

# **Joint Committee on Administrative Rules**

# **ADMINISTRATIVE CODE**

## **TITLE 77: PUBLIC HEALTH**

### **CHAPTER I: DEPARTMENT OF PUBLIC HEALTH**

#### **SUBCHAPTER c: LONG-TERM CARE FACILITIES**

#### **PART 300 SKILLED NURSING AND INTERMEDIATE CARE FACILITIES CODE**

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The General Assembly's Illinois Administrative Code database includes only those rulemakings that have been permanently adopted. This menu will point out the Sections on which an emergency rule (valid for a maximum of 150 days, usually until replaced by a permanent rulemaking) exists. The emergency rulemaking is linked through the notation that follows the Section heading in the menu.

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AUTHORITY: Implementing and authorized by the Nursing Home Care Act [210 ILCS 45].

SOURCE: Emergency rules adopted at 4 Ill. Reg. 10, p. 1066, effective March 1, 1980, for a maximum of 150 days; adopted at 4 Ill. Reg. 30, p. 311, effective July 28, 1980; emergency amendment at 6 Ill. Reg. 3229, effective March 8, 1982, for a maximum of 150 days; amended at 6 Ill. Reg. 5981, effective May 3, 1982; amended at 6 Ill. Reg. 6454, effective May 14, 1982; amended at 6 Ill. Reg. 8198, effective June 29, 1982; amended at 6 Ill. Reg. 11631, effective September 14, 1982; amended at 6 Ill. Reg. 14550 and 14554, effective November 8, 1982; amended at 6 Ill. Reg. 14684, effective November 15, 1982; amended at 7 Ill. Reg. 285, effective December 22, 1982; amended at 7 Ill. Reg. 1972, effective January 28, 1983; amended at 7 Ill. Reg. 8579, effective July 11, 1983; amended at 7 Ill. Reg. 15831, effective November 10, 1983; amended at 7 Ill. Reg. 15864, effective November 15, 1983; amended at 7 Ill. Reg. 16992, effective December 14, 1983; amended at 8 Ill. Reg. 15599, 15603, and 15606, effective August 15, 1984; amended at 8 Ill. Reg. 15947, effective August 17, 1984; amended at 8 Ill. Reg. 16999, effective September 5, 1984; codified at 8 Ill. Reg. 19766; amended at 8 Ill. Reg. 24186, effective November 29, 1984; amended at 8 Ill. Reg. 24668, effective December 7, 1984; amended at 8 Ill. Reg. 25102, effective December 14, 1984; amended at 9 Ill. Reg. 132, effective December 26, 1984; amended at 9 Ill. Reg. 4087, effective March 15, 1985; amended at 9 Ill. Reg. 11049, effective July 1, 1985; amended at 11 Ill. Reg. 16927, effective October 1, 1987; amended at 12 Ill. Reg. 1052, effective December 24, 1987; amended at 12 Ill. Reg. 16811, effective October 1, 1988; emergency amendment at 12 Ill. Reg. 18477, effective October 24, 1988, for a maximum of 150 days; emergency expired March 23, 1989; amended at 13 Ill. Reg. 4684, effective March 24, 1989; amended at 13 Ill. Reg. 5134, effective April 1, 1989; amended at 13 Ill. Reg. 20089, effective December 1, 1989; amended at 14 Ill. Reg. 14950, effective October 1, 1990; amended at 15 Ill. Reg. 554, effective January 1, 1991; amended at 16 Ill. Reg. 681, effective January 1, 1992; amended at 16 Ill. Reg. 5977, effective March 27, 1992; amended at 16 Ill. Reg. 17089, effective November 3, 1992; emergency amendment at 17 Ill. Reg. 2420, effective February 3, 1993, for a maximum of 150 days; emergency expired on July 3, 1993; emergency amendment at 17 Ill. Reg. 8026, effective May 6, 1993, for a maximum of 150 days; emergency expired on October 3, 1993; amended at 17 Ill. Reg. 15106, effective September 3, 1993; amended at 17 Ill. Reg. 16194, effective January 1, 1994; amended at 17 Ill. Reg. 19279, effective October 26, 1993; amended at 17 Ill. Reg. 19604, effective November 4, 1993; amended at 17 Ill. Reg. 21058, effective November 20, 1993; amended at 18 Ill. Reg. 1491, effective January 14, 1994; amended at 18 Ill. Reg. 15868, effective October 15, 1994; amended at 19 Ill. Reg. 11600, effective July 29, 1995; emergency amendment at 20 Ill. Reg. 567, effective January 1, 1996, for a maximum of 150 days;

emergency expired May 29, 1996; amended at 20 Ill. Reg. 10142, effective July 15, 1996; amended at 20 Ill. Reg. 12208, effective September 10, 1996; amended at 21 Ill. Reg. 15000, effective November 15, 1997; amended at 22 Ill. Reg. 4094, effective February 13, 1998; amended at 22 Ill. Reg. 7218, effective April 15, 1998; amended at 22 Ill. Reg. 16609, effective September 18, 1998; amended at 23 Ill. Reg. 1103, effective January 15, 1999; amended at 23 Ill. Reg. 8106, effective July 15, 1999; amended at 24 Ill. Reg. 17330, effective November 1, 2000; amended at 25 Ill. Reg. 4911, effective April 1, 2001; amended at 26 Ill. Reg. 3113, effective February 15, 2002; amended at 26 Ill. Reg. 4846, effective April 1, 2002; amended at 26 Ill. Reg. 10523, effective July 1, 2002; emergency amendment at 27 Ill. Reg. 2181, effective February 1, 2003, for a maximum of 150 days; emergency expired June 30, 2003; emergency amendment at 27 Ill. Reg. 5452, effective March 25, 2003, for a maximum of 150 days; emergency expired August 21, 2003; amended at 27 Ill. Reg. 5862, effective April 1, 2003; emergency amendment at 27 Ill. Reg. 14204, effective August 15, 2003, for a maximum of 150 days; emergency expired January 11, 2004; amended at 27 Ill. Reg. 15855, effective September 25, 2003; amended at 27 Ill. Reg. 18105, effective November 15, 2003; expedited correction at 28 Ill. Reg. 3528, effective November 15, 2003; amended at 28 Ill. Reg. 11180, effective July 22, 2004; amended at 28 Ill. Reg. 14623, effective October 20, 2004; amended at 29 Ill. Reg. 876, effective December 22, 2004; emergency amendment at 29 Ill. Reg. 11824, effective July 12, 2005, for a maximum of 150 days; emergency rule modified in response to JCAR Recommendation at 29 Ill. Reg. 15101, effective September 23, 2005, for the remainder of the maximum 150 days; emergency amendment expired December 8, 2005; amended at 29 Ill. Reg. 12852, effective August 2, 2005; amended at 30 Ill. Reg. 1425, effective January 23, 2006; amended at 30 Ill. Reg. 5213, effective March 2, 2006; amended at 31 Ill. Reg. 6044, effective April 3, 2007; amended at 31 Ill. Reg. 8813, effective June 6, 2007; amended at 33 Ill. Reg. 9356, effective June 17, 2009; amended at 34 Ill. Reg. 19182, effective November 23, 2010.

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### **Section 300.110 General Requirements**

- a) This Part applies to the operator/licensee of facilities, or distinct parts thereof, that are to be licensed and classified to provide intermediate care or skilled nursing care. Any license issued and in effect prior to March 1, 1980, pursuant to the Nursing homes, sheltered care homes, and homes for the aged Act (Ill. Rev. Stat. 1977, ch. 111½, par. 35.16 et seq.) shall remain valid and subject to the terms and conditions of the Nursing Home Care Act (the Act) (Ill. Rev. Stat. 1991, ch. 111½, par. 4151-101 et seq.) and all regulations promulgated thereunder until the expiration date shown on the face of such license.
- b) The license issued to each operator/licensee shall designate the licensee's name, facility name, address, the classification by level of service authorized for that facility, the number of beds authorized for each level, the date the license was issued and the expiration date. Such licenses shall be issued for a period of *not less than six months nor more than 18 months*. The Department will set the period of the license based on the license expiration dates of the facilities in the geographical area surrounding the facility *in order to distribute the expiration dates* as evenly as possible *throughout the calendar year*. (Section 3-110 of the Act)
- c) An applicant may request that the license issued by the Department of Public Health

(the Department) have distinct parts classified according to levels of services. The distinct part must satisfactorily meet the applicable physical plant standards based on a level of service classification sought for that distinct part. If necessary to protect the health, welfare and safety of residents in a distinct part requiring higher standards, the Department shall require compliance with whatever additional physical plant standards are necessary in any distinct part, to achieve this protection as required by the highest level of care being licensed. Administrative, supervisory, and other personnel may be shared by the entire facility, if so doing does not adversely affect meeting the total needs of the residents of the facility.

- d) *The operator may not admit residents in excess of the licensed capacity of the facility.* (Section 2-209 of the Act) (B)
- e) An intermediate care facility licensed and classified under the Act shall not use in its title or description "Hospital", "Sanitarium", "Sanatorium", "Rehabilitation Center", "Skilled Nursing Facility", or any other word or description in its title or advertisements which indicates that a type of service is provided by the facility which the facility is not licensed to provide or, in fact, does not provide. A skilled nursing facility may use in its title or advertisement the words or description: "Nursing Home", "Intermediate Care", "Skilled Nursing Facility".
- f) Any person constructing or modifying a long-term care facility or portion thereof without obtaining the required permit from the Health Facilities Planning Board shall not be eligible to apply for licensure for that facility or portion thereof (Ill. Rev. Stat. 1991, ch. 111½, par. 1163.1).
- g) *The licensee shall give 90 days notice prior to voluntarily closing a facility or closing any part of a facility, or prior to closing any part of a facility if closing such part will require the transfer or discharge of more than ten percent of the residents. Such notice shall be given to the Department, to any residents who must be transferred or discharged, to the resident's representative, and to a member of the resident's family, where practicable. Notice shall state the proposed date of closing and the reason for closing. The licensee shall offer to assist the resident in securing an alternative placement and shall advise the resident on available alternatives. Where the resident is unable to choose an alternate placement and is not under guardianship, the Department shall be notified of the need for relocation assistance. The facility shall comply with all applicable laws and regulations until the date of closing, including those related to transfer or discharge of residents. The Department may place a relocation team in the facility as provided under the Act.* (Section 3-423 of the Act) (A, B)
- h) Licensure for more than one level of care.
  - 1) A facility may be licensed for more than one level of care. The licensee must designate the level of care that will be provided in each bedroom. Bedrooms of like licensed level of care must be contiguous to each other within each "nursing unit" as defined in Section 300.330. Each nursing unit may have up to two levels of care and must meet the construction standards

for the highest licensed level of care in the nursing unit.

- 2) If a licensee wishes to designate a portion of its licensed beds as either Intermediate Care for the Developmentally Disabled or Long-Term Care for Under Age 22, the licensed beds must be located in a distinct part (as defined in Section 300.330) of the facility.

(Source: Amended at 16 Ill. Reg. 17089, effective November 3, 1992)

### **Section 300.120 Application for License**

- a) Any person acting individually or jointly with other persons who proposes to build, own, establish, or operate an intermediate care facility or skilled nursing facility shall submit application information on forms provided by the Department. The Department shall be furnished a written description of the proposed program to be provided, and other such information as it may require in order to determine the appropriate level of care for which the facility should be licensed. Application forms and other required information shall be submitted and approved prior to surveys of the physical plant or review of building plans and specifications.
- b) An application for a new facility shall be accompanied by a permit as required by the Illinois Health Facilities Planning Act [20 ILCS 3960].
- c) *Application* for a license to establish or *operate* an intermediate care facility or skilled nursing facility shall be made in writing and submitted, with other such information as the Department may require, *on forms* provided by the Department. (Section 3-103(1) of the Act)
- d) *All license applications shall be accompanied with an application fee of \$995. The fee for a 2-year license shall be double the fee for the annual license.* (Section 3-103(2) of the Act)
- e) *The application shall be under oath and the submission of false or misleading information shall be a Class A misdemeanor. The application shall contain the following information:*
  - 1) *The name and address of the applicant if an individual, and if a firm, partnership, or association, of every member thereof, and in the case of a corporation, the name and address thereof and of its officers and its registered agent, and in the case of a unit of local government, the name and address of its chief executive officer;*
  - 2) *The name and location of the facility for which a license is sought;*
  - 3) *The name of the person or persons under whose management or supervision the facility will be conducted;*

- 4) *The number and type of residents for which maintenance, personal care, or nursing is to be provided; and*
  - 5) *Such information relating to the number, experience, and training of the employees of the facility, any management agreements for the operation of the facility, and of the moral character of the applicant and employees as the Department may deem necessary. (Section 3-103(2) of the Act)*
- f) **Ownership Change or Discontinuation**
- 1) The license is not transferable. It is issued to a specific licensee and for a specific location. The license and the valid current renewal certificate immediately become void and shall be returned to the Department when the facility is sold or leased; when operation is discontinued; when operation is moved to a new location; when the licensee (if an individual) dies; when the licensee (if a corporation or partnership) dissolves or terminates; or when the licensee (whatever the entity) ceases to be.
  - 2) A license issued to a corporation shall become null, void and of no further effect upon the dissolution of the corporation. The license shall not be revived if the corporation is subsequently reinstated. A new license must be obtained in such cases.
- g) *Each initial application shall be accompanied by a financial statement setting forth the financial condition of the applicant and by a statement from the unit of local government having zoning jurisdiction over the facility's location stating that the location of the facility is not in violation of a zoning ordinance. An initial application for a new facility shall be accompanied by a permit as required by the Illinois Health Facilities Planning Act. After the application is approved, the applicant shall advise the Department every six months of any changes in the information originally provided in the application. (Section 3-103(3) of the Act)*
- h) *The Department may issue licenses or renewals for periods of not less than six months nor more than 18 months for facilities with annual licenses and not less than 18 months nor more than 30 months for facilities with 2-year licenses in order to distribute the expiration dates of such licenses throughout the calendar year. The fees for such licenses shall be pro-rated on the basis of the portion of the year for which they are issued. (Section 3-110 of the Act)*

(Source: Amended at 30 Ill. Reg. 1425, effective January 23, 2006)

### **Section 300.130 Licensee**

- a) The licensee is the corporate body, political subdivision, individual, or individuals responsible for the operation of the facility and upon whom rests the responsibility for meeting the licensing requirements. The licensee does not have to own the building being used.

- b) If the licensee does not own the building, a lease or management agreement between the licensee and the owner of the building is required. A copy of the lease or management agreement shall be furnished to the Department. The Department shall also be provided with a copy of all new lease agreements or any changes to existing agreements within 30 days of the effective date of such changes.
- c) If the licensee is not a corporation or a political subdivision of the State of Illinois, each person responsible for the operation of the facility and upon whom rests the responsibility for meeting the licensing Minimum Standards shall be at least 18 years of age.

(Source: Amended at 13 Ill. Reg. 4684, effective March 24, 1989)

### **Section 300.140 Issuance of an Initial License for a New Facility**

- a) *Upon receipt and review of an application for a license and inspection of the applicant facility, the Director shall issue a probationary license if he finds:*
  - 1) *The applicant is a person responsible and suitable to operate or to direct or participate in the operation of a facility by virtue of financial capacity, appropriate business or professional experience, a record of compliance with lawful orders of the Department and lack of revocation of a license during the previous five years;*
  - 2) *The facility is under the supervision of an administrator who is licensed under the Nursing Home Administrators Licensing and Disciplinary Act (Ill. Rev. Stat. 1991, ch. 111, par. 3651 et seq.) [225 ILCS 70]; and*
  - 3) *The facility is in substantial compliance with the Act and this Part. (Section 3-109 of the Act)*
- b) The Department will issue a probationary license for 120 days from the date of issuance.
- c) *Within 30 days prior to the termination of a probationary license, the Department shall fully and completely inspect the facility and, if the facility meets the applicable requirements for licensure, shall issue a license under Section 3-109 of the Act. (Section 3-116 of the Act) If the facility is not in compliance and satisfactory progress toward compliance is not being made, the Department will allow the probationary license to expire.*
- d) *If the Department finds that the facility does not meet the requirements for licensure but has made substantial progress toward meeting those requirements, the license may be renewed once for a period not to exceed 120 days from the expiration date of the initial probationary license. (Section 3-116 of the Act) Under no condition may more than two successive probationary licenses be issued.*

- e) The licensee shall qualify for issuance of a two-year license if the licensee has met the criteria contained in Section 3-110(b) of the Act for the last twenty-four consecutive months.

(Source: Amended at 18 Ill. Reg. 1491, effective January 14, 1994)

### **Section 300.150 Issuance of an Initial License Due to a Change of Ownership**

- a) *Upon receipt and review of an application for a license the Director shall issue a probationary license if he finds:*
  - 1) *The applicant is a person responsible and suitable to operate or to direct or to participate in the operation of a facility by virtue of financial capacity, appropriate business or professional experience, a record of compliance with lawful orders of the Department and lack of revocation of a license during the previous five years;*
  - 2) *The facility is under the supervision of an administrator who is licensed under the Nursing Home Administrators Licensing and Disciplinary Act; and*
  - 3) *The facility is in substantial compliance with the Act and this Part.*  
(Section 3-109 of the Act)
- b) *Whenever ownership of a facility is transferred from the person named in a license to any other person, the transferee must obtain a new probationary license. The transferee shall notify the Department of the transfer and apply for a new license at least 30 days prior to final transfer. (Section 3-112 of the Act)*
- c) *The transferor shall notify the Department at least 30 days prior to final transfer. The transferor shall remain responsible for the operation of the facility until such time as the license is issued to the new transferee. (Section 3-112 of the Act)*
- d) *The license granted to the transferee shall be subject to any plan of correction submitted by the previous owner and approved by the Department and any conditions contained in a conditional license issued to the previous owner. If there are outstanding violations and no plan of correction has been submitted by the facility and approved by the Department, the Department may issue a conditional license and plan of correction as provided in Sections 3-311 through 3-317 of the Act in place of a probationary license. (Section 3-113 of the Act)*
- e) *The transferor shall remain liable for all penalties assessed against the facility which are imposed for violations occurring prior to transfer of ownership.*  
(Section 3-114 of the Act)
- f) The Department will issue a probationary license for 120 days from the date of issuance.



- g) *Within 30 days prior to the termination of a probationary license, the Department shall fully and completely inspect the facility and, if the facility meets the applicable requirements for licensure, shall issue a license under Section 3-109 of the Act.*(Section 3-116 of the Act) If the facility is not in compliance and satisfactory progress toward compliance is not being made, the Department will allow the probationary license to expire.
- h) *If the Department finds that the facility does not meet the requirements for licensure but has made substantial progress toward meeting those requirements, the license may be renewed once for a period not to exceed 120 days from the expiration date of the initial probationary license.* (Section 3-116 of the Act) Under no condition may more than two successive probationary licenses be issued.
- i) The issuance date of the probationary license to the new owner will be the date the last licensure requirement is met as determined by the Department.
- j) The licensee shall qualify for issuance of a two-year license if the licensee has met the criteria contained in Section 3-110(b) of the Act for the last twenty-four consecutive months.

(Source: Amended at 18 Ill. Reg. 1491, effective January 14, 1994)

### **Section 300.160 Issuance of a Renewal License**

*At least 120 days but not more than 150 days prior to license expiration, the licensee shall submit an application for renewal of the license in such form and containing such information as the Department requires. If the application is approved, and the facility is in compliance with all other licensure requirements, the license shall be renewed in accordance with Section 3-110 of the Act. The renewal application shall not be approved unless the applicant has provided to the Department an accurate disclosure document in accordance with the Alzheimer's Special Care Disclosure Act [220 ILCS 4] and Section 300.163 of this Part, if applicable.* (Section 3-115 of the Act)

(Source: Amended at 24 Ill. Reg. 17330, effective November 1, 2000)

### **Section 300.163 Alzheimer's Special Care Disclosure**

*A facility that offers to provide care for persons with Alzheimer's disease through an Alzheimer's special care unit or center shall disclose to the Department or to a potential or actual client of the facility the following information in writing on request of the Department or client:*

- a) *The form of care or treatment that distinguishes the facility as suitable for persons with Alzheimer's disease;*
- b) *The philosophy of the facility concerning the care or treatment of persons with Alzheimer's disease;*
- c) *The facility's pre-admission, admission, and discharge procedures;*

- d) *The facility's assessment, care planning, and implementation guidelines in the care and treatment of persons with Alzheimer's disease;*
- e) *The facility's minimum and maximum staffing ratios, specifying the general licensed health care provider to client ratio and the trainee health care provider to client ratio;*
- f) *The facility's physical environment;*
- g) *Activities available to clients at the facility;*
- h) *The role of family members in the care of clients at the facility; and*
- i) *The costs of care and treatment under the program or at the center.* (Section 15 of the Alzheimer's Special Care Disclosure Act)

(Source: Added at 23 Ill. Reg. 1103, effective January 15, 1999)

### **Section 300.165 Criteria for Adverse Licensure Actions**

- a) Adverse licensure actions are determinations to deny the issuance of an initial license, to deny the issuance of a renewal of a license, or to revoke the current license of a facility.
- b) A determination by the Director or his designee to take adverse licensure action against a facility shall be based on a finding that one or more of the following criteria are met:
  - 1) The facility has *substantially failed to meet any of the minimum standards set forth in the act or this Part*. For purposes of this provision, substantial failure is a failure to meet the requirements of this Part which is other than a variance from strict and literal performance which results only in unimportant omissions or defects given the particular circumstances involved. (Sections 3-117(1) and 3-119(a)(1) of the Act)
  - 2) *The licensee or applicant, or the person designated to manage or supervise the facility has been convicted of any of the following crimes during the previous five years. Such convictions shall be verified by a certified copy of the record of the court of conviction.*
    - A) *A felony.*
    - B) *Two or more misdemeanors involving moral turpitude.* (Sections 3-117(2) and 3-119(a)(2) of the Act)
  - 3) *The moral character of the licensee, administrator, manager, or supervisor of the facility is not reputable.* Evidence to be considered will include verifiable statements by residents of a facility, law enforcement officials, or other persons with knowledge of the individual's character. In

addition, the definition afforded to the terms "reputable," "unreputable," and "irreputable" by the circuit courts of the State of Illinois shall apply when appropriate to the given situation. For purposes of this Section, a manager or supervisor of the facility is an individual with responsibility for the overall management, direction, coordination, or supervision of the facility or the facility staff. (Section 3-117(2) and 3-119(a)(2) of the Act)

- 4) The facility is operating (or, for an initial applicant, intends to operate) *with personnel which are insufficient in number or unqualified by training or experience to properly care for the number and type of residents* in the facility. Standards in these rules concerning personnel, including Sections 300.810, 300.820, 300.830, 300.1220, 300.1230 and 300.1240, will be considered in making this determination. (Sections 3-117(3) and 3-119(a)(3) of the Act)
  - 5) The facility has available *insufficient financial or other resources to operate the facility in accordance with this Part*. Financial information and changes in financial information provided by the facility under Section 300.120(f) and under Section 3-208 of the Act will be considered in making this determination (Section 3-208 of the Act)
  - 6) *The facility is not under the direct supervision of a full-time administrator* as required by Section 300.510. (Sections 3-117(6) and 3-119(a)(5) of the Act)
  - 7) The facility has violated the rights of residents of the facility by any of the following actions:
    - A) A pervasive pattern of cruelty or indifference to residents has occurred in the facility.
    - B) The facility has appropriated or converted for its use the property of a resident without his written consent or the consent of his legal guardian.
    - C) The facility has secured property, or a bequest of property, from a resident by undue influence.
  - 8) The facility knowingly submitted false information either on the licensure or renewal application forms or during the course of an inspection or survey of the facility.
  - 9) The facility has refused to allow an inspection or survey of the facility by agents of the Department to occur.
- c) The Director or his designee shall consider all available evidence at the time of the determination, including the history of the facility and the applicant in complying with the Act and this Part, notices of violations which have been issued to the facility and the applicant, findings of surveys and inspections, and

any other evidence provided by the facility, residents, law enforcement officials and other interested individuals.

(Source: Amended at 13 Ill. Reg. 4684, effective March 24, 1989)

### **Section 300.170 Denial of Initial License**

- a) A determination by the Director or his designee to deny the issuance of an initial license shall be based on a finding that one or more of the criteria outlined in Section 300.165 or the following criteria are met.
  - 1) *The applicant, any member of the firm, partnership, or association which is the applicant, any officer or stockholder of the corporation which is the applicant, or the person designated to manage or supervise the facility has been convicted of any of the following crimes during the previous five years. Such convictions shall be verified by a certified copy of the record of the court of conviction.*
    - A) *A felony.*
    - B) *Two or more misdemeanors involving moral turpitude. (Section 3-117(2) of the Act)*
  - 2) Prior license revocation. Both of the following conditions must be met:
    - A) *The license of a facility under this Act has been revoked during the past five years, which was owned or operated by the applicant, by a controlling owner of the applicant, by a controlling combination of owners of the applicant, or by an affiliate who is a controlling owner of the applicant. Operation for the purposes of this provision shall include individuals with responsibility for the overall management, direction, or supervision of the facility.*
    - B) *Such prior revocation renders the applicant unqualified or incapable of maintaining a facility in accordance with the minimum standards set forth in the act or in this Part. This determination will be based on the applicant's qualifications and ability to meet the criteria outlined in Section 300.165(b) as evidenced by the application and the applicant's prior history. (Section 3-117(5) of the Act)*
- b) The Department shall notify an applicant *immediately upon denial of any application*. Such notice shall be *in writing* and shall include:
  - 1) *A clear and concise statement of the basis of the denial. The statement shall include a citation to the provisions of Section 3-117 of the Act and the provisions of this Part under which the application is being denied.*

- 2) A description of *the right of the applicant to appeal the denial of the application* and the right to a hearing. (Section 3-118 of the Act)

(Source: Amended at 13 Ill. Reg. 4684, effective March 24, 1989)

### **Section 300.175 Denial of Renewal of License**

- a) Application for renewal of a license of a facility shall be denied and the license of the facility shall be allowed to expire when the Director or his designee finds that a condition, occurrence, or situation in the facility meets any of the criteria specified in Section 300.165(b). Pursuant to Section 10-65 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1991, ch. 127, par. 1010-65) [5 ILCS 100/10-65], licensees who are individuals are subject to denial of renewal of licensure if the individual is more than 30 days delinquent in complying with a child support order.
- b) When the Director or his designee determines that an application for renewal of a license of a facility is to be denied, the Department shall notify the facility. The notice to the facility shall be in writing and shall include:
  - 1) *A clear and concise statement* of the basis of the denial. The statement shall include a citation to the provisions of the Act and this Part on which the application for renewal is being denied.
  - 2) A statement of the date on which the current license of the facility will expire as provided in subsection (c) of this Section and Section 3-119(d) of the Act.
  - 3) *A description of the right of the applicant to appeal the denial of the application for renewal and the right to a hearing.* (Section 3-119(b) of the Act)
- c) The effective date of the nonrenewal of a license shall be as provided in Section 3-119(d) of the Act.
- d) The current license of the facility shall be *extended by the Department* when it finds that such extension is necessary *to permit orderly removal and relocation of residents.* (Section 3-119(d)(3) of the Act)

(Source: Amended at 17 Ill. Reg. 19279, effective October 26, 1993)

### **Section 300.180 Revocation of License**

- a) The license of a facility shall be revoked when the Director or his designee finds that a condition, occurrence or situation in the facility meets any of the criteria specified in Section 300.165(b). In addition, the license of a facility will be revoked when the facility fails to abate or eliminate a level A violation as provided in Section 300.282(b). Pursuant to Section 10-65 of the Illinois Administrative Procedure Act, licensees who are individuals are subject to

revocation of licensure if the individual is more than 30 days delinquent in complying with a child support order.

- b) When the Director or his designee determines that the license of a facility is to be revoked, the Department shall notify the facility. The notice to the facility shall be in writing and shall include:
  - 1) *A clear and concise statement* of the basis of the revocation. The statement shall include a citation to the provisions of the Act and this Part on which the license is being revoked.
  - 2) A statement of the date on which the revocation will take effect as provided in subsection (c) of this Section and Section 3-119(d) of the Act.
  - 3) *A description of the right of the facility to appeal the revocation of the license and the right to a hearing.* (Section 3-119(b) of the Act)
- c) The effective date of the revocation of a license shall be as provided in Section 3-119(d) of the Act.
- d) The effective date of the revocation shall be *extended by the Department* when it finds that such extension is necessary *to permit orderly removal and relocation of residents.* (Section 3-119(d)(3) of the Act)

(Source: Amended at 17 Ill. Reg. 19279, effective October 26, 1993)

### **Section 300.190 Experimental Program Conflicting With Requirements**

- a) Any facility desiring to conduct an experimental program or do research which is in conflict with this Part shall submit a written request to the Department and secure prior approval. The Department will not approve experimental programs which would violate residents rights under the Act. Such approval will be granted only if the request will not create an unnecessary and unusual threat to the health, welfare, or safety of the residents or staff. (A, B)
- b) The Department may grant to a facility special permission to provide day care when it has adequate facilities and staff to satisfactorily provide such services based on the requirements in Section 300.3710.

(Source: Amended at 13 Ill. Reg. 4684, effective March 24, 1989)

### **Section 300.200 Inspections, Surveys, Evaluations and Consultation**

The terms survey, inspection and evaluation are synonymous. These terms refer to the overall examination of compliance with the Act and this Part.

- a) All facilities to which this Part applies shall be subject to and shall be deemed to have given consent to annual inspections, surveys or evaluations by properly identified personnel of the Department, or by such other properly identified

persons, including local health department staff, as the Department may designate. *An inspection, survey or evaluation, other than an inspection of financial records, shall be conducted without prior notice to the facility. A visit for the sole purpose of consultation may be announced.* The licensee, or person representing the licensee in the facility, shall provide to the representative of the Department access and entry to the premises or facility for obtaining information required to carry out the Act and this Part. In addition, representatives of the Department *shall have access to and may reproduce or photocopy at its cost any books, records, and other documents maintained by the facility*, the licensee or their representatives *to the extent necessary to carry out the Act and this Part*. A facility may charge the Department for such photocopying at a rate determined by the facility not to exceed the rate in the Department's Freedom of Information Code (2 Ill. Adm. Code 1126). Sections 3-212 and 3-213 of the Act)

- b) *In determining whether to make more than the required number of unannounced inspections, surveys and evaluations of a facility, the Department shall consider one or more of the following:*
- 1) *previous inspection reports;*
  - 2) *the facility's history of compliance with the Act and this Part:*
    - A) *correction of violations;*
    - B) *penalties or other enforcement actions;*
  - 3) *the number and severity of complaints received about the facility;*
  - 4) *any allegations of resident abuse or neglect;*
  - 5) *weather conditions;*
  - 6) *health emergencies;*
  - 7) *other reasonable belief that deficiencies exist; and*
  - 8) *requirements pursuant to the "1864 Agreement" (42 U.S.C.A. 1395aa) between the Department and U.S. Health and Human Services (HHS) (e.g., annual and follow-up certification inspections, life safety code inspections and any inspections requested by the secretary of HHS). (Section 3-212(b) of the Act)*
- c) *The Department shall not be required to determine whether a facility certified to participate in the Medicare program under Title XVIII of the Social Security Act, or the Medicaid Program under Title XIX of the Social Security Act, and which the Department determines by inspection to be in compliance with the certification requirements of Title XVIII or XIX, is in compliance with any requirement of the Act that is less stringent than or duplicates a federal*

*certification requirement.* (Section 3-212(b-1) of the Act, see P.A. 88-278, effective August 10, 1993)

- d) *The Department shall, in accordance with Section 3-212(a) of the Act, determine whether a certified facility is in compliance with requirements of the Act that exceed federal certification requirements.* (Section 3-212(b-1) of the Act, see P.A. 88-278, effective August 10, 1993)
- e) *If a certified facility is found to be out of compliance with federal certification requirements, the results of the inspection conducted pursuant to Title XVIII or XIX of the Social Security Act* (Section 3-212(b-1) of the Act, see P.A. 88-278, effective August 10, 1993) shall be reviewed to determine which, if any, of the results shall be considered licensure findings, as follows:
  - 1) The result identifies potential violations of the Nursing Home Care Act and this Part; and
  - 2) The result, based on available information, would likely represent a Type A or Type B violation if tested against the factors described in Sections 300.272 and 300.274.
- f) All results of an inspection conducted pursuant to Title XVIII or XIX of the Social Security Act that the Department considers licensure findings shall be provided to the facility at the time of exit or by mail in accordance with subsection (g) of this Section.
- g) *Upon the completion of each inspection, survey and evaluation, the appropriate Department personnel who conducted the inspection, survey or evaluation shall submit a copy of their report to the licensee or their representative upon exiting the facility or upon considering results of an inspection conducted pursuant to Title XVIII or XIX of the Social Security Act as licensure findings. A copy of the information gathered during a complaint investigation will not be provided upon exiting the facility. Comments or documentation provided by the licensee which may refute findings in the report, which explain extenuating circumstances that the facility could not reasonably have prevented, or which indicate methods and timetables for correction of deficiencies described in the report shall be provided to the Department within ten days of receipt of the copy of the report.* (Section 3-212(c) of the Act)
- h) Consultation consists of providing advice or suggestions to the staff of a facility at their request relative to specific matters of the scope of regulation, methods of compliance with the Act or this Part, or general matters of patient care.

(Source: Amended at 19 Ill. Reg. 11600, effective July 29, 1995)

### **Section 300.210 Filing an Annual Attested Financial Statement**



- a) *Each licensee shall submit an annual attested financial statement to the Department. This financial statement shall be filed in a prescribed format on forms supplied by the Department. The forms will be developed in conjunction with the Illinois Department of Public Aid. The time period covered in the financial statement shall be a period determined by the Department for the initial filing, and shall thereafter coincide with the facility's fiscal year or the calendar year. (Section 3-208 of the Act)*
- b) *The Department may require any facility to file an audited financial statement, if the Department determines that such a statement is needed. (Section 3-208 of the Act)*
- c) *The Department may require any or all facilities to submit attested or audited financial statements more frequently than annually, if the Department determines that more frequent financial statements are needed. The frequency and time period of such filings shall be as determined by the Department for each individual facility. (Section 3-208 of the Act)*
- d) The financial statement shall be filed with the Department within 90 days following the end of the designated reporting period. The financial statement will not be considered as having been filed unless all sections of the prescribed forms have been properly completed. Those sections which do not apply to a particular facility shall be noted "not applicable" on the forms.
- e) The information required to be submitted in the financial statement will include at a minimum the following:
  - 1) Facility information, including: facility name and address, licensure information, type of ownership, licensed bed capacity, date and cost of building construction and additions, date and cost of acquisition of buildings, building sizes, equipment costs and dates of acquisition.
  - 2) Resident information, including: number and level of care of residents by source of payment, income from residents by level of care.
  - 3) Cost information by level of care, including:
    - A) General service costs; such as dietary, food, housekeeping, laundry, utilities, and plant operation and maintenance.
    - B) Health care costs; such as medical director, nursing, medications, oxygen, activities, medical records, other medical services, social services, and utilization reviews.
    - C) General Administration; such as administrative salaries, professional services, fees, subscriptions, promotional, insurance, travel, clerical, employee benefits, license fees, and inservice training and education.

- D) Ownership; such as depreciation, interest, taxes, rent, and leasing.
- E) Special Service cost centers; such as habilitative and rehabilitative services, therapies, transportation, education, barber and beauty care, and gift and coffee shop.
- 4) Income information, including operating and nonoperating income.
- 5) Ownership information, including balance sheet and payment to owners.
- 6) Personnel information, including the number and type of people employed and salaries paid.
- 7) Related organization information, including related organizations from which services are purchased.
- f) The new owner or a new lessee of a previously licensed facility may file a projection of capital costs at the time of closing or signing of the lease.
  - 1) A facility which is licensed for the first time (a newly constructed facility) must file a projection of capital costs.
  - 2) Each of the above must file a full cost report within nine months after acquisition (covering the first six months of operation). Each must also file a cost report within 90 days of the close of its first complete fiscal year.
- g) *No public funds shall be expended for the maintenance of any resident in any facility which has failed to file this financial statement, and no public funds shall be paid to, or on behalf of, a facility which has failed to file the statement.*  
(Section 3-208(b) of the Act)

(Source: Amended at 13 Ill. Reg. 4684, effective March 24, 1989)

### **Section 300.220 Information to Be Made Available to the Public By the Department**

- a) *The Department shall respect the confidentiality of a resident's record and shall not divulge or disclose the contents of a record in a manner which identifies a resident, except upon a resident's death to a relative or guardian, or under judicial proceedings. This Section shall not be construed to limit the right of a resident or a resident's representative to inspect or copy the resident's records.*  
(Section 2-206(a) of the Act)
- b) *Confidential medical, social, personal or financial information identifying a resident shall not be available for public inspection in a manner which identifies a resident.* (Section 2-206(b) of the Act)

- c) *The following information is subject to disclosure to the public from the Department or the Department of Public Aid:*
- 1) *Information submitted under Section 3-103 and 3-207 of the Act, except information concerning the remuneration of personnel licensed, registered, or certified by the Department of Professional Regulation and monthly charges for an individual private resident;*
  - 2) *Records of license and certification inspections, surveys, and evaluations of facilities, other reports of inspections, surveys, and evaluations of resident care, and reports concerning a facility prepared pursuant to Titles XVIII and XIX of the Social Security Act (42 U.S.C.A. 1395 et seq. and 1396 et seq.)subject to the provisions of the Social Security Act (42 U.S.C.A. 301 et seq.)*
  - 3) *Cost and reimbursement reports submitted by a facility under Section 3-208 of the Act reports of audits of facilities, and other public records concerning the cost incurred by, revenues received by, and reimbursement of facilities; and*
  - 4) *Complaints filed against a facility and complaint investigation reports, except that a complaint or complaint investigation report shall not be disclosed to a person other than the complainant or complainant's representative before it is disclosed to a facility under Section 3-702 of the Act, and, further, except that a complainant or resident's name shall not be disclosed except under Section 3-702 of the Act. (Section 2-205 of the Act)*
- d) *The Department shall disclose information under this Section in accordance with provisions for inspection and copying of public records required by the Freedom of Information Act (Ill. Rev. Stat. 1987, ch. 116, par. 201 et seq.).*
- e) *However, the disclosure of information described in subsection (1) shall not be restricted by any provision of the Freedom of Information Act. (Section 2-205 of the Act)*
- f) *Copies of reports available to the public may be obtained by making a written request to the Department in accordance with the Department's Freedom of Information Rules – 2 Ill. Adm. Code 1126. However, access to cost reports shall be governed by Department of Public Aid rule "Access to Cost Reports" (89 Ill. Adm. Code 140.544). The Department may, at its discretion, waive this fee if the party requesting the material is involved in legal action with the Department.*

(Source: Amended at 13 Ill. Reg. 4684, effective March 24, 1989)

### **Section 300.230 Information to Be Made Available to the Public By the Licensee**

- a) *Every facility shall conspicuously post or display in an area of its offices accessible to residents, employees, and visitors the following:*
- 1) *Its current license;*
  - 2) *A description, provided by the Department of complaint procedures established under the Act and the name, address, and telephone number of a person authorized by the Department to receive complaints;*
  - 3) *A copy of any order pertaining to the facility issued by the Department or a court; and*
  - 4) *A list of the material available for public inspection under subsection (b) of this Section and Section 3-210 of the Act. (Section 3-209 of the Act)*
- b) *A facility shall retain the following for public inspection:*
- 1) *A complete copy of every inspection report of the facility received from the Department during the past five years;*
  - 2) *A copy of every order pertaining to the facility issued by the Department or a court during the past five years;*
  - 3) *A description of the services provided by the facility and the rates charged for those services and items for which a resident may be separately charged;*
  - 4) *A copy of the Statement of Ownership required by Section 3-207 of the Act;*
  - 5) *A record of personnel employed or retained by the facility who are licensed, certified or registered by the Department of Professional Regulation; and*
  - 6) *A complete copy of the most recent inspection report of the facility received from the Department. (Section 3-210 of the Act)*

(Source: Amended at 13 Ill. Reg. 4684, effective March 24, 1989)

### **Section 300.240 Municipal Licensing**

- a) Municipalities which have adopted a licensing ordinance as provided under Section 3-104 of the Act and this Part shall adopt this Part by complying with Article I, Division 3, of the Illinois Municipal Code (Ill. Rev. Stat. 1987, ch. 24, pars. 1-3-1 et seq.).
- b) Municipalities shall issue licenses so that the expiration dates are distributed throughout the calendar year. The month the license expires shall coincide with

the date of original licensure of the licensee. During the 24 month period following the effective date of the Act, the municipality may issue renewal licenses for a period of less than one year in order to distribute the expiration date of such licenses throughout the calendar year.

- c) The municipality shall notify the Department within ten days from the date of issuance or denial of a license that the municipal license has been issued or denied. If the license is issued, the notice will include the facility name, address, the date of issuance, and the number of beds by level of care for which the license was issued. If the license is denied, the notice will indicate reason for denial and the current status of licensee's (applicant's) application for municipal license.
- d) *The municipality shall use the same licensing classifications as the Department; and a facility may not be licensed for a different classification by the Department than by the municipality.*
- e) *The Department and the municipality shall have the right at any time to visit and inspect the premises and personnel of any facility for the purpose of determining whether the applicant or licensee is in compliance with the Act, this Part or with the local ordinances which govern the regulation of the facility. The Department may survey any former facility which once held a license to insure that the facility is not again operating without a license. Municipalities may charge a reasonable license or renewal fee for the regulation of facilities, which fees shall be in addition to the fees paid to the Department.*

(Source: Amended at 13 Ill. Reg. 4684, effective March 24, 1989)

### **Section 300.250 Ownership Disclosure**

- a) *As a condition of the issuance or renewal of the license of any facility, the applicant shall file a statement of ownership. The applicant shall notify the Department of any change in the information required in the statement of ownership within ten days of the Change. (Section 3-207(a) of the Act)*
- b) A statement of ownership shall include the following:
  - 1) The name, address, Social Security Number, telephone number, occupation or business activity, business address, business telephone number, and the percent of direct or indirect financial interest of those persons who have a direct or indirect financial interest of five percent or more in the legal entity designated as the operator/licensee of the facility which is the subject of the application or license;
  - 2) The name, address, Social Security Number, telephone number, occupation or business activity, business address, business telephone number, and the percent of direct or indirect financial interest of those persons who have a direct or indirect financial interest of five percent or more in the legal entity that owns the building in which the

operator/licensee is operating the facility which is the subject of the application or license; and

- 3) *The name and address of any facility, wherever located, in which the applicant has any ownership interest. (Section 3-207(b) of the Act)*

(Source: Amended at 13 Ill. Reg. 4684, effective March 24, 1989)

### **Section 300.260 Issuance of Conditional Licenses**

- a) *The Director may issue a conditional license under Section 3-305 of the Act to any facility if the Director finds that either a Type "A" or Type "B" violation exists in such facility. The issuance of a conditional license shall revoke any license held by the facility. (Section 3-311 of the Act)*
- b) *Prior to the issuance of a conditional license, the Department shall review and approve a written plan of correction. The Department shall specify the violations which prevent full licensure and shall establish a time schedule for correction of the deficiencies. Retention of the license shall be conditional on the timely correction of the deficiencies in accordance with the plan of correction. (Section 3-312 of the Act)*
- c) *Written notice of the decision to issue a conditional license shall be sent to the applicant or licensee together with the specification of all violations of the Act and this Part which prevent full licensure and which form the basis for the Department's decision to issue a conditional license and the required plan of correction. The notice shall inform the applicant or licensee of its right to a full hearing under Section 3-315 of the Act to contest the issuance of the conditional license. (Section 3-313 of the Act)*
- d) *If the applicant or licensee desires to contest the basis for issuance of a conditional license, or the terms of the plan of correction, the applicant or licensee shall send a written request for hearing to the Department within ten (10) days after receipt by the applicant or licensee of the Department's notice and decision to issue a conditional license. The Department shall hold the hearing as provided under Section 3-703 of the Act. The terms of the conditional license shall be stayed pending the issuance of the Final Order at the conclusion of the hearing, and the facility may operate in the same manner as with an unrestricted license. (Section 3-315 of the Act)*
- e) *A conditional license shall be issued for a period specified by the Department, but in no event for more than one year. The effective date of the conditional license shall not begin until such time as the applicant or licensee has had the opportunity to request a hearing pursuant to subsection (d) of this Section, and if a hearing is requested in a timely manner, then the terms of the conditional license shall be stayed as provided for in subsection (d) of this Section. The Department shall periodically inspect any facility operating under a conditional license. If the Department finds substantial failure by the facility to timely correct the violations*

*which prevented full licensure and formed the basis for the Department's decision to issue a conditional license in accordance with the required plan of correction, the conditional license may be revoked as provided under Section 3-119 of the Act. (Section 3-316 of the Act)*

(Source: Amended at 17 Ill. Reg. 15106, effective September 3, 1993)

### **Section 300.270 Monitor and Receivership**

- a) *The Department may place an employee or agent to serve as a monitor in a facility when any of the following conditions exist:*
  - 1) *The facility is operating without a license;*
  - 2) *The Department has suspended, revoked or refused to renew the existing license of the facility;*
  - 3) *The facility is closing or has informed the Department that it intends to close and adequate arrangements for relocation of residents have not been made at least 30 days prior to closure;*
  - 4) *The Department determines that an emergency exists, whether or not it has initiated revocation or nonrenewal procedures, if because of the unwillingness or inability of the licensee to remedy the emergency the Department believes a monitor is necessary; as used in this subsection, "emergency" means a threat to the health, safety or welfare of a resident that the facility is unwilling or unable to correct; or*
  - 5) *The Department receives notification that the facility is terminated or will not be renewed for participation in the federal reimbursement program under either Title XVIII (Medicare) or Title XIX (Medicaid) of the Social Security Act. (Section 3-501 of the Act)*
  
- b) *The monitor shall meet the following minimum requirements:*
  - 1) *be in good physical health as evidenced by a physical examination by a physician within the last year;*
  - 2) *have an understanding of the needs of long-term care facility residents as evidenced by one year of experience in working, as appropriate, with elderly or developmentally disabled individuals in programs such as patient care, social work, or advocacy;*
  - 3) *have an understanding of the Act and this Part which are the subject of the monitors' duties as evidenced in a personal interview of the candidate;*

- 4) not be related to the owners of the involved facility either through blood, marriage or common ownership of real or personal property except ownership of stock that is traded on a stock exchange;
  - 5) have successfully completed a baccalaureate degree or possess a nursing license or a nursing home administrator's license; and
  - 6) have two years full-time work experience in the long-term care industry of the State of Illinois.
- c) The monitor shall be under the supervision of the Department; shall perform the duties of a monitor delineated in Section 3-502 of the Act; and shall accomplish the following actions:
- 1) visit the facility as directed by the Department;
  - 2) review all records pertinent to the condition for such monitor's placement under subsection (a) of this Section;
  - 3) provide to the Department written and oral reports detailing the observed conditions of the facility; and
  - 4) be available as a witness for hearings involving the condition for placement as monitor.
- d) All communications, including but not limited to data, memoranda, correspondence, records and reports shall be transmitted to and become the property of the Department. In addition, findings and results of the monitor's work done under this Part shall be strictly confidential and not subject to disclosure without written authorization from the Department or by court order subject to disclosure only in accordance with the provisions of the Freedom of Information Act, subject to the confidentiality requirements of the Act.
- e) The assignment as monitor may be terminated at any time by the Department.
- f) Through consultation with the long-term care industry associations, professional organizations, consumer groups and health-care management corporations, the Department shall maintain a list of receivers. Preference on the list shall be given to individuals possessing a valid Illinois Nursing Home Administrator's License, experience in financial and operations management of a long-term care facility and individuals with access to consultative experts with the aforementioned experience. To be placed on the list, individuals must meet the following minimum requirements:
- 1) be in good physical health as evidenced by a physical examination by a physician within the last year;
  - 2) have an understanding of the needs of long-term care facility residents and the delivery of the highest possible quality of care as evidenced by one



- year of experience in working with elderly or developmentally disabled individuals in programs such as patient care, social work, or advocacy;
- 3) have an understanding and working knowledge of the Act and this Part, as evidenced in a personal interview of the candidate;
  - 4) have successfully completed a baccalaureate degree or possess a nursing license or a nursing home administrator's license; and
  - 5) have two years full-time working experience in the Illinois long-term care industry.
- g) Upon appointment of a receiver for a facility by a court, the Department shall inform the individual of all legal proceedings to date which concern the facility.
- h) The receiver may request that the Director of the Department authorize expenditures from monies appropriated, pursuant to Section 3-511 of the Act, if incoming payments from the operation of the facility are less than the costs incurred by the receiver.
- i) In the case of Department ordered patient transfers, the receiver may:
- 1) assist in providing for the orderly transfer of all residents in the facility to other suitable facilities or make other provisions for their continued health;
  - 2) assist in providing for transportation of the resident, his medical records and his belongings if he is transferred or discharged; assist in locating alternative placement; assist in preparing the resident for transfer; and permit the resident's legal guardian to participate in the selection of the resident's new location;
  - 3) unless emergency transfer is necessary, explain alternative placements to the resident and provide orientation to the place chosen by the resident or resident's guardian.
- j) *In any action or special proceeding brought against a receiver in the receiver's official capacity for acts committed while carrying out the aforesaid powers and duties, the receiver shall be considered a public employee under the Local Governmental and Governmental Employees Tort Immunity Act [745 ILCS 10]. A receiver may be held liable in a personal capacity only for the receiver's own gross negligence, intentional acts or breach of fiduciary duty. (Section 3-513 of the Act)*

(Source: Amended at 19 Ill. Reg. 11600, effective July 29, 1995)

### **Section 300.271 Presentation of Findings**

- a) If it is probable that findings will be presented that could be issued as violations of regulations which represent a direct threat to the health, safety or welfare of residents, surveyors shall notify the administrator or designee during the course of the survey of such possible findings.
- b) The Department shall conduct an exit conference with the administrator or other facility designee at the conclusion of each on-site inspection at the facility, whether or not the investigation has been completed. If the investigation has been completed, findings shall be presented during the exit conference. If the investigation has not been completed at the time of the facility exit, the Department shall inform the facility administrator or designee that the investigation is not complete and that findings may be presented to the facility at a later date. Presentation of any additional findings may be conducted at the facility, at the Department's regional office, or by telephone.
- c) With the assistance of the administrator, surveyors shall schedule a time and place for the exit conference to be held at the conclusion of the survey.
- d) At the exit conference, surveyors shall present their findings and resident identity key and identify regulations related to the findings. The facility administrator or designee shall have an opportunity at the exit conference to discuss and provide additional documentation related to the findings. The Department's surveyors conducting the exit conference may, in their discretion, modify or eliminate any or all preliminary findings in accordance with any facts presented by the facility to the Department during the exit conference.
- e) Additional comments or documentation may be submitted by the facility to the Department during a 10-day comment period as allowed by the Act.
- f) If the Department determines, after review of the comments submitted pursuant to subsection (d) of this Section, that the facility may have committed violations of the Act or this Part different than or in addition to those presented at the exit conference and the violations may be cited as either Type A or repeat Type B violations, the Department shall so inform the facility in writing. The facility shall then have an opportunity to submit additional comments addressing the different or additional Sections of the Act or this Part. The surveyors will be advised of any code changes made after their recommendations are submitted.
- g) The facility shall have 5 (five) working days from receipt of the notice required by subsection (f) of this Section to submit its additional comments to the Department. The Department shall consider such additional comments in determining the existence and level of violation of the Act and/or this Part in the same manner as the Department considers the facility's original comments.
- h) If desired by the facility, an audio-taped recording may be made of the exit conference provided that a copy of such recording is provided, at facility expense, to the surveyors at the conclusion of the exit conference. No video-taped recording shall be allowed.

- i) Surveyors shall not conduct an exit conference for the following reason:
  - 1) The facility administrator or designee requests that an exit conference not be held;
  - 2) During a scheduled exit conference, facility staff and/or their guests create an environment that is not conducive to a meaningful exchange of information.

(Source: Added at 17 Ill. Reg. 15106, effective September 3, 1993)

### **Section 300.272 Determination to Issue a Notice of Violation or Administrative Warning**

- a) Upon receipt of a report of an inspection, survey or evaluation of a facility, the Director or his designee shall review the findings contained in the report to determine *whether the report's findings constitute a violation or violations of which the facility must be given notice and which threaten the health, safety, or welfare of a resident or residents*. All information, evidence and observations made during an inspection, survey or evaluation shall be considered findings or deficiencies. (Section 3-212(c) of the Act)
- b) In making this determination, the Director or his designee shall consider *any comments and documentation provided by the facility* within ten days of receipt of the report in accordance with Section 300.200(c). (Section 3-212(c) of the Act)
- c) In determining whether the findings warrant the issuance of a notice of violation, the Director or his designee shall base his determination on the following factors:
  - 1) *The severity of the finding*. The Director or his designee will consider whether the finding constitutes a merely technical non-substantial error or whether the finding is serious enough to constitute an actual violation of the intent and purpose of the standard.
  - 2) *The danger posed to resident health and safety*. The Director or his designee will consider whether the finding could pose any direct harm to the residents.
  - 3) *The diligence and efforts to correct deficiencies and correction of reported deficiencies by the facility*. Consideration will be given to any evidence provided by the facility in its comments and documentation that steps have been taken to reduce noted findings and to insure a reduction of deficiencies.
  - 4) *The frequency and duration of similar findings in previous reports and the facility's general inspection history*. The director or his designee will consider whether the same finding or a similar finding relating to the same condition or occurrence has been included in previous reports and the

facility has allowed the condition or occurrence to continue or to recur.  
(Section 3-212(c) of the Act)

- d) If the Director or his designee determines that the report's findings constitute a violation or violations which do not directly threaten the health, safety, or welfare of a resident or residents, the *department shall issue an administrative warning* as provided in Section 300.277 (Section 3-303.2(a) of the Act)
- e) *Violations shall be determined under this Section no later than 60 days after completion of each inspection, survey and evaluation.* (Section 3-212(c) of the Act)

(Source: Added at 13 Ill. Reg. 4684, effective March 24, 1989)

### **Section 300.274 Determination of the Level of a Violation**

- a) After determining that issuance of a notice of violation is warranted and prior to issuance of the notice, the Director or his designee will review the findings which are the basis of the violation and any comments and documentation provided by the facility to determine the level of the violation. Each violation shall be determined to be either a level A or level B violation based on the criteria outlined in this Section.
- b) The following definitions of levels of violations shall be used in determining the level of each violation:
  - 1) A "level A violation" or "type A violation" is *a violation of the act or these rules which creates a condition or occurrence relating to the operation and maintenance of a facility presenting a substantial probability that death or serious mental or physical harm will result therefrom.* (Section 1-129 of the Act)
  - 2) A "level B violation" or "type B violation" is *a violation of the act or these rules which creates a condition or occurrence relating to the operation and maintenance of a facility directly threatening to the health, safety or welfare of a resident* (Section 1-130 of the Act)
- c) In determining the level of a violation, the Director or his designee shall consider the following criteria:
  - 1) The specific requirements of this Part which have been violated and the designated level of violation for those provisions.
    - A) The designated level of violation is indicated by the letter or letters in parentheses following specific provisions. The presence of more than one letter following a specific provision indicates that the provision may be applicable to different levels of violation. The absence of any letter following a specific provision indicates

that no designated level of violation applicable to that provision has been determined.

- B) The designated level of violation will be considered in conjunction with the other criteria contained in subsections (c)(2) and (c)(3) of this Section which may increase or decrease the level of violation cited for a specific violation, except that no violation will be cited as a level B violation unless there is a direct threat to the health, safety or welfare of a resident, or as a level A violation unless there is a substantial probability of the death of a resident or serious mental or physical harm to a resident.
- 2) The degree of danger to the resident or residents which is posed by the condition or occurrence in the facility. The following factors will be considered in assessing the degree of danger:
- A) Whether the resident or residents of the facility are able to recognize conditions or occurrences which may be harmful and are able to take measures for self-preservation and self-protection. The extent of nursing care required by the residents as indicated by review of patient needs will be considered in relation to this determination.
  - B) Whether the resident or residents have access to the area of the facility in which the condition or occurrence exists and the extent of such access. A facility's use of barriers, warning notices, instructions to staff and other means of restricting resident access to hazardous areas will be considered.
  - C) Whether the condition or occurrence was the result of inherently hazardous activities or negligence by the facility.
  - D) Whether the resident or residents of the facility were notified of the condition or occurrence and the promptness of such notice. Failure of the facility to notify residents of potentially harmful conditions or occurrences will be considered. The adequacy of the method of such notification and the extent to which such notification reduced the potential danger to the residents will also be considered.
- 3) The directness and imminence of the danger to the resident or residents by the condition or occurrence in the facility. In assessing the directness and imminence of the danger, the following factors will be considered:
- A) Whether actual harm, including death, physical injury or illness, mental injury or illness, distress, or pain, to a resident or residents resulted from the condition or occurrence and the extent of such harm.

- B) Whether available statistics and records from similar facilities indicate that direct and imminent danger to the resident or residents has resulted from similar conditions or occurrences and the frequency of such danger.
- C) Whether professional opinions and findings indicate that direct and imminent danger to the resident or residents will result from the condition or occurrence.
- D) Whether the condition or occurrence was limited to a specific area of the facility or was widespread throughout the facility. Efforts taken by the facility to limit or reduce the scope of the area affected by the condition or occurrence will be considered.
- E) Whether the physical, mental, or emotional state of the resident or residents, who are subject to the danger, would facilitate or hinder harm actually resulting from the condition or occurrence.

(Source: Amended at 13 Ill. Reg. 4684, effective March 24, 1989)

#### **Section 300.276 Notice of Violation**

- a) *Each notice of violation shall be in writing and shall contain the following information:*
  - 1) A description of *the nature of the violation*.
  - 2) A citation of the specific *statutory provision or rule* which the Department believes has been violated. (Section 3-301 of the Act)
  - 3) A statement of the level of the violation as determined pursuant to Section 300.274.
  - 4) One of the following requirements for corrective action:
    - A) For level A violations, a statement that necessary corrective action to *abate or eliminate* the violation must be taken *immediately* or within a specific *fixed period of time not exceeding 15 days*. In setting this period, the Department will consider whether harm to residents of the facility is imminent, whether necessary precautions can be taken to protect residents before the corrective action is completed, and whether delay would pose additional risks to the residents.
    - B) For level B violations, a *request* that the facility submit a *plan of correction within ten days of the receipt of the notice of violation* pursuant to Section 3-303 of the Act and Section 300.278 of this Part. (Section 3-301 of the Act)

- 5) A statement that the Department may take additional action under the Act, including assessment of penalties or licensure action.
  - 6) A description of the licensee's right to appeal the notice and its right to a hearing.
- b) Each notice of violation shall be sent to the facility and the licensee or served personally at the facility *within ten days* after the Director or his designee determines that issuance of a notice of violation is warranted under Section 300.272. (Section 3-301 of the Act)

(Source: Amended at 13 Ill. Reg. 4684, effective March 24, 1989)

### **Section 300.277 Administrative Warning**

- a) Each administrative warning shall be in writing and shall include the following information:
  - 1) A description of the nature of the violation.
  - 2) A citation of the specific statutory provision or rule which the Department believes has been violated.
  - 3) A statement that the *facility shall be responsible for correcting the situation, condition, or practice.* (Section 3-303.2(a) of the Act)
- b) Each administrative warning shall be sent to the facility and the licensee or served personally at the facility within ten days after the Director or his designee determines that issuance of an administrative warning is warranted under Section 300.272.
- c) The facility is not required to submit a plan of correction in response to an administrative warning.
- d) If the Department finds, during *the next on-site inspection which occurs more than 90 days after the issuance of the administrative warning*, that the facility has *not corrected the situation, condition, or practice which resulted in the issuance of the administrative warning*, the Department shall notify the facility of the finding. The facility must then *submit a written plan of correction* as provided in Section 300.278. The Department will consider the plan of correction and take any necessary action in accordance with Section 302.78. (Section 3-303.2(b) of the Act)

(Source: Added at 13 Ill. Reg. 4684, effective March 24, 1989)

### **Section 300.278 Plans of Correction**

- a) *A facility shall have ten days after receipt of notice of violation for a Type B violation, or after receipt of a notice under Section 300.277(d) of failure to correct a situation, condition, or practice which resulted in the issuance of an administrative warning, to prepare and submit a plan of correction to the Department. (Section 3-303(b) of the Act)*
- b) Within the ten-day period, a facility may request additional time for submission of the plan of correction. The Department will extend the period for submission of the plan of correction for an additional 30 days, when it finds that corrective action by a facility to abate or eliminate the violation will require *substantial capital improvement*. The Department will consider the extent and complexity of necessary physical plant repairs and improvements and any impact on the health, safety, or welfare of the residents of the facility in determining whether to grant a requested extension. (Section 3-303(b) of the Act)
- c) Each plan of correction shall be based on an assessment by the facility of the conditions or occurrences which are the basis of the violation and an evaluation of the practices, policies, and procedures which have caused or contributed to the conditions or occurrences. Evidence of such assessment and evaluation shall be maintained by the facility. Each plan of correction shall include:
  - 1) A description of the specific corrective action the facility is taking, or plans to take, to abate, eliminate, or correct the violation cited in the notice.
  - 2) A description of the steps which will be taken to avoid future occurrences of the same and similar violations.
  - 3) A specific date by which the corrective action will be completed.
- d) Submission of a plan of correction shall not be considered an admission by the facility that the violation has occurred.
- e) The Department shall review each plan of correction to insure that it provides for the abatement, elimination, or correction of the violation. The Department shall reject a submitted plan only if it finds any of the following deficiencies:
  - 1) The plan does not appear to address the conditions or occurrences which are the basis of the violation and an evaluation of the practices, policies, and procedures which have caused or contributed to the conditions or occurrences.
  - 2) The plan is not specific enough to indicate the actual actions the facility will be taking to abate, eliminate, or correct the violation.
  - 3) The plan does not provide for measures which will abate or eliminate, or correct the violation.



- 4) The plan does not provide steps which will avoid future occurrences of the same and similar violations.
- 5) The plan does not provide for timely completion of the corrective action, considering the seriousness of the violation, any possible harm to the residents, and the extent and complexity of the corrective action.
- f) When the Department rejects a submitted plan of correction, it shall notify the facility. The notice of rejection shall be in writing and shall specify *the reason for the rejection. The facility shall have ten days after receipt of the notice of rejection in which to submit a modified plan.* (Section 3-303(b) of the Act)
- g) If a facility fails to submit a plan or modified plan meeting the criteria in subsection (c) of this Section within the prescribed time periods in subsection (a) or (b) of this Section, or anytime the Department issues a Type A or repeat B violation, an approved plan of correction will be imposed by the Department.
- h) The Department shall verify the completion of the corrective action required by the plan of correction within the specified time period during subsequent investigations, surveys and evaluations of the facility.

(Source: Amended at 17 Ill. Reg. 15106 effective September 3, 1993)

### **Section 300.280 Reports of Correction**

- a) In lieu of submission of a plan of correction, a facility may submit a report of correction if the corrective action has been completed. The report of correction must be submitted within the time periods required in Section 300.278 for submission of a plan of correction.
- b) Each report of correction shall be based on an assessment by the facility of the conditions or occurrences which are the basis of the violation and an evaluation of the practices, policies, and procedures which have caused or contributed to the conditions or occurrences. Evidence of such assessment and evaluation shall be maintained by the facility. Each report of correction shall include:
  - 1) A description of the specific corrective action the facility has taken to abate, eliminate, or correct the violation cited in the notice.
  - 2) A description of the steps which have been taken to avoid future occurrences of the same and similar violations.
  - 3) The specific date on which the corrective action was completed.
  - 4) A signed statement by the administrator of the facility that the report of correction is true and accurate, which shall be considered an oath for the purposes of any legal proceedings.

- c) Submission of a report of correction shall not be considered an admission by the facility that the violation has occurred.
- d) The Department shall review and approve or disapprove the report of correction based on the criteria outlined in Section 300.278(d) for review of plans of correction. If a report of correction is disapproved, the facility shall be subject to a plan of correction imposed by the Department as provided in Section 300.278.
- e) The Department shall verify the completion of the corrective action outlined in the report of correction during subsequent investigations, surveys and evaluations of the facility.

(Source: Amended at 13 Ill. Reg. 4684, effective March 24, 1989)

### **Section 300.282 Conditions for Assessment of Penalties**

The Department shall consider the assessment of a monetary penalty against a facility under the following conditions:

- a) When a notice of violation for a level A violation is issued.
  - 1) The penalty to be assessed for this violation shall be the greater of the following:
    - A) An amount *not less than* \$5000 as determined by the Director or his designee considering the factors outlined in Section 300.286(a), or
    - B) The total of the following:
      - i) \$5 *per resident in the facility, plus*
      - ii) \$.20 *per resident for each day of the violation, commencing on the day on which the notice of violation is served under Section 3-301 of the Act and ending on the date the violation is corrected, or*
    - C) *When death, serious mental or physical harm, permanent disability, or disfigurement results, a fine of not less than \$10,000 as determined by the Director or his designee considering the factors outlined in Section 300.286(a). (Section 3-305(1) of the Act)*
  - 2) The facility shall also be issued a conditional license for a period of six months as provided in Section 300.260.

- b) When a facility fails to abate or eliminate a level A violation immediately or within the period set by the Department in the notice of violation pursuant to Section 300.276(a)(4)(A).
  - 1) The facility shall be cited for a repeat violation.
  - 2) The penalty to be assessed shall be three times the penalty computed under subsection (a)(1) of this Section.
  - 3) The license of the facility shall be revoked as provided in Section 300.180.
- c) When a notice of violation for a level B violation is issued.
  - 1) The penalty to be assessed for this violation shall be the greater of the following:
    - A) An amount *not less than* \$500 as determined by the Director or his designee considering the factors outlined in Section 300.286(a), or
    - B) The total of the following:
      - i) \$3 *per resident in the facility, plus*
      - ii) \$.15 *per resident for each day of the violation, commencing on the date a notice of violation is served under Section 3-301 of the Act and ending on the date the violation is corrected.* (Section 3-305(2) of the Act)
  - 2) Upon acceptance of a plan of correction by the Department, assessment of the penalty shall be suspended by the Department. No additional penalty shall be imposed for days during which the plan of correction is in effect.
- d) When a facility fails to correct a level B violation within the time period specified in the plan of correction approved by the Department.
  - 1) The facility shall be cited for a repeat violation.
  - 2) The penalty to be assessed shall be computed in accordance with subsection (c)(1) of this Section. Days during which the plan of correction was in effect shall be included in the calculation of the penalty.
  - 3) The facility shall also be issued a conditional license for a period of at least six months as provided in Section 300.260.
- e) *When a notice of violation is issued for a violation of Article II of the Act with regard to the rights of a particular resident of the facility, the Department shall order the facility to reimburse the residents for any injuries incurred or if the*

*amount of the injuries is less than \$100, the Department shall order the facility to pay \$100 to the resident. (Section 3-305(7) of the Act)*

(Source: Amended at 18 Ill. Reg. 1491, effective January 14, 1994)

### **Section 300.284 Calculation of Penalties**

- a) For the purpose of calculating penalties as provided in Section 300.282, *each day on which a violation continues to exist after the day on which notice of the violation is received by the facility shall be considered a separate violation.* The Department shall not be required to send additional notices of violation to the facility for such continuing violations. (Section 3-302 of the Act)
- b) For purposes of calculating penalties as provided in Section 300.282, *the number of residents in the facility and the number of residents on each day shall be calculated as the average number of residents in the facility during the 30 days immediately preceding the day on which the findings were made in the facility and the conditions or occurrences determined to be a violation were discovered.* The number of residents in the facility on the day on which the findings were made in the facility will be considered to be the same as the average number of residents in the facility during the preceding 30 days, unless evidence is provided by the facility substantiating that the average number of residents for that period was different. Changes in the number of residents in the facility subsequent to the day on which the findings were made shall not be considered in the calculation. (Section 3-305(5) of the Act)

(Source: Amended at 13 Ill. Reg. 4684, effective March 24, 1989)

### **Section 300.286 Determination to Assess Penalties**

- a) The Director or his designee shall consider the following factors in determining whether or not to assess penalties for violations under the conditions outlined in Section 300.282.
  - 1) *The severity of harm, including death or serious physical or mental harm, which has resulted to a resident and the extent to which residents have been subject to potential serious harm.* A penalty will be assessed when the Director or his designee finds that death or serious physical or mental harm to a resident has occurred or that the facility has knowingly subjected residents to potential serious harm.
  - 2) *The gravity of the violation and the extent to which the provisions of the act or this Part were violated.* The Director or his designee will assess a monetary penalty if he finds that the violation recurred or continued, is widespread throughout the facility or evidences flagrant violation or the Act or this Part.

- 3) *The extent and seriousness of any previous violations committed by the facility and the extent of diligence exercised by the facility to correct such violations.* The Director or his designee will assess a penalty when he finds that the facility has been cited for similar violations and has failed to correct such violations as promptly as practicable or has failed to exercise diligence in taking necessary corrective action. The Director or his designee will also consider any evidence that the violations constitute a pattern of deliberate action by the facility. The extent of any change in the ownership and management of the facility will be considered in relation to the seriousness of previous violations.
  - 4) *Any possible financial benefit the facility could gain as a result of committing or continuing the violation.* Such benefits include, but are not limited to, diversion of costs associated with physical plant repairs, staff salaries, consultant fees, or direct patient care services. (Section 3-306 of the Act)
- b) If the Director or his designee determines that a penalty is to be assessed, a written notice of penalty assessment shall be sent to the facility. Each notice of penalty assessment shall include:
- 1) *The amount of the penalty* being assessed as provided in Section 300.282.
  - 2) The amount of any reduction or whether the penalty has been waived pursuant to Section 300.288.
  - 3) A description of *the violation*, including a reference to the notices of violation and plans of correction which are the basis of the assessment.
  - 4) A citation to the provision of *the act or the rule* which the facility has violated.
  - 5) A description of the right of the facility to appeal the assessment and of the *right of the facility to a hearing*.
  - 6) For violations which are continuing at the time the notice of assessment, *the amount of additional penalties per day* which will be assessed. (Section 3-307 of the Act)
- c) Penalties shall be paid by the facility to the Department within the time periods provided in Section 3-310 of the Act.

(Source: Amended at 13 Ill. Reg. 4684, effective March 24, 1989)

### **Section 300.288 Reduction or Waiver of Penalties**

- a) Reductions for all types of violations subject to penalties.

- 1) The Director or his designee shall consider the factors contained in Section 300.286(a) in determining whether to reduce the amount of the penalty to be assessed from the amount calculated pursuant to Section 300.284 and in determining the amount of such reduction.
  - 2) When the Director or his designee finds that correction of a violation required capital improvements or repairs in the physical plant of the facility and the facility has a history of compliance with physical plant requirements, the penalty will be reduced by the amount of the cost of the improvements or repairs. This reduction, however, shall not reduce the penalty for a level A violation to an amount less than \$1000.
- b) Reductions and waivers for level B violations.
- 1) Penalties resulting from level B violations may be reduced or waived only under one of the following conditions:
    - A) *The facility submits a report of correction within ten days after the notice of violation is received, and the report is subsequently verified by the Department.*
    - B) *The facility submits a plan of correction within ten days after the notice of violation is received, the plan is approved by the Department, the facility submits a report of correction within 15 days after submission of the plan or correction, and the report is subsequently verified by the Department.*
    - C) *The facility submits a plan of correction within ten days after the notice of violation is received, the plan provides for correction within not more than 30 days after submission of the plan of correction, and the plan is approved by the Department.*
    - D) Correction of the violation requires substantial capital improvements or repairs in the physical plant of the facility, *the facility submits a plan or correction involving substantial capital costs, the plan of correction provides completion of the corrective action within 90 days after submission of the plan, and the plan is approved by the Department. (Section 3-308 of the Act)*
  - 2) Under these conditions, the Director or his designee shall consider the factors outlined in Section 300.286(a) in determining whether to reduce or waive the penalty and in setting the amount of any reduction.

(Source: Amended at 13 Ill. Reg. 4684, effective March 24, 1989)

**Section 300.290 Quarterly List of Violators (Repealed)**

(Source: Repealed at 24 Ill. Reg. 17330, effective November 1, 2000)

### **Section 300.300 Alcoholism Treatment Programs In Long-Term Care Facilities**

- a) A long-term care facility that desires to provide an alcoholism treatment program must first receive written approval from the Department. Such approval will be granted only if it can be shown that such program will not interfere in any way with the residents in the other parts of the facility.
- b) Any alcoholism treatment program in a long-term care facility must meet the program standards of the rules for Alcoholism and Substance Abuse Treatment, Intervention and Research Programs (77 Ill. Adm. Code 2058), as promulgated by the Illinois Department of Alcoholism and Substance Abuse under the Illinois Alcoholism and Other Drug Dependency Act (Ill. Rev. Stat. 1987, ch. 111½, par. 6351-1 et seq.).
- c) The alcoholism treatment program must be in a completely separate distinct part of the long-term care facility, and must include all beds in that distinct part. It must be completely separated from the rest of the facility, and have separate entrances.
- d) Beds designated for alcoholism treatment cannot be used for long-term care residents, nor can beds designated for long-term care residents be used for residents undergoing treatment for alcoholism.
- e) The alcoholism treatment program staff will not be utilized in performing services in the long-term care area of the facility, nor will long-term care program staff be utilized to provide any services in the alcoholism treatment designated area.
- f) There may be joint use of laundry, food service, housekeeping and administrative services, provided written approval is obtained from the Department. Such approval will be granted only if it can be shown that such joint usage will not interfere in any way with the residents in other parts of the facility.

(Source: Amended at 13 Ill. Reg. 4684, effective March 24, 1989)

### **300.310 Department may Survey Facilities Formerly Licensed**

*The Department may survey any former facility which once held a license to insure that the facility is not operating without a license. (Section 3-107 of the Act)*

(Source: Amended at 13 Ill. Reg. 4684, effective March 24, 1989)

### **Section 300.315 Supported Congregate Living Arrangement Demonstration**

- a) A facility or location approved to participate in the Supported Congregate Living Arrangement Demonstration authorized by Section 4.02b of the Illinois Act on the

Aging [20 ILCS 105/4.02b] and requesting a waiver of the Act and this Part shall submit to the Department *a joint waiver request* with the Department on Aging or documentation that the Department on Aging failed to *act upon* a waiver *application within 60 days* after the applicant submitted a request to the Department on Aging. (Section 4.02b of the Illinois Act on the Aging)

- b) The waiver application shall include the following:
  - 1) a specific listing of those portions of the Act and this Part for which a waiver is being requested; and
  - 2) the applicant's proposed Program Plan.
- c) The proposed *Program Plan* shall describe *the types of residents to be served and the services that will be provided in the Supported Congregate Living Arrangement Demonstration*. (Section 3-102.2 of the Act)
- d) The Department will evaluate the waiver application based on the criteria in Section 300.320 of this Part. The applicant shall be notified within 10 days after the Department's waiver determination.
- e) *The Department may revoke the waiver if the Department determines that the Supported Congregate Living Arrangement Demonstration:*
  - 1) *is not in compliance with the Program Plan* submitted in accordance with subsection (b) of this Section (Section 3-102.2 of the Act);
  - 2) is not in compliance with the Department's waiver approval conditions; or
  - 3) has been terminated from the demonstration by the Department on Aging.

(Source: Added at 22 Ill. Reg. 7218, effective April 15, 1998)

### **Section 300.320 Waivers**

- a) *Upon application by a facility, the Director may grant or renew the waiver of the facility's compliance with a rule or standard for a period not to exceed the duration of the current license or, in the case of an application for license renewal, the duration of the renewal period.* (Section 3-303.1 of the Act)
- b) *The waiver may be conditioned upon the facility taking action prescribed by the Director as a measure equivalent to compliance.* (Section 3-303.1 of the Act)
- c) *In determining whether to grant or renew a waiver, the Director shall consider:*
  - 1) *the duration and basis for any current waiver with respect to the same rule or standard;*
  - 2) *the continued validity of extending the waiver on the same basis;*



- 3) *the effect upon the health and safety of residents;*
  - 4) *the quality of resident care (whether the waiver would reduce the overall quality of the resident care below that required by the Act or this Part);*
  - 5) *the facility's history of compliance with the Act and this Part (the existence of a consistent pattern of violation of the Act or this Part); and*
  - 6) *the facility's attempts to comply with the particular rule or standard in question. (Section 3-303.1 of the Act)*
- d) *The Department shall renew waivers relating to physical plant standards issued pursuant to this Section at the time of the indicated reviews, unless it can show why such waivers should not be extended for the following reasons:*
- 1) *the condition of the physical plant has deteriorated or its use substantially changed so that the basis upon which the waiver was issued is materially different; or*
  - 2) *the facility is renovated or substantially remodeled in such a way as to permit compliance with the applicable rules and standards without substantial increase in cost. (Section 3-303.1 of the Act)*

(Source: Amended at 13 Ill. Reg. 4684, effective March 24, 1989)

### **Section 300.330 Definitions**

The terms defined in this Section are terms that are used in one or more of the sets of licensing standards established by the Department to license various levels of long-term care. They are defined as follows:

*Abuse – any physical or mental injury or sexual assault inflicted on a resident other than by accidental means in a facility. (Section 1-103 of the Act)*

Abuse means:

Physical abuse refers to the infliction of injury on a resident that occurs other than by accidental means and that requires (whether or not actually given) medical attention.

Mental injury arises from the following types of conduct:

Verbal abuse refers to the use by a licensee, employee or agent of oral, written or gestured language that includes disparaging and derogatory terms to residents or within their hearing or seeing distance, regardless of their age, ability to comprehend or disability.

Mental abuse includes, but is not limited to, humiliation, harassment, threats of punishment or deprivation, or offensive physical contact by a licensee, employee or agent.

Sexual harassment or sexual coercion perpetrated by a licensee, employee or agent.

Sexual assault.

*Access – the right to:*

*Enter any facility;*

*Communicate privately and without restriction with any resident who consents to the communication;*

*Seek consent to communicate privately and without restriction with any resident;*

*Inspect the clinical and other records of a resident with the express written consent of the resident;*

*Observe all areas of the facility except the living area of any resident who protests the observation. (Section 1-104 of the Act)*

Act – as used in this Part, the Nursing Home Care Act [210 ILCS 45].

Activity Program – a specific planned program of varied group and individual activities geared to the individual resident's needs and available for a reasonable number of hours each day.

Adaptive Behavior – the effectiveness or degree with which the individual meets the standards of personal independence and social responsibility expected of his age and cultural group.

Adaptive Equipment – a physical or mechanical device, material or equipment attached or adjacent to the resident's body that may restrict freedom of movement or normal access to one's body, the purpose of which is to permit or encourage movement, or to provide opportunities for increased functioning, or to prevent contractures or deformities. Adaptive equipment is not a physical restraint. No matter the purpose, adaptive equipment does not include any device, material or method described in Section 300.680 of this Part as a physical restraint.

Addition – any construction attached to the original building which increases the area or cubic content of the building.

Adequate – enough in either quantity or quality, as determined by a reasonable person familiar with the professional standards of the subject under review, to

meet the needs of the residents of a facility under the particular set of circumstances in existence at the time of review.

Administrative Warning – a notice to a facility issued by the Department under Section 300.277 of this Part and Section 3-303.2 of the Act, which indicates that a situation, condition, or practice in the facility violates the Act or the Department's rules, but is not a type A or type B violation.

Administrator – the person who is directly responsible for the operation and administration of the facility, irrespective of the assigned title. (See Licensed Nursing Home Administrator.)

Advocate – a person who represents the rights and interests of an individual as though they were the person's own, in order to realize the rights to which the individual is entitled, obtain needed services, and remove barriers to meeting the individual's needs.

*Affiliate – means:*

*With respect to a partnership, each partner thereof.*

*With respect to a corporation, each officer, director and stockholder thereof.*

*With respect to a natural person: any person related in the first degree of kinship to that person; each partnership and each partner thereof of which that person or any affiliate of that person is a partner; and each corporation in which that person or any affiliate of that person is an officer, director or stockholder. (Section 1-106 of the Act)*

Aide or Orderly – any person providing direct personal care, training or habilitation services to residents.

Alteration – any construction change or modification of an existing building which does not increase the area or cubic content of the building.

Ambulatory Resident – a person who is physically and mentally capable of walking without assistance, or is physically able with guidance to do so, including the ascent and descent of stairs.

*Applicant – any person making application for a license. (Section 1-107 of the Act)*

Appropriate – term used to indicate that a requirement is to be applied according to the needs of a particular individual or situation.

Assessment – the use of an objective system with which to evaluate the physical, social, developmental, behavioral, and psychosocial aspects of an individual.

Audiologist – a person who is licensed as an audiologist under the Speech-Language Pathology and Audiology Practice Act [225 ILCS 110].

Autism – a syndrome described as consisting of withdrawal, very inadequate social relationships, exceptional object relationships, language disturbances and monotonously repetitive motor behavior; many children with autism will also be seriously impaired in general intellectual functioning; mental illness observed in young children characterized by severe withdrawal and inappropriate response to external stimulation.

Autoclave – an apparatus for sterilizing by superheated steam under pressure.

Auxiliary Personnel – all nursing personnel in intermediate care facilities and skilled nursing facilities other than licensed personnel.

Basement – when used in this Part, means any story or floor level below the main or street floor. Where due to grade difference, there are two levels each qualifying as a street floor, a basement is any floor below the level of the two street floors. Basements shall not be counted in determining the height of a building in stories.

Behavior Modification – treatment to be used to establish or change behavior patterns.

Cerebral Palsy – a disorder dating from birth or early infancy, nonprogressive, characterized by examples of aberrations of motor function (paralysis, weakness, incoordination) and often other manifestations of organic brain damage such as sensory disorders, seizures, mental retardation, learning difficulty and behavior disorders.

Certification for Title XVIII and XIX – the issuance of a document by the Department to the Department of Health and Human Services or the Department of Healthcare and Family Services verifying compliance with applicable statutory or regulatory requirements for the purposes of participation as a provider of care and service in a specific Federal or State health program.

Charge Nurse – a registered professional nurse or a licensed practical nurse in charge of the nursing activities for a specific unit or floor during a tour of duty.

*Chemical Restraint* – any drug that is used for discipline or convenience and is not required to treat medical symptoms or behavior manifestations of mental illness. (Section 2-106 of the Act)

Child Care/Habilitation Aide – any person who provides nursing, personal or rehabilitative care to residents of licensed Long-Term Care Facilities for Persons Under 22 Years of Age, regardless of title, and who is not otherwise licensed, certified or registered by the Department of Financial and Professional Regulation to render such care. Child Care/Habilitation aides must function under the supervision of a licensed nurse.

Community Alternatives – service programs in the community provided as an alternative to institutionalization.

Continuing Care Contract – a contract through which a facility agrees to supplement all forms of financial support for a resident throughout the remainder of the resident's life.

Contract – a binding agreement between a resident or the resident's guardian (or, if the resident is a minor, the resident's parent) and the facility or its agent.

Convenience – the use of any restraint by the facility to control resident behavior or maintain a resident, which is not in the resident's best interest, and with less use of the facility's effort and resources than would otherwise be required by the facility. This definition is limited to the definition of chemical restraint and Section 300.680 of this Part.

Corporal Punishment – painful stimuli inflicted directly upon the body.

Cruelty and Indifference to Welfare of the Resident – failure to provide a resident with the care and supervision he requires; or, the infliction of mental or physical abuse.

Dentist – any person licensed to practice dentistry, including persons holding a Temporary Certificate of Registration, as provided in the Illinois Dental Practice Act [225 ILCS 25].

Department – as used in this Part means the Illinois Department of Public Health.

Developmental Disabilities (DD) Aide – any person who provides nursing, personal or habilitative care to residents of Intermediate Care Facilities for the Developmentally Disabled, regardless of title, and who is not otherwise licensed, certified or registered to render medical care. Other titles often used to refer to DD Aides include, but are not limited to, Program Aides, Program Technicians and Habilitation Aides. DD Aides must function under the supervision of a licensed nurse or a Qualified Mental Retardation Professional (QMRP).

*Developmental Disability – means a severe, chronic disability of a person which:*

*is attributable to a mental or physical impairment or combination of mental and physical impairments, such as mental retardation, cerebral palsy, epilepsy, autism;*

*is manifested before the person attains age 22;*

*is likely to continue indefinitely;*

*results in substantial functional limitations in 3 or more of the following areas of major life activity:*

*self-care,*  
*receptive and expressive language,*  
*learning,*  
*mobility,*  
*self-direction,*  
*capacity for independent living, and*  
*economic self-sufficiency; and*

*reflects the person's need for combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and are individually planned and coordinated.*(Section 3-801.1 of the Act)

Dietetic Service Supervisor – a person who:

is a dietitian; or

is a graduate of a dietetic technician or dietetic assistant training program, corresponding or classroom, approved by the American Dietetic Association; or

is a graduate, prior to July 1, 1990, of a Department-approved course that provided 90 or more hours of classroom instruction in food service supervision and has had experience as a supervisor in a health care institution which included consultation from a dietitian; or

has successfully completed a Dietary Manager's Association approved dietary managers course; or

is certified as a dietary manager by the Dietary Manager's Association; or

has training and experience in food service supervision and management in a military service equivalent in content to the programs in the second, third or fourth paragraph of this definition.

Dietitian – a person who is a licensed dietitian as provided in the Dietetic and Nutrition Services Practice Act [225 ILCS 30].

Direct Supervision – work performed under the guidance and direction of a supervisor who is responsible for the work, who plans work and methods, who is available on short notice to answer questions and deal with problems that are not

strictly routine, who regularly reviews the work performed, and who is accountable for the results.

*Director – the Director of the Department of Public Health or designee. (Section 1-110 of the Act)*

Director of Nursing Service – the full-time Professional Registered Nurse who is directly responsible for the immediate supervision of the nursing services.

*Discharge – the full release of any resident from a facility. (Section 1-111 of the Act)*

Discipline – any action taken by the facility for the purpose of punishing or penalizing residents.

Distinct Part – an entire, physically identifiable unit consisting of all of the beds within that unit and having facilities meeting the standards applicable to the levels of service to be provided. Staff and services for a distinct part are established as set forth in the respective regulations governing the levels of services approved for the distinct part.

*Emergency – a situation, physical condition or one or more practices, methods or operations which present imminent danger of death or serious physical or mental harm to residents of a facility. (Section 1-112 of the Act)*

Epilepsy – a chronic symptom of cerebral dysfunction, characterized by recurrent attacks, involving changes in the state of consciousness, sudden in onset, and of brief duration. Many attacks are accompanied by a seizure in which the person falls involuntarily.

Existing Long-Term Care Facility – any facility initially licensed as a health care facility or approved for construction by the Department, or any facility initially licensed or operated by any other agency of the State of Illinois, prior to March 1, 1980. Existing long-term care facilities shall meet the design and construction standards for existing facilities for the level of long-term care for which the license (new or renewal) is to be granted.

Facility, Intermediate Care – a facility that provides basic nursing care and other restorative services under periodic medical direction. Many of these services may require skill in administration. Such facilities are for residents who have long-term illnesses or disabilities that may have reached a relatively stable plateau.

Facility, Intermediate Care for the Developmentally Disabled – when used in this Part, is a facility of three or more persons, or distinct part thereof, serving residents of which more than 50 percent are developmentally disabled.

*Facility or Long-Term Care Facility – a private home, institution, building, residence, or any other place, whether operated for profit or not, or a county home for the infirm and chronically ill operated pursuant to Division 5-21 or 5-22*

*of the Counties Code [55 ILCS 5], or any similar institution operated by a political subdivision of the State of Illinois, which provides, through its ownership or management, personal care, sheltered care or nursing for three or more persons, not related to the applicant or owner by blood or marriage. It includes skilled nursing facilities and intermediate care facilities as those terms are defined in Title XVIII and Title XIX of the Federal Social Security Act (42 USCA 1395 et seq. and 1936 et seq.). It also includes homes, institutions, or other places operated by or under the authority of the Illinois Department of Veterans' Affairs. A "facility" may consist of more than one building as long as the buildings are on the same tract, or adjacent tracts of land. However, there shall be no more than one "facility" in any one building. "Facility" does not include the following:*

*A home, institution, or other place operated by the federal government or agency thereof, or by the State of Illinois other than homes, institutions, or other places operated by or under the authority of the Illinois Department of Veterans' Affairs;*

*A hospital, sanitarium, or other institution whose principal activity or business is the diagnosis, care, and treatment of human illness through the maintenance and operation as organized facilities therefor, which is required to be licensed under the Hospital Licensing Act [210 ILCS 85];*

*Any "facility for child care" as defined in the Child Care Act of 1969 [225 ILCS 10];*

*Any "community living facility" as defined in the Community Living Facilities Licensing Act [210 ILCS 35];*

*Any "community residential alternative" as defined in the Community Residential Alternatives Licensing Act [210 ILCS 140];*

*Any nursing home or sanatorium operated solely by and for persons who rely exclusively upon treatment by spiritual means through prayer, in accordance with the creed or tenets of any well-recognized church or religious denomination. However, such nursing home or sanatorium shall comply with all local laws and rules relating to sanitation and safety;*

*Any facility licensed by the Department of Human Services as a community-integrated living arrangement as defined in the Community-Integrated Living Arrangements Licensure and Certification Act [210 ILCS 135];*

*Any supportive residence licensed under the Supportive Residences Licensing Act [210 ILCS 65];*

*Any supportive living facility in good standing with the demonstration project established under Section 5-5.01a of the Illinois Public Aid Code [305 ILCS 5/5-5.01a];*



*Any assisted living or shared housing establishment licensed under the Assisted Living and Shared Housing Act [210 ILCS 9]; or*

*An Alzheimer's disease management center alternative health care model licensed under the Alternative Health Care Delivery Act [210 ILCS 3].  
(Section 1-113 of the Act)*

Facility, Long-Term Care, for Residents Under 22 Years of Age – when used in this Part is synonymous with a long-term care facility for residents under 22 years of age, which facility provides total habilitative health care to residents who require specialized treatment, training and continuous nursing care because of medical or developmental disabilities.

Facility, Sheltered Care – when used in this Part is synonymous with a sheltered care facility, which facility provides maintenance and personal care.

Facility, Skilled Nursing – when used in this Part is synonymous with a skilled nursing facility. A skilled nursing facility provides skilled nursing care, continuous skilled nursing observations, restorative nursing, and other services under professional direction with frequent medical supervision. Such facilities are provided for patients who need the type of care and treatment required during the post-acute phase of illness or during recurrences of symptoms in long-term illness.

Financial Responsibility – having sufficient assets to provide adequate services such as: staff, heat, laundry, foods, supplies, and utilities for at least a two-month period of time.

Full-time – means on duty a minimum of 36 hours, four days per week.

Goal – an expected result or condition that involves a relatively long period of time to achieve, that is specified in behavioral terms in a statement of relatively broad scope, and that provides guidance in establishing specific, short-term objectives directed toward its attainment.

Governing Body – the policy-making authority, whether an individual or a group, that exercises general direction over the affairs of a facility and establishes policies concerning its operation and the welfare of the individuals it serves.

*Guardian – a person appointed as a guardian of the person or guardian of the estate, or both, of a resident under the Probate Act of 1975 [755 ILCS 5].  
(Section 1-114 of the Act)*

Habilitation – an effort directed toward the alleviation of a disability or toward increasing a person's level of physical, mental, social or economic functioning. Habilitation may include, but is not limited to, diagnosis, evaluation, medical services, residential care, day care, special living arrangements, training,

education, sheltered employment, protective services, counseling and other services.

Health Information Management Consultant – a person who is certified as a Registered Health Information Administrator (RHIA) or a Registered Health Information Technician (RHIT) by the American Health Information Management Association; or is a graduate of a school of health information management that is accredited jointly by the American Medical Association and the American Health Information Management Association.

Health Services Supervisor (Director of Nursing Service) – the full-time Registered Nurse who is directly responsible for the immediate supervision of the health services in an Intermediate Care Facility.

Home for the Aged – any facility that is operated: by a not-for-profit corporation incorporated under, or qualified as a foreign corporation under, the General Not For Profit Corporation Act of 1986 [805 ILCS 105]; or by a county pursuant to Division 5-22 of the Counties Code [55 ILCS 5]; or pursuant to a trust or endowment established for nonprofit, charitable purposes; and that provides maintenance, personal care, nursing or sheltered care to three or more residents, 90 percent of whom are 60 or more years of age.

Hospitalization – the care and treatment of a person in a hospital as an inpatient.

*Identified Offender – a person who has been convicted of any felony offense listed in Section 25 of the Health Care Worker Background Check Act, is a registered sex offender, or is serving a term of parole, mandatory supervised release, or probation for a felony offense. (Section 1-114.01 of the Act)*

Individual Education Program (IEP) – a written statement for each resident that provides for specific education and related services. The Individual Education Program may be incorporated into the Individual Habilitation Plan (IHP).

Individual Habilitation Plan (IHP) – a total plan of care that is developed by the interdisciplinary team for each resident, and that is developed on the basis of all assessment results.

Interdisciplinary Team – a group of persons that represents those professions, disciplines, or service areas that are relevant to identifying an individual's strengths and needs, and designs a program to meet those needs. This team shall include at least a physician, a social worker and other professionals. In Intermediate Care Facilities for the Developmentally Disabled (ICF/DD) at least one member of the team shall be a Qualified Mental Retardation Professional. The Interdisciplinary Team includes the resident, the resident's guardian, the resident's primary service providers, including staff most familiar with the resident; and other appropriate professionals and caregivers as determined by the resident's needs. The resident or his or her guardian may also invite other individuals to meet with the Interdisciplinary Team and participate in the process of identifying the resident's strengths and needs.

Licensed Nursing Home Administrator – a person who is charged with the general administration and supervision of a facility and licensed under the Nursing Home Administrators Licensing and Disciplinary Act [225 ILCS 70].

Licensed Practical Nurse – a person with a valid Illinois license to practice as a practical nurse.

*Licensee – the person or entity licensed to operate the facility as provided under the Act. (Section 1-115 of the Act)*

Life Care Contract – a contract through which a facility agrees to provide maintenance and care for a resident throughout the remainder of the resident's life.

*Maintenance – food, shelter, and laundry services. (Section 1-116 of the Act)*

Maladaptive Behavior – impairment in adaptive behavior as determined by a clinical psychologist or by a physician. Impaired adaptive behavior may be reflected in delayed maturation, reduced learning ability or inadequate social adjustment.

Mentally Retarded and Mental Retardation – subaverage general intellectual functioning originating during the developmental period and associated with maladaptive behavior.

Misappropriation of Property – using a resident's cash, clothing, or other possessions without authorization by the resident or the resident's authorized representative; failure to return valuables after a resident's discharge; or failure to refund money after death or discharge when there is an unused balance in the resident's personal account.

Mobile Nonambulatory – unable to walk independently or without assistance, but able to move from place to place with the use of a device such as a walker, crutches, a wheelchair, or a wheeled platform.

Mobile Resident – any resident who is able to move about either independently or with the aid of an assistive device such as a walker, crutches, a wheelchair, or a wheeled platform.

Monitor – a qualified person placed in a facility by the Department to observe operations of the facility, assist the facility by advising it on how to comply with the State regulations, and who reports periodically to the Department on the operations of the facility.

*Neglect – a failure in a facility to provide adequate medical or personal care or maintenance, which failure results in physical or mental injury to a resident or in the deterioration of a resident's physical or mental condition. (Section 1-117 of the Act)* Neglect means the failure to provide adequate medical or personal care or maintenance, which failure results in physical or mental injury to a resident or

in the deterioration of a resident's physical or mental condition. This shall include any allegation where:

the alleged failure causing injury or deterioration is ongoing or repetitious;  
or

a resident required medical treatment as a result of the alleged failure; or

the failure is alleged to have caused a noticeable negative impact on a resident's health, behavior or activities for more than 24 hours.

**New Long-Term Care Facility** – any facility initially licensed as a health care facility by the Department, or any facility initially licensed or operated by any other agency of the State of Illinois, on or after March 1, 1980. New long-term care facilities shall meet the design and construction standards for new facilities for the level of long-term care for which the license (new or renewal) is to be granted.

**Normalization** – the principle of helping individuals to obtain an existence as close to normal as possible, by making available to them patterns and conditions of everyday life that are as close as possible to the norms and patterns of the mainstream of society.

**Nurse** – *a registered nurse or a licensed practical nurse as defined in the Nursing and Advanced Practice Nursing Act [225 ILCS 65]. (Section 1-118 of the Act)*

**Nursing Assistant** – any person who provides nursing care or personal care to residents of licensed long-term care facilities, regardless of title, and who is not otherwise licensed, certified or registered by the Department of Financial and Professional Regulation to render medical care. Other titles often used to refer to nursing assistants include, but are not limited to, nurse's aide, orderly and nurse technician. Nursing assistants must function under the supervision of a licensed nurse.

**Nursing Care** – a complex of activities which carries out the diagnostic, therapeutic, and rehabilitative plan as prescribed by the physician; care for the resident's environment; observing symptoms and reactions and taking necessary measures to carry out nursing procedures involving understanding of cause and effect in order to safeguard life and health.

**Nursing Unit** – a physically identifiable designated area of a facility consisting of all the beds within the designated area, but having no more than 75 beds, none of which are more than 120 feet from the nurse's station.

**Objective** – an expected result or condition that involves a relatively short period of time to achieve, that is specified in behavioral terms, and that is related to the achievement of a goal.

Occupational Therapist, Registered (OTR) – a person who is registered as an occupational therapist under the Illinois Occupational Therapy Practice Act [225 ILCS 75].

Occupational Therapy Assistant – a person who is registered as a certified occupational therapy assistant under the Illinois Occupational Therapy Practice Act.

Operator – the person responsible for the control, maintenance and governance of the facility, its personnel and physical plant.

Other Resident Injury – occurs where a resident is alleged to have suffered physical or mental harm and the allegation does not fall within the definition of abuse or neglect.

Oversight – general watchfulness and appropriate reaction to meet the total needs of the residents, exclusive of nursing or personal care. Oversight shall include, but is not limited to, social, recreational and employment opportunities for residents who, by reason of mental disability, or in the opinion of a licensed physician, are in need of residential care.

*Owner – the individual, partnership, corporation, association or other person who owns a facility. In the event a facility is operated by a person who leases the physical plant, which is owned by another person, "owner" means the person who operates the facility, except that if the person who owns the physical plant is an affiliate of the person who operates the facility and has significant control over the day-to-day operations of the facility, the person who owns the physical plant shall incur jointly and severally with the owner all liabilities imposed on an owner under the Act. (Section 1-119 of the Act)*

Person – any individual, partnership, corporation, association, municipality, political subdivision, trust, estate or other legal entity whatsoever.

*Personal Care – assistance with meals, dressing, movement, bathing or other personal needs or maintenance, or general supervision and oversight of the physical and mental well-being of an individual who is incapable of maintaining a private, independent residence or who is incapable of managing his person, whether or not a guardian has been appointed for such individual. (Section 1-120 of the Act)*

Pharmacist, Registered – a person who holds a certificate of registration as a registered pharmacist, a local registered pharmacist or a registered assistant pharmacist under the Pharmacy Practice Act of 1987 [225 ILCS 85].

*Physical Restraint – any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body, which the individual cannot remove easily and which restricts freedom of movement or normal access to one's body. (Section 2-106 of the Act)*

Physical Therapist Assistant – a person who has graduated from a two year college level program approved by the American Physical Therapy Association.

Physical Therapist – a person who is registered as a physical therapist under the Illinois Physical Therapy Act [225 ILCS 90].

Physician – any person licensed to practice medicine in all its branches as provided in the Medical Practice Act of 1987 [225 ILCS 60].

Probationary License – an initial license issued for a period of 120 days during which time the Department will determine the qualifications of the applicant.

Psychiatrist – a physician who has had at least three years of formal training or primary experience in the diagnosis and treatment of mental illness.

Psychologist – a person who is licensed to practice clinical psychology under the Clinical Psychologist Licensing Act [225 ILCS 15].

Qualified Mental Retardation Professional – a person who has at least one year of experience working directly with individuals with developmental disabilities and meets at least one of the following additional qualifications:

Be a physician as defined in this Section.

Be a registered nurse as defined in this Section.

Hold at least a bachelor's degree in one of the following fields: occupational therapy, physical therapy, psychology, social work, speech or language pathology, recreation (or a recreational specialty area such as art, dance, music, or physical education), dietary services or dietetics, or a human services field (such as sociology, special education, or rehabilitation counseling).

Qualified Professional – a person who meets the educational, technical and ethical criteria of a health care profession, as evidenced by eligibility for membership in an organization established by the profession for the purpose of recognizing those persons who meet such criteria; and who is licensed, registered, or certified by the State of Illinois, if required.

*Reasonable Visiting Hours* – any time between the hours of 10 a.m. and 8 p.m. daily. (Section 1-121 of the Act)

Registered Nurse – a person with a valid license to practice as a registered professional nurse under the Nursing and Advanced Practice Nursing Act.

*Repeat Violation* – for purposes of assessing fines under Section 3-305 of the Act, a violation that has been cited during one inspection of the facility for which a subsequent inspection indicates that an accepted plan of correction was not complied with, within a period of not more than twelve months from the issuance

of the initial violation. *A repeat violation shall not be a new citation of the same rule, unless the licensee is not substantially addressing the issue routinely throughout the facility.* (Section 3-305(7) of the Act)

Reputable Moral Character – having no history of a conviction of the applicant, or if the applicant is a firm, partnership, or association, of any of its members, or of a corporation, of any of its officers, or directors, or of the person designated to manage or supervise the facility, of a felony, or of two or more misdemeanors involving moral turpitude, as shown by a certified copy of the record of the court of conviction, or in the case of the conviction of a misdemeanor by a court not of record, as shown by other evidence; or other satisfactory evidence that the moral character of the applicant, or manager, or supervisor of the facility is not reputable.

*Resident – person residing in and receiving personal care from a facility.* (Section 1-122 of the Act)

Resident Services Director – the full-time administrator, or an individual on the professional staff in the facility, who is directly responsible for the coordination and monitoring of the residents' overall plans of care in an intermediate care facility.

*Resident's Representative – a person other than the owner, or an agent or employee of a facility not related to the resident, designated in writing by a resident to be his representative, or the resident's guardian, or the parent of a minor resident for whom no guardian has been appointed.* (Section 1-123 of the Act)

Restorative Care – a health care process designed to assist residents to attain and maintain the highest degree of function of which they are capable (physical, mental, and social).

Room – a part of the inside of a facility that is partitioned continuously from floor to ceiling with openings closed with glass or hinged doors.

Sanitization – the reduction of pathogenic organisms on a utensil surface to a safe level, which is accomplished through the use of steam, hot water, or chemicals.

Satisfactory – same as adequate.

Seclusion – the retention of a resident alone in a room with a door that the resident cannot open.

Self Preservation – the ability to follow directions and recognize impending danger or emergency situations and react by avoiding or leaving the unsafe area.

*Sheltered Care – maintenance and personal care.* (Section 1-124 of the Act)

Social Worker – a person who is a licensed social worker or a licensed clinical social worker under the Clinical Social Work and Social Work Practice Act [225 ILCS 20].

State Fire Marshal – the Fire Marshal of the Office of the State Fire Marshal, Division of Fire Prevention.

Sterilization – the act or process of destroying completely all forms of microbial life, including viruses.

*Stockholder of a Corporation – any person who, directly or indirectly, beneficially owns, holds or has the power to vote, at least five percent of any class of securities issued by the corporation. (Section 1-125 of the Act)*

Story – when used in this Part, means that portion of a building between the upper surface of any floor and the upper surface of the floor above except that the topmost story shall be the portion of a building between the upper surface of the topmost floor and the upper surface of the roof above.

*Student Intern – means any person whose total term of employment in any facility during any 12-month period is equal to or less than 90 continuous days, and whose term of employment is either:*

*an academic credit requirement in a high school or undergraduate institution; or*

*immediately succeeds a full quarter, semester or trimester of academic enrollment in either a high school or undergraduate institution, provided that such person is registered for another full quarter, semester or trimester of academic enrollment in either a high school or undergraduate institution which quarter, semester or trimester will commence immediately following the term of employment. (Section 1-125.1 of the Act)*

Substantial Compliance – meeting requirements except for variance from the strict and literal performance that results in unimportant omissions or defects given the particular circumstances involved. This definition is limited to the phrase as used in Sections 300.140(a)(3) and 300.150(a)(3).

Substantial Failure – the failure to meet requirements other than a variance from the strict and literal performance that results in unimportant omissions or defects given the particular circumstances involved. This definition is limited to the phrase as used in Section 300.165(b)(1).

Sufficient – same as adequate.

Supervision – authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence, with



initial direction and periodic inspection of the actual act of accomplishing the function or activity.

Therapeutic Recreation Specialist – a person who is certified by the National Council for Therapeutic Recreation Certification and who meets the minimum standards it has established for classification as a Therapeutic Recreation Specialist.

Time Out – removing an individual from a situation that results in undesirable behavior. It is a behavior modification procedure which is developed and implemented under the supervision of a qualified professional.

*Title XVIII – Title XVIII of the Federal Social Security Act as now or hereafter amended. (Section 1-126 of the Act)*

*Title XIX – Title XIX of the Federal Social Security Act as now or hereafter amended. (Section 1-127 of the Act)*

*Transfer – a change in status of a resident's living arrangements from one facility to another facility. (Section 1-128 of the Act)*

*Type A Violation – a violation of the Act or of the rules promulgated thereunder which creates a condition or occurrence relating to the operation and maintenance of a facility presenting a substantial probability that death or serious mental or physical harm to a resident will result therefrom. (Section 1-129 of the Act)*

*Type B Violation – a violation of the Act or of the rules promulgated thereunder which creates a condition or occurrence relating to the operation and maintenance of a facility directly threatening to the health, safety or welfare of a resident. (Section 1-130 of the Act)*

Unit – an entire physically identifiable residence area having facilities meeting the standards applicable to the levels of service to be provided. Staff and services for each distinct resident area are established as set forth in the respective rules governing the approved levels of service.

Universal Progress Notes – a common record with periodic narrative documentation by all persons involved in resident care.

Valid License – a license which is unsuspended, unrevoked and unexpired.

(Source: Amended at 30 Ill. Reg. 5213, effective March 2, 2006)

### **Section 300.340 Incorporated and Referenced Materials**

- a) The following regulations and standards are incorporated in this Part:

- 1) Private and professional association standards:
  - A) ANSI/ASME Standard No. A17.1-2000, Safety Code for Elevators and Escalators, which may be obtained from the American Society of Mechanical Engineers (ASME) International, 22 Law Drive, Box 2900, Fairfield, New Jersey 07007-2900.
  - B) American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE), Handbook of Fundamentals (2001), and Handbook of Applications (1999), which may be obtained from the American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc., 1791 Tullie Circle, N.E., Atlanta, Georgia 30329.
  - C) American Society for Testing and Materials (ASTM) International Standard No. E90-02 (1996): Standard Test Method for Laboratory Measurement of Airborne Sound Transmission Loss of Building Partitions and Elements, which may be obtained from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, Pennsylvania 19428-2959.
  - D) International Building Code (IBC) (2000), which may be obtained from the International Code Council (ICC), 4051 W. Flossmoor Road, Country Club Hills, Illinois 60478-5795.
  - E) For existing facilities (see Subpart O), National Fire Protection Association (NFPA) Standard No. 101: Life Safety Code, Appendix B (1981) and the following additional standards, which may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02169:
    - i) No. 10 (1978): Standards for Portable Extinguishers
    - ii) No. 13 (1980): Standards for the Installation of Sprinkler Systems
    - iii) No. 56F (1977): Standards for Non-Flammable Medical Gas Systems
    - iv) No. 70 (1981): National Electric Code
    - v) No. 90A (1978): Installation of Air Conditioning and Ventilating Systems
    - vi) No. 96 (1980): Standard for the Installation of Equipment for the Removal of Smoke and Grease-Laden Vapors from Commercial Cooking Equipment
    - vii) No. 220 (1979): Standard Types of Building Construction

- viii) No. 253 (1978): Flooring Radiant Heat Energy Test
  - ix) No. 255 (1972): Test of Surface Burning Characteristics of Building Materials
  - x) Appendix C (1981): Fire Safety Evaluation System for Health Occupancies
- F) For new facilities (see Subpart N), the following standards of the National Fire Protection Association (NFPA), which may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02169:
- i) NFPA 17A, Standard for Wet Chemical Extinguishing Systems – 2002 Edition
  - ii) NFPA 20, Standard for the Installation of Stationary Pumps for Fire Protection – 1999 Edition
  - iii) NFPA 22, Standard for Water Tanks for Private Fire Protection – 1998 Edition
  - iv) NFPA 24, Standard for the Installation of Private Fire Service Mains and Their Appurtenances – 2002 Edition
  - v) NFPA 50, Standard for Bulk Oxygen Systems at Consumer Sites – 2001 Edition
  - vi) NFPA 70B, Recommended Practice for Electrical Equipment Maintenance – 2002 Edition
  - vii) NFPA 70E, Standard for Electrical Safety Requirements for Employee Workplaces – 2000 Edition
  - viii) NFPA 80A, Recommended Practice for Protection of Buildings from Exterior Fire Exposures – 2001 Edition
  - ix) NFPA 101, Life Safety Code – 2000 Edition
  - x) NFPA 105, Recommended Practice for the Installation of Smoke-Control Door Assemblies – 1999 Edition
- G) For new and existing facilities (see Section 300.1610), NFPA 99: Standard for Health Care Facilities – 2003 Edition.
- H) The following standards, which may be obtained from Underwriters Laboratories (UL), Inc., 333 Pfingsten Rd., Northbrook, Illinois 60062:

- i) Fire Resistance Directory (2003 Edition)
      - ii) Building Material Directory (2003 Edition)
    - I) American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV) (1994), which may be obtained from the American Psychiatric Association, 1000 Wilson Blvd., Suite 1825, Arlington, Virginia, 22209-3901.
  - 2) Federal guidelines:

The following guidelines of the Center for Infectious Diseases, Centers for Disease Control and Prevention, United States Public Health Service, Department of Health and Human Services, which may be obtained from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

    - A) Guideline for Prevention of Catheter-Associated Urinary Tract Infections (October 1981)
    - B) Guideline for Hand Hygiene in Health-Care Settings (October 2002)
    - C) Guidelines for Prevention of Intravascular Catheter-Related Infections (2002)
    - D) Guideline for Prevention of Surgical Site Infection (1999)
    - E) Guideline for Prevention of Nosocomial Pneumonia (February 1994)
    - F) Guideline for Isolation Precautions in Hospitals (February 18, 1997)
    - G) Guidelines for Infection Control in Health Care Personnel (1998)
  - 3) Federal regulations:
    - A) 21 CFR 1306, Prescriptions (April 1, 2002)
    - B) 42 CFR 483.151-156, Requirements for States and Long-Term Care Facilities (October 1, 2002)
- b) All incorporations by reference of federal regulations and the standards of nationally recognized organizations refer to the regulations and standards on the date specified and do not include any amendments or editions subsequent to the date specified.
- c) The following statutes and State regulations are referenced in this Part:

- 1) Federal statutes:
  - A) Civil Rights Act of 1964 (42 USC 2000e et seq.)
  - B) Social Security Act (42 USC 301 et seq., 1395 et seq. and 1396 et seq.)
  - C) Controlled Substances Act (21 USC 802)
  
- 2) State of Illinois statutes:
  - A) Illinois Alcoholism and Other Drug Dependency Act [20 ILCS 305]
  - B) Boiler and Pressure Vessel Safety Act [430 ILCS 75]
  - C) Child Care Act of 1969 [225 ILCS 10]
  - D) Court of Claims Act [705 ILCS 505]
  - E) Illinois Dental Practice Act [225 ILCS 25]
  - F) Election Code [10 ILCS 5]
  - G) Freedom of Information Act [5 ILCS 140]
  - H) General Not For Profit Corporation Act of 1986 [805 ILCS 105]
  - I) Hospital Licensing Act [210 ILCS 85]
  - J) Illinois Controlled Substances Act [720 ILCS 570]
  - K) Illinois Health Facilities Planning Act [20 ILCS 3906]
  - L) Illinois Municipal Code [65 ILCS 5]
  - M) Nursing and Advanced Practice Nursing Act [225 ILCS 65]
  - N) Illinois Occupational Therapy Practice Act [225 ILCS 75]
  - O) Illinois Physical Therapy Act [225 ILCS 90]
  - P) Life Care Facilities Act [210 ILCS 40]
  - Q) Local Governmental and Governmental Employees Tort Immunity Act [745 ILCS 10]
  - R) Medical Practice Act of 1987 [225 ILCS 60]

- S) Mental Health and Developmental Disabilities Code [405 ILCS 5]
- T) Nursing Home Administrators Licensing and Disciplinary Act [225 ILCS 70]
- U) Nursing Home Care Act [210 ILCS 45]
- V) Pharmacy Practice Act of 1987 [225 ILCS 85]
- W) Private Sewage Disposal Licensing Act [225 ILCS 225]
- X) Probate Act of 1975 [775 ILCS 5]
- Y) Illinois Public Aid Code [305 ILCS 5]
- Z) Safety Glazing Materials Act [430 ILCS 60]
- AA) Illinois Administrative Procedure Act [5 ILCS 100]
- BB) Clinical Psychologist Licensing Act [225 ILCS 15]
- CC) Dietetic and Nutrition Services Practice Act [225 ILCS 30]
- DD) Health Care Worker Background Check Act [225 ILCS 46]
- EE) Clinical Social Work and Social Work Practice Act [225 ILCS 20]
- FF) Living Will Act [755 ILCS 35]
- GG) Powers of Attorney for Health Care Law [755 ILCS 45/Art. IV]
- HH) Health Care Surrogate Act [755 ILCS 45]
- II) Right of Conscience Act [745 ILCS 70]
- JJ) Abused and Neglected Long-Term Care Facility Residents Reporting Act [210 ILCS 30]
- KK) Supportive Residences Licensing Act [210 ILCS 65]
- LL) Community Residential Alternatives Licensing Act [210 ILCS 40]
- MM) Community Living Facilities Licensing Act [210 ILCS 35]
- NN) Community-Integrated Living Arrangements Licensure and Certification Act [210 ILCS 135]

- OO) Counties Code [55 ILCS 5]
- PP) Professional Counselor and Clinical Professional Counselor Licensing Act [225 ILCS 107]
- QQ) Podiatric Medical Practice Act of 1987 [225 ILCS 100]
- RR) Illinois Optometric Practice Act of 1987 [225 ILCS 80]
- SS) Physician Assistant Practice Act of 1987 [225 ILCS 95]
- TT) Alzheimer's Special Care Disclosure Act [210 ILCS 4]
- UU) Illinois Act on the Aging [20 ILCS 105]
- VV) Alternative Health Care Delivery Act [210 ILCS 3]
- WW) Assisted Living and Shared Housing Act [210 ILCS 9]
- XX) Language Assistance Services Act [210 ILCS 87]

3) State of Illinois rules:

- A) Office of the State Fire Marshal, Boiler and Pressure Vessel Safety (41 Ill. Adm. Code 120)
- B) Capital Development Board, Illinois Accessibility Code (71 Ill. Adm. Code 400)
- C) Department of Public Health:
  - i) Control of Communicable Diseases Code (77 Ill. Adm. Code 690)
  - ii) Control of Sexually Transmissible Diseases Code (77 Ill. Adm. Code 693)
  - iii) Food Service Sanitation Code (77 Ill. Adm. Code 750)
  - iv) Illinois Plumbing Code (77 Ill. Adm. Code 890)
  - v) Private Sewage Disposal Code (77 Ill. Adm. Code 905)
  - vi) Drinking Water Systems Code (77 Ill. Adm. Code 900)
  - vii) Illinois Water Well Construction Code (77 Ill. Adm. Code 920)

- viii) Illinois Water Well Pump Installation Code (77 Ill. Adm. Code 925)
  - ix) Freedom of Information Code (2 Ill. Adm. Code 1126)
  - x) Rules of Practice and Procedure in Administrative Hearings (77 Ill. Adm. Code 100)
  - xi) Sheltered Care Facilities Code (77 Ill. Adm. Code 330)
  - xii) Intermediate Care for the Developmentally Disabled Facilities Code (77 Ill. Adm. Code 350)
  - xiii) Long-Term Care for Under Age 22 Facilities Code (77 Ill. Adm. Code 390)
  - xiv) Long-Term Care Assistants and Aides Training Programs Code (77 Ill. Adm. Code 395)
  - xv) Control of Tuberculosis Code (77 Ill. Adm. Code 696)
  - xvi) Health Care Worker Background Check Code (77 Ill. Adm. Code 955)
  - xvii) Language Assistance Services Code (77 Ill. Adm. Code 940)
- D) Department of Financial and Professional Regulation:
    - i) Controlled Substances Act (68 Ill. Adm. Code 3100)
    - ii) Pharmacy Practice Act of 1987 (68 Ill. Adm. Code 1330)
  - E) Department of Human Services, Alcoholism and Substance Abuse Treatment and Intervention Licenses (77 Ill. Adm. Code 2060)
  - F) Department of Natural Resources, Regulation of Construction within Flood Plains (17 Ill. Adm. Code 2706)
  - G) Department of Public Aid, Medical Payment (89 Ill. Adm. Code 140)

(Source: Amended at 29 Ill. Reg. 12852, effective August 2, 2005)