Section 7.0 Change of Ownership, Operation and/or Location

7.3 Thirty (30) days prior to voluntary cessation of any facility license, the resident, his/her guardian or decision-maker, and the Department of Health shall be notified. The facility shall provide the Department with a plan for orderly closure, and transfer of residents and records.

7.3.1 In the event that a facility seeks a variance from the required thirty (30) day notice of closure of the facility, reasonable advance notice of the hearing for the variance shall be given by the facility to the resident, his or her guardian, or relative so appointed or elected to be his or her decision-maker, and an opportunity to be present at the hearing shall be granted to the person so designated.

7.3.2 In the event of the voluntary closure of a facility, which closure is the result of a variance from the required thirty (30) day notice of closure, granted by the Director, reasonable advance notice of the closure shall be given by the facility to the resident, his or her guardian, or relative so appointed or elected to be his or her decision-maker.

Section 31.0 Social Services

31.3 Notwithstanding any provisions in §§ 5-39.1-1 – 5-39.1-14 or any other general or public law to the contrary, any nursing facility licensed under Chapter 17 of Title 23 that employs a social worker or social worker designee who meets all of the criteria in section 31.4 below shall be granted a variance to the "qualified social worker" provisions stated herein.

Section 38.0 New Construction, Addition or Modification

38.2 All plans for new construction or the renovation, alteration, extension, modification or conversion of an existing facility that may affect compliance with sections 41.0, 43.0, 44.0, 45.0, 46.0, and 52.0 herein, and reference 15, shall be reviewed by a Rhode Island licensed architect. Said architect shall certify that the plans conform to the construction requirements of sections 41.0, 43.0, 44.0, 45.0, 46.0, and 52.0 herein, and reference 15, prior to construction. The facility shall maintain a copy of the plans reviewed and the architect's signed certification, for review by the Department of Health upon request. 38.2.1 In the event of non-conformance for which the facility seeks a variance, the general procedures outlined in section 54.0 shall be followed. Variance requests shall include a written description of the entire project, details of the non-conformance for which the variance is sought and alternate provisions made, as well as detailing the basis upon which the request
is made. The Department may request additional information while evaluating variance requests. 38.2.2 If variances are granted, a licensed architect shall certify that the plans conform to all construction requirements of sections 41.0, 43.0, 44.0, 45.0, 46.0, and 52.0 herein, and reference 15, except those for which variances were granted, prior to construction. The facility shall maintain a copy of the plans reviewed, the variance(s) granted and the architect’s signed certification, for review by the Department upon request.

PART VI Confidentiality - Variance and Appeal Procedure

Section 53.0 Confidentiality

53.1 Disclosure of any health care information relating to individuals shall be subject to all the statutory and regulatory provisions pertaining to confidentiality including but not limited to the provisions of reference 17.

Section 54.0 Variance Procedure

54.1 The licensing agency may grant a variance from the provisions of a rule or regulation in a specific case if it finds that a literal enforcement of such provision will result in unnecessary hardship to the applicant and that such a variance will not be contrary to the public interest, public health and/or health and safety of residents.

Variances shall not be granted for the provisions of these regulations found in sections 2.0, 9.0, 16.0, 19.0, 22.0, 24.0, 25.0, 27.11, 48.0, 49.0, 51.0, and 53.0. 54.2 A request for a variance shall be filed by an applicant in writing, setting forth in detail the basis upon which the request is made.

a) Upon the filing of each request for variance with the licensing agency, and within a reasonable time thereafter, the licensing agency shall notify the applicant by certified mail of its approval or in the case of a denial, a hearing date, time and place may be scheduled if the facility appeals the denial.

54.3 At a hearing held in furtherance of an appeal from a denial for a variance in accordance with section 54.2 (a) above, the applicant shall present his case to the Director or his designee for quasi-judicial matters, and shall have the burden of persuading the Director or his designee as aforesaid, through the introduction of clear and convincing evidence, that a literal enforcement of the rules will result in unnecessary hardship, and that a variance will not be contrary to the public interest, public health and/or health and safety of residents.

54.4 Nursing facilities that provide care in accordance with alternative service delivery models may be eligible for a variance in accordance with the requirements contained herein.

Section 55.0 Deficiencies and Plans of Correction
55.3 A facility which received a notice of deficiencies must submit a plan of corrections to the licensing agency within fifteen (15) days of the date of the notice of deficiencies. The plan of corrections shall detail any requests for variances as well as document the reasons therefor.