



RULE-MAKING ORDER EMERGENCY RULE ONLY

CR-103E (August 2017) (Implements RCW 34.05.350 and 34.05.360)

CODE REVISER USE ONLY

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STATE OF WASHINGTON
FILED

DATE: December 05, 2017

TIME: 12:10 PM

WSR 17-24-086

Agency: Department of Social and Health Services, Aging and Long-Term Support Administration

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify) December 6, 2017

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes
 - No
- If Yes, explain:

Purpose: The department is amending WAC 388-71-0105 to strike the term "willful" from the definitions list as a result of an order by the Division III Court of Appeals in Crosswhite v DSHS invalidating the current definition of "willful".

Citation of rules affected by this order:

- New: None
- Repealed: None
- Amended: WAC 388-71-0105
- Suspended: None

Statutory authority for adoption: RCW 74.08.090

Other authority:

EMERGENCY RULE

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: The Division III Court of Appeals invalidated the current definition of "willful" in WAC 388-71-0105. The removal of the current term is necessary to comply with the court's order. The department filed a CR-102 on October 17, 2017 and held a public hearing on November 21, 2017. The permanent rule will not be in effect before the current emergency rule expires on December 6, 2017. This CR-103E extends the emergency rule until the permanent rule becomes effective.

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	<u>1</u>	Repealed	___

The number of sections adopted at the request of a nongovernmental entity:

New	___	Amended	___	Repealed	___
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The number of sections adopted on the agency's own initiative:

New	___	Amended	___	Repealed	___
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	___	Amended	___	Repealed	___
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The number of sections adopted using:

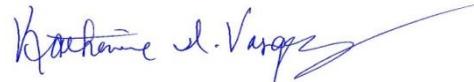
Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	<u>1</u>	Repealed	___

Date adopted: November 27, 2017

Name: Katherine I. Vasquez

Title: DSHS Rules Coordinator

Signature:



WAC 388-71-0105 What definitions apply to adult protective services? In addition to the definitions found in chapter 74.34 RCW, the following definitions apply to adult protective services:

"AL TSA" means DSHS aging and long-term support administration.

"Adult family home" means a home or building licensed under chapter 70.128 RCW.

"ALJ" means an administrative law judge, an impartial decision-maker who is an attorney and presides at an administrative hearing. The office of administrative hearings (OAH), which is a state agency, employs the ALJs. ALJs are not DSHS employees or DSHS representatives.

"APS" means adult protective services.

"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.

"BOA" means the DSHS board of appeals. The board of appeals consists of lawyers who are members of the Washington State Bar Association. An ALJ's decision can be appealed to the board of appeals, allowing a level of review before an appeal to the court system may be considered.

"DSHS" means the department of social and health services.

"Enhanced service facility" means a home or building licensed under chapter 70.97 RCW.

"Facility" means a residence licensed as an assisted living facility under chapter 18.20 RCW, an adult family home under chapter 70.128 RCW, a nursing home under chapter 18.51 RCW, a soldier's home under chapter 72.36 RCW, a residential habilitation center under chapter 71A.20 RCW, an enhanced services facility under chapter 71.05 RCW, or any other facility or residential program licensed or certified by DSHS's aging and long-term support administration.

"Final finding" means a substantiated initial finding of abandonment, abuse, financial exploitation or neglect that:

(1) Has been upheld through the administrative appeal described in WAC 388-71-01205 through 388-71-01280, or

(2) Is not timely appealed to the office of administrative hearings. A final finding may be appealed to superior court and the court of appeals under the Administrative Procedure Act, chapter 34.05 RCW.

"Intermediate care facility for individuals with intellectual disabilities (ICF/IID)" means a facility certified under 42 C.F.R. Part 483, Subpart I.

"Legal representative" means a guardian appointed under chapter 11.88 RCW or an attorney-in-fact under chapter 11.94 RCW.

"Nursing Assistant" means a nursing assistant as defined under RCW 18.88A.020 or successor laws.

"Nursing facility (NF)" or **"medicaid-certified nursing facility"** means a nursing home licensed under chapter 18.51 RCW, 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 federal Social Security Act (42 U.S.C. § 1396r). All beds in a nursing facility are certified to provide medicaid services, even though one or more of the beds may also be certified to provide medicare skilled nursing facility services.

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

"Person with a duty of care" includes, but is not limited to, the following:

(1) A guardian appointed under chapter 11.88 RCW; ~~((ex))~~

(2) A person named in a durable power of attorney as the attorney-in-fact as defined under chapter 11.94 RCW~~((-))~~; or

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

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

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

"Personal aide" as found in RCW 74.39.007.

"Self-directed care" as found in RCW 74.39.007.

"Skilled nursing facility (SNF)" or **"medicare-certified 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 federal Social Security Act (42 U.S.C. § 1395i-3).

"Substantiated initial finding" means a determination made by the department upon investigation of an allegation of abandonment, abuse, financial exploitation, neglect, or self-neglect that more likely than not occurred.

~~((**"Willful"** means the nonaccidental action or inaction by an alleged perpetrator that he/she knew or reasonably should have known could cause harm, injury or a negative outcome.))~~