

388-97-4160**Initial nursing home license.**

(1) A complete nursing home license application must be:

- (a) Submitted at least sixty days prior to the proposed effective date of the license on forms designated by the department;
- (b) Signed by the proposed licensee or the proposed licensee's authorized representative;
- (c) Notarized; and
- (d) Reviewed by the department in accordance with this chapter.

(2) All information requested on the license application must be provided. At minimum, the nursing home license application will require the following information:

- (a) The name and address of the proposed licensee, and any partner, officer, director, managerial employee, or owner of five percent or more of the proposed licensee;
- (b) The names of the administrator, director of nursing services, and, if applicable, the management company;
- (c) The specific location and the mailing address of the facility for which a license is sought;
- (d) The number of beds to be licensed; and
- (e) The name and address of all nursing homes that the proposed licensee or any partner, officer, director, managerial employee, or owner of five percent or more of the proposed licensee has been affiliated with in the past ten years.

(3) The proposed licensee must be:

- (a) The individual or entity responsible for the daily operation of the nursing home;
- (b) Denied the license if any individual or entity named in the application is found by the department to be unqualified.

(4) For initial licensure of a new nursing home, the proposed licensee must submit the annual license fee with the initial license application. The nonrefundable nursing home license fee is three hundred twenty seven dollars per bed per year.

(5) If any information submitted in the initial license application changes before the license is issued, the proposed licensee must submit a revised application containing the changed information.

(6) If a license application is pending for more than six months, the proposed licensee must submit a revised application containing current information about the proposed licensee or any other individuals or entities named in the application.

[Statutory Authority: RCW [18.51.050](#), [43.135.055](#), and 2010 c 37 § 206 (19)(a). 10-21-037, § 388-97-4160, filed 10/12/10, effective 10/29/10. Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-4160, filed 9/24/08, effective 11/1/08.]

388-97-4166**Liability insurance required.**

The nursing home must:

- (1) Obtain liability insurance upon licensure and maintain the insurance as required in WAC [388-97-4167](#) and [388-97-4168](#); and

- (2) Have evidence of liability insurance coverage available if requested by the department.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW. 10-02-021, § 388-97-4166, filed 12/29/09, effective 1/29/10.]

388-97-4167

Liability insurance required — Commercial general liability insurance or business liability insurance coverage.

The nursing home must have commercial general liability insurance or business liability insurance that includes:

- (1) Coverage for the acts and omissions of any employee and volunteer;
- (2) Coverage for bodily injury, property damage, and contractual liability;
- (3) Coverage for premises, operations, independent contractors, products-completed operations, personal injury, advertising injury, and liability assumed under an insured contract; and
- (4) Minimum limits of:
 - (a) Each occurrence at one million dollars; and
 - (b) General aggregate at two million dollars.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW. 10-02-021, § 388-97-4167, filed 12/29/09, effective 1/29/10.]

388-97-4168

Liability insurance required — Professional liability insurance coverage.

The nursing home must have professional liability insurance or errors and omissions insurance. The insurance must include:

- (1) Coverage for losses caused by errors and omissions of the nursing home, its employees, and volunteers; and
- (2) Minimum limits of:
 - (a) Each occurrence at one million dollars; and
 - (b) Aggregate at two million dollars.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW. 10-02-021, § 388-97-4168, filed 12/29/09, effective 1/29/10.]

388-97-4180

Nursing home license renewal.

- (1) All nursing home licenses must be renewed annually.
- (2) License renewals must be:
 - (a) Submitted at least thirty days prior to the license's expiration date on forms designated by the department;
 - (b) Signed by the current licensee; and
 - (c) Reviewed by the department in accordance with this chapter.
- (3) The current licensee must provide all information on the license renewal form or other information requested by the department.
- (4) The application for a nursing home license renewal must be made by the individual or entity currently licensed and responsible for the daily operation of the nursing home.
- (5) The nursing home license renewal fee must be submitted at the time of renewal. The nonrefundable nursing home license renewal fee is three hundred twenty seven dollars per bed per year.
- (6) In unusual circumstances, the department may issue an interim nursing home license for a period not to exceed three months. The current licensee must submit the prorated nursing home license fee for the period covered by the interim license. The annual date of license renewal does not change when an interim license is issued.
- (7) A change of nursing home ownership does not change the date of license renewal and fee payment.

[Statutory Authority: RCW [18.51.050](#), [43.135.055](#), and 2010 c 37 § 206 (19)(a). 10-21-037, § 388-97-4180, filed 10/12/10, effective 10/29/10. Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-4180, filed 9/24/08, effective 11/1/08.]

388-97-4200

Department review of initial nursing home license applications.

- (1) All initial nursing home license applications must be reviewed by the department under this chapter.
- (2) The department will not begin review of an incomplete license application.
- (3) The proposed licensee must respond to any department request for additional information within five working days.
- (4) When the application is determined to be complete, the department will consider the proposed licensee or any partner, officer, director, managerial employee, or owner of five percent or more of the proposed licensee, separately and jointly, in its review. The department will review:
 - (a) The information contained in the application;
 - (b) Survey and complaint investigation citations in every facility each individual and entity named in the application has been affiliated with during the past ten years;
 - (c) Compliance history;
 - (d) Financial assessments;
 - (e) Actions against the proposed licensee (i.e., revocation, suspension, refusal to renew, etc.);
 - (f) All criminal convictions, and relevant civil or administrative actions or findings including, but not limited to, findings, including professional disciplinary actions, and findings of abuse, neglect, exploitation, abandonment, or domestic violence

resulting from a civil adjudication proceeding; and

(g) Other relevant information.

(5) The department will notify the proposed licensee of the results of the review.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW. 10-02-021, § 388-97-4200, filed 12/29/09, effective 1/29/10. Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-4200, filed 9/24/08, effective 11/1/08.]

388-97-4220

Reasons for denial, suspension, modification, revocation of, or refusal to renew a nursing home license.

(1) The department may deny, suspend, modify, revoke, or refuse to renew a nursing home license when the department finds the proposed or current licensee, or any partner, officer, director, managing employee, owner of five percent or more of the proposed or current licensee of the nursing home, owner of five percent or more of the assets of the nursing home, proposed or current administrator, or employee or individual providing nursing home care or services has:

(a) Failed or refused to comply with the:

(i) Requirements established by chapters [18.51](#), [74.42](#), or [74.46](#) RCW and regulations adopted under these chapters; or

(ii) Medicaid requirements of Title XIX of the Social Security Act and medicaid regulations, including 42 CFR, Part 483.

(b) A history of significant noncompliance with federal or state regulations in providing nursing home care;

(c) No credit history or a poor credit history;

(d) Engaged in the illegal use of drugs or the excessive use of alcohol or been convicted of "crimes relating to drugs" as defined in RCW [43.43.830](#), unless subsection (3)(c) applies;

(e) Unlawfully operated a nursing home, or long term care facility as defined in RCW [70.129.010](#), without a license or under a revoked or suspended license;

(f) Previously held a license to operate a hospital or any facility for the care of children or vulnerable adults, and that license has been revoked, or suspended, or the licensee did not seek renewal of the license following written notification of the licensing agency's initiation of revocation or suspension of the license;

(g) Obtained or attempted to obtain a license by fraudulent means or misrepresentation;

(h) Permitted, aided, or abetted the commission of any illegal act on the nursing home premises;

(i) Been convicted of a felony or other crime that would not be automatically disqualifying under RCW [74.39A.050](#)(8) or this chapter, if the conviction reasonably relates to the competency of the individual to own or operate a nursing home;

(j) Had a sanction, corrective, or remedial action taken by federal, state, county or municipal officials or safety officials related to the care or treatment of children or vulnerable adults;

(k) Failed to:

(i) Provide any authorization, documentation, or information the department requires in order to verify information contained in the application;

(ii) Meet financial obligations as the obligations fall due in the normal course of business;

- (iii) Verify additional information the department determines relevant to the application;
- (iv) Report abandonment, abuse, neglect or financial exploitation in violation of chapter [74.34](#) RCW; or in the case of a skilled nursing facility or nursing facilities, failure to report as required by 42 C.F.R. 483.13; or
- (v) Pay a civil fine the department assesses under this chapter within ten days after assessment becomes final.
- (l) Been certified pursuant to RCW [74.20A.320](#) as a person who is not in compliance with a child support order (license suspension only);
- (m) Knowingly or with reason to know makes a false statement of a material fact in the application for a license or license renewal, in attached data, or in matters under department investigation;
- (n) Refused to allow department representatives or agents to inspect required books, records, and files or portions of the nursing home premises;
- (o) Willfully prevented, interfered with, or attempted to impede the work of authorized department representatives in the:
 - (i) Lawful enforcement of provisions under this chapter or chapters [18.51](#) or [74.42](#) RCW; or
 - (ii) Preservation of evidence of violations of provisions under this chapter or chapters [18.51](#) or [74.42](#) RCW.
- (p) Retaliated against a resident or employee initiating or participating in proceedings specified under RCW [18.51.220](#); or
- (q) Discriminated against medicaid recipients as prohibited under RCW [74.42.055](#).

(2) In determining whether there is a history of significant noncompliance with federal or state regulations under subsection (1)(b), the department may, at a minimum, consider:

- (a) Whether the violation resulted in a significant harm or a serious and immediate threat to the health, safety, or welfare of any resident;
- (b) Whether the proposed or current licensee promptly investigated the circumstances surrounding any violation and took steps to correct and prevent a recurrence of a violation;
- (c) The history of surveys and complaint investigation findings and any resulting enforcement actions;
- (d) Repeated failure to comply with regulations;
- (e) Inability to attain compliance with cited deficiencies within a reasonable period of time; and
- (f) The number of violations relative to the number of facilities the proposed or current licensee, or any partner, officer, director, managing employee, employee or individual providing nursing home care or services has been affiliated within the past ten years, or owner of five percent or more of the proposed or current licensee or of the assets of the nursing home.

(3) The department must deny, suspend, revoke, or refuse to renew a proposed or current licensee's nursing home license if the proposed or current licensee or any partner, officer, director, managing employee, owner of five percent or more of the proposed or current licensee of the nursing home or owner of five percent or more of the assets of the nursing home, proposed or current administrator, or employee or individual providing nursing home care or services has been:

- (a) Convicted of a "crime against children or other persons" as defined under RCW [43.43.830](#) unless the individual has been convicted of one of the two crimes listed below and the required number of years has passed between the most recent conviction and the date of the application for employment:
 - (i) Simple assault, assault in the fourth degree, or the same offense as it may hereafter be renamed, and three or more years have passed;
 - (ii) Prostitution, or the same offense as it may hereafter be renamed, and three or more years have passed.

(b) Convicted of a "crime relating to financial exploitation" as defined under RCW [43.43.830](#) unless the individual has been convicted of one of the three crimes listed below and the required number of years has passed between the most

recent conviction and the date of the application for employment:

- (i) Theft in the second degree, or the same offense as it may hereafter be renamed, and five or more years have passed;
 - (ii) Theft in the third degree, or the same offense as it may hereafter be renamed, and three or more years have passed;
- or
- (iii) Forgery, or the same offense as it may hereafter be renamed, and five or more years have passed.
- (c) Convicted of:
- (i) Violation of the Imitation Controlled Substances Act (VICSA);
 - (ii) Violation of the Uniform Controlled Substances Act (VUCSA);
 - (iii) Violation of the Uniform Legend Drug Act (VULDA); or
 - (iv) Violation of the Uniform Precursor Drug Act (VUPDA).
- (d) Convicted of sending or bringing into the state depictions of a minor engaged in sexually explicit conduct;
- (e) Convicted of criminal mistreatment;
- (f) Found by a court in a criminal proceeding or a protection proceeding under chapter [74.34](#) RCW, or any comparable state or federal law, to have abandoned, abused, neglected or financially exploited a vulnerable adult;
- (g) Found in any final decision issued by a disciplinary board to have sexually or physically abused or exploited any minor or an individual with a developmental disability or to have abused, neglected, abandoned, or financially exploited any vulnerable adult;
- (h) Found in any dependency action to have sexually assaulted or exploited any minor or to have physically abused any minor;
- (i) Found by a court in a domestic relations proceeding under Title [26](#) RCW, or any comparable state or federal law, to have sexually abused or exploited any minor or to have physically abused any minor;
- (j) Found to have abused or neglected a child, and the finding is:
- (i) Listed on the department's background check central unit (BCCU) report; or
 - (ii) Disclosed by the individual, except for findings made before December, 1998.
- (k) Found to have abandoned, abused, neglected, or financially exploited a vulnerable adult, and the finding is:
- (i) Listed on any registry, including the department registry;
 - (ii) Listed on the department's background check central unit (BCCU) report; or
 - (iii) Disclosed by the individual, except for adult protective services findings made before October, 2003.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW. 10-02-021, § 388-97-4220, filed 12/29/09, effective 1/29/10. Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-4220, filed 9/24/08, effective 11/1/08.]

A proposed or current licensee contesting a department licensing decision must file a written request for an administrative hearing within twenty days of receipt of the decision.

The appeals process and requirements are set forth in WAC [388-97-4440](#).

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-4240, filed 9/24/08, effective 11/1/08.]

388-97-4260

Management agreements.

(1) The licensee is responsible for the daily operations of the nursing home.

(2) As used in this section:

(a) "**Management agreement**," means a written, executed, agreement between the licensee and another individual or entity regarding the provision of certain services in a nursing home; and

(b) "**Manager**" refers to the individual or entity providing services under a management agreement.

(3) The licensee may not give the manager responsibilities that are so extensive that the licensee is relieved of responsibility for the daily operations and provisions of services of the facility. If the licensee does so, then the department must determine that a change of ownership has occurred.

(4) The proposed licensee or the current licensee must notify the residents and their representatives sixty days before entering into a management agreement.

(5) The department must receive a written management agreement, including an organizational chart showing the relationship between the proposed or current licensee, management company, and all related organizations:

(a) Sixty days before:

(i) The proposed change of ownership date;

(ii) The initial licensure date; or

(iii) The effective date of the management agreement; or

(b) Thirty days before the effective date of any amendment to an existing management agreement.

(6) Management agreements, at minimum must:

(a) Create a principal/agent relationship between the licensee and the manager;

(b) Describe the responsibilities of the licensee and manager, including items, services, and activities to be provided;

(c) Require the licensee's governing body, board of directors, or similar authority to appoint the facility administrator;

(d) Provide for maintenance and retention of all records as applicable according to rules and regulations;

(e) Allow unlimited access by the department to documentation and records according to applicable laws or regulations;

(f) Require the licensee to participate in monthly oversight meetings and quarterly on-site visits to the facility;

(g) Require the manager to immediately send copies of surveys and notices of noncompliance to the licensee;

(h) State that the licensee is responsible for ensuring all licenses, certifications, and accreditations are obtained and maintained;

(i) State that the manager and licensee will review the management agreement annually and notify the department of changes according to applicable regulations;

(j) Acknowledge that the licensee is the party responsible for meeting state and federal licensing and certification requirements;

(k) Require the licensee to maintain ultimate responsibility over personnel issues relating to the operation of the nursing home and care of the residents, including but not limited to, staffing plans, orientation, and training;

(l) Require that, even if day-to-day management of the trust funds are delegated, the licensee:

(i) Retains all fiduciary and custodial responsibility for funds that have been deposited with the nursing home by the resident; and

(ii) Is directly accountable to the residents for such funds.

(m) Provide that if any responsibilities for the day-to-day management of the resident trust fund are delegated to the manager, then the manager must:

(i) Provide the licensee with a monthly accounting of the resident funds; and

(ii) Meet all legal requirements related to holding, and accounting for, resident trust funds; and

(n) State that the manager will not represent itself or give the appearance it is the licensee.

(7) Upon receipt of a proposed management agreement, the department may require:

(a) The licensee or manager to provide additional information or clarification;

(b) Any changes necessary to:

(i) Bring the management agreement into compliance with this section; and

(ii) Ensure that the licensee has not been relieved of the responsibility for the daily operations of the facility; and

(c) More frequent contact between the licensee and manager under subsection (6)(f).

(8) The licensee and manager must act in accordance with the terms of the management agreements. If the department determines that they are not, then the department may take action deemed appropriate.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-4260, filed 9/24/08, effective 11/1/08.]

388-97-4280

Change of ownership.

(1) A change of ownership occurs when there is a substitution, elimination, or withdrawal of the licensee or a substitution of control of the licensee. "**Control**," as used in this section, means the possession, directly or indirectly, of the power to direct the management, operation, and policies of the licensee, whether through ownership, voting control, by agreement, by contract or otherwise. Events which constitute a change of ownership include, but are not limited to, the following:

- (a) The form of legal organization of the licensee is changed (e.g., a sole proprietor forms a partnership or corporation);
- (b) The licensee transfers ownership of the nursing home business enterprise to another party regardless of whether ownership of some or all of the real property and/or personal property assets of the facility is also transferred;
- (c) Dissolution or consolidation of the entity;
- (d) Merger unless the licensee survives the merger and there is not a change in control of the licensee;
- (e) If, during any continuous twenty-four month period, fifty percent or more of the entity is transferred, whether by a single transaction or multiple transactions, to:
 - (i) A different party (e.g., new or former shareholders); or
 - (ii) An individual or entity that had less than a five percent ownership interest in the nursing home at the time of the first transaction; or
 - (f) Any other event or combination of events that the department determines results in a:
 - (i) Substitution, elimination, or withdrawal of the licensee; or
 - (ii) Substitution of control of the licensee responsible for the daily operational decisions of the nursing home.
- (2) Ownership does not change when the following, without more, occur:
 - (a) A party contracts with the licensee to manage the nursing home enterprise in accordance with the requirements of WAC [388-97-4260](#); or
 - (b) The real property or personal property assets of the nursing home are sold or leased, or a lease of the real property or personal property assets is terminated, as long as there is not a substitution or substitution of control of the licensee.
- (3) When a change of ownership is contemplated, the current licensee must notify the department and all residents and their representatives at least sixty days prior to the proposed date of transfer. The notice must be in writing and contain the following information as specified in RCW [18.51.530](#):
 - (a) Name of the proposed licensee;
 - (b) Name of the managing entity;
 - (c) Names, addresses, and telephone numbers of department personnel to whom comments regarding the change may be directed;
 - (d) Names of all officers and the registered agent in the state of Washington if proposed licensee is a corporation; and
 - (e) Names of all general partners if proposed licensee is a partnership.
- (4) The proposed licensee must comply with license application requirements. The operation or ownership of a nursing home must not be transferred until the proposed licensee has been issued a license to operate the nursing home.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-4280, filed 9/24/08, effective 11/1/08.]

388-97-4300
Licensed bed capacity.

A nursing home must not be licensed for a capacity that exceeds the number of beds permitted under:

- (1) This chapter;
- (2) Chapter [70.38](#) RCW and regulations thereunder; or
- (3) Applicable local zoning, building or other such regulations.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-4300, filed 9/24/08, effective 11/1/08.]

388-97-4320

Relocation of residents.

- (1) In the event of license revocation or suspension, decertification, or other emergency closures the department will:
 - (a) Notify residents and, when appropriate, resident representatives of the action;
 - (b) Assist with residents' relocation and identify possible alternative living choices and locations; and
 - (c) The nursing home will assist the residents to the extent it is directed to do so by the department.
- (2) When a resident's relocation occurs due to an emergency closure from a natural disaster, the nursing home may not be required to cease its business operations unless directed to do so by the department.
- (3) When a resident's relocation occurs due to a nursing home's voluntary closure, or voluntary termination of its medicare or medicaid contract or both, the nursing home must:
 - (a) Notify the department and all residents and resident representatives in accordance with WAC [388-97-1640](#);
 - (b) Notify the Centers for Medicare and Medicaid Services and the public as required by 42 C.F.R. 489.52, or a successor regulation, if the closure or termination affects the provision of medicare services; and
 - (c) Provide appropriate discharge planning and coordination for all residents including a plan to the department for safe and orderly transfer or discharge of residents from the nursing home.
- (4) The department may provide residents assistance with relocation.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW. 10-02-021, § 388-97-4320, filed 12/29/09, effective 1/29/10. Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-4320, filed 9/24/08, effective 11/1/08.]

388-97-4340

License relinquishment.

- (1) A nursing home licensee must voluntarily relinquish its license when:
 - (a) The nursing home ceases to do business as a nursing home; and
 - (b) Within twenty-four hours after the last resident is discharged from the facility.

(2) The nursing home may not be required to relinquish its license when residents must be relocated due to emergency closures from natural disasters.

(3) The relinquished license must be returned to the department.

(4) If a nursing home licensee fails to voluntarily relinquish its license when required, the department will revoke the license.

[Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW. 10-02-021, § 388-97-4340, filed 12/29/09, effective 1/29/10. Statutory Authority: Chapters [18.51](#) and [74.42](#) RCW and 42 C.F.R. 489.52. 08-20-062, § 388-97-4340, filed 9/24/08, effective 11/1/08.]