

WAC 388-97-0260 Informed consent. (1) The nursing home must ensure that the informed consent process is followed with:

(a) The resident to the maximum extent possible, taking into consideration his or her ability to understand and respond; and

(b) The surrogate decision maker when the resident is determined to be incapacitated as established through the provision of a legal document such as durable power of attorney for health care, a court proceeding, or as authorized by state law, including RCW 7.70.065. The surrogate decision maker must:

(i) First determine if the resident would consent or refuse the proposed or alternative treatment;

(ii) Discuss determination of consent or refusal with the resident whenever possible; and

(iii) When a determination of the resident's consent or refusal of treatment cannot be made, make the decision in the best interest of the resident.

(2) The informed consent process must include, in words and language that the resident, or if applicable the resident's surrogate decision maker, understands, a description of:

(a) The nature and character of the proposed treatment;

(b) The anticipated results of the proposed treatment;

(c) The recognized possible alternative forms of treatment;

(d) The recognized serious possible risks, complications, and anticipated benefits involved in the treatment and in the recognized possible alternative forms of treatment including nontreatment; and

(e) The right of the resident to choose not to be informed.

(3) To ensure informed consent or refusal by a resident, or if applicable the resident's surrogate decision maker, regarding plan or care options, the nursing home must:

(a) Provide the informed consent process to the resident in a neutral manner and in a language, words, and manner the resident can understand;

(b) Inform the resident of the right to consent to or refuse care and service options at the time of resident assessment and plan of care development (see WAC 388-97-1000 and 388-97-1020 and with condition changes, as necessary to ensure that the resident's wishes are known;

(c) Inform the resident at the time of initial plan of care decisions and periodically of the right to change his or her mind about an earlier consent or refusal decision;

(d) Ensure that evidence of informed consent or refusal is consistent with WAC 388-97-1000 and 388-97-1020; and

(e) Where appropriate, include evidence of resident's choice not to be informed as required in subsections (2) and (3) of this section.

[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. WSR 08-20-062, § 388-97-0260, filed 9/24/08, effective 11/1/08.]