

## Subchapter B. Organization and General Services

### §9713. Delivery of Services

A nursing home shall be administered in a manner that promotes the highest level of functioning and well-being of each resident.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:47 (January 1998).

### §9715. Governing Body

A. The nursing home shall have a governing body that is legally responsible for establishing and implementing policies regarding the management and operation of the nursing home. The governing body shall develop and approve policies and procedures which define and describe the scope of services offered. They shall be revised as necessary and reviewed at least annually.

B. The governing body shall be responsible for the operation of the nursing home.

C. The governing body shall appoint, in writing, a licensed administrator responsible for the management of the nursing home.

D. The governing body shall notify the department, in writing by certified mail, when a change occurs in the administrator position within 30 calendar days after the change occurs. The notice shall include the identity of the individual and the specific date the change occurred.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:47 (January 1998).

### §9717. Administration

A. Facility Administrator. All facilities are required to have full-time administrators. Full-time administrators are persons who are licensed, currently registered and engaged in the day-to-day management of the facility. The administrator's duties shall conform to the following standards.

1. Administrative/management activities shall be the major function of the required duties.

2. An adequate and reasonable amount of time shall be spent on the premises of the facility. The administrative activities must be the major function of the person performing the duties.

3. A major portion of the time, described above, shall be spent during the normal work week of the facility's personnel.

B. A full-time employee functioning in an administrative capacity shall be authorized in writing to act in the

administrator's behalf when he/she is absent or functioning as a full-time administrator for two facilities.

### C. Administrator Responsibilities and Restrictions

1. No individual may function as a full-time administrator for more than two nursing facilities. When a full-time administrator is engaged in the management of two nursing facilities, the facilities' sizes and proximity to one another have considerable bearing on the administrator's ability to adequately manage the affairs of both nursing facilities.

a. The response time to either facility shall be no longer than one hour.

b. If an administrator serves two facilities, he/she must spend 20 hours per week at each facility.

2. The administrator or his designee is responsible, in writing, for the execution of all policies and procedures.

3. If a change occurs in the individual who is the administrator of a nursing facility, notice shall be provided to the Bureau of Health Services Financing, Health Standards Section by the facility administrator or, in the absence of an administrator, by the governing body of the facility at the time the change occurs.

a. Notice shall include the identity of all individuals involved and the specific changes which have occurred.

b. Failure to provide written notice by certified mail within 30 calendar days from the date a change occurs will result in a Class C civil money penalty.

c. The Department shall allow nursing facilities 30 days from the date of the change in the position to fill the resulting vacancy in the administrator position. There shall be no waiver provisions for this position.

d. The governing body of the facility shall appoint a facility designee charged with the general administration of the facility in the absence of a licensed administrator.

e. Failure to fill a vacancy or to notify the Department in writing by the thirty-first day of vacancy that the administrator position has been filled shall result in a Class C civil money penalty.

D. Assistant Administrator. A nursing facility with a licensed bed capacity of 161 or more beds must employ an assistant administrator. An assistant administrator shall be a full-time employee and function in an administrative capacity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:47 (January 1998), amended LR 32:1067 (June 2006).

### §9719. Personnel

A. There shall be sufficient qualified personnel to properly operate each department of the nursing home to

assure the health, safety, proper care, and treatment of the residents.

1. Time schedules shall be maintained indicating the numbers and classification of all personnel, including relief personnel, who work on each tour of duty. The time schedules shall reflect all changes so as to indicate who actually worked.

2. Should there be a need to commingle the nursing service staff with other personnel:

a. nurse aides shall not work in food preparation after having provided personal care to residents;

b. laundry and housekeeping personnel shall not provide nursing care functions to residents;

c. nursing service personnel may perform housekeeping duties only after normal duty hours of the housekeeping staff or when a situation arises that may cause an unsafe situation.

B. Personnel records shall be current and available for each employee and shall contain sufficient information to assure that they are assigned duties consistent with his or her job description and level of competence, education, preparation, and experience.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:48 (January 1998).

#### **§9721. Criminal History Provisions; Screening**

A. Nursing homes shall have criminal history checks performed on nonlicensed personnel to include CNAs, housekeeping staff, activity workers, and social service personnel in accordance with R.S. 40:1300.5 et seq.

B. All personnel requiring licensure to provide care shall be licensed to practice in the state of Louisiana. Credentials of all licensed full-time, part-time, and consultant personnel shall be verified on an annual basis, in writing, by a designated staff member.

C. TB Testing. All personnel, including volunteer workers, involved in direct resident care, shall adhere to Section 3, Chapter II of the *State of Louisiana Sanitary Code*, Sections 2:022-2:025-1 and 2:026.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:48 (January 1998).

#### **§9723. Policies and Procedures**

A. There shall be written policies and procedures:

1. available to staff, residents, and/or sponsors governing all areas of care and services provided by the nursing home;

2. ensuring that each resident receives the necessary care and services to promote the highest level of functioning and well-being of each resident;

3. developed with the advice of a group of professional personnel consisting of at least a licensed physician, the administrator, and the director of nursing service;

4. approved by the governing body;

5. revised, as necessary, but reviewed by the professional group at least annually;

6. available to admitting physicians; and

7. reflecting awareness of, and provision for, meeting the total medical and psychosocial needs of residents, including admission, transfer, and discharge planning; and the range of services available to residents, including frequency of physician visits by each category of residents admitted.

B. The administrator, or his designee, is responsible, in writing, for the execution of such policies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:48 (January 1998).

#### **§9725. Assessments and Care Plans**

A. An initial assessment of the resident's needs/problems shall be performed and documented in each resident's clinical record by a representative of the appropriate discipline.

B. The assessment shall be used to develop the resident's plan of care.

C. The assessment and care plan shall be completed within 21 days of admission.

D. The care plan shall be revised, as necessary, and reviewed, at least annually, by the personnel involved in the care of the resident.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:48 (January 1998).

#### **§9727. Staff Orientation, Training and Education**

A. New employees shall have an orientation program of sufficient scope and duration to inform the individual about his/her responsibilities and how to fulfill them.

B. The orientation program shall include at least a review of policies and procedures, job description, and performance expectations prior to the employee performing his/her responsibilities.

C. A staff development program shall be conducted by competent staff and/or consultants and planned based upon employee performance appraisals, resident population served

by the nursing home, and as determined by facility staff. All employees shall participate in in-service education programs which are planned and conducted for the development and improvement of their skills.

D. The in-service training shall include at least problems and needs common to the age of those being served; prevention and control of infections; fire prevention and safety; emergency preparedness; accident prevention; confidentiality of resident information; and preservation of resident dignity and respect, including protection of privacy and personal and property rights.

E. The facility's in-service training shall be sufficient to ensure the continuing competence of the staff but must be provided no less than 12 hours per year.

F. Records of in-service training shall be maintained indicating the content, time, names of employees in attendance, and the name of the presenter.

#### G. Dementia Training

1. All employees shall be trained in the care of persons diagnosed with dementia and dementia-related practices that include or that are informed by evidence-based care practices.

2. Nursing facility staff who provide care on a regular basis to residents in Alzheimer's special care units shall meet the following training requirements:

a. Staff who provide nursing and nursing assistant care to residents shall be required to obtain at least eight hours of dementia-specific training within 90 days of employment and five hours of dementia-specific training annually. The training shall include the following topics:

- i. an overview of Alzheimer's disease and related dementias;
- ii. communicating with persons with dementia;
- iii. behavior management;
- iv. promoting independence in activities of daily living; and
- v. understanding and dealing with family issues.

NOTE: For purposes of this Section, "regular basis" shall mean more than 10 full shifts in any one calendar year.

b. Staff who have regular communicative contact with residents, but who do not provide nursing and nursing assistant care, shall be required to obtain at least four hours of dementia-specific training within 90 days of employment and one hour of dementia training annually. This training shall include the following topics:

- i. an overview of dementias; and
  - ii. communicating with persons with dementia.
- c. Staff who have only incidental contact with residents shall receive general written information provided by the facility on interacting with residents with dementia.

3. Nursing facility staff who do not provide care to residents in an Alzheimer's special care unit shall meet the following training requirements.

a. Staff who provide nursing assistant care shall be required to obtain four hours of dementia-specific training within 90 days of employment and two hours of dementia training annually.

b. Staff who are not licensed and who have regular communicative contact with residents but do not provide nursing assistant care shall be required to obtain four hours of dementia-specific training within 90 days of employment and one hour of dementia training annually. The training shall include the following topics:

- i. an overview of dementias; and
- ii. communicating with persons with dementia.

c. Staff who have only incidental contact with residents shall receive general written information provided by the facility on interacting with residents with dementia.

4. Staff delivering approved training will be considered as having received that portion of the training that they have delivered.

5. Nothing herein shall be construed to increase the number of training hours already required by regulations promulgated by the department.

6. Any dementia-specific training received in a nursing assistant program approved by the Department of Health and Hospitals or the Department of Social Services may be used to fulfill the training hours required pursuant to this Section.

7. Nursing facility providers may offer an approved complete training curriculum themselves or may contract with another organization, entity, or individual to provide the training.

8. The dementia-specific training curriculum must be approved by the department or its designee. To obtain training curriculum approval, the organization, entity, or individual must submit the following information to the department or its designee:

- a. a copy of the curriculum;
- b. qualifications of the person(s) or entity that developed the training; and
- c. information on how the training will be delivered (i.e., web-based, classroom, etc.)

9. A provider, organization, entity, or individual must submit any significant content changes to an approved training curriculum to the department, or its designee, for review and approval.

- a. A significant change occurs when there is:
  - i. any change of 50 percent or more to the training content;

ii. a change to the content regarding three or more required topic areas; or

iii. a change in the delivery method of the training (e.g., from classroom-based to web-based).

b. Continuing education undertaken by the provider does not require the department's approval.

10. If a provider, organization, entity or individual with an approved curriculum ceases to provide training, the department must be notified in writing within 30 days of cessation of training. Prior to resuming the training program, the provider, organization, entity or individual must reapply to the department for approval to resume the program.

11. An approved training curriculum remains effective for seven years from the date the approval is obtained from the department or its designee.

12. Disqualification of Training Programs and Sanctions.

a. The department may disqualify a training curriculum offered by a provider, organization, entity or individual that has demonstrated substantial noncompliance with training requirements, including, but not limited to the:

i. qualifications of the person(s) or entity that developed the training;

ii. the minimum qualifications of the person(s) or entity delivering the training; or

iii. training curriculum requirements.

13. Compliance with Training Requirements.

a. The review of compliance with training requirements will include, at a minimum, a review of:

i. the documented use of an approved training curriculum; and

ii. the provider's adherence to established training requirements.

b. The department may impose applicable sanctions for failure to adhere to the training requirements outlined in this Section.

14. Training Exclusions and Timelines

a. Persons who are employed on a contractual basis are excluded from the dementia training requirements.

b. Nursing facilities must comply with these dementia training requirements by January 1, 2011.

i. Existing staff must be trained in accordance with these provisions by January 1, 2011.

ii. New staff must be trained in accordance with these provisions within 90 days from the date of hire.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4 and R.S. 40:2200.1-2200.5.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 24:48 (January 1998), amended by the

Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1542 (August 2009), LR 36:1013 (May 2010).

### §9729. Emergency Preparedness

A. The nursing facility shall have an emergency preparedness plan which conforms to the Office of Emergency Preparedness (OEP) model plan designed to manage the consequences of declared disasters or other emergencies that disrupt the facility's ability to provide care and treatment or threatens the lives or safety of the residents. The facility shall follow and execute its approved emergency preparedness plan in the event of the occurrence of a declared disaster or other emergency.

B. At a minimum, the nursing facility shall have a written plan that describes:

1. the evacuation of residents to a safe place either within the nursing facility or to another location;

2. the delivery of essential care and services to residents, whether the residents are housed off-site or when additional residents are housed in the nursing facility during an emergency;

3. the provisions for the management of staff, including distribution and assignment of responsibilities and functions, either within the nursing facility or at another location;

4. Effective immediately, upon declaration by the secretary and notification to the Louisiana Nursing Home Association and Gulf States Association of Homes and Services for the Aging, all nursing facilities licensed in Louisiana shall file an electronic report with the HSS emergency preparedness webpage/operating system, or a successor operation system, during a declared disaster or other public health emergency.

a. The electronic report will enable the department to monitor the status of nursing facilities during and immediately following an emergency event.

b. The electronic report shall be filed twice daily at 7:30 a.m. and 2:30 p.m. throughout the duration of the disaster or emergency event.

c. The electronic report shall include, but is not limited to the following:

i. status of operation (open, limited or closed);

ii. availability of beds;

iii. resources that have been requested by the nursing facility from the local or state Office of Emergency Preparedness;

iv. generator status;

v. evacuation status;

vi. shelter in place status; and

vii. other information requested by the department.

NOTE: The electronic report is not to be used to request resources or to report emergency events.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and 40:2009.2 – 2009.11.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing LR 24:49 (January 1998), amended LR 32:2261 (December 2006), amended LR 34:1917 (September 2008), amended by the Department of Health and Hospitals, Bureau of Health Services Financing LR 35:248 (February 2009), amended LR 36:325 (February 2010).

### **§9731. Complaint Process**

A. Provisions for Complaints. In accordance with R.S. 40:2009.13 et seq., the following requirements are established for receiving, evaluating, investigating, and correcting grievances pertaining to resident care in licensed nursing homes. They also provide for mandatory reporting of abuse and neglect in nursing homes.

#### **B. Nursing Home Complaints, Procedure, Immunity**

1. Any person having knowledge of the alleged abuse or neglect of a resident of a nursing home; or who has knowledge that a state law, licensing requirement, rule, or regulation, or correction order promulgated by the department, or any federal certification rule pertaining to a nursing home has been violated; or who otherwise has knowledge that a nursing home resident is not receiving care and treatment to which he is entitled under state or federal laws, may submit a complaint regarding such matter to the secretary (Department of Health and Hospitals). The complaint shall be submitted to the Health Standards Section of DHH in writing, by telephone, or by personal visit where the complainant will complete and sign a form furnished by the member of the secretary's staff receiving the complaint.

2. The secretary shall designate a staff member whose responsibility shall be to assure that all complaints received are referred to the appropriate office of the department (Health Standards Section).

3. If the complaint involves an alleged violation of any criminal law pertaining to nursing homes, the secretary shall refer the complaint to the appropriate office.

4. If the complaint involves any other matter, the secretary shall refer the complaint to the appropriate office for investigation in accordance with this Section.

5. Any person who, in good faith, submits a complaint pursuant to this Section shall have immunity from any civil liability that otherwise might be incurred or imposed because of such complaint. Such immunity shall extend to participation in any judicial proceeding resulting from the complaint.

#### **C. Procedure for Investigation by the Office; Confidentiality of Complaints**

1. The office of the department which has received the complaint from the secretary shall review the complaint and determine whether there are reasonable grounds for an investigation. No complaint shall be investigated if:

a. in the opinion of the office, it is trivial or not made in good faith;

b. it is too out dated and delayed to justify present investigation; or

c. the complaint is not within the investigating authority of the office.

2. If the office determines that grounds for an investigation do not exist, it shall notify the complainant of its decision and the reasons within 15 work days after receipt of such complaint.

3. If grounds for an investigation do exist, the office shall initiate an investigation of such complaint and make a report to the complainant on its findings within 30 work days after completion of the complaint investigation.

4. The substance of the complaint shall be given to the nursing home no earlier than at the commencement of the investigation of the complaint.

5. When the substance of the complaint is furnished the nursing home, it shall not identify the complainant or the patient unless he/she consents, in writing or in a documented telephone conversation with an employee, to the disclosure. If the disclosure is considered essential to the investigation or if the investigation results in a judicial proceeding, the complainant shall be given the opportunity to withdraw the complaint.

#### **D. Investigation Report**

1. The investigation report of the department shall state whether any nursing home licensing law, or any licensing requirement, rule, regulation, or correction order of the Department of Health and Hospitals, or any standard relating to the health, safety, care, or treatment of residents in nursing homes has been violated.

a. If such violation is found to exist, the appropriate departmental staff shall immediately provide notice of such violation to the secretary.

b. The report shall also contain a deficiency statement to the nursing home. A copy of the report shall be sent by certified mail or hand-delivered to the complainant and to the nursing home.

2. The deficiency statement shall describe the violation; list the rule or law violated; and solicit corrective actions to be taken by the nursing home.

3. A nursing home which is ordered to correct deficiencies may file a written request that the department review the corrective action taken by the home and, if necessary, reinspect the home.

a. The department shall comply with the request in a timely manner.

b. If no such request is received, the department shall review the steps taken by the home in order to comply with the corrective order and, if necessary, reinspect the home on the final date fixed for completion of the correction of the violation.

4. If the violation is found to continue to exist on the correction date, the office shall notify the appropriate

department to take further action as indicated applicable by state regulations.

#### E. Hearing

1. A complainant or nursing home who is dissatisfied with the department's determination or investigation may request a hearing.

2. A request for a hearing shall be submitted, in writing, to the secretary within 30 days after the department's report has been mailed in accordance with the provisions of R.S. 40:2009.15A(1).

3. Notice of the time and place fixed for the hearing shall be sent to the complainant and the nursing home.

4. All appeal procedures shall be conducted in accordance with the Administrative Procedure Act.

F. Prohibition Against Retaliation. No discriminatory or retaliatory action shall be taken by any health care facility or government agency against any person or client by whom or for whom any communication was made to the department or unit, provided the communication is made in good faith for the purpose of aiding the office or unit to carry out its duties and responsibilities.

G. Notice of the Complaint Procedure. Notice of the complaint procedure, complete with the name, address, and telephone number of the Health Standards Section of the Office of the Secretary of the Department of Health and Hospitals, shall be posted conspicuously in the nursing home at places where residents gather.

H. In accordance with R.S. 14:403.2, 14:93.3, 14:93.4, and 14:93.5, all nursing homes shall adhere to the adult protective services laws.

#### I. Duty to Make Complaints; Penalty; Immunity

1. Any person who is engaged in the practice of medicine, social services, facility administration, psychological or psychiatric treatment; or any registered nurse, licensed practical nurse, or nurse's aid, who has actual knowledge of the abuse or neglect of a resident of a health care facility shall, within 24 hours, submit a complaint to the secretary or inform the unit or local law enforcement agency of such abuse or neglect.

2. Any person who knowingly or willfully violates the provisions of this Section shall be fined not more than \$500; or imprisoned for not more than two months; or both.

3. Any person who, in good faith, submits a complaint pursuant to this Section shall have immunity from any civil liability that otherwise might be incurred or imposed because of such complaint. Such immunity shall extend to participation in any judicial proceeding resulting from the complaint.

4. Any person, other than the person alleged to be responsible for the abuse or neglect, reporting pursuant to this Section in good faith, shall have immunity from any civil liability that otherwise might be incurred or imposed because of such report. Such immunity shall extend to

participation in any judicial proceeding resulting from such report.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:2009.1-2116.4.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 24:49 (January 1998).