

**Chapter 388-103 WAC
ADULT PROTECTIVE SERVICES**

NEW SECTION

WAC 388-103-0001 What definitions apply to this chapter? In addition to the definitions found in chapter 74.34 RCW, the following definitions apply to this chapter:

- (1) "Adult family home" is defined under chapter 70.128 RCW.
- (2) "Alleged perpetrator" means the person who is alleged to have abandoned, abused, financially exploited, neglected, or misappropriated the property of, an alleged victim; and the department has received a report of, is investigating, or has made an initial substantiated finding about such allegation.
- (3) "Alleged victim" means:
 - (a) The person who is alleged to have been abandoned, abused, financially exploited, neglected, or had their property misappropriated by an alleged perpetrator; and the department has received a report of, is investigating, or has made an initial substantiated finding about such allegation; or
 - (b) The person who is alleged to be neglecting themselves; and the department has received a report of, is investigating, or has made an initial substantiated finding about the self-neglect.
- (4) "Assisted living facility" is defined under chapter 18.20 RCW.
- (5) "Basic necessities of life" means food, water, shelter, clothing, and medically necessary health care, including but not limited to health-related treatment or activities, hygiene, oxygen, and medication.
- (6) "Facility" means a residence licensed or required to be licensed under:
 - (a) Chapter 18.20 RCW, assisted living facilities;
 - (b) Chapter 18.51 RCW, nursing homes;
 - (c) Chapter 70.128 RCW, adult family homes;
 - (d) Chapter 72.36 RCW, soldiers' homes;
 - (e) Chapter 71A.20 RCW, residential habilitation centers;
 - (f) Chapter 70.97 RCW, enhanced services facilities; or
 - (g) Any other facility licensed or certified by the department.
- (7) "Final substantiated finding" means an initial substantiated finding of abandonment, abuse, financial exploitation, misappropriation of resident property, or neglect that:
 - (a) Has been upheld through the administrative hearing process described in WAC 388-103-0090 through 388-103-0160; or
 - (b) Is not timely appealed to the office of administrative hearings as required under WAC 388-103-0100.
- (8) "Initial substantiated finding" means a finding by the department that, more likely than not, the alleged abandonment, abuse, financial exploitation, misappropriation of resident property, neglect, or self-neglect occurred.
- (9) "Legal representative" means a guardian or conservator appointed under either chapter 11.88 RCW or chapter 11.130 RCW; or an agent granted authority under a power of attorney as described under chapter 11.125 RCW.

(10) "Nursing assistant" means as it is defined under chapter 18.88A RCW.

(11) "Nursing facility" means a nursing home, or any portion of a hospital, veterans' home, or residential habilitation center, that is certified to provide nursing services to medicaid recipients under section 1919(a) of the Social Security Act (42 U.S.C. Sec. 1396r).

(12) "Nursing home" means any facility licensed to operate under chapter 18.51 RCW.

(13) "Person with a duty of care," in the context of abandonment and neglect, includes:

(a) A guardian or conservator appointed under chapter 11.88 RCW or chapter 11.130 RCW;

(b) An agent granted authority under a power of attorney as described under chapter 11.125 RCW; or

(c) A person providing the basic necessities of life to a vulnerable adult where:

(i) The person is employed by or on behalf of the vulnerable adult; or

(ii) The person voluntarily agrees to provide, or has been providing, the basic necessities of life to the vulnerable adult on a continuing basis.

(14) "Skilled nursing facility" means a nursing home, a portion of a nursing home, or a long-term care wing or unit of a hospital that has been certified to provide nursing services to medicare recipients under section 1819(a) of the Social Security Act (42 U.S.C. Sec. 1395i-3).

(15) "Vulnerable adult abuse registry" means the registry, established and maintained by the department as required under RCW 74.39A.056, that contains identifying information about people who have final substantiated findings of abandonment, abuse, financial exploitation, misappropriation of resident property, or neglect of a vulnerable adult.

(16) "Willful." A person's action or inaction is willful when the person's action or inaction is intentional or knowing.

(a) INTENTIONAL. A person's action or inaction is intentional when the person's objective or purpose is to inflict injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult.

(b) KNOWING. A person's action or inaction is knowing when the person is aware that his or her action or inaction would inflict injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult.

NEW SECTION

WAC 388-103-0002 What additional definitions apply when the facility is a nursing facility or skilled nursing facility? (1) This section incorporates those definitions under 42 C.F.R. Sec. 488.301 into this chapter.

(2) In addition to the definitions in WAC 388-103-0001 and RCW 74.34.020, the definitions in this section apply to this chapter when:

(a) The alleged victim is a resident of a nursing facility or skilled nursing facility; and

(b) The alleged perpetrator is an individual used by such facility to provide services to residents.

(3) Abuse.

(a) Abuse is the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish. Abuse also includes the deprivation by an individual, including a caretaker, of goods or services that are necessary to attain or maintain physical, mental, and psychosocial well-being.

(b) Instances of abuse of all residents, irrespective of any mental or physical condition, cause physical harm, pain or mental anguish.

(c) Abuse includes verbal abuse, sexual abuse, physical abuse, and mental abuse including abuse facilitated or enabled through the use of technology.

(d) Willful, as used in this definition of abuse, means the individual must have acted deliberately, not that the individual must have intended to inflict injury or harm.

(4) "Individual" means a person used by a nursing facility or skilled nursing facility to provide services to residents of such facility.

(5) "Misappropriation of resident property" means the deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money without the resident's consent.

(6) "Neglect" means the failure of an individual to provide goods and services to a resident that are necessary to avoid physical harm, pain, mental anguish, or emotional distress.

NEW SECTION

WAC 388-103-0010 What is the purpose of an adult protective services investigation? The purpose of an adult protective services investigation is to:

(1) Investigate allegations of abandonment, abuse, financial exploitation, misappropriation of resident property, neglect, or self-neglect.

(2) Provide protective services to the alleged victim, with the consent of the alleged victim or their legal representative, when the protective services could assist in ending or preventing of the harm to the alleged victim.

NEW SECTION

WAC 388-103-0020 When does adult protective services respond to a report? The department will initiate a response to a report of suspected abandonment, abuse, financial exploitation, misappropriation of resident property, neglect, or self-neglect of a vulnerable adult when the alleged facts and circumstances reasonably fit the definition of abandonment, abuse, financial exploitation, misappropriation of resident property, neglect, or self-neglect as defined in RCW 74.34.020 or this chapter.

NEW SECTION

WAC 388-103-0030 What state-only funded services may be offered to an alleged victim? (1) Subject to available funding, adult protective services (APS) may arrange for, and provide referrals to, state-only funded services for an alleged victim.

(2) Services may include:

(a) In-home personal care, household services, or both; and

(b) Emergency referral options for a department-licensed and -contracted adult family home, assisted living facility, or nursing home.

(3) Services may be offered if:

(a) The person is the alleged victim in an open APS investigation;

(b) The services would help protect the alleged victim from harm;

(c) APS cannot identify alternative resources or options for payment for services available to the alleged victim at the time the services are needed;

(d) Services are provided in the least restrictive and cost effective manner and setting available to meet the needs of the alleged victim;

(e) APS is pursuing service alternatives or resolution of the issues that resulted in the need for the services; and

(f) The services are temporary and provided with the consent of the alleged victim, or their legal representative, only until the situation has stabilized.

(4) Service limitations.

(a) State-only funded protective services are provided by APS on a discretionary basis, are not a benefit, and are not an entitlement.

(b) There is no right to notice over an approval, denial, change, termination, or any other action regarding services.

(c) There is no right to an administrative hearing over an approval, denial, change, termination, or any other action regarding services.

(d) All services are limited to a cumulative maximum total of ninety days in any twelve-month period, with nursing home services limited to thirty days in the twelve-month period. An exception to rule requested under chapter 388-440 WAC will not be accepted.

(e) In-home personal care, household services, or both, are provided based on assessed need and limited to one hundred forty-three hours per calendar month.

NEW SECTION

WAC 388-103-0040 When does adult protective services notify the alleged perpetrator of an initial substantiated finding? (1) Adult protective services (APS) will notify the alleged perpetrator in writing on or before the tenth working day after making an initial substantiated finding.

(2) APS may notify the alleged perpetrator after the tenth working day if time is needed to translate the notification letter, or if time is needed to provide for the safety of the alleged victim.

NEW SECTION

WAC 388-103-0050 How will adult protective services give the alleged perpetrator notice of the initial substantiated finding? (1) Adult protective services (APS) will notify the alleged perpetrator of the initial substantiated finding using one of the following methods:

(a) Personal service of the notice as described under RCW 4.28.080; or

(b) Sending a copy of the notice by first-class mail and certified mail, return receipt requested, to the alleged perpetrator's last known mailing address.

(2) If APS knows the alleged perpetrator no longer receives mail at their last known mailing address, then APS will give notice by personal service.

NEW SECTION

WAC 388-103-0060 When is notice to the alleged perpetrator complete? Notice is complete when:

(1) Personal service is made; or

(2) First-class mail and certified mail, return receipt requested, are both properly stamped, addressed, and deposited in the United States mail.

NEW SECTION

WAC 388-103-0070 What proves that adult protective services provided notice of the initial substantiated finding to the alleged perpetrator? Adult protective services may prove notice was provided to the alleged perpetrator by any of the following:

(1) A sworn statement, certification, or declaration of personal service;

(2) A sworn statement, certification, or declaration of mailing; or

(3) The certified mail receipt confirming the notice was delivered.

NEW SECTION

WAC 388-103-0080 Will adult protective services notify anyone other than the alleged perpetrator of the initial substantiated finding? (1) Facilities.

(a) If the incident occurred in a facility, adult protective services (APS) will inform the facility owner, manager, or administrator of the initial substantiated finding.

(b) If abuse, neglect, or misappropriation of resident property occurred in a nursing home, APS will inform the administrator of the nursing home of the initial substantiated finding.

(2) Agencies or programs.

(a) If the alleged perpetrator is an employee, contractor, volunteer, or otherwise related to an agency or program described in RCW 74.34.068, APS may inform such agency or program of the initial substantiated finding; and

(b) APS may also inform appropriate state or local governmental authorities responsible for licensing or certification of such agency or program.

(3) APS may inform law enforcement of the initial substantiated finding.

(4) APS may inform the long-term care ombuds, the developmental disabilities ombuds, or both, of the initial substantiated finding.

(5) Other authorities.

(a) If an alleged perpetrator is professionally licensed, certified, or registered under title 18 RCW, APS may inform the proper authority of the initial substantiated finding.

(b) APS may inform other investigative authorities of the initial substantiated finding.

NEW SECTION

WAC 388-103-0090 May an alleged perpetrator challenge an initial substantiated finding? An alleged perpetrator may request an administrative hearing to challenge an initial substantiated finding.

NEW SECTION

WAC 388-103-0100 How does an alleged perpetrator request an administrative hearing to challenge an initial substantiated finding?

(1) To request an administrative hearing, the alleged perpetrator must send, deliver, or fax a written request to the office of administrative hearings (OAH).

(a) OAH must receive the written request no later than the earlier of:

(i) 5:00 p.m. on the thirtieth calendar day after the mailing date on adult protective services' (APS's) letter of notice; or

(ii) 5:00 p.m. on the thirtieth calendar day after the date APS's letter of notice was personally served upon the alleged perpetrator.

(b) Days are counted as described under WAC 388-02-0035.

(c) OAH mailing addresses, fax numbers, and telephone numbers are in WAC 388-02-0025.

(2) The minimum information required to make a request is given by:

(a) Completing the adult protective services administrative hearing request form (DSHS 27-178); or

(b) A written request that includes:

(i) The full legal name, current address, and phone number of the alleged perpetrator;

(ii) A brief explanation of why the alleged perpetrator disagrees with the initial substantiated finding; and

(iii) A description of assistance needed in the administrative appeal process, if any, by the alleged perpetrator, such as a foreign or sign language interpreter, or accommodation for a disability.

(3) Good cause, as described under WAC 388-02-0020, does not apply to the requirements of this section.

NEW SECTION

WAC 388-103-0110 What laws and rules will control the administrative hearings held regarding initial substantiated findings? (1) Chapters 34.05 and 74.34 RCW, chapters 388-02 and 10-08 WAC, and this chapter govern an administrative hearing regarding an initial substantiated finding.

(2) In the event of a conflict between this chapter and chapter 388-02 or 10-08 WAC, this chapter will prevail; and in the event of a conflict between chapter 388-02 and 10-08 WAC, chapter 388-02 WAC will prevail.

NEW SECTION

WAC 388-103-0120 What additional rules apply to administrative hearings regarding initial substantiated findings of abuse, neglect, or misappropriation of resident property, where the alleged perpetrator is an individual used by a nursing facility or skilled nursing facility to provide services to residents of that facility? (1) This section applies to the administrative hearing when an initial substantiated finding of abuse, neglect, or misappropriation of resident property is made against an individual used by a nursing facility or skilled nursing facility to provide services to residents of that facility.

(2) The hearing and the hearing record must be completed within one hundred and twenty days from the day the office of administrative hearings received the request for a hearing under WAC 388-103-0100.

(a) If the administrative law judge (ALJ) finds that extenuating circumstances exist that will make it impossible to render a decision within one hundred and twenty days, then the ALJ may extend the limit by a maximum of sixty days.

(b) The individual must be available for the hearing and other preliminary matters.

(c) If the individual is a nursing assistant, and if the hearing and hearing record cannot be completed within the time limit because of the unavailability of the nursing assistant, then, after the time limit has expired, the nursing assistant's name will be placed on the vulnerable adult abuse registry pending the outcome of the hearing.

(3) The hearing must be held at a reasonable place and time convenient for the individual.

(4) A final substantiated finding of neglect, where neglect is defined under WAC 388-103-0002, may not be made if the individual dem-

onstrates the neglect was caused by factors beyond the control of the individual.

NEW SECTION

WAC 388-103-0130 How is confidential information protected in the administrative hearing process? (1) All information described under RCW 74.34.095(1) is confidential, and not subject to disclosure in the administrative hearing process, except as described under RCW 74.34.095(3) and this section.

(2) If the administrative law judge (ALJ) determines that disclosure is essential to the administration of justice and will not endanger the life or safety of the alleged victim or the person who made the report, then the ALJ may order disclosure of the information otherwise protected under RCW 74.34.095

(3) Such disclosure may only be made under a protective order agreed to by the parties and entered by the ALJ. The ALJ may place restrictions on such disclosure as the ALJ deems proper.

NEW SECTION

WAC 388-103-0140 How does the administrative law judge make a decision regarding the initial substantiated finding? (1) If the administrative law judge (ALJ) finds that the preponderance of the evidence supports the initial substantiated finding, the ALJ shall uphold the initial substantiated finding in an initial order.

(2) If the ALJ finds that the initial substantiated finding is not supported by a preponderance of the evidence, the ALJ shall remand the matter to the department to modify the finding consistent with the initial order.

NEW SECTION

WAC 388-103-0150 What if the alleged perpetrator or the department disagrees with the administrative law judge's initial order? (1) If the alleged perpetrator or the department disagrees with the administrative law judge's (ALJ's) initial order, either party may request review of the initial order with the department's board of appeals as described under chapter 388-02 WAC.

(2) If either party requests review of the ALJ's initial order, the initial order will not be effected.

NEW SECTION

WAC 388-103-0160 When does the initial substantiated finding become a final substantiated finding? (1) An initial substantiated finding becomes a final substantiated finding when:

(a) The department gives the alleged perpetrator notice of the initial substantiated finding as described under WAC 388-103-0050, and the alleged perpetrator does not request an administrative hearing under WAC 388-103-0100;

(b) The administrative law judge (ALJ) dismisses the alleged perpetrator's request for hearing;

(c) The ALJ issues an initial order upholding the initial substantiated finding and the order becomes a final order under WAC 388-02-0525; or

(d) The department's board of appeals enters a final order upholding the initial substantiated finding.

NEW SECTION

WAC 388-103-0170 What happens when an initial substantiated finding becomes a final substantiated finding? When an initial substantiated finding becomes a final substantiated finding, identifying information about the perpetrator of the abandonment, abuse, financial exploitation, misappropriation of resident property, or neglect is placed on the vulnerable adult abuse registry that is maintained by the department.

NEW SECTION

WAC 388-103-0180 Is a final substantiated finding permanent?

(1) A final substantiated finding is permanent, except as described under subsection (2) of this section.

(2) A final substantiated finding may be reversed, and the person's identifying information removed from the vulnerable adult abuse registry, if:

(a) The department determines the final substantiated finding was made in error;

(b) The final substantiated finding is reversed or otherwise overturned upon judicial review; or

(c) The department is notified that a person with a final substantiated finding is deceased.

NEW SECTION

WAC 388-103-0190 Will adult protective services notify anyone other than the alleged perpetrator of the final substantiated finding?

(1) Adult protective services (APS) may provide notice of the final

substantiated finding to those persons and entities described under WAC 388-103-0080.

(2) Where the perpetrator of a final substantiated finding is an individual used by a nursing home to provide services to residents of such nursing home, APS will notify the following on or before the tenth working day of the final substantiated finding:

(a) The perpetrator;

(b) The current administrator of the nursing home in which the incident occurred;

(c) The administrator of the nursing home in which the perpetrator is currently employed, if known by APS and if different than the nursing home in which the incident occurred; and

(d) The Washington state department of health.

NEW SECTION

WAC 388-103-0200 Does the department disclose information contained in the vulnerable adult abuse registry about final substantiated findings of abandonment, abuse, financial exploitation, misappropriation of resident property, and neglect? Upon request of any person, the department shall disclose the identity of a person on the vulnerable adult abuse registry with a final substantiated finding of abandonment, abuse, financial exploitation, misappropriation of resident property, or neglect.

NEW SECTION

WAC 388-103-0210 May a nursing assistant petition the department to have their name removed from the vulnerable adult abuse registry?

(1) This section implements 42 U.S.C. Sec. 1396r(g)(1)(D) and Sec. 1395i-3(g)(1)(D).

(2) A nursing assistant may petition the department to have their name removed from the vulnerable adult abuse registry, subject to the requirements of this section.

(3) Preliminary requirements for the department to accept a petition:

(a) At least one year must have elapsed between the date of the final substantiated finding and the date the department receives the petition;

(b) The final substantiated finding was a singular occurrence of neglect; and

(c) The petition must be in writing and contain the following information:

(i) About the petitioner:

(A) Name;

(B) Date of birth;

(C) Social security number;

(D) Mailing address; and

(E) Phone number;

(ii) The final substantiated finding;

(iii) All documents regarding any disciplinary action, or any other negative action, taken against the petitioner under chapter 18.88A RCW;

(iv) A background check through the Washington state patrol that was completed no earlier than thirty days prior to the date the department accepts the petition;

(v) An affidavit stating why the petitioner believes the department should grant the petition. The statement must include whether the petitioner has abused or neglected a vulnerable adult since the final substantiated finding was entered;

(vi) A list of three references for the department to contact regarding the petitioner's employment and personal history, where two references must be professional references; and

(vii) Any other relevant information the petitioner wants the department to consider.

(4) Standard for removal.

(a) The department will accept a petition if the requirements of subsection (3) of this section are met.

(b) Once the petition is accepted, the petitioner must attend an in-person interview with the department. "In-person" means either physical presence with department personnel, or visual presence through electronic means.

(c) Once the petition is accepted and the interview is completed, the department will determine whether the petitioner's employment and personal history reflects a pattern of abusive behavior or neglect:

(i) If the department determines the petitioner's employment and personal history does not reflect a pattern of abusive behavior or neglect, the department approves the petition, and removes the petitioner's name from the vulnerable adult abuse registry.

(ii) If the department determines the petitioner's employment and personal history does reflect a pattern of abusive behavior or neglect, the department denies the petition.

(iii) If the department is unable to determine whether the petitioner's employment and personal history reflects a pattern of abusive behavior or neglect, the department denies the petition.

(5) Other information.

(a) The department will act with reasonable promptness upon receiving a petition that contains the information required under subsection (3) of this section, and make its decision within sixty days of accepting a petition.

(b) If the department requires additional information to make its determination, a letter will be sent to the petitioner requesting the additional information. The petitioner has ten business days to provide the information. If the department does not receive the requested information, it may be unable to determine whether petitioner's employment and personal history reflects a pattern of abusive behavior or neglect, and deny the petition.

(c) Decisions and other correspondence regarding the petition will be mailed to the petitioner. At the petitioner's request, correspondence may also be sent via email.

(d) A petitioner does not have a right to an administrative hearing regarding any department action taken on a petition.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 388-71-0100 What are the statutory references for WAC 388-71-0100 through 388-71-01281?
- WAC 388-71-0105 What definitions apply to adult protective services?
- WAC 388-71-0110 What is the purpose of an adult protective services investigation?
- WAC 388-71-0115 When is an investigation conducted?
- WAC 388-71-01201 What state-only funded services may be offered to a vulnerable adult victim of abandonment, abuse, financial exploitation, neglect or self-neglect?
- WAC 388-71-01202 When does the department make a substantiated initial finding of an individual used by a nursing facility or skilled nursing facility to provide services to vulnerable adults?
- WAC 388-71-01205 When does APS notify the alleged perpetrator of a substantiated initial finding?
- WAC 388-71-01210 How may APS give the alleged perpetrator notice of the substantiated initial finding?
- WAC 388-71-01215 When is notice to the alleged perpetrator complete?
- WAC 388-71-01220 What proves that APS provided notice of the substantiated initial finding to the alleged perpetrator?
- WAC 388-71-01225 What information must not be in the APS finding notice to the alleged perpetrator?
- WAC 388-71-01230 Will APS notify anyone other than the alleged perpetrator of the substantiated initial finding of abandonment, abuse, financial exploitation or neglect?
- WAC 388-71-01235 Can an alleged perpetrator challenge a substantiated initial finding of abandonment, abuse, financial exploitation or neglect?
- WAC 388-71-01240 How does an alleged perpetrator request an administrative hearing to challenge a substantiated initial finding of abandonment, abuse, financial exploitation or neglect?
- WAC 388-71-01245 What laws and rules will control the administrative hearings held regarding substantiated initial findings?

- WAC 388-71-01247 What additional rules apply to administrative hearings held regarding substantiated initial findings made against a nursing assistant employed in a nursing facility or skilled nursing facility?
- WAC 388-71-01250 How is confidential information protected in the appeal process?
- WAC 388-71-01255 How does the administrative law judge make a decision regarding the substantiated initial finding?
- WAC 388-71-01260 When is the alleged perpetrator notified of the administrative law judge's decision?
- WAC 388-71-01265 What if the alleged perpetrator or the department disagrees with the decision?
- WAC 388-71-01270 What happens if the administrative law judge rules against the department?
- WAC 388-71-01275 When does the APS substantiated initial finding become a final finding?
- WAC 388-71-01280 Does the department disclose information about final findings of abuse, abandonment, neglect and financial exploitation?
- WAC 388-71-01281 To whom does the department report a final substantiated finding against a nursing assistant employed in a nursing facility or skilled nursing facility?