



RULE-MAKING ORDER PERMANENT RULE ONLY

CR-103P (December 2017) (Implements RCW 34.05.360)

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FILED

DATE: February 06, 2020

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WSR 20-05-016

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

Effective date of rule:

Permanent Rules

- 31 days after filing.
- Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

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

- Yes No If Yes, explain:

Purpose: These rule changes came from concerns raised by representatives of the adult family home industry regarding barriers to entry for certain provider and entity types, and are intended to address these issues and clarify other requirements for licensure that have been ambiguous. The anticipated effect is to reduce regulatory burdens for new qualified providers and to increase access to the adult family home industry and access to beds for residents.

Citation of rules affected by this order:

New: WAC 388-76-10041, 388-76-10201

Repealed: None

Amended: WAC 388-76-10000, 388-76-10003, 388-76-10020, 388-76-10035, 388-76-10037, 388-76-10060, 388-76-10063, 388-76-10064, 388-76-10074, 388-76-10085, 388-76-10090, 388-76-10095, 388-76-10105, 388-76-10106, 388-76-10107, 388-76-10120, 388-76-10125, 388-76-10129, 388-76-10130, 388-76-10145, 388-76-10950

Suspended: None

Statutory authority for adoption: RCW 70.128.040, RCW 70.128.060

Other authority: None

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 19-21-116 on October 18, 2019 (date).

Describe any changes other than editing from proposed to adopted version: No changes have been made since the supplemental proposal.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

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**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Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___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	___	Repealed	___

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

New	<u>2</u>	Amended	<u>16</u>	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	<u>2</u>	Amended	<u>21</u>	Repealed	___
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The number of sections adopted using:

Negotiated rule making:	New	<u>2</u>	Amended	<u>21</u>	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	___	Repealed	___

Date Adopted: February 6, 2020

Name: Cheryl Strange

Title: Secretary

Signature:



WAC 388-76-10000 Definitions. "**Abandonment**" means action or inaction by a person or entity with a duty of care for a frail elder or vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

"**Abuse**" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment of a vulnerable adult.

(1) In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish.

(2) Abuse includes sexual abuse, mental abuse, physical abuse, and personal exploitation of a vulnerable adult, and improper use of restraint against a vulnerable adult which have the following meanings:

(a) "**Sexual abuse**" means any form of nonconsensual sexual conduct, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse also includes any sexual conduct between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not consensual.

(b) "**Physical abuse**" means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, or prodding.

(c) "**Mental abuse**" means a willful verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. Mental abuse may include ridiculing, yelling, or swearing.

(d) "**Personal exploitation**" means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

(e) "**Improper use of restraint**" means the inappropriate use of chemical, physical, or mechanical restraints for convenience or discipline or in a manner that:

(i) Is inconsistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW;

(ii) Is not medically authorized; or

(iii) Otherwise constitutes abuse under this section.

"**Adult family home**" or "**AFH**" means:

(1) A residential home in which a person or an entity is licensed to provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to a (~~licensed operator~~) provider, entity representative, resident manager, or caregiver, who resides in the home.

(2) As used in this chapter, the term "entity" includes corporations, partnerships, and limited liability companies, and the term

"adult family home" includes the person or entity that is licensed to operate an adult family home.

"Affiliated with an applicant" means any person listed on the application as a partner, officer, director, resident manager, entity representative, or majority owner of the applying entity, or is the spouse or domestic partner of the applicant.

"Affiliated entity" means any entity owned, controlled, or managed by the applicant or licensed provider, or associated with a parent or subsidiary entity applying for, or holding, an adult family home license.

"Applicant" means:

(1) An individual, partnership, corporation, or other entity seeking a license to operate an adult family home; and

(2) For the following sections only, also includes an entity representative solely for the purposes of fulfilling requirements on behalf of the entity:

(a) WAC 388-76-10020(1);

(b) WAC 388-76-10035(1);

(c) WAC 388-76-10060;

(d) WAC 388-76-10064;

(e) WAC 388-76-10120;

(f) WAC 388-76-10125;

(g) WAC 388-76-10129;

(h) WAC 388-76-10130;

(i) WAC 388-76-10146(4);

(j) WAC 388-76-10265;

(k) WAC 388-76-10500; and

(l) WAC 388-76-10505.

"Capacity" means the maximum number of persons in need of personal or special care who are permitted to reside in an adult family home at a given time. Capacity includes:

(1) The number of related children or adults in the home who receive personal or special care and services; and

(2) The number of residents the adult family home may admit and retain (resident capacity), which is the number listed on the license.

"Caregiver" means any person eighteen years of age or older responsible for providing direct personal or special care to a resident and who is not the provider, entity representative, a student or volunteer.

"Chemical restraint" means the administration of any drug to manage a vulnerable adult's behavior in a way that reduces the safety risk to the vulnerable adult or others, has a temporary effect of restricting the vulnerable adult's freedom of movement, and is not standard treatment for the vulnerable adult's medical or psychiatric condition.

"Consent" means express written consent granted after the vulnerable adult or their legal representative has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

"Dementia" means a condition documented through the assessment process required by WAC 388-76-10335.

"Department" means the Washington state department of social and health services.

"Department case manager" means the department authorized staff person or designee assigned to negotiate, monitor, and facilitate a care and services plan for residents receiving services paid for by the department.

"Developmental disability" means the same as defined under WAC 388-823-0015.

"Direct supervision" means oversight by a person who has demonstrated competency in the basic training and specialty training if required, or who has been exempted from the basic training requirements and is:

- (1) On the premises; and
- (2) Quickly and easily available to the caregiver.

"Domestic partners" means two adults who meet the requirements for a valid state registered domestic partnership as established by RCW 26.60.030 and who have been issued a certificate of state registered domestic partnership.

"Entity representative" means the individual designated by an entity provider or entity applicant as its representative for the purposes of fulfilling the training and qualification requirements under this chapter that only an individual can fulfill where an entity cannot. The entity representative is responsible for overseeing the operation of the home. The entity representative does not hold the license on behalf of the entity.

"Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.020(7).

"Financial solvency" means that the applicant or provider is able to meet debts or financial obligations with some money to spare.

~~(**"Entity representative"** means the individual designated by a provider who is or will be responsible for the daily operation of the adult family home and who meets the requirements of this chapter and chapter 388-112A WAC.)~~

"Home" means adult family home.

"Imminent danger" or **"immediate threat"** means serious physical harm to or death of a resident has occurred, or there is a serious threat to the resident's life, health, or safety.

"Indirect supervision" means oversight by a person who is quickly and easily available to the caregiver, but not necessarily on-site and:

- (1) Has demonstrated competency in the basic and specialty training, if required; or
- (2) Is exempt from basic training requirements.

"Inspection" means a review by department personnel to determine the health, safety, and well-being of residents, and the adult family home's compliance with this chapter and chapters 70.128, 70.129, 74.34 RCW, and other applicable rules and regulations. The department's review may include an on-site visit.

"Management agreement" means a written, executed agreement between the adult family home and another individual or entity regarding the provision of certain services on behalf of the adult family home.

"Mandated reporter" means an employee of the department, law enforcement, officer, social worker, professional school personnel, individual provider, an employee of a facility, an employee of a social service, welfare, mental health, adult day health, adult day care, or hospice agency, county coroner or medical examiner, Christian Science practitioner, or health care provider subject to chapter 18.130 RCW. For the purpose of the definition of a mandated reporter, **"Facility"** means a residence licensed or required to be licensed under chapter

18.20 RCW (assisted living facilities), chapter 18.51 RCW (nursing homes), chapter 70.128 RCW (adult family homes), chapter 72.36 RCW (soldiers' homes), chapter 71A.20 RCW (residential habilitation centers), or any other facility licensed by the department.

"Mechanical restraint" means any device attached or adjacent to the vulnerable adult's body that they cannot easily remove and restricts freedom of movement or normal access to the vulnerable adult's body. "Mechanical restraint" does not include the use of devices, materials, or equipment that are:

- (a) Medically authorized, as required; and
- (b) Used in a manner that is consistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW.

"Medical device" as used in this chapter, means any piece of medical equipment used to treat a resident's assessed need.

(1) A medical device is not always a restraint and should not be used as a restraint;

(2) Some medical devices have considerable safety risks associated with use; and

(3) Examples of medical devices with known safety risks when used are transfer poles, Posey or lap belts, and side rails.

"Medication administration" means giving resident medications by a person legally authorized to do so, such as a physician, pharmacist, or nurse.

"Medication organizer" is a container with separate compartments for storing oral medications organized in daily doses.

"Mental illness" is defined as an axis I or II diagnosed mental illness as outlined in volume IV of the Diagnostic and Statistical Manual of Mental Disorders (a copy is available for review through the aging and disability services administration).

"Minimal" means violations that result in little or no negative outcome or little or no potential harm for a resident.

"Moderate" means violations that result in negative outcome and actual or potential harm for a resident.

"Multiple ((facility)) home provider" means a provider who is licensed to operate more than one adult family home.

"Neglect" means:

(1) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or

(2) An act or omission by a person or entity with a duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

"Nurse delegation" means a registered nurse transfers the performance of selected nursing tasks to competent nursing assistants, home care aides, or qualified long-term care workers in selected situations. The registered nurse delegating the task retains the responsibility and accountability for the nursing care of the resident.

"Over-the-counter medication" is any medication that can be purchased without a prescriptive order, including but not limited to vitamin, mineral, or herbal preparations.

"Permanent restraining order" means a restraining order or order of protection issued either following a hearing, or by stipulation of

the parties. A "permanent restraining order" order may be in force for a specific time period (for example, one year), after which it expires.

"Personal care services" means both physical assistance and prompting and supervising the performance of direct personal care tasks as determined by the resident's needs and does not include assistance with tasks performed by a licensed health professional.

"Physical restraint" means application of physical force without the use of any device, for the purpose of restraining the free movement of a vulnerable adult's body. "Physical restraint" does not include briefly holding without undue force a vulnerable adult in order to calm or comfort them, or holding a vulnerable adult's hand to safely escort them from one area to another.

"Placement agency" is an "elder or vulnerable adult referral agency" as defined in chapter 18.330 RCW and means a business or person who receives a fee from or on behalf of a vulnerable adult seeking a referral to care services or supportive housing or who receives a fee from a care services provider or supportive housing provider because of any referral provided to or on behalf of a vulnerable adult.

"Practitioner" includes a physician, osteopathic physician, podiatric physician, pharmacist, licensed practical nurse, registered nurse, advanced registered nurse practitioner, dentist, and physician assistant licensed in the state of Washington.

"Prescribed medication" refers to any medication (legend drug, controlled substance, and over-the-counter) that is prescribed by an authorized practitioner.

"Provider" means:

(1) Any (~~person~~) individual who is licensed to operate an adult family home and meets the requirements of this chapter; (~~or~~)

(2) Any corporation, partnership, (~~or~~) limited liability company, or other entity that is licensed under this chapter to operate an adult family home and meets the requirements of this chapter; and

(3) For the following sections only, also includes an entity representative solely for the purposes of fulfilling requirements on behalf of the entity:

(a) WAC 388-76-10020(1);

(b) WAC 388-76-10035(1);

(c) WAC 388-76-10060;

(d) WAC 388-76-10064;

(e) WAC 388-76-10120;

(f) WAC 388-76-10125;

(g) WAC 388-76-10129;

(h) WAC 388-76-10130;

(i) WAC 388-76-10146(4);

(j) WAC 388-76-10265;

(k) WAC 388-76-10500; and

(l) WAC 388-76-10505.

"Psychopharmacologic medications" means the class of prescription medications, which includes but is not limited to antipsychotics, anti-anxiety medications, and antidepressants, capable of affecting the mind, emotions, and behavior.

"Recurring" or **"repeated"** means that the department has cited the adult family home for a violation of applicable licensing laws or rules and the circumstances of (1) or (2) of this definition are present and if the previous violation in subsection (1) or (2) of this definition was pursuant to a law or rule that has changed at the time

of the new violation, a citation to the equivalent current rule or law is sufficient:

(1) The department previously imposed an enforcement remedy for a violation of the same section of law or rule for substantially the same problem following any type of inspection within the preceding thirty-six months.

(2) The department previously cited a violation under the same section of law or rule for substantially the same problem following any type of inspection on two occasions within the preceding thirty-six months.

"Resident" means any adult unrelated to the provider who lives in the adult family home and who is in need of care. Except as specified elsewhere in this chapter, for decision-making purposes, the term "resident" includes the resident's surrogate decision maker acting under state law.

"Resident manager" means a person employed or designated by the provider to manage the adult family home and who meets the requirements of this chapter.

"Serious" means violations that either result in one or more negative outcomes and significant actual harm to residents that does not constitute imminent danger, or there is a reasonable predictability of recurring actions, practices, situations, or incidents with potential for causing significant harm to a resident, or both.

"Severity" means the seriousness of a violation as determined by actual or potential negative outcomes for residents and subsequent actual or potential for harm. Outcomes include any negative effect on the resident's physical, mental, or psychosocial well-being (such as safety, quality of life, quality of care).

"Significant change" means:

(1) A lasting change, decline, or improvement in the resident's baseline physical, mental, or psychosocial status;

(2) The change is significant enough so either the current assessment, or negotiated care plan, or both, do not reflect the resident's current status; and

(3) A new assessment may be needed when the resident's condition does not return to baseline within a two week period of time.

"Special care" means care beyond personal care services as defined in this section.

"Staff" means any person who is employed or used by an adult family home, directly or by contract, to provide care and services to any residents.

Staff must meet all the requirements in this chapter and chapter 388-112A WAC.

"Temporary restraining order" means a restraining order or order of protection that expired without a hearing, was dismissed following an initial hearing, or was dismissed by stipulation of the parties before an initial hearing.

"Uncorrected" means the department has cited a violation of WAC or RCW following an inspection and the violation remains uncorrected at the time of a subsequent inspection for the specific purpose of verifying whether such violation has been corrected.

"Unsupervised" means not in the presence of:

(1) Another employee or volunteer from the same business or organization; or

(2) Any relative or guardian of any of the children or individuals with developmental disabilities or vulnerable adults to which the

employee, student, or volunteer has access during the course of their employment or involvement with the business or organization.

"Usable floor space" means resident bedroom floor space exclusive of:

- (1) Toilet rooms;
- (2) Closets;
- (3) Lockers;
- (4) Wardrobes;
- (5) Vestibules; and
- (6) The space required for the door to swing if the bedroom door opens into the resident bedroom.

~~(("Water hazard" means any body of water over twenty-four inches in depth that can be accessed by a resident, and includes but is not limited to:~~

- ~~(1) In-ground, above-ground, and on-ground pools;~~
- ~~(2) Hot tubs, spas;~~
- ~~(3) Fixed-in-place wading pools;~~
- ~~(4) Decorative water features;~~
- ~~(5) Ponds; or~~
- ~~(6) Natural bodies of water such as streams, lakes, rivers, and oceans.))~~

"Vulnerable adult" includes a person:

- (1) Sixty years of age or older who has the functional, mental, or physical inability to care for themselves;
- (2) Found incapacitated under chapter 11.88 RCW;
- (3) Who has a developmental disability as defined under RCW 71A.10.020;
- (4) Admitted to any facility;
- (5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW;
- (6) Receiving services from an individual provider; or
- (7) With a functional disability who lives in their own home, who is directing and supervising a paid personal aide to perform a health care task as authorized by RCW 74.39.050.

"Water hazard" means any body of water over twenty-four inches in depth that can be accessed by a resident, and includes but is not limited to:

- (1) In-ground, above-ground, and on-ground pools;
- (2) Hot tubs, spas;
- (3) Fixed-in-place wading pools;
- (4) Decorative water features;
- (5) Ponds; or
- (6) Natural bodies of water such as streams, lakes, rivers, and oceans.

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

WAC 388-76-10003 Department access. (1) During the initial licensing of the home, the applicant must allow the department staff to inspect the entire premises including all of the home's rooms, buildings, grounds, and equipment and all pertinent records ((during the initial licensing of the home)).

(2) During inspections after initial licensing is complete, the adult family home must allow the department staff to examine all areas and articles in the home that are used to provide care or support to residents, including the physical premises and residents' records and accounts. The physical premises includes the buildings, grounds, and equipment, as well as all areas of the home for the purpose of checking smoke detectors, fire extinguishers, and posting of the emergency evacuation floor plan. The ~~((provider's))~~ personal records of adult family home staff unrelated to the operation of the adult family home are not subject to department ~~((review))~~ inspection. ~~((The provider's))~~ A separate bedroom used by adult family home staff will not be subject to review and inspection unless it is used to provide direct care to a resident.

(3) During complaint investigations, the adult family home must give department staff access to the entire premises and all records related to the residents or operation of the home. Department staff are authorized to interview the provider, family members, and individuals residing in the home including residents.

AMENDATORY SECTION (Amending WSR 10-03-064, filed 1/15/10, effective 2/15/10)

WAC 388-76-10020 License—Ability to provide care and services.

The provider must have the:

(1) Understanding, ability, emotional stability and physical health necessary to meet the psychosocial, personal, and special care needs of the vulnerable adults under the home's care; and

(2) Ability to meet all personal and business financial obligations.

AMENDATORY SECTION (Amending WSR 18-20-015, filed 9/21/18, effective 10/22/18)

WAC 388-76-10035 License requirements—Multiple adult family home providers. The department will only consider an application for more than one home if the applicant has:

(1) Evidence of successful completion of the ~~((forty-eight hour residential care administrator's))~~ adult family home administrator training to meet the applicable requirements of chapter 388-112A WAC;

(2) The ability to operate more than one home;

(3) The following plans for each home the applicant intends to operate. Each of the following plans must be updated and maintained:

(a) A twenty-four hour a day, seven day a week staffing plan;

(b) A plan for managing the daily operations of each home; and

(c) A plan for emergencies, deliveries, staff and visitor parking~~((=))~~i

(4) A demonstrated history of financial solvency related to the ability to provide care and services; and

(5) (~~An entity representative or~~) A different resident manager at each home who is responsible for the care of each resident at all times.

AMENDATORY SECTION (Amending WSR 15-03-037, filed 1/12/15, effective 2/12/15)

WAC 388-76-10037 License requirements—Multiple adult family homes—Additional homes. The department will only accept and process an application for an additional license as follows:

(1) For a second home, if the applicant has maintained the first adult family home license for at least twenty-four months with no enforcement actions as listed in RCW 70.128.160(2) related to a significant violation of chapters 70.128, 70.129 or 74.34 RCW, this chapter, or other applicable laws and regulations; and

(2) For a third or additional homes as follows:

(a) When twelve months have passed since the previous adult family home license was granted and the department has taken no enforcement actions against the applicant's currently licensed adult family homes during the twelve months prior to application; or

(b) When less than twelve months have passed since the previous adult family home license was granted; and

(i) The applications are due to the change in ownership of existing adult family homes that are currently licensed; and

(ii) No enforcement action was taken against any of the applicant's currently licensed homes during the twelve months prior to application.

NEW SECTION

WAC 388-76-10041 License—Change of personnel. An entity provider must:

(1) Notify the department when officers, directors, or entity representatives change, or when any owner is added and what percent of ownership is granted;

(2) Provide at least one point of contact for the owner, board of directors, or other governing body and if the entity has a board of directors, the provider must post in the home in a visible location in a common area information on at least one board meeting per twelve month period where all residents, their representatives, adult family home staff, the department, representatives of resident advocacy programs, and the long-term care ombuds can view it; and

(3) Provide written notice to all residents and the department when the entity representative changes as soon as possible upon realizing the need for a change.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10060 Application—Department orientation class—Required. (1) An applicant or any person who has not held an adult family home license within the last twelve months must attend a department approved orientation class before ~~((receiving))~~ submitting an application ~~((form; and))~~.

(2) If an applicant has not obtained an adult family home license within one calendar year of submitting the application to the department the applicant must attend department orientation again.

(3) A new entity representative in a currently-licensed adult family home must attend a department-approved orientation class within one hundred and twenty days of assuming the role, unless:

(a) They have completed the course in the previous twenty-four months; or

(b) They worked as an entity representative or provider in an adult family home in the last twelve months.

AMENDATORY SECTION (Amending WSR 18-20-015, filed 9/21/18, effective 10/22/18)

WAC 388-76-10063 Application—General training requirements. An applicant must ensure that ~~((each person))~~ any individual provider, entity representative, or resident manager listed on the application has successfully completed the training ~~((if))~~ that is required for their role under this chapter and chapter 388-112A WAC.

AMENDATORY SECTION (Amending WSR 18-20-015, filed 9/21/18, effective 10/22/18)

WAC 388-76-10064 Adult family home administrator training requirements. (1) ~~((The applicant and the entity representative))~~ Applicants and entity representatives must successfully complete the department approved adult family home administration class as required in chapter 388-112A WAC.

(2) An applicant ~~((and))~~ who operates or is the entity representative ~~((may not be required to take))~~ in a currently licensed home and has already taken the adult family home administrator ~~((class if there is a change in ownership and the applicant and entity representative are already participants in the operation of a currently licensed home))~~ training is not required to take the class again. However, a currently licensed provider or current entity representative who has not successfully completed the adult family home administrator training must take the class before submitting an application for a new license.

(3) ~~((An applicant and entity representative must take the adult family home administrator class when the application is for an addi-~~

~~tional licensed home and the class has not already been successfully taken.~~

~~(4) The class must be a minimum of forty-eight hours of classroom time and approved by the department.~~

~~(5)) Under exceptional circumstances, the department may waive the administrator training class for up to four months if the application meets all the other requirements for licensure and all the components of WAC 388-76-10074 or the requirements for a provisional license per RCW 70.128.064.~~

AMENDATORY SECTION (Amending WSR 16-01-171, filed 12/22/15, effective 1/22/16)

WAC 388-76-10074 Application—Waiver of fees. The department may authorize a one-time waiver of the application fees for a change of ownership or relocation, if the situation meets all of the following conditions ~~((+))~~ :

(1) The current provider has experienced an exceptional circumstance such as ~~((+))~~

~~(a) The death or incapacity of a spouse who was also named on the license; or~~

~~(b))~~ the diagnosis of a terminal or debilitating illness that prevents them from running the adult family home; ((and))

(2) Residents will be forced to move if a new provider is not licensed; ~~((and))~~

(3) Full payment of the licensing fee would cause the applicant a financial hardship; ~~((and))~~

(4) The application has been approved for priority processing by the local field office per WAC 388-76-10107; and

(5) Neither the applicant nor the current provider has requested a waiver of fees in the past.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10085 Application—~~((Individual or coprovider))~~ Affiliated facilities. The applicant must include in the application a list of all facilities or homes in which the applicant ~~((+))~~ persons affiliated with the applicant, or affiliated entities provided care and services to children or vulnerable adults within the last ten years.

AMENDATORY SECTION (Amending WSR 10-04-008, filed 1/22/10, effective 2/22/10)

WAC 388-76-10090 Application—Entity application. An entity submitting an application must:

(1) Include a list of all facilities or homes in which the applicant or persons affiliated with the applicant, managerial employee, or owner of five percent or more of the entity provided care and services to children or vulnerable adults within the last ten years;

(2) Designate an entity representative who:

(a) Fulfills the training and qualification requirements under this chapter that only an individual can fulfill where an entity cannot;

(b) Is responsible on behalf of the entity for the ((daily)) operations of the adult family home;

~~((b))~~ (c) Will be considered the department's primary contact person on behalf of the entity; ((and

~~(e))~~ (d) May act as ((both the entity representative and)) the resident manager in only one home((-));

(e) May be an officer, director, member, or owner of the entity, but in the case that they are not, the entity provider must have a plan under WAC 388-76-10201 to ensure that at no time will the entity provider lack an entity representative that meets the requirements of subsection (2)(a) of this section; and

(f) May be designated as the entity representative for only one entity provider;

(3) Designate a resident manager for the home if the entity representative is not the designated resident manager in subsection ~~((2)(e))~~ (2)(d) of this section; and

(4) Identify all DSHS-licensed facilities or homes owned by any affiliated entity.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10095 Application—Identification of ((landlord)) property owner—Required. (1) Applicants must name the ~~((landlord))~~ property owner of the building if the building to be used as an adult family home is leased, under contract, or rented and the ~~((landlord))~~ property owner takes an active interest in the operation of the home.

(2) An active interest includes but is not limited to:

(a) The charging of rent as a percentage of the business;

(b) Assistance with start-up and/or operational costs;

(c) Collection of resident fees;

(d) Recruitment of residents;

(e) Management oversight;

(f) Assessment and/or negotiated care plan development of residents; ~~((or))~~

(g) The provision of personal or special care of residents; or

(h) Property ownership by an affiliated entity.

WAC 388-76-10105 Application—Change of ownership. (1) Under this section, "control of the provider" means the possession, directly or indirectly, of the power to direct the management, operation and/or policies of the adult family home, whether through ownership, voting control, by agreement, by contract, or otherwise.

(2) A change of ownership of an adult family home requires both a new license application and a new license.

(3) A change of ownership occurs when there is a change in:

- (a) The provider; or
- (b) The control of a provider.

(4) Events (~~which~~) that constitute a change of ownership include, but are not limited to:

(a) The form of legal organization of the adult family home is changed, such as when an adult family home forms:

- (i) A partnership;
- (ii) A corporation;
- (iii) A limited liability company; or
- (iv) When it merges with another legal organization(~~(-)~~);

(b) The adult family home transfers business operations and management responsibility to another party, whether or not there is a partial or whole transfer of real property, personal property, or both(~~(-)~~);

(c) (~~Two people are both licensed as a married couple or domestic partners to operate an adult family home and an event, such as a separation, divorce, or death, results in only one person operating the home.~~)

~~(d))~~ Dissolution of a business partnership that is licensed to operate the adult family home(~~(-)~~);

~~((e))~~ (d) If the adult family home is ~~((a corporation and the corporation))~~ an entity and the entity:

- (i) Is dissolved;
- (ii) Merges with another ~~((corporation))~~ entity, resulting in a change in the control of the provider; ~~((or))~~
- (iii) Consolidates with one or more ~~((corporations))~~ entities to form a new ~~((corporation))~~ entity; or
- (iv) Whether by a single transaction or multiple transactions ~~((within a continuous twenty-four month))~~ over any time period, transfers fifty percent or more of its shares to one or more of the following:

(A) New or former ~~((shareholders))~~ owners; or

(B) Present ~~((shareholders))~~ owners, each having less than five percent of the ~~((shares))~~ ownership interest before the initial transaction(~~(-)~~); or

~~((f))~~ (e) Any other event or combination of events that results in a substitution, elimination, or withdrawal of the provider's control of the adult family home.

(5) Events which do not by themselves constitute a change in ownership include:

(a) For a nonprofit entity only, a change of a member or members of the board of directors;

(b) A change in entity representative; or

(c) Two people are both licensed as a married couple or domestic partners to operate an adult family home and an event, such as separation, divorce, or death, results in only one person operating the home.

(6) The new owner:

(a) Must obtain a new license from the department before transfer of ownership;

(b) Must not begin operation of the adult family home until the department has granted the license unless a provisional license has been requested and granted for exceptional circumstances per RCW 70.128.064;

(c) Must correct all deficiencies that exist at the time of the ownership change;

(d) Is subject to the provisions of chapters 70.128, 70.129, 74.34 RCW, this chapter and other applicable laws and regulations; ((and))

(e) Must ensure that any funds in the resident's accounts at the time of the ownership change remain in an equivalent account. If any funds in resident's accounts are moved, the new owner must promptly notify residents or resident's representative in writing of the name, address, and location of the new depository; and

(f) Must provide the department with a copy of the written notice of the change of ownership that was given to each resident, or applicable resident representatives.

AMENDATORY SECTION (Amending WSR 10-14-058, filed 6/30/10, effective 7/31/10)

WAC 388-76-10106 Change of ownership—Notice to department and residents.

(1) The current adult family home owner must provide written notice to the department((~~τ~~)) and residents or applicable resident representatives((~~τ~~)) sixty calendar days prior to the date of the proposed change of ownership; and

(2) The home must include the following information in the written notice:

(a) Names of the present owner and prospective owner, and if the present or prospective owner is an entity, include the names of each partner, member, officer, and director of the entity, and of any affiliated entities;

(b) Name and address of the adult family home for which the ownership is being changed;

(c) ((~~Date of proposed change;~~

~~(d)~~)) Date notice was provided;

(d) The resident's right to decide whether they want to stay or move; and

(e) Any change in the home's policies or operations that could impact a resident's ability to continue to live in the home. For example, if the new owner will be changing the home's policy on serving medicaid eligible residents, that change might impact a resident's ability to continue receiving services in the home.

AMENDATORY SECTION (Amending WSR 16-01-171, filed 12/22/15, effective 1/22/16)

WAC 388-76-10107 Priority processing—Change of ownership and relocation. (1) In order to prevent disruption to residents, currently licensed providers may request in writing that the department give priority processing to an applicant seeking to be licensed as the new provider of an existing, licensed adult family home in the event of a change of ownership or relocation.

(2) If priority processing is granted, the requirement that written notification be provided to the department and residents or applicable resident representatives sixty days prior to the change of ownership may be waived. Notice will be required as early as possible if this requirement is waived.

AMENDATORY SECTION (Amending WSR 14-14-028, filed 6/24/14, effective 7/25/14)

WAC 388-76-10120 License—Must be denied. The adult family home license will not be granted if:

(1) The applicant has not successfully completed a department-approved (~~forty-eight hour~~) adult family home administration and business planning class except as provided in WAC 388-76-10064(~~(-)~~);

(2) It has been less than twenty years since the applicant surrendered or relinquished an adult family home license after receiving notice of the department's initiation of a denial, suspension, nonrenewal or revocation of the license(~~(-)~~); or

(3) The applicant (~~(or)~~), the ((applicant's)) spouse((~~-~~)) or domestic partner of an applicant who is a sole proprietor, the spouse or domestic partner of an entity representative with an ownership interest in the business, or any partner, officer, director, managerial employee or majority owner of the applying entity:

(a) Has a history of significant noncompliance with federal or state laws or regulations in the provision of care or services to children or vulnerable adults;

(b) Has prior violations of federal or state laws or regulations relating to residential care facilities resulting in revocation, suspension, or nonrenewal of a license or contract with the department within the past ten years;

(c) Has a conviction or pending criminal charge for a crime that is automatically disqualifying under chapter 388-113 WAC; or

(d) Has one or more of the following disqualifying negative actions:

(i) A court has issued a permanent restraining order or order of protection, either active or expired, against the person that was based upon abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult;

(ii) The person is a registered sex offender;

(iii) The person is on a registry based upon a final finding of abuse, neglect or financial exploitation of a vulnerable adult, unless the finding was made by adult protective services prior to October 2003;

(iv) A founded finding of abuse or neglect of a child was made against the person, unless the finding was made by child protective services prior to October 1, 1998;

(v) The individual was found in any dependency action to have sexually assaulted or exploited any child or to have physically abused any child;

(vi) The individual was found by a court in a domestic relations proceeding under Title 26 RCW, or under any comparable state or federal law, to have sexually abused or exploited any child or to have physically abused any child;

(vii) The individual has had a contract or license denied, terminated, revoked, or suspended due to abuse, neglect, financial exploitation, or mistreatment of a child or vulnerable adult; or

(viii) The individual has relinquished a license or terminated a contract because an agency was taking an action against the individual related to alleged abuse, neglect, financial exploitation or mistreatment of a child or vulnerable adult.

AMENDATORY SECTION (Amending WSR 15-03-037, filed 1/12/15, effective 2/12/15)

WAC 388-76-10125 License—May be denied. The adult family home license may be denied if the applicant or the applicant's spouse, domestic partner, or any partner, officer, director, managerial employee or majority owner of the applying entity:

(1) Has any conviction or pending criminal charge for crime that is not automatically disqualifying under chapter 388-113 WAC, but that the department determines is reasonably related to the competency of the person to be involved in the ownership or operation of an adult family home;

(2) Has abused, neglected, or financially exploited a vulnerable adult, unless denial is required under WAC 388-76-10120(~~(-)~~);

(3) Has engaged in the illegal use, sale or distribution of drugs or excessive use of alcohol or drugs without the evidence of rehabilitation;

(4) Has been found in any final decision of a federal or state agency to have abandoned, neglected, abused or financially exploited a vulnerable adult, unless such decision requires a license denial under WAC 388-76-10120;

(5) Has had a license for the care of children or vulnerable adults denied, suspended, revoked, or not renewed(~~(-)~~) in connection with the operation of any facility for the care of children or vulnerable adults, relinquished or returned a license, or did not seek license renewal following written notification that the licensing agency intended to deny, suspend, or revoke the license, unless such action requires a license denial under WAC 388-76-10120;

(6) Has a history of prior violations of chapter 70.128 RCW or any law regulating residential care facilities that resulted in revocation, suspension, or nonrenewal of a license;

(7) Has been enjoined from operating a facility for the care and services of children or adults;

(8) Has had a medicaid or medicare provider agreement or any other contract for the care and treatment of children or vulnerable

adults, terminated, cancelled, suspended, or not renewed by any public agency, including a state medicaid agency;

(9) Has been the subject of a sanction or 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;

(10) Has obtained or attempted to obtain a license from the department by fraudulent means or misrepresentation;

(11) Knowingly, or with reason to know, made a false statement of material fact on his or her application for a license or any data attached to the application, or in any matter involving the department;

(12) Permitted, aided, or abetted the commission of any illegal act on the adult family home premises;

(13) Willfully prevented or interfered with or failed to cooperate with any inspection, investigation, or monitoring visit made by the department, including refusal to permit authorized department representatives to interview residents or have access to their records;

(14) Failed or refused to comply with:

(a) A condition imposed on a license or a stop placement order;
or

(b) The requirements of chapters 70.128, 70.129, 74.34 RCW, this chapter or other applicable laws and regulations(~~(-)~~);

(15) Misappropriated property of a resident, unless such action requires a license denial under WAC 388-76-10120;

(16) Exceeded licensed capacity in the operation of an adult family home;

(17) Operated a facility for the care of children or adults without a license or with a revoked license;

(18) When providing care to children or vulnerable adults, has had resident trust funds or assets seized by the Internal Revenue Service or a state entity for failure to pay income or payroll taxes;

(19) Failed to meet financial obligations as the obligations fell due in the normal course of owning or operating a business involved in the provision of care and services to children or vulnerable adults;

(20) Has failed to meet personal financial obligations, or if the applicant is an entity, has failed to meet the entity's financial obligation, or both;

(21) Interfered with a long-term care ombuds or department staff in the performance of his or her duties;

(22) Has not demonstrated financial solvency or management experience in its currently licensed homes, or has not demonstrated the ability to meet other relevant safety, health, and operating standards pertaining to the operation of multiple homes, including ways to mitigate the potential impact of vehicular traffic related to the operation of the homes; (~~(or)~~)

(23) The home is currently licensed:

(a) As an assisted living facility; or

(b) To provide care for children in the same home, unless:

(i) It is necessary in order to allow a resident's child(ren) to live in the same home as the resident or to allow a resident who turns eighteen to remain in the home;

(ii) The applicant provides satisfactory evidence to the department of the home's capacity to meet the needs of children and adults residing in the home; and

(iii) The total number of (~~persons~~) residents receiving care and services in the home does not exceed the number permitted by the licensed capacity of the home(~~(-)~~);

(24) Failed to give the department access to all parts of the home as authorized under RCW 70.128.090((-));

(25) Has an ownership interest in one or more currently licensed adult family homes or additional applications and does not meet the requirements of being a multiple home provider; or

(26) Has demonstrated any other factors that give evidence the individual lacks the appropriate character, competence, and suitability to provide care or services to vulnerable adults.

AMENDATORY SECTION (Amending WSR 18-20-015, filed 9/21/18, effective 10/22/18)

WAC 388-76-10129 Qualifications—Adult family home personnel.

(1) The adult family home must ensure that ((the following are qualified and meet all of the applicable requirements of this chapter and chapter 388-112A WAC:

(1)) any person employed or used by the adult family home, directly or by contract, ((by an adult family home; including)) is qualified and meets all of the applicable requirements of this chapter and chapter 388-112A WAC. This may include, but is not limited to:

- (a) The provider;
- (b) Entity representative;
- (c) Resident manager;
- (d) Staff; and
- (e) Caregivers.

(2) Every home must have a designated resident manager. The provider or entity representative can also be the designated resident manager, but an individual can only be the designated resident manager for one home at a time.

(3) For entities licensed after the effective date of this section, an individual can only be the entity representative for one entity provider.

AMENDATORY SECTION (Amending WSR 18-20-015, filed 9/21/18, effective 10/22/18)

WAC 388-76-10130 Qualifications—Provider, entity representative, and resident manager. The adult family home must ensure that the provider, entity representative on behalf of an entity provider, and resident manager have the following minimum qualifications:

- (1) Be twenty-one years of age or older;
- (2) Have a United States high school diploma or high school equivalency certificate as provided in RCW 28B.50.536, or any English or translated government document of the following:

(a) Successful completion of government approved public or private school education in a foreign country that includes an annual average of one thousand hours of instruction a year for twelve years, or no less than twelve thousand hours of instruction;

(b) Graduation from a foreign college, foreign university, or United States community college with a two-year diploma, such as an associate's degree;

(c) Admission to, or completion of course work at a foreign or United States college or university for which credit was awarded;

(d) Graduation from a foreign or United States college or university, including award of a bachelor's degree;

(e) Admission to, or completion of postgraduate course work at, a United States college or university for which credits were awarded, including award of a master's degree; or

(f) Successful passage of the United States board examination for registered nursing, or any professional medical occupation for which college or university education was required((-));

(3) Completion of the training requirements that were in effect on the date they were hired or became licensed providers, including the requirements described in chapter 388-112A WAC;

(4) Have good moral and responsible character and reputation;

(5) Be literate and able to communicate in the English language, and assure that a person is on staff and available at the home who is capable of understanding and speaking English well enough to be able to respond appropriately to emergency situations and be able to read, understand and implement resident negotiated care plans((-));

(6) (~~Assure that there is a mechanism~~) Have the ability to communicate with (~~the resident~~) residents in (~~his or her~~) their primary language (~~either~~), including through a qualified person on-site or readily available at all times, or other reasonable accommodations, such as a language line((-));

(7) Be able to carry out the management and administrative requirements of chapters 70.128, 70.129 and 74.34 RCW, this chapter and other applicable laws and regulations;

(8) Have completed at least one thousand hours of successful direct care experience in the previous sixty months obtained after age eighteen to vulnerable adults in a licensed or contracted setting before operating or managing a home. Individuals holding one of the following professional licenses are exempt from this requirement:

(a) Physician licensed under chapter 18.71 RCW;

(b) Osteopathic physician licensed under chapter 18.57 RCW;

(c) Osteopathic physician assistant licensed under chapter 18.57A RCW;

(d) Physician assistant licensed under chapter 18.71A RCW; or

(e) Registered nurse, advanced registered nurse practitioner, or licensed practical nurse licensed under chapter 18.79 RCW((-));

(9) Have no disqualifying criminal convictions or pending criminal charges under chapter 388-113 WAC;

(10) Have none of the negative actions listed in WAC 388-76-10180;

(11) Obtain and keep valid cardiopulmonary resuscitation (CPR) and first-aid card or certificate as required in chapter 388-112A WAC; and

(12) Have tuberculosis screening to establish tuberculosis status per this chapter.

AMENDATORY SECTION (Amending WSR 18-20-015, filed 9/21/18, effective 10/22/18)

WAC 388-76-10145 Qualifications—Licensed nurse as provider, entity representative, or resident manager. The adult family home must ensure that a licensed nurse who is a provider, entity representative, or resident manager:

(1) Meets (~~all minimum~~) the relevant qualifications (~~for providers, entity representatives, or resident managers~~) for their role listed in WAC 388-76-10130; and

(2) Has a current valid cardiopulmonary resuscitation (CPR) card or certificate as required in chapter 388-112A WAC.

AMENDATORY SECTION (Amending WSR 07-21-080, filed 10/16/07, effective 1/1/08)

WAC 388-76-10950 Remedies—History and actions by individuals. The department will consider the history and actions of the following individual or combination of individuals when imposing remedies:

- (1) Applicant;
- (2) Provider;
- (3) Entity representative;
- (4) Person affiliated with the applicant;
- (5) Resident manager;
- (6) A partner, officer, director or managerial employee of the entity;
- (7) Spouse of the provider or entity representative;
- (8) An owner:
 - (a) Of fifty-one percent or more of the entity; or
 - (b) Who exercises control over the daily operations of the home (~~is~~);
- (9) A caregiver; (~~is~~)
- (10) Any person who:
 - (a) Has unsupervised access to residents in the home; (~~and~~) or
 - (b) Lives in the home but who is not a resident; or
- (11) Any affiliated entities.

NEW SECTION

WAC 388-76-10201 Succession plan. (1) The adult family home must have a written plan addressing how they will continue to meet the requirements of this chapter and provide care and services to residents in the event that the provider or entity representative is unable to fulfill their duties in the home and make it available upon request of the department.

(2) If an emergency or other exceptional circumstance requires a change of ownership due to the inability of a provider to continue to operate the home, an applicant who meets the qualifications to be a provider may apply for a provisional license that would allow the home

to continue to operate. The applicant must also apply for a change of ownership at the same time. The department will have the discretion to determine if the circumstances warrant a provisional license.