

## RULE

### Department of Social Services Office of the Secretary Bureau of Licensing

Adult Day Care Center  
(LAC 48:I.Chapter 43)

The Department of Social Services, Office of the Secretary, Bureau of Licensing is amending the *Louisiana Administrative Code*, Title 48, Part 1, Subpart 3, Licensing and Certification.

This rule is mandated by R.S. 46:1971-1980.

These standards are being revised to supersede any previous regulations heretofore published.

#### Title 48

#### PUBLIC HEALTH—GENERAL

#### Part I. General Administration

#### Subpart 3. Licensing and Certification

#### Chapter 43. Adult Day Care Center

#### §4301. Purpose

The overall purpose of these regulations is the well-being of persons involved in adult day care programs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:109 (January 1998).

#### §4303. Authority

A. Legal Authority. The legal authority of these regulations and of the licensing authority of the Department of Social Services (DSS) is found in the following statutes:

R.S. 46:51;

R.S. Title 28 Sections 1 through 2;

R.S. Title 28 Sections 421 through 427;

R.S. Title 46 Sections 1971 through 1980;

R.S. Title 46 Section 2102; and

29 U.S.C. 795K (34 CFR Part 363) (P.L. 99-506).

B. Effective Date. These regulations (LAC 48:I.Chapter 43) are effective upon publication as a final rule in the *Louisiana Register*, in accordance with the Administrative Procedure Act.

#### C. Penalties

1. All adult day care facilities, including facilities owned or operated by any governmental, profit, nonprofit, private, or church agency shall be licensed.

2. Any person operating an adult day care facility, as defined in R.S. 46:1972, in violation of Chapter 43, shall be guilty of a misdemeanor and shall be fined not less than \$100 nor more than \$500 for each such offense. Each day of operation in violation of Chapter 43 shall constitute a separate offense.

#### D. Inspections

1. According to law, it shall be the duty of the Department of Social Services "through its duly authorized agents, to inspect at regular intervals not to exceed one year,

or as deemed necessary by the department, and without previous notice all adult day care facilities subject to the provisions of the Chapter" (R.S. 46:1971-1980).

2. Whenever the department is advised, or has reason to believe, that any person, agency, or organization is operating an adult day care facility without a license or provisional license, the department shall make an investigation to ascertain the facts.

3. Whenever the department is advised, or has reason to believe, that any person, agency, or organization is operating in violation of the Adult Day Care Minimum Standards, the department shall complete a complaint investigation. All reports of mistreatment of clients coming to the attention of the Department of Social Services will be investigated.

#### E. Waivers

1. The secretary of the Department of Social Services, in specific instances, may waive compliance with a minimum standard if it is determined that the economic impact is sufficiently great to make compliance impractical, as long as the health and well-being of the clients/staff are not imperiled. If it is determined that the facility or agency is meeting or exceeding the intent of a standard or regulation, the standard or regulation may be deemed to be met.

2. All waivers must be reviewed at least annually for continuance. However, a waiver may be withdrawn when it is determined that it was issued in error; situations have changed as to why the waiver was first issued; or when the provider has not complied with agreed-upon stipulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:109 (January 1998).

#### §4305. Types of Programs (Modules) Licensed

#### A. Sheltered Workshop

1. This is a facility-based program providing prevocational and vocational training to functionally-impaired adults that is comprehensive in nature, and offers opportunity for structured work among a variety of other services.

2. This module shall meet standards listed in §§4301-4329.

#### B. Enclave Module

1. *Enclave Module*—a work group of functionally-impaired individuals performing real work in a business or industrial setting among typical co-workers with supervision, training, and support provided both by the host company and the provider. Payment for work performed is made in compliance with Department of Labor regulations. Opportunities for integration with typical co-workers are facilitated through use of common dining facilities, break areas, and other settings/events that may be appropriate.

2. A provider with the enclave module must meet the applicable requirements/standards (except for the physical plant standards).

3. This module must meet standards listed in §§4301-4323.

### C. Mobile Work Crew Module

1. Mobile work crew module is:
  - a. designed to provide employment through contracts in the community;
  - b. typically comprised of eight or fewer individuals with a staff person;
  - c. operated at a customer's site, rather than at the provider's building, performing service jobs in the community;
  - d. typically contracted to provide grounds-keeping and janitorial services; and
  - e. useful in providing meaningful wages and constant opportunities for crew members to interact with nonhandicapped people in the community.

2. A provider with the mobile work crew module must meet the applicable requirements (except for the physical plant standards).

3. This module must meet standards listed in §§4301-4323.

### D. Psychosocial Module

1. This module is concerned with individuals who need emphasis on social and enhancement skills. Staff is involved in a highly interactive manner with clients in the day program in an effort to build friendship and other skills in the clients.

2. This module must meet standards listed in §§4301-4323. If services are provided within the facility, all standards shall be met.

### E. Supported Competitive Jobs Module

1. Supported competitive jobs module requires staff to locate jobs in the community, match individuals to those jobs and provide ongoing support. Wages are commensurate to the work performed, and workers are highly integrated with nonhandicapped workers.

2. A provider with the supported competitive jobs module must meet the applicable requirements (except for the physical plant standards).

3. This module must meet standards listed in §§4301-4323.

### F. Community Rehabilitation Program Module

1. *Community Rehabilitation Program (CRP)*—a program that provides vocational rehabilitation services to individuals with disabilities to enable those individuals to maximize their opportunities for employment, including career advancement.

2. A Community Rehabilitation Program may also provide services compatible with any or all of the modules listed under §4305.

3. A CRP must meet standards listed in §§4301-4323. If the services are provided within the facility, all standards shall be met.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:109 (January 1998).

## §4307. Definitions

*Administrator*—the owner or the manager designated by the governing body as responsible for the management, administration, and supervision of the program.

*Adult Day Care*—a group program designed to meet the individual needs of functionally-impaired adults that is structured and comprehensive and provides a variety of health, social, vocational, or related services in a protective setting for a portion of a 24-hour day.

*Adult Day Care Center*—any place owned or operated for profit, or not for profit, by a person, society, agency, corporation, institution, or any other group wherein are received, for a portion of a 24-hour day, 10 or more functionally-impaired adults who are not related to the owner or operator of the facility for the purpose of supervision or participation in a training program. If the facility receives state or federal funding, directly or indirectly, it must be licensed regardless of the number of adults in its care.

*Change of Ownership*—transfer of ownership to someone other than the owner listed on the initial application. Ownership of the business, not the building, determines the owner.

*Department (DSS)*—the Department of Social Services.

*Director*—the full-time staff responsible for the day-to-day operation of the facility or program as recorded with the Bureau of Licensing. For the purpose of these regulations, the term *director* also refers to director designee, if applicable.

*Director Designee*—the on-site staff appointed by the director when the director is not a full-time employee of the licensed location. This staff shall meet director qualifications.

*Documentation*—written evidence or proof, signed and dated.

*Facility*—adult day care center(s).

*Functionally-Impaired Adult*—a person 17 years of age or older who is physically, mentally, or socially impaired to a degree requiring supervision.

*Human Services Field*—means psychology, sociology, special education, rehabilitation counseling, juvenile justice, corrections, nursing, etc.

*Owner or Operator*—the actual owner of a facility, i.e., the person who owns or controls a facility either directly or indirectly.

*Physically, Mentally or Socially Impaired*—any impairment, physical or mental, that limits one or more of the following major life activities:

1. self-care;
2. receptive or expressive language;
3. learning;
4. mobility;
5. self-direction;
6. capacity for independence;
7. economic self-sufficiency.

*Provider*—the owner of an adult day care facility and the representatives, agents, and employees of the facility. If the owner is a closely held corporation or a nonprofit organization, provider includes the natural persons with actual

ownership or control over the corporation and the corporation's officers, directors, and shareholders.

*Universal Precautions*—the infectious disease control precautions recommended by the Centers for Disease Control to be used in all situations to prevent transmission of blood-borne pathogens (e.g., human immunodeficiency virus, hepatitis B virus).

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 46:1971-1980.

**HISTORICAL NOTE:** Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:110 (January 1998).

### §4309. Procedures

A. Initial Application. Facilities applying for a license after the effective date of these standards shall meet all of the requirements herein. Before beginning operation, it is mandatory to obtain a license from the Department of Social Services.

1. Prior to purchasing, leasing, etc., carefully check all local zoning and building ordinances in the area of the planned facility location. Guidelines from the Office of Public Health, Sanitarian Services; Office of the State Fire Marshal and Office of the City Fire Department (if applicable) should be obtained.

2. After securing property, obtain an application form issued by the Department of Social Services, Bureau of Licensing, Box 3078, Baton Rouge, LA 70821-3078; Telephone: (504) 922-0015 and by FAX (504) 922-0014.

3. The completed application shall indicate the type of adult day care module(s) that will be provided. An initial application fee shall accompany all applications.

4. Nonprofit providers shall submit documentation of nonprofit status with the completed application and initial fee.

5. After the facility's location has been established, complete and return the application form. The applicant must contact the following offices prior to building or renovating a facility:

- a. Office of Public Health, Sanitarian Services (if applicable);
- b. Office of the State Fire Marshal (if applicable);
- c. Office of the City Fire Department (if applicable);
- d. Zoning Department (if applicable);
- e. City or Parish Building Permit Office.

6. After the application has been received by the department, a request will be made to the Office of the State Fire Marshal, Office of the City Fire Department, Office of Public Health, and any known required local agencies, as applicable, to make an inspection of the location, as per their standards. It is the applicant's responsibility to obtain these inspections and approvals. A licensing specialist will visit the facility to conduct a licensing inspection.

7. A license will be issued on an initial application when the following items have been met and verification is received by the Bureau of Licensing:

- a. fire approval (state and/or city) (if applicable);
- b. health approval (if applicable);
- c. zoning (if applicable);
- d. full licensure fee where applicable;

- e. licensure survey verifying substantial compliance;
- f. director meets qualifications.

8. When a provider changes location, it is considered a new operation, and a new application and fee for licensure shall be submitted. All applicable items in §4309.A.7 shall be resubmitted, except director qualifications if director remains the same.

9. When a provider changes ownership, a new application and fee for licensure shall be submitted. All applicable items in §4309.A.7 shall be current. Documentation is required from the previous owner assuring change of ownership, e.g., letter from previous owner, copy of bill of sale, or a lease agreement.

10. All new construction or renovation of a facility requires approval from agencies listed in §4309.A.5, if applicable.

11. The department is authorized to determine the period during which the license shall be effective. A license is valid for the period for which it is issued.

12. A license is not transferable to another person or location.

13. Separate licenses shall be required for facilities maintained on separate premises even though operated under the same management or owner. Separate licenses will not be required for separate buildings on the same grounds.

14. If an owner/director or member of his immediate family has had a previous license revoked, refused, or denied, upon re-application, applicant shall provide written evidence that the reason for such revocation, refusal, or denial no longer exists. A licensing survey will then be conducted to verify that the reasons for revocation, refusal, or denial have been corrected, and the facility is in substantial compliance with all minimum standards.

### B. Fees

1. Initial application fee of \$25 shall be submitted with all initial applications. This fee will be applied toward the total licensure fee, where applicable, when the provider is licensed. This fee shall be paid by all initial providers. All fees shall be paid by certified check or money order only and are nonrefundable.

2. Annual licensure fee of \$150 shall be submitted prior to issuance or renewal of the license, where applicable.

3. Licensure fee shall be waived for nonprofit providers.

4. Other licensure fees:

a. \$25 replacement fee for any provider replacing a license when changes are requested by the provider, e.g., change in capacity, name change, age range change. (No processing charge when request coincides with regular renewal of license.)

b. \$5 processing fee for issuing a duplicate provider license with no changes.

### C. Relicensing

1. An application form shall be resubmitted annually to the Department of Social Services, Bureau of Licensing, Box 3078, Baton Rouge, LA, 70821-3078.

2. A provider changing ownership, or making any substantial changes in the services offered or in the buildings, shall reapply for a license. In the event of a change of ownership, the old license shall be immediately returned to the

Department of Social Services, Bureau of Licensing, Box 3078, Baton Rouge, LA 70821-3078.

3. The Department of Social Services shall be notified prior to making changes which might have an effect upon the license (e.g., changes in program, services, physical plant of the facility, director, hours/months/days of operation, ownership, location).

4. A license is issued for a period of up to one year, based upon provider's compliance with minimum standards. Before expiration of the license, applicable re-inspections by the Office of Public Health, Sanitarian Services; Office of State Fire Marshal; Office of the City Fire Department (if applicable) and Department of Social Services shall be required.

5. Licensing inspections are conducted at least annually and more often if deemed necessary by the department. No advance notice is given. Licensing specialists shall be given access to all of the areas in the facility, staff members, clients, and all relevant files and records. Licensing specialists will explain the licensing process in an initial interview and will report orally, and in writing, (the exit interview) to the director or designee on any deficiencies found during the inspection.

6. If the licensing inspection reveals that the provider is not substantially meeting minimum requirements, a recommendation will be made that a new license not be issued.

D. Denial, Revocation, or Nonrenewal of License. An application for a license may be denied, or a license may be revoked, or renewal thereof denied, for any of the following reasons:

1. violation of any provision of R.S. 46:1971 through R.S. 46:1980, or failure to meet any of the minimum standards, rules, regulations, or orders of the Department of Social Services promulgated thereunder;

2. cruelty or indifference to the welfare of the clients;

3. conviction of a felony, as shown by a certified copy of the record of the court of conviction, of the applicant or the members or the officers of the firm or corporation or the person designated to manage or supervise the facility;

4. the director is not reputable;

5. history of noncompliance;

6. failure of the provider to hire a qualified director;

7. disapproval from any agency whose approval is required for licensure;

8. nonpayment of licensure fee/failure to submit application for renewal prior to the expiration of the current license;

9. any validated instance of corporal punishment, physical punishment, cruel, severe, or unusual punishment, physical or sexual abuse/neglect if the owner is responsible or if the employee who is responsible remains in the employment of the provider;

10. closure of the provider with no plans for reopening and no means of verifying compliance;

11. any act of fraud such as falsifying or altering documents required for licensure.

E. Appeal Procedure. If the license is refused, revoked, or denied because the provider does not meet minimum requirements for licensure, the procedure is as follows:

1. the Department of Social Services, by certified letter, shall advise the provider of the reasons for refusal, revocation, or denial and its right of appeal;

2. the director/owner may appeal this decision by submitting a written request, with the reasons, to the secretary of the Department of Social Services. Write to Department of Social Services, Appeals Section, Box 2944, Baton Rouge, LA 70821-9118. This written request must be post marked within 30 days of the director/owner's receipt of the above notification in §4309.E.1;

3. the Appeals Bureau of the Department of Social Services shall set a hearing to be held within 30 days after receipt of such a request;

4. an appeal hearing officer of the Department of Social Services shall conduct the hearing. Within 90 days after the date the appeal is filed, the Department of Social Services shall advise the appellant, by certified letter, of the decision, either affirming or reversing the original decision. If the license is refused or revoked, the provider shall terminate operation immediately;

5. if the provider continues to operate without a license, the Department of Social Services may seek injunctive relief.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971 through 1980.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:111 (January 1998).

#### **§4311. General Requirements**

A. Licensing Authority. The provider shall allow representatives of the licensing agency and the appropriate program office(s), in the performance of their mandated duties, to inspect all aspects of a program's functioning which impact on clients and to interview staff members and clients.

1. The provider shall make any information required in these standards and any information reasonably related to assessment of compliance with these requirements available to the licensing agency and the appropriate program office(s).

i. The client's rights shall not be considered abridged by this requirement.

ii. A provider shall promptly provide all necessary and needed information for review.

iii. A provider shall provide adequate space and privacy for the licensing specialist to review records uninterrupted.

2. The administrator, or a person authorized to act on behalf of the administrator, shall be accessible to agency staff and designated representatives of the licensing agency at all times.

B. Jurisdictional Approvals. The provider shall comply and show proof of compliance with all relevant standards, regulations, and requirements established by federal, state, local, and municipal regulatory bodies, including but not limited to:

1. the Office of Public Health;
2. the Office of the State Fire Marshal and Office of the City Fire Department (if applicable);
3. the Department of Labor (if applicable);
4. fiscal and program review agencies (if applicable);
5. zoning approval (if applicable).

C. Documentation of Authority to Operate. A private provider shall be incorporated in the state of Louisiana.

1. A privately-owned provider shall have documents identifying the names and addresses of owners.

2. A corporation, partnership, or association shall identify the names and addresses of its members and officers and shall, where applicable, have a charter, partnership agreement, constitution, articles of association/incorporation, or bylaws.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:112 (January 1998).

### §4313. Administration and Organization

A. Governing Body. The provider shall have an identifiable governing body with responsibility for and authority over the policies and activities of the provider.

1. The provider shall have documents identifying all members and officers of the governing body, their addresses, and their terms of membership, if applicable.

2. When the governing body of the provider is composed of more than one person, the governing body shall hold formal meetings at least twice a year.

3. When the governing body is composed of more than one person, the provider shall have written minutes of all formal meetings of the governing body and bylaws specifying frequency of meetings and quorum requirements.

4. The bylaws or other written policy shall describe the circumstances under which a business relationship may exist between a member of the governing body and the provider, so as not to create a conflict of interest.

B. Responsibilities of a Governing Body. The governing body shall:

1. ensure the provider's compliance and conformity with the governing body's charter;

2. ensure the provider's continual compliance and conformity with all relevant federal and state laws and regulations;

3. review and approve the provider's annual budget;

4. ensure that the provider is housed, maintained, staffed, and equipped appropriately, considering the nature of the provider's program;

5. designate a person to act as administrator and delegate sufficient authority to this person to manage the provider;

6. formulate and annually review, in consultation with the administrator, written policies concerning the provider's philosophy, goals, current services, personnel practices, and fiscal management;

7. annually evaluate the administrator's performance;

8. have the authority to dismiss the administrator;

9. meet with designated representatives of the licensing agency and the program office(s) whenever required to do so;

10. inform the licensing agency and the program office(s), in writing, prior to initiating any substantial changes in the program, services, or physical plant of the facility.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:113 (January 1998).

### §4315. Management Responsibilities

A. Administrative File. A provider shall have an administrative file including:

1. documents identifying the governing body;

2. list of members and officers of the governing body and their addresses and terms of membership, if applicable;

3. bylaws of the governing body and minutes of formal meetings, if applicable;

4. documentation of the provider's incorporation in the state;

5. organizational chart of the provider;

6. all leases, contracts, and purchase-of-service agreements to which the provider is a party;

7. insurance policies (The provider shall maintain in force at all times a comprehensive general liability insurance policy. The policy shall be in addition to any professional liability policies maintained by the provider. The provider shall extend coverage to any staff member who provides transportation for any client in the course and scope of his/her employment);

8. annual budgets;

9. incident reports and required documentation.

B. Program Description

1. The provider shall have a written program plan describing the services and programs offered by the provider.

2. The provider shall have a written policy regarding participation of clients in activities related to fundraising, publicity, photographing and audio, or audio-visual recordings of clients.

a. The written, informed consent of the client and, where appropriate, the legally responsible person, shall be obtained prior to participation in such activities.

b. Client involvement in these activities shall be in a manner which respects the dignity and confidentiality of the client.

3. The provider shall have written policies regarding the participation of clients in research projects. No client shall participate in any research project without the written, informed consent of the client and the client's legally responsible person, if applicable.

a. The provider shall have a detailed written description of any research projects approved.

b. The provider may conduct research for educational purposes as long as client names are not used or identified in any manner.

C. Client Rights. The provider shall have a written policy on client rights. This policy shall give assurances that:

1. a client's civil rights are not abridged or abrogated solely as a result of placement in the provider's program;
2. a client's civil rights are protected through accessibility or referral to legal counsel;
3. a client is not denied admission, segregated into programs, or otherwise subjected to discrimination on the basis of race, color, religion, sex, age, national origin, handicap, political beliefs, or any nonmerit factor, in accordance with all state and federal regulations.

#### D. Confidentiality and Security of Files

1. The provider shall have written procedures for the maintenance and security of records specifying who shall supervise the maintenance of records, who shall have custody of records, and to whom records may be released. The provider, as custodian, shall secure records against loss, tampering, or unauthorized use.

2. The provider shall maintain the confidentiality of all clients' case records. Employees, volunteers, and interns of the provider shall not disclose, or knowingly permit the disclosure of, any information concerning the client or his/her family, directly or indirectly, to any unauthorized person.

3. The provider shall implement and have written policies and procedures regarding the release of information. The client's file shall contain documentation concerning any information released with the individual's written consent. The policies and procedures shall require that the release form shall:

- a. specify the name of the person or agency to whom the information is released;
- b. describe the information to be released;
- c. specify the purpose for the release of information;
- d. specify the length of time for which the release is valid, not to exceed one year; and
- e. include the date and signature of the client or his/her legally responsible person, if applicable. The signature of two witnesses must be obtained when client signs with a mark.

4. The provider shall have a written policy which defines who has access to client records.

5. The provider's written policies shall ensure that information from the case record is made available to the client, the legally responsible person, or legal counsel of the client upon request. If, in the professional judgment of the provider, it is felt that the information contained in the record would be damaging to a client, that information *only* may be withheld from the client, except under court order.

#### E. Record Keeping

1. All records shall be maintained in an accessible, standardized order and format and shall be retained and disposed of according to state laws.

2. The provider shall ensure that all entries in records are legible, signed by the person making the entry, and accompanied by the date on which the entry was made.

3. The provider shall have sufficient space, facilities, and supplies for providing effective record keeping services.

F. Client's Case Record. A provider shall have a written record for each client which shall include:

1. the name, sex, race, birth date, and current address of the client;

2. date of admission to the program;
3. court status or legal status, and who is authorized to give consent;
4. client's history, including family data, employment record, and prior medical history;
5. current medication and any known allergies;
6. a copy of the client's individual service plan, any subsequent modifications, and any objectives to guide and assist direct service workers in implementing the client's program;
7. quarterly reviews and progress notes;
8. a copy of the discharge summary, when applicable;
9. critical incident reports;
10. reports of any client grievances and the conclusions or dispositions of these reports;
11. the name, address, and telephone number of the next of kin and/or legally responsible person;
12. a signed consent giving the provider authorization to obtain emergency medical care;
13. the name, address, and phone number of the client's physician and dentist;
14. client's evaluations as required in §4319.B.2.

#### G. Personnel File

1. The provider shall have a record for each staff member which shall contain:

- a. the application for employment or résumé;
- b. documentation of three reference checks;
- c. evidence of applicable professional credentials;
- d. in-service training records or summary;
- e. annual performance evaluations;
- f. personnel actions, reports, and notes relating to the individual's employment with the facility;
- g. employee's starting and termination dates;
- h. a satisfactory criminal history check, in accordance with state law;
- i. TB test result; and
- j. documentation of current driver's license for all staff who transport clients.

2. The provider shall have written policies ensuring that staff members have reasonable access to their file and are allowed to add any written statement they wish to the file.

3. The provider shall retain the personnel file of an employee for at least three years after the employee's termination of employment.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:113 (January 1998).

### §4317. Human Resources

A. Staff Plan/Personnel Practices. The provider shall have written personnel policies that include:

1. a plan for recruitment, screening, orientation, ongoing training, development, supervision, and performance evaluation of staff members;
  - a. the provider shall have a nondiscrimination policy prohibiting discrimination against any person on the basis of

race, color, religion, sex, age, national origin, disability, veteran status, or any nonmerit factor;

b. the provider's screening procedures shall address the prospective staff member's qualifications, ability, and experience, as related to the appropriate job description;

c. prior to employing any person, the provider shall obtain written references or document phone contacts on oral references from three persons;

d. a satisfactory criminal history check shall be obtained by the provider, prior to an offer of employment, in accordance with state law;

e. all persons, prior to or at time of employment, shall be free of tuberculosis in a communicable state, as evidenced by:

i. a negative Mantoux skin test for tuberculosis;

ii. a normal chest x-ray if the aforementioned skin test is positive; or

iii. a statement from a physician certifying that the individual is noninfectious if the chest x-ray is other than normal;

(a). any employee who has a negative Mantoux skin test for tuberculosis, in order to remain employed, shall be retested annually;

(b). any employee who has a positive Mantoux skin test for tuberculosis, in order to remain employed, shall complete an adequate course of therapy, as prescribed by a licensed physician, or shall present a signed statement from a licensed physician stating that therapy is not indicated;

f. where certification or licensing standards exist for professional staff, these individuals shall possess current certifications/licenses. Documentation of such shall be on file and available for review;

g. the provider shall not knowingly hire, or continue to employ, any person whose history or current behavior impairs his/her ability to properly protect the health and safety of the clients or is such that it would endanger the physical or psychological well-being of the clients. This requirement is not to be interpreted to exclude continued employment in other than direct service capacities of persons undergoing temporary medical or emotional problems;

h. the provider shall complete an annual performance evaluation of all staff members. For any person who interacts with clients, a provider's performance evaluation procedures shall address the quality and nature of a staff member's relationships with clients;

2. written job descriptions for each staff position;

3. written employee grievance procedure.

#### B. Orientation

1. A provider's orientation program shall include training in the following topics for *all* employees:

a. philosophy, organization, program, practices, and goals of the provider;

b. instruction in the specific responsibilities of the employee's job;

c. the provider's emergency and safety procedures, including medical emergencies;

d. detecting and reporting suspected abuse and neglect;

e. reporting critical incidents;

f. client rights; and

g. universal precautions.

2. Orientation for direct-care staff shall include additional training in the following topics:

a. implementation of service plans;

b. detecting signs of illness or dysfunction that warrant medical or nursing intervention;

c. basic skills required to meet the health needs and problems of the clients;

d. passive physical restraint;

e. crisis de-escalation and the management of aggressive behavior, including acceptable and prohibited responses; and

f. safe administration and handling of all medications.

3. All direct care employees shall receive certification in adult CPR and first aid within the first 30 days of employment.

4. A new direct care employee shall not be given sole responsibility for the implementation of a client's program plan until all required training is completed.

5. The employee shall sign a statement of understanding certifying that such training has occurred.

#### C. Annual Training

1. A provider shall document that *all* employees receive training on an annual basis in the following topics:

a. provider's policies and procedures;

b. emergency and safety procedures;

c. medical emergencies;

d. client's rights;

e. detecting and reporting suspected abuse and neglect;

f. reporting critical incidents;

g. universal precautions.

2. Direct care staff shall receive additional annual training in the following topics:

a. training in implementation of service plans;

b. confidentiality;

c. detecting signs of illness or dysfunction that warrant medical or nursing intervention;

d. basic skills required to meet the health needs and problems of the client;

e. passive physical restraint;

f. crisis de-escalation; and

g. the management of aggressive behavior, including acceptable and prohibited responses.

3. All direct care staff shall have documentation of current certification in first aid and CPR.

4. Staff in supervisory positions shall have annual training in supervisory and management techniques.

#### D. Number and Qualifications of Staff

1. The provider shall delegate sufficient authority to qualified staff to ensure that the responsibilities the provider undertakes are carried out.

2. The provider shall not be dependent upon clients or volunteers for performing necessary services such as maintenance or client supervision.

3. Qualified direct care staff shall be employed and present with the clients as necessary to ensure the health,

safety and well-being of clients. Staff coverage shall be maintained in consideration of the time of day, the size and nature of the agency, and the ages and needs of the clients.

4. The client/staff ratio shall be one staff per eight clients unless client(s)' functional impairment require(s) additional staff coverage to meet the client(s)' needs.

5. The following staff positions are required; however, one person may occupy more than one position:

a. Director/Director Designee. The director (or director designee, if applicable) shall have a bachelor's degree plus one year's experience relative to the population being served.

b. Qualified Professional. A person with a bachelor's degree in the human services field and one year's experience in human services with the relevant type of client population.

c. Food Service Supervisor. The facility shall designate one staff member who shall be responsible for meal preparation/serving if meals are prepared in the facility.

d. Any staff hired after the effective date of publication shall meet requirements of that position.

#### E. Volunteers/Student Interns

1. A provider utilizing volunteers or student interns on a regular basis shall have a written plan for using such resources. This plan shall be given to all volunteers and interns. The plan shall indicate that all volunteers and interns shall:

a. be directly supervised by a paid staff member;  
b. be oriented and trained in the philosophy and policy and procedures of the provider, confidentiality, the needs of clients, and methods of meeting those needs; and  
c. have documentation of three reference checks.

2. Volunteers/student interns shall be a supplement to the required staffing component.

#### F. External Professional Services

1. When a client's plan indicates the need for professional services that are not available from the provider, the provider shall facilitate access to such services and shall document such.

2. The provider shall have a written agreement with appropriately qualified professionals.

3. Current documentation of the professional's certification/licensure shall be kept on file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:114 (January 1998).

### **§4319. Direct Service Management**

#### A. Admissions

1. The provider shall have a written description of the admission process and the criteria for admission.

2. The provider shall not refuse admission to any client on the grounds of race, color, religion, sex, age, national origin, handicap, political beliefs, or any other nonmerit factor. The provider shall not refuse admission on the grounds of age, except where funded by state or federal monies and the appropriate program office's eligibility criteria indicate age restrictions.

3. The provider shall not admit more clients into care than the number specified on the license.

4. The provider shall not admit any client into care whose presence would pose a documented health and safety risk to the client or to other clients and for whom the provider cannot provide the necessary care.

5. The provider shall determine the legal status of applicants, as well as any changes in such status of applicants or current clients (e.g., full interdiction, partial interdiction, continuing tutorship, competent major).

In the event that a restrictive legal action has been filed on behalf of an applicant or current client, the responsible individual shall be informed of the need to provide a copy of the legal document, or affidavit to that effect, to the provider.

6. There shall be a written orientation program for clients admitted to the program which shall include the following:

a. the responsibilities of the organization;  
b. wage payment practices;  
c. work program rules;  
d. nondiscrimination provisions;  
e. client rights and responsibilities;  
f. grievance and appeal procedures for clients; and  
g. the availability of community-based job training and placement services;

h. The client and staff shall sign and date a statement verifying the client received an explanation of information covered in §4319.A.6.a-g.

#### B. Individual Service Plans

1. Within 30 days of admission, an individualized plan shall be developed by a team composed of the following:

a. the client, and when appropriate, legally responsible person(s);  
b. any representative the client may select, if the representative agrees;  
c. a qualified professional;  
d. the staff person(s) involved in the client's program;  
e. other professionals deemed appropriate by the team.

2. Prior to the development of the initial individualized plan, the following evaluations shall be on file and shall be current (not over a year old):

a. social history;  
b. vocational profile;  
c. psychological or psychiatric;  
d. medical; and  
e. any other evaluations that may be recommended by the team.

NOTE: Omission of a specific evaluation may be made in certain instances, provided the state referring agency documents that the information is not necessary to develop a valid service plan.

3. Individualized plans shall be reviewed and updated at least annually and more often, if needed, by the team as defined in §4319.B.1.a-e.

4. Individualized plans shall include, at a minimum, the following:

a. a list of the client's interests, preferences, and goals;  
b. a list of the client's general and specific abilities, based on observations, interviews and other techniques;



- c. a statement of the client's strengths and needs; and
- d. measurable, functional outcomes based on the results of required evaluations and §4319.B.4.a-c.

5. For each measurable, functional outcome the plan shall include:

- a. methods for achieving the outcome;
- b. persons responsible for implementing the plan;
- c. projected time frames for completion; and
- d. procedures for evaluation of progress.

6. The individualized plan shall be made available to staff person(s) who work with the client.

7. A quarterly summary, approved by a qualified professional, shall include successes and failures of the client's program, and shall address each functional outcome and any recommendations for modification. This shall be located in the client's file.

#### C. Work

1. The provider shall meet all state and federal wage and hour regulations regarding employment of persons admitted to the agency.

a. The provider must maintain full financial records of clients' earnings if the agency pays the client.

b. The provider shall have written assurance that the conditions and compensation of work are in compliance with applicable state and federal wage and hour laws.

2. Clients shall not be required to perform any kind of work involving operation and maintenance of the facility without compensation.

3. Clients shall be directly supervised when operating any type of power driven equipment such as lawn mowers or electric saws, unless the team has determined that direct supervision is not necessary and the equipment has safety guards or devices and adequate training is given to the client and the training is documented.

4. Clients shall be provided with the necessary safety apparel and safety devices.

D. Abuse and Neglect. The provider shall have a comprehensive, written procedure concerning client abuse which includes, but is not limited to, the following:

1. current definitions of abuse and neglect, reporting requirements, and applicable laws;

2. provisions ensuring that regulations for reporting critical incidents involving abuse and neglect are followed;

3. provisions ensuring the administrator/director completes an investigation report within 10 working days;

4. provisions ensuring the client is protected from potential harassment during the investigation;

5. provisions for disciplining staff members who abuse or neglect clients.

#### E. Incident Reports

1. The provider shall have written procedures for the reporting and documentation of deaths of clients, injuries, fights or physical confrontations, situations requiring the use of passive physical restraints, suspected incidents of abuse or neglect, unusual incidents, and other situations or circumstances affecting the health, safety, or well-being of a client(s).

Such procedures shall ensure timely verbal reporting to the administrator/director and a preliminary written report within 24 hours of the incident.

There shall be documentation that the director or designee reviewed the written report within 24 hours.

2. When an incident occurs, a detailed report of the incident shall be completed. As a minimum, the incident report shall contain the following:

- a. circumstances under which the incident occurred;
- b. date and time the incident occurred;
- c. location where the incident occurred;
- d. immediate treatment and follow-up care;
- e. names and addresses of witnesses;
- f. date and time the legally responsible person was notified, if applicable;

g. symptoms of pain and injury discussed with the physician, if applicable;

h. signatures and dates of the staff completing the report and the administrator/director.

3. When an incident results in death of a client, involves abuse or neglect of a client, or entails any serious threat to the client's health, safety, or well-being the provider shall:

a. immediately report verbally to the administrator/director and submit a preliminary written report within 24 hours of the incident;

There shall be documentation that the director or designee reviewed the report within 24 hours.

b. immediately notify the Bureau of Licensing and other appropriate authorities, according to state law (e.g., DHH Adult Protection Services, Office of Elderly Affairs, and law enforcement authority). The provider must notify the above agencies, in writing, within 24 hours of the suspected incident;

c. immediately notify the next of kin or legally responsible person, with written notification to follow within 24 hours;

d. provide follow-up written reports to all the above persons and agencies;

e. take appropriate corrective action to prevent future incidents.

4. Copies of all critical incident reports shall be kept as part of the clients' record, and a separate copy shall be kept in the administrative file of the provider, along with documentation of compliance with procedures required in §4319.E.3.

#### F. Behavior Management

1. The provider shall have written policies and procedures for behavior management which:

a. prohibit corporal punishment; chemical restraints; psychological abuse; verbal abuse; seclusion; forced exercise; mechanical restraints; any procedure which denies food, drink, or use of rest room facilities; and any cruel, severe, unusual, or unnecessary punishment;

b. ensure that nonintrusive, positive approaches to address the meaning/origin of behaviors are used prior to the development of a restrictive plan;

c. define the use of behavior modification programs, define mechanisms which authorize their use, and provide for the monitoring and control of their use;

d. indicate that passive/physical restraint may be used only after other, less restrictive interventions/strategies have failed; shall be implemented only by trained staff; and shall be of short duration;

e. cover any behavioral emergency and provide documentation of the event in incident report format.

2. Any behavior management plan for an individual must be developed or approved by a licensed psychologist or psychiatrist.

#### G. Discharge

1. There shall be a written discharge policy and procedure. This policy shall ensure that emergency discharges initiated by the provider shall occur only when the health and safety of a client or other clients might be endangered by the client's further stay at the facility.

2. A summary shall be written at the time of discharge and shall include:

a. the name and address of the client and, where appropriate, the legally responsible person;

b. dates of admission and discharge;

c. reason for discharge and details of the circumstances leading to the discharge;

d. a summary of accomplishments while at the facility;

e. a summary of services provided during care.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:116 (January 1998).

#### §4321. Food and Nutrition

A. If meals are prepared by the facility or contracted from an outside source:

1. menus shall be written in advance and shall provide for a variety of foods;

2. records of menus, as served, shall be filed and maintained for at least 30 days;

3. modified diets shall be prescribed by a physician;

4. if there are modified diets, a registered dietician shall review all the orders for special diets and plan the diets;

5. only food and drink of safe quality shall be purchased, and storage, preparation, and serving techniques shall be provided to ensure nutrients are retained and spoilage is prevented;

6. food preparation areas and utensils shall be kept clean.

B. When meals are not provided by the facility:

1. provisions must be made for obtaining food for clients who do not bring their lunch;

2. there shall be an adequate area for eating.

C. Drinking water shall be readily available. If a drinking fountain is not available, single-use disposable cups shall be used.

D. The dining areas shall be adequately equipped with tables, chairs, eating utensils, and dishes designed to meet the functional needs of all clients.

E. Adequate refrigeration for food shall be maintained, and refrigerators shall be kept at 45°F, or below.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:118 (January 1998).

#### §4323. Transportation

A. The provider shall have means of transporting clients in cases of emergency.

B. If transportation is provided, the provider shall ensure that the client is provided with the transportation necessary for implementing the client's service plan.

C. Any vehicle used in transporting clients in care of the provider, whether such vehicle is operated by a staff member or any other person acting on behalf of the provider, shall be properly licensed and inspected, in accordance with state law.

D. The provider shall have documentation of liability insurance coverage for all owned and nonowned vehicles used to transport clients. Employees' personal liability insurance shall not be substituted for required coverage.

E. Any staff member of the provider, or other person acting on behalf of the provider, operating a vehicle for the purpose of transporting clients, shall be properly licensed to operate that class of vehicle, according to state law.

F. The provider shall not allow the number of persons in any vehicle used to transport clients to exceed the number of available seats in the vehicle.

G. All vehicles used for the transportation of clients shall be maintained in a safe condition and be in conformity with all applicable motor vehicle laws. The provider shall document that all vehicles, whether provider or employee owned, have a current license and inspection.

H. The provider shall ascertain the nature of any need or problem of a client which might cause difficulties during transportation. The provider shall communicate such information to the operator of any vehicle transporting clients in care.

I. The following additional arrangements are required for providers serving handicapped, nonambulatory clients:

1. A ramp device to permit entry and exit of a client from the vehicle shall be provided for vehicles, except automobiles, normally used to transport persons with disabilities. A mechanical lift may be utilized, provided that a ramp is also available in case of emergency, unless the mechanical lift has a manual override.

2. In all vehicles, except automobiles, wheelchairs used in transit shall be securely fastened to the vehicle.

3. In all vehicles, except automobiles, the arrangement of the wheelchairs shall not impede access to the exit door of the vehicle.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:118 (January 1998).

**§4325. General Safety Practices**

A. A facility shall not maintain any firearms or chemical weapons at any time.

B. A facility shall ensure that all poisonous, toxic, and flammable materials are safely stored in appropriate containers labeled as to contents. Such materials shall be maintained only as necessary and shall be used in such a manner as to ensure the safety of clients, staff, and visitors.

C. Adequate supervision/training shall be provided where potentially harmful materials, such as cleaning solvents and detergents, are used.

D. A facility shall ensure that a first aid kit is available in the facility and in all vehicles used to transport clients.

E. If the provider holds medication for clients, it shall be locked.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:119 (January 1998).

**§4327. Emergency and Safety**

A. A provider shall have a written overall plan of emergency and safety procedures.

1. The plan shall provide for the evacuation of clients to safe or sheltered areas.

2. The plan shall include provisions for training staff and clients in preventing, reporting, and responding to fires and other emergencies.

3. The plan shall provide means for an ongoing safety program, including continuous inspection of the center for possible hazards, continuous monitoring of safety equipment, and investigation of all accidents or emergencies.

4. The plan shall include provisions for training personnel in their emergency duties and in the use of any fire fighting or other emergency equipment in their immediate work areas.

B. The facility shall conduct fire drills once every month, with documentation including:

1. date of drill;
2. time of drill;
3. lapse time of drill;
4. number of staff and clients participating;
5. any problems and corrective actions taken; and
6. signature of person responsible for conducting the drill.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of

Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:119 (January 1998).

**§4329. Physical Environment**

A. The building shall be constructed, equipped, and maintained to ensure the safety of all concerned.

The building shall be maintained in good repair and kept free of hazards, such as those created by any damaged or defective parts of the building.

B. The provider shall maintain all areas of the facility that are accessible to clients and ensure that all structures on the grounds of the facility are in good repair and free from any reasonably foreseeable hazard to health or safety.

C. The facility shall be accessible to and functional for those cared for, the staff, and the public. All necessary accommodations shall be made to meet the needs of persons with disabilities.

Training or supports are provided to help clients effectively negotiate their environment.

D. There shall be a minimum of 35 square feet of space per client. Kitchens, bathrooms, halls used as passageways, and other spaces not directly associated with program activities shall not be considered as floor space available for clients.

E. There shall be storage space, as needed by the program, for training and vocational materials, office supplies, etc.

F. Rooms used for client activities shall be well ventilated and lighted.

G. There shall be separate space for storage of clients' personal belongings.

H. Chairs and tables shall be adequate in number to serve the clients.

I. Bathrooms and lavatories shall be accessible, operable, and equipped with soap, paper towels or hand drying machines, and tissue.

J. Individuals shall be provided privacy when using bathroom facilities.

K. Every bathroom door shall be designed to permit opening of the locked door from the outside, in an emergency, and the opening device shall be readily accessible to the staff.

L. Stairways shall be kept free of obstruction, and fire exit doors shall be maintained in working order. All stairways shall be equipped with handrails.

M. There shall be a telephone available and accessible to all clients.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:1971-1980.

HISTORICAL NOTE: Promulgated by the Department of Health and Human Resources, Office of the Secretary, Division of Licensing and Certification, LR 13:246 (April 1987), amended by the Department of Social Services, Office of the Secretary, Bureau of Licensing, LR 24:119 (January 1998).

Madlyn B. Bagneris  
Secretary

9801#056