

WSR 23-06-063

PROPOSED RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Aging and Long-Term Support Administration)

[Filed February 28, 2023, 10:27 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 20-17-005, 20-17-133, 20-19-009, 20-21-034, and 21-11-061.

Title of Rule and Other Identifying Information: The department is proposing amendments to WAC 388-97-0300 clinical records for residents in medicare and medicaid certified facilities, and adoption of a new section related to nursing facilities providing clinical records to residents and their representatives during the COVID-19 pandemic, 388-97-0920 resident and family groups, and 388-97-1000 Resident assessment; a new section related to resident assessment during the COVID-19 pandemic, 388-97-1020 Comprehensive plan of care; a new section related to care plans during the COVID-19 pandemic, 388-97-1260 Physician services, for residents in medicare and medicaid certified facilities, new sections related to physician delegation of tasks and visits in nursing homes during the COVID-19 pandemic, 388-97-1380 Tuberculosis—Testing required and 388-97-1580 Tuberculosis—Reporting—Required; new sections related to tuberculosis testing requirements and COVID-19 vaccinations during the COVID-19 pandemic, 388-97-1740 Disaster and emergency preparedness, 388-97-1760 Quality assessment and assurance and 388-97-2400 Resident rooms; and the adoption of three new sections during the COVID-19 pandemic.

Hearing Location(s): On April 25, 2023, at 10:00 a.m., at Office Building 2, Department of Social and Health Services (DSHS) Headquarters, 1115 Washington [Street S.E.], Olympia, WA 98504. Public parking at 11th and Jefferson. A map is available at <https://www.dshs.wa.gov/office-of-the-secretary/driving-directions-office-bldg-2>; or virtually. Due to the impacts of COVID-19, hearings are being held virtually. Please see the DSHS website for the most current information.

Date of Intended Adoption: Not before April 26, 2023.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504, email DSHSRPAURulesCoordinator@dshs.wa.gov, fax 360-664-6185, by 5:00 p.m. on April 25, 2023.

Assistance for Persons with Disabilities: Contact Shelley Tencza, DSHS rules consultant, phone 360-664-6036, fax 360-664-6185, TTY 711 relay service, email Tencza@dshs.wa.gov, by 5:00 p.m. on April 11, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: DSHS is proposing to adopt rules to identify the requirements in place during the COVID-19 pandemic in Washington state. The purpose of the rule change is to ensure consistent implementation and enforcement of rule requirements in effect during the COVID-19 pandemic in Washington state.

Reasons Supporting Proposal: This rule making will provide clarity for regulated facilities, department inspection, and investigation staff related to requirements in place during the COVID-19 pandemic.

Statutory Authority for Adoption: RCW 74.42.620.

Statute Being Implemented: Chapters 18.51 and 74.42 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: DSHS, governmental.

Name of Agency Personnel Responsible for Drafting: Molly McClintock, P.O. Box 45600, Olympia, WA 98504-5600, 360-742-6966; Implementation and Enforcement: Amy Abbott, P.O. Box 45600, Olympia, WA 98504-5600, 360-485-7893.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This proposal is exempt from the requirement for a cost-benefit analysis under RCW 34.05.328 (5)(b)(iv) as the proposed rules clarify language of a rule without changing its effect.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Is exempt under RCW 34.05.328 (5)(b)(iv).

Explanation of exemptions: The rule is exempt under RCW 34.05.328 (5)(b)(iv), as it clarifies language of a rule without changing its effect. The department is proposing to adopt rules to identify the requirements in place during the COVID-19 pandemic in Washington state. The purpose of the rule change is to ensure consistent implementation and enforcement of rule requirements in effect during the COVID-19 pandemic.

Scope of exemption for rule proposal:

Is fully exempt.

February 27, 2023
Katherine I. Vasquez
Rules Coordinator

SHS-4968.2

AMENDATORY SECTION (Amending WSR 14-12-040, filed 5/29/14, effective 6/29/14)

WAC 388-97-0300 Notice of rights and services. The department amended or suspended portions of this section from May 15, 2020, through May 7, 2022, in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-97-03001.

(1) The nursing home must provide the resident, before admission, or at the time of admission in the case of an emergency, and as changes occur during the resident's stay, both orally and in writing and in language and words that the resident understands, with the following information:

(a) All rules and regulations governing resident conduct, resident's rights and responsibilities during the stay in the nursing home;

(b) Advanced directives, and of any nursing home policy or practice that might conflict with the resident's advance directive if made;

(c) Advance notice of transfer requirements, consistent with RCW 70.129.110;

(d) Advance notice of deposits and refunds, consistent with RCW 70.129.150; and

(e) Items, services and activities available in the nursing home and of charges for those services, including any charges for services not covered under medicare or medicaid or by the home's per diem rate.

(2) The resident has the right:

(a) Upon an oral or written request, to access all records pertaining to the resident including clinical records within (~~twenty-four~~) 24 hours; and

(b) After receipt of (~~his or her~~) their records for inspection, to purchase at a cost not to exceed (~~twenty-five~~) 25 cents a page, photocopies of the records or any portions of them upon request and two working days advance notice to the nursing home. For the purposes of this chapter, "**working days**" means Monday through Friday, except for legal holidays.

(3) The resident has the right to:

(a) Be fully informed in words and language that (~~he or she~~) they can understand of (~~his or her~~) their total health status, including, but not limited to, (~~his or her~~) their medical condition;

(b) Accept or refuse treatment; and

(c) Refuse to participate in experimental research.

(4) The nursing home must inform each resident:

(a) Who is entitled to medicaid benefits, in writing, prior to the time of admission to the nursing facility or, when the resident becomes eligible for medicaid of the items, services and activities:

(i) That are included in nursing facility services under the medicaid state plan and for which the resident may not be charged; and

(ii) That the nursing home offers and for which the resident may be charged, and the amount of charges for those services.

(b) That deposits, admission fees, and prepayment of charges cannot be solicited or accepted from medicare or medicaid eligible residents; and

(c) That minimum stay requirements cannot be imposed on medicare or medicaid eligible residents.

(5) The nursing home must, except for emergencies, inform each resident in writing, (~~thirty~~) 30 days in advance before changes are made to the availability or charges for items, services, or activities specified in section (4)(a)(i) and (ii) of this section, or before changes to the nursing home rules.

(6) The private pay resident has the right to the following, regarding fee disclosure-deposits:

(a) Prior to admission, a nursing home that requires payment of an admission fee, deposit, or a minimum stay fee, by or on behalf of an individual seeking admission to the nursing home, must provide the individual:

(i) Full disclosure in writing in a language the potential resident or (~~his or her~~) their representative understands:

(A) Of the nursing home's schedule of charges for items, services, and activities provided by the nursing home; and

(B) Of what portion of the deposits, admissions fees, prepaid charges, or minimum stay fee will be refunded to the resident if the resident leaves the nursing home.

(ii) The amount of any admission fees, deposits, or minimum stay fees.

(iii) If the nursing home does not provide these disclosures, the nursing home must not keep deposits, admission fees, prepaid charges, or minimum stay fees.

(b) If a resident dies or is hospitalized or is transferred and does not return to the nursing home, the nursing home:

(i) Must refund any deposit or charges already paid, less the home's per diem rate, for the days the resident actually resided or reserved or retained a bed in the nursing home, regardless of any minimum stay or discharge notice requirements; except that

(ii) The nursing home may retain an additional amount to cover its reasonable, actual expenses incurred as a result of a private pay resident's move, not to exceed five days per diem charges, unless the resident has given advance notice in compliance with the admission agreement.

(c) The nursing home must refund any and all refunds due the resident within (~~thirty~~) 30 days from the resident's date of discharge from the nursing home; and

(d) Where the nursing home requires the execution of an admission contract by or on behalf of an individual seeking admission to the nursing home, the terms of the contract must be consistent with the requirements of this section.

(7) The nursing home must furnish a written description of legal rights which includes:

(a) A description of the manner of protecting personal funds, under WAC 388-97-0340;

(b) In the case of a nursing facility only, a description of the requirements and procedures for establishing eligibility for medicaid, including the right to request an assessment which determines the extent of a couple's nonexempt resources at the time of institutionalization and attributes to the community spouse an equitable share of resources which cannot be considered available for payment toward the cost of the institutionalized spouse's medical care in (~~his or her~~) their process of spending down to medicaid eligibility levels;

(c) A posting of names, addresses, and telephone numbers of all relevant state client advocacy groups such as the state survey and certification agency, the state licensure office, the state ombuds program, the protection and advocacy network, and the medicaid fraud control unit; and

(d) A statement that the resident may file a complaint with the state survey and certification agency concerning resident abandonment, abuse, neglect, financial exploitation, and misappropriation of resident property in the nursing home.

(8) The nursing home must:

(a) Inform each resident of the name, and specialty of the physician responsible for (~~his or her~~) their care; and

(b) Provide a way for each resident to contact (~~his or her~~) their physician.

(9) The skilled nursing facility and nursing facility must prominently display in the facility written information, and provide to residents and individuals applying for admission oral and written information, about how to apply for and use medicare and medicaid benefits, and how to receive refunds for previous payments covered by such benefits.

(10) The written information provided by the nursing home pursuant to this section, and the terms of any admission contract executed between the nursing home and an individual seeking admission to the nursing home, must be consistent with the requirements of chapters 74.42 and 18.51 RCW and, in addition, for facilities certified under medicare or medicaid, with the applicable federal requirements.

[Statutory Authority: Chapters 18.51 and 74.42 RCW. WSR 14-12-040, § 388-97-0300, filed 5/29/14, effective 6/29/14. Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. WSR 08-20-062, § 388-97-0300, filed 9/24/08, effective 11/1/08.]

NEW SECTION

WAC 388-97-03001 Notice of rights and services-Requirements in effect May 15, 2020, through May 7, 2022, in response to the state of emergency related to the COVID-19 pandemic. In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.350 on May 15, 2020, to amend and suspend portions of WAC 388-97-0300. The emergency rules remained in effect until May 7, 2022. The following rule was in effect during that time:

(1) The nursing home must provide the resident, before admission, or at the time of admission in the case of an emergency, and as changes occur during the resident's stay, both orally and in writing and in language and words that the resident understands, with the following information:

(a) All rules and regulations governing resident conduct, resident's rights and responsibilities during the stay in the nursing home;

(b) Advanced directives, and of any nursing home policy or practice that might conflict with the resident's advance directive if made;

(c) Advance notice of transfer requirements, consistent with RCW 70.129.110;

(d) Advance notice of deposits and refunds, consistent with RCW 70.129.150; and

(e) Items, services, and activities available in the nursing home and of charges for those services, including any charges for services not covered under medicare or medicaid or by the home's per diem rate.

(2) The resident has the right to purchase at a cost not to exceed 25 cents a page, photocopies of the records or any portions of them upon request and 10 working days advance notice to the nursing home. For the purposes of this chapter, "working days" means Monday through Friday, except for legal holidays.

(3) The resident has the right to:

(a) Be fully informed in words and language that he or she can understand of his or her total health status, including, but not limited to, his or her medical condition;

(b) Accept or refuse treatment; and

(c) Refuse to participate in experimental research.

(4) The nursing home must inform each resident:

(a) Who is entitled to medicaid benefits, in writing, prior to the time of admission to the nursing facility or, when the resident becomes eligible for medicaid of the items, services, and activities:

(i) That are included in nursing facility services under the medicaid state plan and for which the resident may not be charged; and

(ii) That the nursing home offers and for which the resident may be charged, and the amount of charges for those services.

(b) That deposits, admission fees, and prepayment of charges cannot be solicited or accepted from medicare or medicaid eligible residents; and

(c) That minimum stay requirements cannot be imposed on medicare or medicaid eligible residents.

(5) The nursing home must, except for emergencies, inform each resident in writing, 30 days in advance before changes are made to the availability or charges for items, services, or activities specified in section (4)(a)(i) and (ii) of this section, or before changes to the nursing home rules.

(6) The private pay resident has the right to the following, regarding fee disclosure-deposits:

(a) Prior to admission, a nursing home that requires payment of an admission fee, deposit, or a minimum stay fee, by or on behalf of an individual seeking admission to the nursing home, must provide the individual:

(i) Full disclosure in writing in a language the potential resident or his or her representative understands:

(A) Of the nursing home's schedule of charges for items, services, and activities provided by the nursing home; and

(B) Of what portion of the deposits, admissions fees, prepaid charges, or minimum stay fee will be refunded to the resident if the resident leaves the nursing home.

(ii) The amount of any admission fees, deposits, or minimum stay fees.

(iii) If the nursing home does not provide these disclosures, the nursing home must not keep deposits, admission fees, prepaid charges, or minimum stay fees.

(b) If a resident dies or is hospitalized or is transferred and does not return to the nursing home, the nursing home:

(i) Must refund any deposit or charges already paid, less the home's per diem rate, for the days the resident actually resided or reserved or retained a bed in the nursing home, regardless of any minimum stay or discharge notice requirements; except that

(ii) The nursing home may retain an additional amount to cover its reasonable, actual expenses incurred as a result of a private pay resident's move, not to exceed five days per diem charges, unless the resident has given advance notice in compliance with the admission agreement.

(c) The nursing home must refund any and all refunds due the resident within 30 days from the resident's date of discharge from the nursing home; and

(d) Where the nursing home requires the execution of an admission contract by or on behalf of an individual seeking admission to the nursing home, the terms of the contract must be consistent with the requirements of this section.

(7) The nursing home must furnish a written description of legal rights which includes:

(a) A description of the manner of protecting personal funds, under WAC 388-97-0340;

(b) In the case of a nursing facility only, a description of the requirements and procedures for establishing eligibility for medicaid, including the right to request an assessment which determines the extent of a couple's nonexempt resources at the time of institutionalization and attributes to the community spouse an equitable share of resources which cannot be considered available for payment toward the

cost of the institutionalized spouse's medical care in his or her process of spending down to medicaid eligibility levels;

(c) A posting of names, addresses, and telephone numbers of all relevant state client advocacy groups such as the state survey and certification agency, the state licensure office, the state ombuds program, the protection and advocacy network, and the medicaid fraud control unit; and

(d) A statement that the resident may file a complaint with the state survey and certification agency concerning resident abandonment, abuse, neglect, financial exploitation, and misappropriation of resident property in the nursing home.

(8) The nursing home must:

(a) Inform each resident of the name, and specialty of the physician responsible for his or her care; and

(b) Provide a way for each resident to contact his or her physician.

(9) The skilled nursing facility and nursing facility must prominently display in the facility written information, and provide to residents and individuals applying for admission oral and written information, about how to apply for and use medicare and medicaid benefits, and how to receive refunds for previous payments covered by such benefits.

(10) The written information provided by the nursing home pursuant to this section, and the terms of any admission contract executed between the nursing home and an individual seeking admission to the nursing home, must be consistent with the requirements of chapters 74.42 and 18.51 RCW and, in addition, for facilities certified under medicare or medicaid, with the applicable federal requirements.

[]

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-0920 Participation in resident and family groups.

The department repealed this section from April 13, 2020, through May 7, 2022, in response to the state of emergency related to the COVID-19 pandemic. The requirements of this section were not in effect during that time.

(1) A resident has the right to organize and participate in resident groups in the nursing home.

(2) The nursing home must provide a resident or family group, if one exists, with private space.

(3) Staff or visitors may attend meetings only at the group's invitation.

(4) The nursing home must provide a designated staff individual responsible for providing assistance and responding to written requests that result from group meetings.

(5) When a resident or family group exists, the nursing home must listen to the views and act upon the grievances and recommendations of residents and families concerning proposed policy and operational decisions affecting resident care and life in the nursing home.

(6) A resident's family has the right to meet in the nursing home with the families of other residents in the facility.

[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. WSR 08-20-062, § 388-97-0920, filed 9/24/08, effective 11/1/08.]

AMENDATORY SECTION (Amending WSR 18-11-001, filed 5/2/18, effective 6/2/18)

WAC 388-97-1000 Resident assessment. The department amended or suspended portions of this section from April 13, 2020, through May 10, 2021, in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-97-10001.

- (1) The nursing home must:
 - (a) Provide resident care based on a systematic, comprehensive, interdisciplinary assessment, and care planning process in which the resident participates, to the fullest extent possible;
 - (b) Conduct initially and periodically a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity;
 - (c) At the time each resident is admitted:
 - (i) Have physician's orders for the resident's immediate care; and
 - (ii) Ensure that the resident's immediate care needs are identified in an admission assessment.
 - (d) Ensure that the comprehensive assessment of a resident's needs describes the resident's capability to perform daily life functions and significant impairments in functional capacity.
- (2) The comprehensive assessment must include at least the following information:
 - (a) Identification and demographic information;
 - (b) Customary routine;
 - (c) Cognitive patterns;
 - (d) Communication;
 - (e) Vision;
 - (f) Mood and behavior patterns;
 - (g) Psychosocial well-being;
 - (h) Physical functioning and structural problems;
 - (i) Continence;
 - (j) Disease diagnosis and health conditions;
 - (k) Dental and nutritional status;
 - (l) Skin conditions;
 - (m) Activity pursuit;
 - (n) Medications;
 - (o) Special treatments and procedures;
 - (p) Discharge potential;
 - (q) Documentation of summary information regarding the assessment performed; and
 - (r) Documentation of participation in assessment.
- (3) The nursing home must conduct comprehensive assessments:
 - (a) No later than (~~fourteen~~) 14 days after the date of admission;
 - (b) Promptly after a significant change in the resident's physical or mental condition; and
 - (c) In no case less often than once every (~~twelve~~) 12 months.

(4) The nursing home must ensure that:

(a) Each resident is assessed no less than once every three months, and as appropriate, the resident's assessment is revised to assure the continued accuracy of the assessment; and

(b) The results of the assessment are used to develop, review, and revise the resident's comprehensive plan of care under WAC 388-97-1020.

(5) The skilled nursing facility and nursing facility must:

(a) For the required assessment, complete the state approved resident assessment instrument (RAI) for each resident in accordance with federal requirements;

(b) Maintain electronic or paper copies of completed resident assessments in the resident's active medical record for (~~fifteen~~) 15 months; this information must be maintained in a centralized location and be easily and readily accessible;

(c) Place the hard copies of the signature pages in the clinical record of each resident if a facility maintains their RAI data electronically and does not use electronic signatures;

(d) Assess each resident not less than every three months, using the state approved assessment instrument; and

(e) Transmit all state and federally required RAI information for each resident to the department:

(i) In a manner approved by the department;

(ii) Within (~~fourteen~~) 14 days of completion of any RAI assessment required under this subsection; and

(iii) Within (~~fourteen~~) 14 days of discharging or admitting a resident for a tracking record.

[Statutory Authority: Chapter 74.42 RCW and 42 C.F.R. 483.20. WSR 18-11-001, § 388-97-1000, filed 5/2/18, effective 6/2/18. Statutory Authority: Chapters 18.51 and 74.42 RCW. WSR 13-04-093, § 388-97-1000, filed 2/6/13, effective 3/9/13. Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. WSR 08-20-062, § 388-97-1000, filed 9/24/08, effective 11/1/08.]

NEW SECTION

WAC 388-97-10001 Resident assessment-Requirements in effect April 13, 2020, through May 10, 2021, in response to the state of emergency related to the COVID-19 pandemic. In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.350 on April 13, 2020, to amend and suspend portions of WAC 388-97-0300. The emergency rules remained in effect until May 10, 2021. The following rule was in effect during that time:

(1) The nursing home must:

(a) Provide resident care based on a systematic, comprehensive, interdisciplinary assessment, and care planning process in which the resident participates, to the fullest extent possible;

(b) Conduct initially and periodically a comprehensive, accurate, standardized, reproducible assessment of each resident's functional capacity;

(c) As soon as practicable after each resident is admitted:

(i) Have physician's orders for the resident's immediate care;

and

(ii) Ensure that the resident's immediate care needs are identified in an admission assessment.

(d) Ensure that the comprehensive assessment of a resident's needs describes the resident's capability to perform daily life functions and significant impairments in functional capacity.

(2) The comprehensive assessment must include at least the following information:

- (a) Identification and demographic information;
- (b) Customary routine;
- (c) Cognitive patterns;
- (d) Communication;
- (e) Vision;
- (f) Mood and behavior patterns;
- (g) Psychosocial well-being;
- (h) Physical functioning and structural problems;
- (i) Continence;
- (j) Disease diagnosis and health conditions;
- (k) Dental and nutritional status;
- (l) Skin conditions;
- (m) Activity pursuit;
- (n) Medications;
- (o) Special treatments and procedures;
- (p) Discharge potential;

(q) Documentation of summary information regarding the assessment performed; and

(r) Documentation of participation in assessment.

(3) The nursing home must ensure that:

(a) As appropriate, the resident's assessment is revised to assure the continued accuracy of the assessment; and

(b) The results of the assessment are used to develop, review, and revise the resident's comprehensive plan of care under WAC 388-97-1020.

(4) The skilled nursing facility and nursing facility must:

(a) For the required assessment, complete the state approved resident assessment instrument (RAI) for each resident in accordance with federal requirements;

(b) Maintain electronic or paper copies of completed resident assessments in the resident's active medical record for 15 months; this information must be maintained in a centralized location and be easily and readily accessible;

(c) Place the hard copies of the signature pages in the clinical record of each resident if a facility maintains their RAI data electronically and does not use electronic signatures;

(d) Transmit all state and federally required RAI information for each resident to the department in a manner and time period approved by the department.

[]

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1020 Comprehensive plan of care. The department amended or suspended portions of this section from April 13, 2020, through May 10, 2021, in response to the state of emergency related to

the COVID-19 pandemic. For requirements in place during that time, see WAC 388-97-10201.

(1) The nursing home must develop a comprehensive plan of care for each resident that includes measurable objectives and timetables to meet a resident's medical, nursing and mental, and psychosocial needs that are identified in the comprehensive assessment.

(2) The comprehensive plan of care must:

(a) Describe the services that are to be furnished to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being as required under WAC 388-97-1060;

(b) Describe any services that would otherwise be required, but are not provided due to the resident's exercise of rights, including the right to refuse treatment (refer to WAC 388-97-0300 and 388-97-0260);

(c) Be developed within seven days after completion of the comprehensive assessment;

(d) Be prepared by an interdisciplinary team that includes the attending physician, a registered nurse with responsibility for the resident, and other appropriate staff in disciplines as determined by the resident's needs;

(e) Consist of an ongoing process which includes a meeting if desired by the resident or the resident's representative; and

(f) Include the ongoing participation of the resident to the fullest extent possible, the resident's family, or the resident's surrogate decision maker.

(3) The nursing home must implement a plan of care to meet the immediate needs of newly admitted residents, prior to the completion of the comprehensive assessment and plan of care.

(4) The nursing home must:

(a) Follow the informed consent process with the resident as specified in WAC 388-97-0260, regarding the interdisciplinary team's plan of care recommendations;

(b) Respect the resident's right to decide plan of care goals and treatment choices, including acceptance or refusal of plan of care recommendations;

(c) Include in the interdisciplinary plan of care process:

(i) Staff members requested by the resident; and

(ii) Direct care staff who work most closely with the resident.

(d) Respect the resident's wishes regarding which individuals, if any, the resident wants to take part in resident plan of care functions;

(e) Provide reasonable advance notice to and reasonably accommodate the resident family members or other individuals the resident wishes to have attend, when scheduling plan of care meeting times; and

(f) Where for practical reasons any individuals significant to the plan of care process, including the resident, are unable to attend plan of care meetings, provide a method for such individuals to give timely input and recommendations.

(5) The nursing home must ensure that each comprehensive plan of care:

(a) Designates the discipline of the individuals responsible for carrying out the program; and

(b) Is reviewed at least quarterly by qualified staff, as part of the ongoing process of monitoring the resident's needs and preferences.

[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. WSR 08-20-062, § 388-97-1020, filed 9/24/08, effective 11/1/08.]

NEW SECTION

WAC 388-97-10201 Comprehensive plan of care-Requirements in effect April 13, 2020, through May 10, 2021, in response to the state of emergency related to the COVID-19 pandemic. In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.350 on April 13, 2020, to amend and suspend portions of WAC 388-97-0300. The emergency rules remained in effect until May 10, 2021. The following rule was in effect during that time:

- (1) The nursing home must develop a comprehensive plan of care for each resident that includes measurable objectives and timetables to meet a resident's medical, nursing and mental, and psychosocial needs that are identified in the comprehensive assessment.
- (2) The comprehensive plan of care must:
 - (a) Describe the services that are to be furnished to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being as required under WAC 388-97-1060;
 - (b) Describe any services that would otherwise be required, but are not provided due to the resident's exercise of rights, including the right to refuse treatment (refer to WAC 388-97-0300 and 388-97-0260);
 - (c) Be prepared by an interdisciplinary team that includes the attending physician, a registered nurse with responsibility for the resident, and other appropriate staff in disciplines as determined by the resident's needs;
 - (d) Consist of an ongoing process which includes a meeting if desired by the resident or the resident's representative; and
 - (e) Include the ongoing participation of the resident to the fullest extent possible, the resident's family, or the resident's surrogate decision maker.
- (3) The nursing home must implement a plan of care to meet the immediate needs of newly admitted residents, prior to the completion of the comprehensive assessment and plan of care.
- (4) The nursing home must:
 - (a) Follow the informed consent process with the resident as specified in WAC 388-97-0260, regarding the interdisciplinary team's plan of care recommendations;
 - (b) Respect the resident's right to decide plan of care goals and treatment choices, including acceptance or refusal of plan of care recommendations;
 - (c) Include in the interdisciplinary plan of care process:
 - (i) Staff members requested by the resident; and
 - (ii) Direct care staff who work most closely with the resident.
 - (d) Respect the resident's wishes regarding which individuals, if any, the resident wants to take part in the resident's plan of care functions;
 - (e) Provide reasonable advance notice to and reasonably accommodate the resident family members or other individuals the resident wishes to have attend, when scheduling plan of care meeting times; and

(f) Where for practical reasons any individuals significant to the plan of care process, including the resident, are unable to attend plan of care meetings, provide a method for such individuals to give timely input and recommendations.

(5) The nursing home must ensure that each comprehensive plan of care:

(a) Designates the discipline of the individuals responsible for carrying out the program; and

(b) Is reviewed at least quarterly by qualified staff, as part of the ongoing process of monitoring the resident's needs and preferences.

[]

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1260 Physician services. The department amended or suspended portions of this section from April 28, 2020, through May 7, 2022, in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-97-12601.

(1) The nursing home must ensure that the resident is seen by the physician whenever necessary.

(2) Except as specified in RCW 74.42.200, a physician must personally approve in writing a recommendation that an individual be admitted to a nursing home.

(3) The nursing home must ensure that:

(a) Except as specified in RCW 74.42.200, the medical care of each resident is supervised by a physician;

(b) Another physician supervises the medical care of residents when their attending physician is unavailable; and

(c) Physician services are provided (~~(twenty-four)~~) 24 hours per day, in case of emergency.

(4) The physician must:

(a) Write, sign, and date progress notes at each visit;

(b) Sign and date all orders; and

(c) In medicare and medicare/medicaid certified facilities, review the resident's total program of care, including medications and treatments, at each federally required visit.

(5) Except as specified in subsections (6), (7), and (9) of this section, a physician may delegate tasks to a physician's assistant or advanced registered nurse practitioner who is:

(a) Licensed by the state;

(b) Acting within the scope of practice as defined by state law; and

(c) Under the supervision of the physician.

(6) The physician may not delegate a task when the delegation is prohibited under state law or by the facility's own policies.

(7) If the resident's primary payor source is medicare, the physician may:

(a) Alternate federally required physician visits between personal visits by:

(i) The physician; and

(ii) An advanced registered nurse practitioner or physician's assistant; and

(b) Not delegate responsibility for the initial required physician visit. This initial visit must occur within the first ~~((thirty))~~ 30 days of admission to the facility.

(8) If the resident's payor source is medicaid, the physician may delegate any federally required physician task, including tasks which the regulations specify must be performed personally by the physician, to a physician's assistant or advanced registered nurse practitioner who is not an employee of the facility but who is working in collaboration with a physician.

(9) If the resident's payor source is not medicare or medicaid:

(a) In the medicare only certified facility or in the medicare certified area of a medicare/medicaid facility, the physician may alternate federally required physician visits between personal visits by the physician and an advanced registered nurse practitioner or physician's assistant. The physician may not delegate responsibility for the initial required physician visit.

(b) In the medicaid only certified facility or in the medicaid certified area of a medicare/medicaid facility, the physician may delegate any federally required physician task, including tasks which the regulations specify must be performed personally by the physician, to a physician's assistant or advanced registered nurse practitioner who is not an employee of the facility but who is working in collaboration with a physician.

(10) The following table describes the physician visit requirements related to medicare or medicaid certified area and payor type.

	Beds in medicare only certified area	Beds in medicare/medicaid certified area	Beds in medicaid only certified area
Payor source:	Initial by physician	Initial by physician	N/A
medicare	Physician may delegate alternate visits	Physician may delegate alternate visits	
Payor source:	N/A	Delegate all tasks	Delegate all tasks
medicaid		Nonemployee	Nonemployee
Payor source:	Initial by physician	Initial by physician	Delegate all tasks
Others: such as insurance, private pay, Veteran Affairs	Physician may delegate alternate visits	Physician may delegate alternate visits	Nonemployee

(11) The attending physician, or the physician-designated advanced registered nurse practitioner or physician's assistant must:

(a) Participate in the interdisciplinary plan of care process as described in WAC 388-97-1020;

(b) Provide to the resident, or where applicable the resident's surrogate decision maker, information so that the resident can make an informed consent to care or refusal of care (see WAC 388-97-0260); and

(c) Order resident self-medication when appropriate.

(12) The nursing home must obtain from the physician the following medical information before or at the time of the resident's admission:

(a) A summary or summaries of the resident's current health status, including history and physical findings reflecting a review of systems;

(b) Orders, as necessary for medications, treatments, diagnostic studies, specialized rehabilitative services, diet, and any restrictions related to physical mobility; and

(c) Plans for continuing care and discharge.

[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. WSR 08-20-062, § 388-97-1260, filed 9/24/08, effective 11/1/08.]

NEW SECTION

WAC 388-97-12601 Physician services-Requirements in effect April 28, 2020, through May 7, 2022, in response to the state of emergency related to the COVID-19 pandemic. In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.350 on April 28, 2020, to amend and suspend portions of WAC 388-97-1260. The emergency rules remained in effect until May 7, 2022. The following rule was in effect during that time:

(1) The nursing home must ensure that the resident is seen by the physician whenever necessary.

(2) Except as specified in RCW 74.42.200, a physician must personally approve in writing a recommendation that an individual be admitted to a nursing home.

(3) The nursing home must ensure that:

(a) Except as specified in RCW 74.42.200, the medical care of each resident is supervised by a physician;

(b) Another physician supervises the medical care of residents when their attending physician is unavailable; and

(c) Physician services are provided 24 hours per day, in case of emergency.

(4) The physician must:

(a) Write, sign, and date progress notes at each visit;

(b) Sign and date all orders; and

(c) In medicare and medicare/medicaid certified facilities, review the resident's total program of care, including medications and treatments, at each federally required visit.

(5) Except as specified in subsection (6) of this section, a physician may delegate tasks, including tasks that, under state law, must be performed personally by the physician, to a physician's assistant or advanced registered nurse practitioner who is:

(a) Licensed by the state;

(b) Acting within the scope of practice as defined by state law;

(c) Under the supervision of, and working in collaboration with the physician; and

(d) Not an employee of the facility, if caring for a resident whose payor source is medicaid.

(6) The physician may not delegate a task when the delegation is prohibited under state law or by the facility's own policies.

(7) The attending physician, or the physician-designated advanced registered nurse practitioner or physician's assistant must:

(a) Participate in the interdisciplinary plan of care process as described in WAC 388-97-1020;

(b) Provide to the resident, or where applicable the resident's surrogate decision maker, information so that the resident can make an informed consent to care or refusal of care (see WAC 388-97-0260); and

(c) Order resident self-medication when appropriate.

(8) The nursing home must obtain from the physician the following medical information before or at the time of the resident's admission:

- (a) A summary or summaries of the resident's current health status, including history and physical findings reflecting a review of systems;
- (b) Orders, as necessary for medications, treatments, diagnostic studies, specialized rehabilitative services, diet, and any restrictions related to physical mobility; and
- (c) Plans for continuing care and discharge.

[]

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1380 Tuberculosis—Testing required. The department amended or suspended portions of this section from January 25, 2021, through September 23, 2021, in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-97-13801.

- (1) The nursing home must develop and implement a system to ensure that facility personnel and residents have tuberculosis testing within three days of employment or admission.
- (2) The nursing home must also ensure that facility personnel are tested annually.
- (3) For the purposes of WAC 388-97-1360 through 388-97-1580 "**person**" means facility personnel and residents.

[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. WSR 08-20-062, § 388-97-1380, filed 9/24/08, effective 11/1/08.]

NEW SECTION

WAC 388-97-13801 Tuberculosis-Testing required-Requirements in effect January 25, 2021, through September 23, 2021, in response to the state of emergency related to the COVID-19 pandemic. In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.350 on January 25, 2021, to amend and suspend portions of WAC 388-97-1380. The emergency rules remained in effect until September 23, 2021. The following rule was in effect during that time:

- (1) Unless the nursing home decides to defer tuberculosis testing in accordance with subsection (2) of this section, or the resident or staff person is excluded from testing from WAC 388-97-1440, the nursing home must:
 - (a) Ensure that facility personnel and residents have tuberculosis testing within three days of employment or admission; and
 - (b) Ensure that facility personnel are tested annually.
- (2) The nursing home may defer tuberculosis testing of facility personnel and residents to complete the COVID-19 vaccination process if the nursing home has considered the risks and benefits of such delay and if the delay is consistent with the current centers for disease control and prevention COVID-19 vaccination guidance.

(3) If testing is deferred for a resident or facility staff person, in accordance with subsection (2) of this section, the nursing home must:

(a) Assess the person for symptoms of tuberculosis within three days of employment or admission, and if the person has tuberculosis symptoms, follow WAC 388-97-1560; and

(b) Complete tuberculosis testing in accordance with WAC 388-97-1400 through 388-97-1580 as soon as indicated by the centers for disease control and prevention COVID-19 vaccination guidelines.

(4) For the purposes of WAC 388-97-1360 through 388-97-1580, "person" means facility personnel and residents.

[]

AMENDATORY SECTION (Amending WSR 10-02-021, filed 12/29/09, effective 1/29/10)

WAC 388-97-1580 Tuberculosis—Test records. (1) The department amended or suspended portions of this section from January 25, 2021, through September 23, 2021, in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-97-15801.

(2) The nursing home must:

~~((1))~~ (a) Keep the records of tuberculin test results, reports of X-ray findings, and any physician or public health provider orders in the nursing home;

~~((2))~~ (b) Make the records readily available to the appropriate health authority and licensing agency;

~~((3))~~ (c) Retain the records for ~~((eighteen))~~ 18 months beyond the date of employment termination; and

~~((4))~~ (d) Provide the person a copy of ~~((his/her))~~ their test results.

[Statutory Authority: Chapters 18.51 and 74.42 RCW. WSR 10-02-021, § 388-97-1580, filed 12/29/09, effective 1/29/10. Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. WSR 08-20-062, § 388-97-1580, filed 9/24/08, effective 11/1/08.]

NEW SECTION

WAC 388-97-15801 Tuberculosis-Test records-Requirements in effect January 25, 2021, through September 23, 2021, in response to the state of emergency related to the COVID-19 pandemic. (1) In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.350 on January 25, 2021, to amend and suspend portions of WAC 388-97-1580. The emergency rules remained in effect until September 23, 2021. The following rule was in effect during that time:

(2) The nursing home must:

(a) Keep the records of tuberculin test results, reports of X-ray findings, and any physician or public health provider orders in the nursing home;

(b) Keep the records of the tuberculosis symptom assessment and the documented rationale for deferring the tuberculosis testing in the nursing home, if tuberculosis testing is deferred in accordance with WAC 388-97-1380(2);

(c) Make the records readily available to the appropriate health authority and licensing agency;

(d) Retain the records for 18 months beyond the date of employment termination; and

(e) Provide the person a copy of their test results.

[]

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1740 Disaster and emergency preparedness. The department amended or suspended portions of this section from June 23, 2020, through June 7, 2022, in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-97-17401.

(1) The nursing home must develop and implement detailed written plans and procedures to meet potential emergencies and disasters. At a minimum the nursing home must ensure these plans provide for:

- (a) Fire or smoke;
- (b) Severe weather;
- (c) Loss of power;
- (d) Earthquake;
- (e) Explosion;
- (f) Missing resident, elopement;
- (g) Loss of normal water supply;
- (h) Bomb threats;
- (i) Armed individuals;
- (j) Gas leak, or loss of service; and
- (k) Loss of heat supply.

(2) The nursing home must train all employees in emergency procedures when they begin work in the nursing home, periodically review emergency procedures with existing staff, and carry out unannounced staff drills using those procedures.

(3) The nursing home must ensure emergency plans:

- (a) Are developed and maintained with the assistance of qualified fire, safety, and other appropriate experts as necessary;
- (b) Are reviewed annually; and
- (c) Include evacuation routes prominently posted on each unit.

[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. WSR 08-20-062, § 388-97-1740, filed 9/24/08, effective 11/1/08.]

NEW SECTION

WAC 388-97-17401 Disaster and emergency preparedness-Requirements in effect June 23, 2020, through June 7, 2022, in response to the state of emergency related to the COVID-19 pandemic. In response

to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.350 on June 23, 2020, to amend and suspend portions of WAC 388-97-1740. The emergency rules remained in effect until June 7, 2022. The following rule was in effect during that time:

(1) The nursing home must develop and implement detailed written plans and procedures to meet potential emergencies and disasters. At a minimum the nursing home must ensure these plans provide for:

- (a) Fire or smoke;
- (b) Severe weather;
- (c) Loss of power;
- (d) Earthquake;
- (e) Explosion;
- (f) Missing resident, elopement;
- (g) Loss of normal water supply;
- (h) Bomb threats;
- (i) Armed individuals;
- (j) Gas leak, or loss of service; and
- (k) Loss of heat supply.

(2) The nursing home must train all employees in emergency procedures when they begin work in the nursing home, and periodically re-view emergency procedures with existing staff.

(3) The nursing home must ensure emergency plans:

- (a) Are developed and maintained with the assistance of qualified fire, safety, and other appropriate experts as necessary;
- (b) Are reviewed annually; and
- (c) Include evacuation routes prominently posted on each unit.

[]

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-1760 Quality assessment and assurance. The department amended or suspended portions of this section from June 23, 2020, through May 7, 2022, in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-97-17601.

(1) The nursing home must maintain a process for quality assessment and assurance. The department may not require disclosure of the records of the quality assessment and assurance committee except in so far as such disclosure is related to ensuring compliance with the requirements of this section.

(2) The nursing home must ensure the quality assessment and assurance process:

- (a) Seeks out and incorporates input from the resident and family councils, if any, or individual residents and support groups; and
- (b) Reviews expressed concerns and grievances.

[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. WSR 08-20-062, § 388-97-1760, filed 9/24/08, effective 11/1/08.]

NEW SECTION

WAC 388-97-17601 Quality assessment and assurance-Requirements in effect June 23, 2020, through May 7, 2022, in response to the state of emergency related to the COVID-19 pandemic. In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.350 on June 23, 2020, to amend and suspend portions of WAC 388-97-1760. The emergency rules remained in effect until May 7, 2022. The following rule was in effect during that time:

(1) The nursing home must maintain a process for quality assessment and assurance. The department may not require disclosure of the records of the quality assessment and assurance committee except in so far as such disclosure is related to ensuring compliance with the requirements of this section.

(2) The nursing home must ensure the quality assessment and assurance process:

(a) Seeks out and incorporates input from the residents and resident representatives; and

(b) At a minimum, reviews adverse events and infection control.

[]

AMENDATORY SECTION (Amending WSR 08-20-062, filed 9/24/08, effective 11/1/08)

WAC 388-97-2400 Resident rooms. The department amended or suspended portions of this section from June 23, 2020, through June 7, 2022, in response to the state of emergency related to the COVID-19 pandemic. For requirements in place during that time, see WAC 388-97-24001.

(1) The nursing home must ensure that each resident bedroom:

(a) Has direct access to a hall or corridor;

(b) Is located on an exterior wall with a transparent glass window; and

(c) Is located to prevent through traffic.

(2) **In a new building or addition**, each resident bedroom must:

(a) Have an exterior transparent glass window:

(i) With an area equal to at least (~~one-tenth~~) 1/10th of the bedroom usable floor area;

(ii) Located (~~twenty-four~~) 24 feet or more from another building or the opposite wall of a court, or (~~ten~~) 10 feet or more away from a property line, except on street sides;

(iii) Located eight feet or more from any exterior walkway, paved surface, or driveway; and

(iv) With a sill three feet or less above the floor.

(b) Be located on a floor level at or above grade level except for earth berms. "Grade" means the level of ground adjacent to the building floor level measured at the required exterior window. The ground must be level or slope downward for a distance of at least (~~ten~~) 10 feet from the wall of the building. From there the ground may slope upward to the maximum sill height of the required window at a rate of one foot vertical for two feet horizontal.

[Statutory Authority: Chapters 18.51 and 74.42 RCW and 42 C.F.R. 489.52. WSR 08-20-062, § 388-97-2400, filed 9/24/08, effective 11/1/08.]

NEW SECTION

WAC 388-97-24001 Resident rooms-Requirements in effect June 23, 2020, through June 7, 2022, in response to the state of emergency related to the COVID-19 pandemic. In response to the state of emergency related to the COVID-19 pandemic, the department adopted emergency rules under RCW 34.05.350 on June 23, 2020, to amend and suspend portions of WAC 388-97-2400. The emergency rules remained in effect until June 7, 2022. The following rule was in effect during that time:

- (1) The nursing home must ensure that each resident bedroom:
 - (a) Has direct access to a hall or corridor; and
 - (b) Is located to prevent through traffic.
- (2) In a new building or addition, unless otherwise necessary for infection control, each resident bedroom must:
 - (a) Have an exterior transparent glass window:
 - (i) With an area equal to at least 1/10th of the bedroom usable floor area;
 - (ii) Located 24 feet or more from another building or the opposite wall of a court, or 10 feet or more away from a property line, except on street sides;
 - (iii) Located eight feet or more from any exterior walkway, paved surface, or driveway; and
 - (iv) With a sill three feet or less above the floor.
 - (b) Be located on a floor level at or above grade level except for earth berms. "Grade" means the level of ground adjacent to the building floor level measured at the required exterior window. The ground must be level or slope downward for a distance of at least 10 feet from the wall of the building. From there the ground may slope upward to the maximum sill height of the required window at a rate of one foot vertical for two feet horizontal.

[]