager in the development of a discharge (move out) plan, and have the case manager approve the plan before any required notice of discharge is issued to the resident, except in an emergency;

(5) Notify the medicaid resident of the assisted living facility's policies regarding bed-holds, consistent with subsections (6) and (7) of this section and WAC 388-105-0045 as soon as possible before, or as soon as practicable following hospitalization or discharge to a nursing home. The notification must include information concerning:

(a) Options for bed-hold payments, and

(b) Rights to return to the boarding home.

(6) Retain a bed or unit for a medicaid resident who is hospitalized or temporarily placed in a nursing home for up to twenty days when the medicaid resident is likely to return to the assisted living facility and the department makes payment to the assisted living facility for holding the bed or unit consistent with WAC 388-105-0045. If, prior to the end of the twenty days, the department determines, or the contractor determines and the department concurs, that the medicaid resident will likely not return to the assisted living facility:

(a) The department must terminate the bed-hold payment; and

(b) The contractor may rent that bed or unit to another resident.

(7) Not seek third-party payment for the first twenty days of retaining the bed for a medicaid resident who is hospitalized or discharged to a nursing home and for whom the department is making a bed hold payment consistent with WAC 388-105-0045.

(a) The contractor may seek third-party payment consistent with RCW 18.20.290 and chapter 388-105 WAC to hold a bed or unit for the time following the first twenty days of a medicaid resident's absence for hospitalization or nursing home care.

(b) If third-party payment is not available, the medicaid resident may return to the first available and appropriate bed or unit if the medicaid resident:

(i) Continues to meet the assisted living facility's admission criteria; and

(ii) Chooses to return to the assisted living facility.

[Statutory Authority: Chapter 18.20 RCW. WSR 14-07-021, § 388-110-100, filed 3/7/14, effective 4/7/14. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.010 and 74.39A.020. WSR 06-05-022, § 388-110-100,

filed 2/6/06, effective 3/9/06. Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.070, and chapter 74.39A RCW. WSR 04-16-063, § 388-110-100, filed 7/30/04, effective 9/1/04. Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-[18.88A.]240 and 70.129.040. WSR 96-11-045 (Order 3979), § 388-110-100, filed 5/8/96, effective 6/8/96.]

WAC 388-110-120 Resident personal funds. (1) Upon the death of a resident, the contractor must promptly convey the resident's personal funds held by the assisted living facility with a final accounting of such funds to the department or to the individual or probate jurisdiction administering the resident's estate no later than forty-five calendar days after the date of the resident's death:

(a) When the personal funds of the deceased resident must be paid to the state of Washington, those funds and the final accounting shall be made payable to the secretary, department of social and health services, and sent to the Office of Financial Recovery, Estate Recovery Unit, P.O. Box 9501, Olympia, Washington 98507-9501, or such address as may be directed by the department in the future;

(b) The check and final accounting accompanying the payment must contain the name and Social Security number of the deceased individual from whose personal funds account the moneys are being paid; and

(c) The department of social and health services shall establish a release procedure for use of funds necessary for burial expenses.

(2) In situations where the resident is absent from the assisted living facility for an extended time without notifying the assisted living facility, and the resident's whereabouts is unknown:

(a) The contractor must make a reasonable effort to find the missing resident; and

(b) If the resident cannot be located after ninety days, the contractor must notify the department of revenue of the existence of "abandoned property," outlined in chapter 63.29 RCW. The contractor must deliver to the department of revenue the balance of the resident's personal funds within twenty days following such notification.

(3) Prior to the change of contractor of the assisted living facility business, the contractor must:

(a) Provide each resident with a written accounting of any personal funds held by the assisted living facility;

(b) Provide the new contractor with a written accounting of all resident funds being transferred; and

(c) Obtain a written receipt for those funds from the new operator.

[Statutory Authority: Chapter 18.20 RCW. WSR 14-07-021, § 388-110-120, filed 3/7/14, effective 4/7/14. Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.070, and chapter 74.39A RCW. WSR 04-16-063, § 388-110-120, filed 7/30/04, effective 9/1/04. Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-[18.88A.]240 and 70.129.040. WSR 96-11-045 (Order 3979), § 388-110-120, filed 5/8/96, effective 6/8/96.]

PART II

ASSISTED LIVING SERVICES

WAC 388-110-140 Assisted living services facility physical requirements. (1) Licensed assisted living facilities with an assisted living services contract are required to:

(a) Meet the physical requirements that were in effect at the time of initial contracting; or

(b) If there is a break in contract, meet the requirements in effect at the time of the new contract.

(2) The contractor must ensure each resident has a private apartment-like unit. Each unit must have at least the following:

(a) A minimum area of two hundred twenty square feet. The minimum area may include counters, closets and built-ins, but must exclude the bathroom;

(b) A private bathroom. The private bathroom must be equipped with a sink, a toilet, and a shower or bathtub. At least one wheelchair accessible bathroom with a roll-in shower that is at least forty-eight inches by thirty-six inches must be provided for every two residents whose care is partially or fully funded through the assisted living contract;

(c) A lockable entry door;

(d) A kitchen area. The kitchen area must be equipped with:

(i) A refrigerator;

(ii) A microwave oven, range or cooktop;

(iii) A counter mounted kitchen sink, with inside dimensions of at least twenty-one inches by fifteen inches, and a minimum depth of seven inches;

(iv) A storage space for utensils and supplies; and [a]

(v) A work counter surface, with a minimum usable surface area of thirty inches in length by twenty-four inches deep, a maximum height of thirty-four inches, and having a clear knee space beneath at least twenty-seven inches in height and thirty inches in length; and

(e) A living area wired for telephone and, where available in the geographic location, wired for television service.

(3) Married couples may share an apartment-like unit under an assisted living contract if:

(a) Both residents understand they are each entitled to live in a separate private unit; and

(b) Both residents mutually request to share a single apartment-like unit.

(4) The contractor must provide a private accessible mailbox for each resident whose care is partially or fully funded through the assisted living contract.

(5) The contractor must provide homelike smoke-free common areas with sufficient space for socialization designed to meet resident needs. Common areas must be available for resident use at any time provided such use does not disturb the health or safety of other residents. The contractor must make access to outdoor areas available to all residents.

(6) The contractor must provide a space for residents to meet with family and friends outside the resident's living unit.

(7) The department may grant an exemption to the requirements of this section in accordance with WAC 388-78A-2820.

[Statutory Authority: Chapter 18.20 RCW. WSR 14-07-021, § 388-110-140, filed 3/7/14, effective 4/7/14. Statutory Authority: Chapters 74.39A and 18.20 RCW. WSR 09-19-042, § 388-110-140, filed 9/10/09, effective 10/11/09. Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.070, and chapter 74.39A RCW. WSR 04-16-063 and 04-18-001, § 388-110-140, filed 7/30/04 and 8/19/04, effective 9/19/04. Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-[18.88A.]240 and 70.129.040. WSR 96-11-045 (Order 3979), § 388-110-140, filed 5/8/96, effective 6/8/96.]

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules, and deems inefficacious changes not filed by the agency in this manner. The bracketed material in the above section does not appear to conform to the statutory requirement.

WAC 388-110-150 Assisted living service standards.

In an assisted living facility with an assisted living contract, the contractor must meet the requirements of parts I and II of this chapter, and for residents served under the assisted living contract:

(1) Ensure that both the physical environment and the delivery of assisted living services are designed to enhance autonomy in ways which reflect personal and social values of dignity, privacy, independence, individuality, choice and decision making of residents. The contractor must provide resident services in a homelike environment for residents who may have a range of needs and preferences.

(2) Must provide or arrange for, at no additional cost to the resident and consistent with chapter 388-78A WAC:

- (a) Intermittent nursing services;
- (b) Medication administration;
- (c) Personal care services; and
- (d) Supportive services that promote independence and self-sufficiency.

(3) Make available and offer at no additional cost to the resident generic personal care items needed by the resident such as soap, shampoo, toilet paper, toothbrush, toothpaste, deodorant, sanitary napkins, and disposable razors. This does not include items covered by medical coupons or preclude residents from choosing to purchase their own personal care items.

(4) Provide all residents with access to an on-site washing machine and dryer for resident use.

(5) Make beverages and snacks available to residents.

[Statutory Authority: Chapter 18.20 RCW. WSR 14-07-021, § 388-110-150, filed 3/7/14, effective 4/7/14. Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.070, and chapter 74.39A RCW. WSR 04-16-063, § 388-110-150, filed 7/30/04, effective 9/1/04. Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-[18.88A.]240 and 70.129.040. WSR 96-11-045 (Order 3979), § 388-110-150, filed 5/8/96, effective 6/8/96.]

PART III

ENHANCED ADULT RESIDENTIAL CARE

WAC 388-110-220 Enhanced adult residential care service standards. (1) In assisted living facility with an enhanced adult residential care contract, the contractor must meet the requirements of parts I and III of this chapter, and for residents served under the enhanced adult residential care contract:

(a) Develop for each resident a negotiated service agreement that supports the principles of dignity, privacy, choice in decision making, individuality, and independence.

(b) Provide or arrange for, at no additional cost to the resident and consistent with the resident's negotiated service agreement and chapter 388-78A WAC:

- (i) Intermittent nursing services;
- (ii) Medication administration;
- (iii) Personal care services; and

(iv) Supportive services that promote independence and self-sufficiency; and

(c) Not allow more than two residents per room.

(2) An enhanced adult residential care-specialized dementia care services contract is a distinct contract, separate from an enhanced adult residential care contract. In an assisted living facility with an enhanced adult residential care-specialized dementia care services contract, the contractor must:

(a) Meet the requirements of parts I and III of this chapter,

(b) Meet the requirements of subsection (1) of this section, and

(c) Maintain an enhanced adult residential care services contract or an assisted living services contract in addition to the enhanced adult residential care-specialized dementia care services contract.

(3) In an assisted living facility with an enhanced adult residential care-specialized dementia care services contract, for residents served under that contract, the contractor must:

(a) Complete a full assessment of residents as specified in chapter 388-78A WAC, at a minimum, on a semi-annual basis;

(b) Maintain awake staff twenty-four hours per day. The contractor must provide staffing that is adequate to respond to the assessed sleeping and waking patterns and needs of residents;

(c) Develop and implement policies and procedures:

(i) To manage residents who may wander;

(ii) To outline actions to be taken in case a resident elopes; and

(iii) To obtain consultative resources to address behavioral issues for residents. The contractor must include a plan that identifies the professional (i.e., clinical psychologist, psychiatrist, psychiatric nurse practitioner, or other behavioral specialist familiar with care of persons with dementia with complex or severe problems) who will provide the consultation, and when and how the consultation will be utilized.

(d) Ensure that each staff who works directly with residents has at least six hours of continuing education per year related to dementia, including Alzheimer's disease. This six hours of continuing education may be part of the ten hours of continuing education required by WAC 388-112-0205. Appropriate topics include, but are not limited to:

(i) Agitation: Caregiving strategies;

(ii) Challenging behaviors: Strategies for managing aggression and sexual behavior;

(iii) Delusions and hallucinations;

(iv) Using problem-solving strategies in dementia care;

(v) Depression and dementia;

(vi) Fall prevention for people with dementia;

(vii) Personal care as meaningful activity;

(viii) Promoting adequate food and fluid consumption;

(ix) Promoting pleasant and purposeful activity;

(x) Resistance to care: Caregiving strategies; and

(xi) Recognizing and assessing pain in people with dementia.

(e) Provide all necessary physical assistance with bathing and toilet use for residents who require caregivers to perform these activities and subtasks of these activities, and

required oversight and supervision, encouragement and cueing. For the purposes of this subsection:

(i) "Bathing" has the same meaning as described in WAC 388-106-0010; and

(ii) "Toilet use" has the same meaning as described in WAC 388-106-0010.

(f) Routinely provide assistance with eating as necessary, including required oversight and supervision, encouragement and cueing. The contractor must also provide all necessary physical assistance with eating on an occasional basis for residents who require total feeding assistance. However, the contractor is not required to provide total feeding assistance for an extended or indefinite period. As used in this section, eating has the same meaning as described in WAC 388-106-0010, except that the contractor is not required to provide tube feedings or intravenous nutrition.

(g) Provide daily activities consistent with the functional abilities, interests, habits and preferences of the individual residents. The contractor must support the participation of residents and the resident council, if there is one, in the development of recreational and activity programs that reflect the needs and choices of residents. On a daily basis, the contractor must provide residents access to:

(i) Opportunities for independent, self-directed, activities.

(ii) Individual activities, in which a staff person or volunteer engages the resident in a planned and/or spontaneous activity of interest. Activities may include personal care activities that provide opportunities for purposeful and positive interactions; and

(iii) Group activities.

(h) Offer opportunities for activities that accommodate variations in a resident's mood, energy and preferences. The contractor must make appropriate activities available based upon the resident's individual schedule and interests. For example, individuals up at night must have access to staff support, food and appropriate activities;

(i) Make available multiple common areas, at least one of which is outdoors, that vary by size and arrangement such as: various size furniture groupings that encourage social interaction; areas with environmental cues that may stimulate activity, such as a resident kitchen or workshop; areas with activity supplies and props to stimulate conversation; a garden area; and paths and walkways that encourage exploration and walking. These areas must accommodate and offer opportunities for individual or group activity;

(j) Ensure that the outdoor area for residents:

(i) Is accessible to residents without staff assistance;

(ii) Is surrounded by walls or fences at least seventy-two inches high;

(iii) Has areas protected from direct sunshine and rain throughout the day;

(iv) Has walking surfaces that are firm, stable, slip-resistant and free from abrupt changes, and are suitable for individuals using wheelchairs and walkers;

(v) Has suitable outdoor furniture;

(vi) Has plants that are not poisonous or toxic to humans; and

(vii) Has areas for appropriate outdoor activities of interest to residents, such as walking paths, raised garden or flower beds, bird feeders, etc.

(k) Ensure that areas used by residents have a residential atmosphere, and residents have opportunities for privacy, socialization, and wandering behaviors;

(l) Ensure any public address system in the area of specialized dementia care services is used only for emergencies;

(m) Encourage residents' individualized spaces to be furnished and or decorated with personal items based on resident needs and preferences;

(n) Ensure residents have access to their own rooms at all times without staff assistance; and

(o) Make available and offer at no additional cost to the resident generic personal care items needed by the resident such as soap, shampoo, toilet paper, toothbrush, toothpaste, deodorant, sanitary napkins, and disposable razors. This does not include items covered by medical coupons or preclude residents from choosing to purchase their own personal care items.

[Statutory Authority: Chapter 18.20 RCW. WSR 14-07-021, § 388-110-220, filed 3/7/14, effective 4/7/14. Statutory Authority: RCW 74.08.090, 74.09.520, 74.39A.010 and 74.39A.020. WSR 06-05-022, § 388-110-220, filed 2/6/06, effective 3/9/06. Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.070, and chapter 74.39A RCW. WSR 04-16-063 and 04-18-001, § 388-110-220, filed 7/30/04 and 8/19/04, effective 9/19/04. Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-[18.88A.]240 and 70.129.040. WSR 96-11-045 (Order 3979), § 388-110-220, filed 5/8/96, effective 6/8/96.]

WAC 388-110-222 Enhanced adult residential care physical requirements. Effective July 1, 2015, the contractor must ensure that, at the resident's choice, each resident has the ability to lock his/her unit door, unless otherwise indicated in the resident's NSA.

[Statutory Authority: Chapter 74.39A RCW and 42 C.F.R. 441.302. WSR 16-06-006, § 388-110-222, filed 2/18/16, effective 4/1/16.]

PART IV

ADULT RESIDENTIAL CARE

WAC 388-110-240 Adult residential care service standards. In an assisted living facility with an adult residential care contract, the contractor must meet the requirements of parts I and IV of this chapter, and for residents served under the adult residential care contract:

(1) Develop for each resident a negotiated service agreement that supports the principles of dignity, privacy, choice in decision making, individuality, and independence; and

(2) Provide personal care services based on the resident's negotiated service agreement.

[Statutory Authority: Chapter 18.20 RCW. WSR 14-07-021, § 388-110-240, filed 3/7/14, effective 4/7/14. Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.070, and chapter 74.39A RCW. WSR 04-16-063, § 388-110-240, filed 7/30/04, effective 9/1/04. Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-[18.88A.]240 and 70.129.040. WSR 96-11-045 (Order 3979), § 388-110-240, filed 5/8/96, effective 6/8/96.]

WAC 388-110-242 Adult residential care physical requirements. Effective July 1, 2015, the contractor must ensure that, at the resident's choice, each resident has the ability to lock his/her unit door, unless otherwise indicated in the resident's NSA.

[Statutory Authority: Chapter 74.39A RCW and 42 C.F.R. 441.302. WSR 16-06-006, § 388-110-242, filed 2/18/16, effective 4/1/16.]

PART V

REMEDIES FOR ASSISTED LIVING, ENHANCED ADULT RESIDENTIAL CARE, ENHANCED ADULT RESIDENTIAL CARE—SPECIALIZED DEMENTIA CARE, AND ADULT RESIDENTIAL CARE

WAC 388-110-260 Remedies. (1) The department may take one or more of the actions listed in subsection (3)(a) of this section in any case in which the department finds that a contractor of assisted living services, enhanced adult residential care services, enhanced residential care-specialized dementia care services, or adult residential care services has:

(a) Failed or refused to comply with the applicable requirements of chapter 74.39A RCW, of chapter 70.129 RCW, chapter 388-78A WAC or of this chapter;

(b) Operated without a license or under a revoked license;

(c) Knowingly, or with reason to know, made a false statement of material fact on his or her application for a contract or any data attached thereto, or in any matter under investigation by the department; or

(d) Willfully prevented or interfered with any inspection or investigation by the department.

(2)(a) For failure or refusal to comply with any applicable requirements of chapter 74.39A RCW, of chapter 70.129 RCW, chapter 388-78A WAC or of this chapter, the department may provide consultation before imposing remedies under subsection (3)(a) unless the violations pose a serious risk to residents, are recurring or have been uncorrected.

(b) When violations of this chapter pose a serious risk to a resident, are recurring or have been uncorrected, the department must impose a remedy or remedies listed under subsection (3)(a). In determining which remedy or remedies to impose, the department must take into account the severity of the impact of the violations on residents and which remedy or remedies are likely to improve resident outcomes and satisfaction in a timely manner.

(3)(a) Actions and remedies the department is authorized to impose include:

(i) Refusal to enter into a contract;

(ii) Imposition of reasonable conditions on a contract, such as correction within a specified time, training, and limits on the type of clients the provider may admit or serve;

(iii) Imposition of civil penalties of not more than one hundred dollars per day per violation;

(iv) Suspension, termination, or refusal to renew a contract; or

(v) Order stop placement of persons under the contract.

(b) When the department orders stop placement, the assisted living facility must not admit any person under the contract until the stop placement order is terminated. The department may approve readmission of a resident to the assisted living facility from a hospital or nursing home during the stop placement. The department must terminate the stop placement when the department determines that:

(i) The violations necessitating the stop placement have been corrected; and

(ii) The provider exhibits the capacity to maintain adequate care and service.

(c) Conditions the department may impose on a contract include, but are not limited to the following:

(i) Correction within a specified time;

(ii) Training related to the violations; and

(iii) Discharge of any resident when the department determines discharge is needed to meet that resident's needs or for the protection of other residents.

(d) When a contractor fails to pay a fine when due under this chapter, the department may, in addition to other remedies, withhold an amount equal to the fine plus interest, if any, from the contract payment.

[Statutory Authority: Chapter 18.20 RCW. WSR 14-07-021, § 388-110-260, filed 3/7/14, effective 4/7/14. Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.070, and chapter 74.39A RCW. WSR 04-16-063, § 388-110-260, filed 7/30/04, effective 9/1/04. Statutory Authority: RCW 74.39A.010, 74.39A.020 and 74.39A.080. WSR 96-21-050, § 388-110-260, filed 10/11/96, effective 11/11/96. Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.-210-[18.88A.]240 and 70.129.040. WSR 96-11-045 (Order 3979), § 388-110-260, filed 5/8/96, effective 6/8/96.]

WAC 388-110-270 Notice, hearing rights, effective dates relating to imposition of remedies. (1) Chapter 34.05 RCW applies to department actions under this chapter and chapter 74.39A RCW, except that orders of the department imposing contract suspension, stop placement, or conditions for continuation of a contract are effective immediately upon notice and shall continue pending any hearing.

(2) Civil monetary penalties shall become due twenty eight days after the contractor is served with a notice of the penalty unless the contractor requests a hearing in compliance with chapter 34.05 RCW and RCW 43.20A.215. If a hearing is requested, the penalty becomes due ten days after a final decision in the department's favor is issued. Interest shall accrue beginning thirty days after the department serves the contractor with notice of the penalty at a rate of one percent per month in accordance with RCW 43.20B.695.

(3) A person contesting any decision by the department to impose a remedy must within twenty-eight days of receipt of the decision:

(a) File a written application for an adjudicative proceeding by a method showing proof of receipt with the Board of Appeals, P.O. Box 45803, Olympia, WA 98504; and

(b) Include in or with the application:

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

(ii) A copy of the contested department decision.

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

[Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.070, and chapter 74.39A RCW. WSR 04-16-063, § 388-110-270, filed 7/30/04, effective 9/1/04. Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-[18.88A.]240 and 70.129.040. WSR 96-11-045 (Order 3979), § 388-110-270, filed 5/8/96, effective 6/8/96.]

WAC 388-110-280 Dispute resolution. (1) When a contractor disagrees with the department's finding of a violation under this chapter, the contractor shall have the right to have the violation reviewed under the department's dispute resolution process. Requests for review must be made to the department within ten days of receipt of the written finding of a violation.

(2) When requested by a contractor, the department must expedite the dispute resolution process to review violations upon which a department order imposing contract suspension, stop placement, or a contract condition is based.

(3) Orders of the department imposing contracts suspension, stop placement, or conditions for continuation of a contract are effective immediately upon notice and shall continue pending dispute resolution.

[Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.070, and chapter 74.39A RCW. WSR 04-16-063, § 388-110-280, filed 7/30/04, effective 9/1/04. Statutory Authority: RCW 74.39A.010, 74.39A.020, 74.39A.060, 74.39A.080, 74.39A.170, 18.88A.210-[18.88A.]-240 and 70.129.040. WSR 96-11-045 (Order 3979), § 388-110-280, filed 5/8/96, effective 6/8/96.]