

# Chapter 388-111 WAC

## RESIDENTIAL HABILITATION CENTERS—COMPLIANCE STANDARDS

### WAC

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035, filed 2/23/16, effective 4/1/16. Statutory Authority: Chapter 71A.12 RCW.

### DISPOSITION OF SECTIONS FORMERLY CODIFIED IN THIS CHAPTER

388-111-0040	Resident and client protection program—Investigation of reports of abandonment, abuse, neglect, or financial exploitation. [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.] Repealed by WSR 16-06-035, filed 2/23/16, effective 4/1/16. Statutory Authority: Chapter 71A.12 RCW.
388-111-0050	Resident and client protection program—Notice to individual of preliminary findings. [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.] Repealed by WSR 16-06-035, filed 2/23/16, effective 4/1/16. Statutory Authority: Chapter 71A.12 RCW.
388-111-0060	Resident and client protection program—Notice to others of preliminary findings. [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.] Repealed by WSR 16-06-035, filed 2/23/16, effective 4/1/16. Statutory Authority: Chapter 71A.12 RCW.
388-111-0070	Resident and client protection program—Disputing a preliminary finding. [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.] Repealed by WSR 16-06-035, filed 2/23/16, effective 4/1/16. Statutory Authority: Chapter 71A.12 RCW.
388-111-0080	Resident and client protection program—Disputing a preliminary finding—Hearing procedures. [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.] Repealed by WSR 16-06-035, filed 2/23/16, effective 4/1/16. Statutory Authority: Chapter 71A.12 RCW.
388-111-0090	Resident and client protection program—Finalizing the preliminary finding. [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.] Repealed by WSR 16-06-035, filed 2/23/16, effective 4/1/16. Statutory Authority: Chapter 71A.12 RCW.
388-111-0100	Resident and client protection program—Reporting final findings. [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.] Repealed by WSR 16-06-035, filed 2/23/16, effective 4/1/16. Statutory Authority: Chapter 71A.12 RCW.
388-111-0110	Resident and client protection program—Appeal of administrative law judge's initial order or finding. [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.] Repealed by WSR 16-06-035, filed 2/23/16, effective 4/1/16. Statutory Authority: Chapter 71A.12 RCW.
388-111-0120	Resident and client protection program—Disclosure of investigative and finding information. [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.] Repealed by WSR 16-06-

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

(1) **"Mental abuse"** means a willful verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines or punishes a vulnerable adult. Mental abuse may also include ridiculing, 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 conduct, 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 also includes any sexual conduct between a staff person and a resident, whether or not it is consensual.

(4) **"Personal 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.

(5) **"Improper use of restraint"** means inappropriate use of chemical, physical or mechanical restraints for the convenience or discipline or in a manner that:

(a) Is inconsistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under Chapter 71A.12 RCW;

(b) Is not medically authorized; or

(c) Otherwise constitutes abuse under this section.

(6) **"Chemical restraint"** 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.

**"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 not department employees or department representatives.

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

**"Facility"**:

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

(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, assisted living facilities; chapter 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family homes; chapter 72.36 RCW, soldiers' and veterans' 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 individuals with intellectual disabilities (ICF/IID)"** 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 an assisted living facility under chapter 18.20 RCW.

**"Mandated reporter"** means 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.

**"Mechanical Restraints"** 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, hospitals, or programs authorized under chapter 71A.12 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 a 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.

**"Physical Restraints"** means the application of physical force without the use of any device, for the purpose of restraining the free movement of a vulnerable adult's body. "Physical restraint" does not include:

(1) Briefly holding without undue force a vulnerable adult in order to calm or comfort him or her; or

(2) Holding a vulnerable adult's hand to safely escort him or her from one area to another.

**"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 71A.20 RCW, WSR 16-01-096, § 388-111-0001, filed 12/16/15, effective 1/16/16. Statutory Authority: Chapter 74.34 RCW, RCW 74.08.090, and 71A.12.030. WSR 14-10-034, § 388-111-0001, filed 4/29/14, effective 5/30/14; 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:

ment 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 388-111-0130 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.]