

TITLE 41
LUMMI NATION CODE OF LAWS
RESIDENTIAL FACILITIES LICENSING CODE

Enacted: Resolution 2001-85, Emergency Adoption (8/9/01)
Resolution 2001-95 (9/25/01)

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**TITLE 41
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Chapter 41.01 General

41.01.010 Purpose

The Lummi Nation has the authority and responsibility to adopt ordinances protecting the public health and welfare of the members of the Lummi Nation. With this in mind, the Lummi Nation recognizes the need for residential facilities within the jurisdiction of the Lummi Nation. These residential facilities will be able to provide much needed affordable housing, as well as homes for individuals in need of care and social services. This code will allow the Lummi Nation to set standards that govern residential facilities to ensure that they are run in a proper and safe manner.

Chapter 41.02 Definitions

41.02.010 Definitions

(a) "Residential Facility" means any home or other institution, however named, within the jurisdiction of the Lummi Nation, and which is advertised, announced, or maintained for the express or implied purpose of providing room, board, and/or other social services for three or more persons not related by blood to the operator.

(b) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.

(c) "Department" means the Life Center Division of the Lummi Indian Business Council, and the legal successor thereof.

Chapter 41.03 Licenses

41.03.010 Licenses: Required

No person shall operate or maintain a Residential Facility within the jurisdiction of the Lummi Nation without a license issued pursuant to this Chapter.

41.03.020 Licenses: Application

Applications for licenses shall be made to the

Department upon forms provided by the Department, and shall contain such information as the Department reasonably requires, which shall include affirmative evidence of the applicant's ability to comply with such regulations as are lawfully adopted by the Department.

41.03.030 Licenses: Issuance

The Department shall issue a license upon receipt of an application and verification that the applicant and the Residential Facility meet the requirements of this Chapter and the regulations promulgated pursuant thereto.

41.03.040 Licenses: Provisional

If an applicant fails to comply with the provisions of this Chapter or the regulations adopted pursuant thereto, the Department may, in its discretion, issue to an applicant for a license, or to an applicant for license renewal, a provisional license which will permit the operation of the Residential Facility for a period to be determined by the Department, but not to exceed twelve (12) months. Provisional licenses shall not be eligible for renewal.

41.03.050 Licenses: Fees

At the time of the application for, or renewal of, a license or provisional license, the licensee shall pay a license fee, the amount of which shall be established in a schedule to be published by the Department. All licenses issued pursuant to this Chapter shall expire on a date set by the Department, but no license shall exceed twelve months in duration. Should the Department issue a license for fewer than twelve months, the annual license fee shall be prorated to conform with the actual amount of time for which the license is valid.

41.03.060 Licenses: Renewal

All applications for renewal of a license shall be made at least thirty days prior to the expiration date of the previously issued license.

41.03.070 Licenses: Transferability

Each license shall be issued only for the premises and persons named in the application, and no license shall be transferable or assignable.

41.03.080 Licenses: Display

Licenses shall be posted in a conspicuous place on the licensed premises.

Chapter 41.04 Regulations and Oversight

41.04.010 Regulations

The Department shall have the authority to promulgate regulations for the governance of Residential Facilities and their operators. These regulations shall be crafted so as to promote safe and adequate care of individuals in Residential Facilities. These regulations shall specifically address the areas of building standards, fire safety, water and sewer management, garbage and refuse disposal, food and nutrition services, and professional and staff training. Additionally, these regulations shall be subject to the requirements of Title 27 (Administrative Code) of the Lummi Code of Laws.

41.04.020 Inspection of Residential Facilities

The Department shall make, or cause to be made, an inspection and investigation of all Residential Facilities as least once every twelve (12) months. Inspections shall focus primarily on actual or potential resident concerns, and may include an inspection of every part of the premises and an examination of all non-financial records, methods of administration, food service, and the stores and methods of supply. Following an inspection or inspections, written notice of any violation of this law or the regulations adopted hereunder shall be given to the licensee and the Department.

41.04.030 Approval of Changes to Existing and New Facilities

The Department may prescribe that all types of structural changes to facilities or construction of new facilities must be approved by the Department prior to the initiation of the changes or construction.

Chapter 41.05 Complaints and Investigations

41.05.010 Complaints and Investigations

(a) All facilities licensed under this Chapter shall post in a place and manner clearly visible to residents and visitors, the procedure by which complaints against the Residential Facility may be filed with the Department.

(b) The Department shall adopt regulations that include the following complaint investigation procedures.

(1) Upon receipt of a complaint, the department shall conduct a preliminary review. Following the preliminary review, the Department shall make a full investigation unless it determines that:

(A)The subject of the complaint is outside of its authority; or

(B)The complaint is intended to willfully harass a licensee or employee of the licensee; or

(C)There is no reasonable basis for investigation or the substance of the complaint does not warrant a full investigation.

(i) Should the department determine that the substance of the complaint does not warrant a full investigation, it shall forward the nature of the complaint to the Licensee.

(D)The Department determines that corrective action has been taken.

(2) If preliminary review of a complaint determines that a full investigation is not warranted, the complainant shall be sent a written notification explaining the basis of the decision unless the complainant is anonymous or unavailable. Complainants will be considered unavailable only if the Department fails to make contact after multiple attempts, using at least two forms of communication.

(3) If preliminary review determines that a full investigation is warranted, the Department shall promptly begin the investigation and attempt to achieve its completion within a reasonable period of time. Complaints involving imminent danger to the health, safety, or well-being of a resident or the general public must be initially responded to within three (3) calendar days of their receipt by the Department.

(4) Upon the initiation of a full investigation, the complainant shall be promptly contacted by the Department and informed of the investigation's initiation, unless he or she is anonymous or unavailable. The Department shall inform the complainant of his or her right to discuss alleged violations with the investigator and to provide other information the complainant believes will assist the investigation. The complainant shall also be informed of his or her right to receive a written copy of the investigation report.

(5) In conducting the investigation, the Department shall interview the complainant, unless he or she is anonymous or unavailable, and shall use its best efforts to interview any residents allegedly harmed by the violations. The Department shall also interview any facility staff, or independent sources of relevant information, including if appropriate, the family members of residents.

(6) Should an investigation reveal possible criminal activity or other activity requiring mandatory reporting to another agency, the Department shall contact the appropriate law enforcement authorities, or file the mandatory report.

(7) The Department may provide the substance of the complaint to the licensee before the completion of the investigation unless such disclosure would reveal the identity of a complainant, witness, or resident who chooses to remain anonymous. Neither the substance of the complaint provided to the licensee, nor any

copy of the complaint or related report that is published, released, or made otherwise available shall disclose, or be reasonably likely to lead to the disclosure of the name, title, or identity of any complainant, or other person mentioned in the complaint, except that the name of the Licensee and the name or names of any officer, employee, or agent of the Department conducting the investigation shall be disclosed after the investigation has been closed and the complaint has been substantiated. The Department may disclose the identity of the complainant if such disclosure is requested in writing by the complainant.

41.05.020 Prohibition of Retaliation

(a) Facility residents shall be free from interference, coercion, discrimination, and reprisal from a facility in exercising his or her rights, including the right to voice grievances about treatment furnished or not furnished. A facility licensed under this Chapter shall not discriminate or retaliate in any manner against a resident, employee, or any other person on the basis of, or for the reason that such resident or any other person made a complaint to the Department, provided information, or otherwise cooperated with the investigation of such complaint. Any attempt to discharge a resident against the resident's wishes, or any type of retaliatory treatment of a resident by whom, or upon whose behalf, a complaint against a Residential Facility has been made, shall raise a rebuttable presumption that such action was in retaliation for the filing of the complaint. "Retaliatory treatment" means, but is not limited to, monitoring a resident's phone, mail, or visits; involuntary seclusion or isolation; transferring a resident to a different room unless requested or based upon legitimate management reasons; withholding or threatening to withhold food or treatment unless authorized by a terminally ill resident or his or her representative pursuant to law; or persistently delaying responses to a resident's request for service or assistance.

Chapter 41.06 Enforcement and Penalties

41.06.010 Enforcement and Penalties

(a) The Department is authorized to take one

or more of the actions listed in subsection (2) of this section in any case in which the Department finds that a Residential Facility provider has:

- (1) Failed or refused to comply with the requirements of this Chapter or regulations adopted pursuant thereto;
- (2) Knowingly, or with reason to know, made a false statement of material fact on an application for license (or any materials attached thereto) applied for under this Chapter, or in any matter under investigation by the Department; or
- (3) Willfully prevented or interfered with any inspection or investigation by the Department.

(b) When authorized by subsection (1) of this section, the Department may take one or more of the following actions:

- (1) Refuse to issue a license;
- (2) Impose reasonable conditions on a license, such as making corrections within a specified time period, providing staff with additional training, or placing limits on the type of clients the provider may admit or serve;
- (3) Impose civil penalties, the amount of which shall be detailed in a schedule to be published by the Department;
- (4) Suspend, revoke, or refuse to renew a license;
- (5) Suspend admissions to the Residential Facility;

(A) When the Department suspends admissions to a Residential Facility, the facility shall not admit any new resident until the admission suspension is lifted. The Department may approve readmission of a resident to the facility from a hospital or nursing home during the placement suspension. The Department shall terminate the admission suspension when:

(i) The violation(s) necessitating the placement suspension have been corrected; and

(ii) The provider exhibits the capacity to maintain adequate care and service.

(6) Seek an injunction or other civil remedy against any person to restrain or prevent the operation or maintenance of a Residential Facility.

(c) If an investigation reveals a serious violation, or a violation that has gone uncorrected following a previous citation, the Department shall revisit the site in two successive quarters to ensure that the violation has been corrected, and compliance with the regulation is being maintained.

(d) If the Department orders any of the actions detailed in subsection (b)(1)-(5), the Department shall provide the Residential Facility or applicant written notice of the Order. The Department's Order shall be effective upon its receipt by the Residential Facility or applicant. The Notice of Order shall state the reasons for the Department's action, and that it shall be effective upon receipt. If the Department takes any of the actions detailed in subsections b(1)-(5), the aggrieved Residential Facility or applicant shall have the right to challenge the action(s) through an administrative hearing. The Residential Facility or applicant must file the challenge within ten (10) days of receipt of the Notice. If the Order is challenged, the resulting administrative hearing shall be held within thirty (30) days of the Notice's receipt, and shall be conducted by an impartial hearing examiner or board. At the hearing, the aggrieved Residential Facility or applicant shall have the right to appear in person and/or through a representative of their choice at their own expense, and to make arguments and present evidence in their defense. Within thirty (30) days of the conclusion of a hearing, the hearing examiner shall prepare a written hearing report which shall include findings of fact. Copies of this report shall be distributed to the Department Director and all other participating parties, who shall then have ten (10) calendar days to respond in writing to the Department Director. At the conclusion of

this ten (10) day period, the Department Director shall take the report and all responses under consideration. Within thirty (30) days of the conclusion of the response period, the Department Director shall issue a written final decision based on findings of fact and conclusions of law. This decision shall be distributed to all parties.

Chapter 41.07 Miscellaneous

41.07.010 Information Disclosure

Except as otherwise detailed in this Chapter, all information received by the Department pursuant to this Chapter or its accompanying regulations shall not be publicly disclosed in any manner as to identify individuals or Licensees, unless such disclosure is approved in writing by the identified party or parties.

41.07.020 Severability

If any portion of this Chapter is held unconstitutional, the remaining portions shall be given full force and effect, as completely as if the part held unconstitutional had not been included herein, if any such remaining part can then be administered for the purpose of establishing and maintaining standards for boarding homes.

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