

Chapter 97. Nursing Homes

Subchapter A. General Provisions

§9701. Definitions

Abuse—the willful infliction of physical or mental injury or the causing of the deterioration of a resident by means including, but not limited to, sexual abuse, exploitation, or extortion of funds or other things of value to such an extent that his health, moral, or emotional well-being is endangered.

Administrator—any individual who is, or may be charged with, the general administration of a nursing home, and who has been licensed and registered by the Board of Examiners of Nursing Home Administrators in accordance with the provisions of R.S. 37:2501.

Advanced-Practice Registered Nurse (APRN)—a licensed registered nurse who is certified by a nationally-recognized certifying body as having an advanced nursing specialty, and who meets the criteria for an advanced-practice registered nurse as established by the Louisiana State Board of Nursing. An advanced-practice registered nurse shall include certified nurse midwife, certified registered nurse anesthetist, clinical nurse specialist, or nurse practitioner.

Alzheimer's Special Care Unit—any nursing home as defined in R.S. 40:2009.2, that segregates or provides a special program or special unit for residents with a diagnosis of probable Alzheimer's disease or related disorder so as to prevent or limit access by a resident to areas outside the designated or separated area, or that advertises, markets, or otherwise promotes the facility as providing specialized Alzheimer/dementia care services.

Ancillary Service—a service such as, but not limited to, podiatry, dental, audiology, vision, physical therapy, speech pathology, occupational therapy, psychological, and social services.

Applicant—the legal entity that applies for the license to open, conduct, manage, or maintain a nursing home.

Biological—a preparation used in the treatment or prevention of disease that is derived from living organisms or their by-product.

Change of Ownership—any change in the legal entity responsible for the operation of the facility. Management agreements are generally not changes of ownership if the former owner continues to retain policy responsibility and approve or concur in decisions involving the nursing home's operation. However, if these ultimate legal responsibilities, authorities, and liabilities are surrendered and transferred from the former owner to the new manager, then a change of ownership has occurred.

Charge Nurse—an individual who is licensed by the state of Louisiana to practice as an RN or LPN and designated as a charge nurse by the nursing home.

Chemical Restraint—a psychopharmacologic drug that is used for discipline or convenience and not required to treat medical symptoms.

Controlled Dangerous Substance—a drug, substance, or immediate precursor in Schedule I through V of R.S. 40:964.

Dietary Manager—a person who:

1. is a licensed dietitian; or
2. is a graduate of a dietetic technician program; or
3. has successfully completed a course of study, by correspondence or classroom, which meets the eligibility requirements for certification by the Dietary Manager's Association; or
4. has successfully completed a training course at a state approved school (vocational or university) which includes coursework in foods, food service supervision, and diet therapy. Documentation of an eight-hour course of formalized instruction in diet therapy, conducted by the employing facility's qualified dietitian, is permissible if the course meets only the foods, and food service supervision requirements; or
5. is currently enrolled in an acceptable course of not more than 12 months which will qualify an individual upon completion.

Director of Nursing (DON)—a registered nurse, licensed by the state of Louisiana, who directs and coordinates nursing services in a nursing home.

Drug Administration—an act in which a single dose of a prescribed drug or biological is given to a resident by an authorized person in accordance with all laws and regulations governing such acts. The complete act of administration entails removing an individual dose from a previously dispensed, properly labeled container (including a unit dose container); verifying it with the physician's orders; giving the individual dose to the proper resident; monitoring the ingestion of the dose; and promptly recording the time and dose given.

Drug Dispensing—an act which entails the interpretation of an order for a drug or biological and, pursuant to the order, the proper selection, measuring, labeling, packaging, and issuance of the drug or biological for a resident or for a service unit of the facility by a licensed pharmacist, physician, or dentist.

Fees—remittance required by rules published by the department in *Louisiana Register*, June 20, 1989 (Volume 15, Number 6).

Licensed Bed—a bed set up, or capable of being set up, within 24 hours in a nursing home for the use of one resident.

Licensed Dietitian—a dietitian who is licensed to practice by the Louisiana Board of Examiners in Dietetics and Nutrition.

Licensed Practical Nurse (LPN)—an individual currently licensed by the Louisiana State Board of Practical Nurse Examiners to practice practical nursing in Louisiana.

Major Alteration—any repair or replacement of building materials and equipment which does not meet the definition of minor alteration.

Medical Director—a physician licensed in Louisiana who directs and coordinates medical care in a nursing home.

Minor Alteration—repair or replacement of building materials and equipment with materials and equipment of a similar type that does not diminish the level of construction below that which existed prior to the alteration. This does not include any alteration to the function or original design of the construction.

Neglect—the failure to provide the proper or necessary medical care, nutrition, or other care necessary for a resident's well-being.

Nurses' Call System—a system that audibly registers calls electronically from its place of origin (which means the resident's bed, toilet, or bathing facility) to the place of receivership (which means the nurses' station).

Nursing Home—any private home, institution, building, residence, or other place, serving two or more persons who are not related by blood or marriage to the operator, whether operated for profit or not, and including those places operated by a political subdivision of the state of Louisiana which undertakes, through its ownership or management, to provide maintenance, personal care, or nursing for persons who, by reason of illness or physical infirmity or age, are unable to properly care for themselves. The term does not include the following:

1. a home, institution, or other place operated by the federal government or agency thereof, or by the state of Louisiana;
2. a hospital, sanitarium, or other institution whose principal activity or business is the care and treatment of persons suffering from tuberculosis or from mental diseases;
3. a hospital, sanitarium, or other medical institution whose principal activity or business is the diagnosis, care, and treatment of human illness through the maintenance and operation of organized facilities therefore;
4. any municipal, parish, or private child welfare agency, maternity hospital, or lying-in home required by law to be licensed by some department or agency;
5. any sanitarium or institution conducted by and for Christian Scientists who rely on the practice of Christian Science for treatment and healing;
6. any nonprofit congregate housing program which promotes independent living by providing assistance with daily living activities such as cooking, eating, dressing, getting out of bed, and the like to persons living in a shared group environment who do not require the medical

supervision and nursing assistance provided by nursing homes. No congregate housing program, except those licensed or operated by the state of Louisiana, shall:

- a. use the term "nursing home" or any other term implying that it is a licensed health care facility; or
- b. administer medications or otherwise provide any other nursing or medical service.

Physical Restraint—any physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the individual cannot remove easily which restricts freedom of movement or normal access to one's body.

Physician—an individual currently licensed by the Louisiana State Board of Medical Examiners to practice medicine and/or surgery in Louisiana.

Physician Assistant—a person who is a graduate of a program accredited by the Council on Medical Education of the American Medical Association or its successors, or who has successfully passed the national certificate examination administered by the National Commission on the Certification of Physicians' Assistants, or its predecessors, and who is approved and licensed by the Louisiana State Board of Medical Examiners to perform protocol services under the supervision of a physician or group of physicians approved by the board to supervise such assistant.

Registered Nurse (RN)—an individual currently licensed by the Louisiana State Board of Nursing to practice professional nursing in Louisiana.

Registered Pharmacist—an individual currently licensed by the Louisiana State Board of Pharmacy to practice pharmacy in Louisiana.

Resident—an individual admitted to the nursing home by and upon the recommendation of a physician, and who is to receive the medical and nursing care ordered by the physician.

Resident Activities Director—an individual responsible for directing or providing the activity services of a nursing home.

Restorative Nursing Care—activities designed to resolve, diminish, or prevent the needs that are inferred from the resident's problem; including the planning, implementation and evaluation of said activities in accordance with the Louisiana State Board of Nursing Legal Standards of Nursing Practice.

Social Service Designee—an individual responsible for arranging or directly providing medically-related social services.

Sponsor—an adult relative, friend, or guardian of a resident who has an interest or responsibility in the resident's welfare.

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 24:44 (January 1998), amended by the Department of Health and Hospitals, Bureau of Health Services Financing, LR 35:1542 (August 2009).

§9703. Licensing Process

A. No application for a nursing home license, renewal of a license, or change in the existing license will be considered unless such application is in writing, on a form supplied by the department, containing the name(s) and address(es) of the owner(s), and signed by either the applicant or his representative.

1. It shall be accompanied by the fees and documentary evidence required by these licensing requirements.

2. When the secretary finds that an application is in proper order, he/she will cause whatever investigations are necessary to be made.

3. He/She may also cause routine, periodic inspections to be made of licensed nursing homes and such special inspections and investigations as he/she may consider necessary.

B. The applicant or applicant's designee shall disclose to the department the name and address of all individuals with 5 percent or more ownership interest, and, in the instance where the nursing home is a corporation or partnership, the name and address of each officer or director, and board members.

C. If the nursing home is operated by a management company, or leased in whole or in part by another organization, the applicant or applicant's designee shall disclose to the department the name of the management firm and employer identification number, or the name of the leasing organization.

D. The nursing home shall complete the licensing application form and return it to the department at least 15 days prior to the initial licensing survey or expiration date of the current license, accompanied by a nonrefundable, per annum licensing fee as provided by law. All fees shall be submitted only by certified or company check, or U.S. postal money order, made payable to DHH. All state-owned facilities are exempt from fees. The nursing home shall reapply for licensing on an annual basis.

E. The nursing home shall only accept that number of residents for which it is licensed, unless prior written approval has been secured from the department.

F. If a nursing home is in substantial compliance with the licensing requirements for nursing homes and the nursing home licensing law, a license shall be issued by the department for a period of not more than 12 months, determined by the department. If a nursing home is not in substantial compliance with the licensing requirements for nursing homes and the nursing home licensing law, the department may issue a provisional license for a period of up

to six months if there is no immediate and serious threat to the health and safety of residents.

G. For an increase in bed capacity as a result of new construction, renovations or alterations, a fee as provided by law shall be remitted to the department. Approval shall be granted after an on-site survey or through the submission of a signed and dated attestation to the compliance with these licensing requirements.

H. For a replacement license, when changes such as name change, address change, or bed reduction are requested, in writing, by the nursing home, a fee as provided by law shall be remitted.

I. For a change in licensee or premises, the buyer(s) shall submit to the department a completed application for nursing home licensing with a licensing fee, as provided by law. Nursing home licensing is not transferable from one entity or owner(s) to another.

J. A processing fee, as provided by law, shall be submitted by the nursing home for issuing a duplicate facility license with no changes.

K. The license shall be conspicuously posted in the nursing home.

L. Licensing inspection visits should be a source of help and guidance to the management. During these inspection visits the representatives of the department, in addition to checking compliance by the home with fire, sanitation, diet and health regulations, will review with the management the overall plan for the care of residents and the personnel needs of the home and will also offer recommendations designed to improve the service of the home, unless contraindicated by a more stringent rule, regulation, or policy.

M. Exceptions to these Licensing Requirements

1. Where any requirement on an existing nursing home would impose a financial hardship but would not adversely affect the health and safety of any resident, the existing nursing home may submit a request for exception (waiver) to the department.

2. Where a more stringent requirement on an existing nursing home would impose an unreasonable hardship, the existing nursing home may submit a written request for exception, along with supporting documentation, to the department.

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 24:46 (January 1998).

§9704. Alzheimer's Special Care Disclosure

A. Any provider offering a special program for persons with Alzheimer's disease or a related disorder must disclose the form of care or treatment that distinguishes it as being especially applicable to or suitable for such persons. For the purpose of this section, a related disorder means progressive, incurable dementia.

B. Prior to entering into any agreement to provide care, a provider must make the disclosure to:

1. any person seeking services within an Alzheimer's special care program; or

2. any person seeking such services on behalf of a person with Alzheimer's disease or a related disorder within an Alzheimer's special care program. A provider must make the disclosure upon characterizing programs or services as specially suited for persons with Alzheimer's disease or a related disorder. Additionally, a provider must give copies of current disclosure forms to all designees, representatives or sponsors of persons receiving treatment in an Alzheimer's special care program.

C. A provider must furnish the disclosure to the department when applying for a license, renewing an existing license, or changing an existing license. Additional disclosure may be made to the state ombudsman. During the licensure or renewal process, the department will examine all disclosures to verify the accuracy of the information. Failure to provide accurate or timely information constitutes non-compliance with this section and may subject the provider to standard administrative penalties or corrective actions. Distributing an inaccurate or misleading disclosure form constitutes deceptive advertising and may subject a provider to prosecution under LA R.S. 51:1401 et seq. In such instances, the department will refer the matter to the Attorney General's Division of Consumer Protection for investigation and possible prosecution.

D. Within seven working days of a significant change in the information submitted to the department, a provider must furnish an amended disclosure form reflecting the change to the following parties:

1. the department;
2. any clients with Alzheimer's disease or a related disorder currently residing in the nursing home;
3. any designee, representative or sponsor of any such client;
4. any person seeking services in an Alzheimer's special care program; and
5. any person seeking services on behalf of a person with Alzheimer's disease or a related disorder in an Alzheimer's special care program.

E. A provider must use the "Alzheimer's Special Care Disclosure Form" developed by the department. The disclosure form shall contain the following information:

1. a written statement of the overall philosophy and mission of the Alzheimer's special care program which reflects the needs of residents afflicted with dementia;
2. a description of the criteria and process for admission to, transfer, or discharge from the program;
3. a description of the process used to perform an assessment as well as to develop and implement the plan of

care, including the responsiveness of the plan of care to changes in condition;

4. a description of staff training and continuing education practices;

5. a description of the physical environment and design features appropriate to support the functioning of cognitively impaired adult residents;

6. a description of the frequency and types of resident activities;

7. a statement of philosophy on the family's involvement in care and a statement on the availability of family support programs;

8. a list of the fees for care and any additional program fees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1300.121-1300.125.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 27:312 (March 2001).

§9705. License Denial, Revocation; or Nonrenewal of License

The department also may deny, suspend, or revoke a license where there has been substantial noncompliance with these requirements in accordance with the nursing home licensing law. If a license is denied, suspended, or revoked, an appeal may be requested as outlined in the nursing home licensing law.

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 24:46 (January 1998).

§9707. Approval of Plans

A. All new construction, other than minor alterations, shall be done in accordance with the specific requirements of the Office of the State Fire Marshal and the Bureau of Engineering and Consulting Services of the Department of Health and Hospitals, covering new construction in nursing homes, including submission of preliminary plans and the submission of final work drawings and specifications to each of these agencies.

B. No new nursing home shall hereafter be constructed, nor shall major alterations be made to existing nursing homes, without prior written approval, and unless in accordance with plans and specifications approved in advance by the Bureau of Engineering and Consulting Services of the Department of Health and Hospitals and the Office of the State Fire Marshal. The review and approval of plans and specifications shall be made in accordance with these licensing requirements for nursing homes and the *State of Louisiana Sanitary Code*.

C. Before any new nursing home is licensed, or before any alteration or expansion of a licensed nursing home can be approved, the applicant must furnish one complete set of plans and specifications to the Bureau of Engineering and Consulting Services of the Department of Health and Hospitals and one complete set of plans and specifications to the Office of the State Fire Marshal, together with fees and other information as may be required.

1. Plans and specifications for new construction, other than minor alterations, shall be prepared by or under the direction of a licensed architect and/or a qualified licensed engineer.

2. No residential conversions will be considered for a nursing home license.

D. In the event that submitted materials do not satisfactorily comply with the aforementioned publications, the Department of Health and Hospitals shall furnish a letter to the party submitting the plans which shall list the particular items in question and request further explanation and/or confirmation of necessary modifications.

E. Notice of satisfactory review from the Department of Health and Hospitals and the Office of the State Fire Marshal constitutes compliance with this requirement, if construction begins within 180 days of the date of such notice. This approval shall in no way permit and/or authorize any omission or deviation from the requirements of any restrictions, laws, regulations, ordinances, codes, or rules of any responsible agency.

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 24:46 (January 1998).

§9709. Fire Protection

All nursing homes required to be licensed by the law shall comply with the rules, established fire protection standards, and enforcement policies as promulgated by the Office of the State Fire Marshal.

1. It shall be the primary responsibility of the Office of the State Fire Marshal to determine if applicants are complying with those requirements.

2. No initial license shall be issued without the applicant furnishing a certificate from the Office of the State Fire Marshal that such applicant is complying with their provisions.

3. A provisional license may be issued to the applicant if the Office of the State Fire Marshal issues the applicant a conditional certificate.

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).

§9711. Sanitation and Patient Safety

All nursing facilities required to be licensed by the law shall comply with the rules, sanitary code and enforcement policies as promulgated by the Office of Public Health.

1. It shall be the primary responsibility of the Office of Public Health to determine if applicants are complying with those requirements.

2. No initial license shall be issued without the applicant furnishing a certificate from the Office of Public Health that such applicant is complying with their provisions.

3. A provisional license may be issued to the applicant if the Office of Public Health issues the applicant a conditional certificate.

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).

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).

Subchapter C. Resident Rights

§9733. Statement of Rights and Responsibilities

A. In accordance with R.S. 40:2010.8 et seq., all nursing homes shall adopt and make public a statement of the rights and responsibilities of the residents residing therein and shall treat such residents in accordance with the provisions of the statement. The statement shall assure each resident the following:

1. the right to civil and religious liberties including, but not limited to, knowledge of available choices; the right to independent personal decision; and the right to encouragement and assistance from the staff of the facility in the fullest possible exercise of these civil and religious rights;

2. the right to private and uncensored communications including, but not limited to, receiving and sending unopened correspondence; access to a telephone; visitation with any person of the resident's choice; and overnight visitation outside the facility with family and friends in accordance with nursing home policies and physician's orders without the loss of his bed;

a. nursing home visiting hours shall be flexible, taking into consideration special circumstances such as out-of-town visitors and working relatives or friends;

b. with the consent of the resident and in accordance with the policies approved by the Department of Health and Hospitals, the home shall permit recognized volunteer groups, representatives of community-based legal, social, mental health, and leisure and planning programs, and members of the clergy access to the home during visiting hours for the purpose of visiting with and providing services to any resident;

3. the right to present grievances on behalf of himself or others to the nursing home's staff or administrator, to governmental officials, or to any other person; to recommend changes in policies and services to nursing home personnel; and to join with other residents or individuals within or outside the home to work for improvements in resident care, free from restraint, interference, coercion, discrimination or reprisal. This right includes access to the resident's sponsor and the Department of Health and Hospitals; and the right to be a member of, to be active in, and to associate with advocacy or special interest groups;

4. the right to manage his own financial affairs or to delegate such responsibility to the nursing home, but this delegation may be only to the extent of the funds held in trust for the resident by the home. A quarterly accounting of any transactions made on behalf of the resident shall be furnished to the resident and his sponsor, if requested. A copy shall be retained in the resident's records on file in the home;

5. the right to be fully informed, in writing and orally, prior to or at time of admission and during his stay, of services not covered by the basic per diem rates and of bed reservation and refund policies of the home;

6. the right to be adequately informed of his medical condition and proposed treatment, unless otherwise indicated by the resident's physician; to participate in the planning of all medical treatment, including the right to refuse medication and treatment, unless otherwise indicated by the resident's physician; and to be informed of the consequences of such actions;

7. the right to receive adequate and appropriate health care and protective and support services, including services consistent with the resident care plan, with established and recognized practice standards within the community and with rules promulgated by the Department of Health and Hospitals;

8. the right to have privacy in treatment and in caring for personal needs:

a. to have closed room doors, and to have facility personnel knock before entering the room, except in case of an emergency or unless medically contraindicated;

b. to have confidentiality in the treatment of personal and medical records;

c. to be secure in storing and using personal possessions, subject to applicable state and federal health and safety regulations and the rights of other residents; and

d. privacy of the resident's body shall be maintained during, but not limited to, toileting, bathing, and other activities of personal hygiene, except as needed for resident safety or assistance;

9. the right to be treated courteously, fairly, and with the fullest measure of dignity and to receive a written statement and oral explanations of the services provided by the home, including statements and explanations required to be offered on an as-needed basis;

10. the right to be free from mental and physical abuse and from physical and chemical restraints, except those restraints authorized by the attending physician for a specified and limited period of time or those necessitated by an emergency:

a. in case of an emergency, restraint may only be applied by a qualified licensed nurse, who shall set forth, in writing, the circumstances requiring the use of the restraint, and, in case of a chemical restraint, the attending physician shall be consulted immediately thereafter;

b. restraints shall not be used in lieu of staff supervision or merely for staff convenience or resident punishment, or for any reason other than resident protection or safety;

11. the right to be transferred or discharged:

a. a resident can be transferred or discharged only if necessary for his welfare and if his needs cannot be met in the facility; his health has improved sufficiently so that he no longer needs the services provided by the facility; the safety of individuals in the facility is endangered; the health of individuals in the facility would otherwise be endangered; he has failed, after reasonable and appropriate notice, to pay or have paid for a stay at the facility; or the facility ceases to operate;

b. both the resident and his legal representative or interested family member, if known and available, have the right to be notified, in writing, in a language and manner they understand, of the transfer and discharge. The notice must be given no less than 30 days in advance of the proposed action, except that the notice may be given as soon as is practicable prior to the action in the case of an emergency. In facilities not certified to provide services under Title XVIII or Title XIX of the Social Security Act, the advance notice period may be shortened to 15 days for nonpayment of a bill for a stay at the facility;

c. the resident, or his legal representative or interested family member, if known and available, has the right to appeal any transfer or discharge to the Department of Health and Hospitals, which shall provide a fair hearing in all such appeals;

d. the facility must ensure that the transfer or discharge is effectuated in a safe and orderly manner. The resident and his legal representative or interested family

member, if known and available, shall be consulted in choosing another facility if facility placement is required;

12. the right to select a personal physician; to obtain pharmaceutical supplies and services from a pharmacy of the resident's choice, at the resident's own expense; and to obtain information about, and to participate in, community-based activities and programs, unless medically contraindicated, as documented by the attending physician in the resident's medical record, and such participation would violate infection control laws or regulations;

13. the right to retain and use personal clothing and possessions, as space permits, unless to do so would infringe upon the rights of other residents or unless medically contraindicated, as documented by the attending physician in the resident's medical record. Clothing need not be provided to the resident by the home, except in emergency situations. If provided, it shall be of reasonable fit;

14. the right to have copies of the nursing home's rules and regulations and an explanation of the resident's responsibility to obey all reasonable rules and regulations of the nursing home and of his responsibility to respect the personal rights and private property of other residents;

15. the right to be informed of the bed reservation policy for a hospitalization:

a. the nursing home shall inform a private pay resident and his sponsor that his bed shall be reserved for any single hospitalization for a period up to 30 days, provided the nursing home receives reimbursement;

b. notice shall be provided within 24 hours of the hospitalization;

16. the right to receive a prompt response to all reasonable requests and inquiries;

17. the right of the resident to withhold payment for physician visitation if the physician did not examine the resident;

18. the right to refuse to serve as a medical research subject without jeopardizing access to appropriate medical care;

19. the right to use tobacco, at his own expense, under the home's safety rules and under applicable laws and rules of the state, unless the facility's written policies preclude smoking in designated areas;

20. the right to consume a reasonable amount of alcoholic beverages, at his own expense, unless:

a. not medically advisable, as documented in his medical record by the attending physician; or

b. unless alcohol is contraindicated with any of the medications in the resident's current regime; or

c. unless expressly prohibited by published rules and regulations of a nursing home owned and operated by a religious denomination which has abstinence from the consumption of alcoholic beverages as a part of its religious belief;

21. the right to retire and rise in accordance with his reasonable requests, if he does not disturb others and does not disrupt the posted meal schedules and, upon the home's request, if he remains in a supervised area unless retiring and rising in accordance with the resident's request is not medically advisable, as documented in his medical record by the attending physician;

22. the right to have any significant change in his health status immediately reported to him and his legal representative or interested family member, if known and available, as soon as such a change is known to the home's staff.

B. A sponsor may act on a resident's behalf to assure that the nursing home does not deny the resident's rights under the provisions of R.S. 40:2010.6 et seq., and no right enumerated therein may be waived for any reason whatsoever.

C. Each nursing home shall provide a copy of the statement required by R.S. 40:2010.8(A) to each resident and sponsor upon or before the resident's admission to the home and to each staff member of the home. The statement shall also advise the resident and his sponsor that the nursing home is not responsible for the actions or inactions of other persons or entities not employed by the facility, such as the resident's treating physician, pharmacists, sitter, or other such persons or entities employed or selected by the resident or his sponsor. Each home shall prepare a written plan and provide appropriate staff training to implement the provisions of R.S. 40:2010.6 et seq., including but not limited to, an explanation of the following:

1. the residents' rights and the staff's responsibilities in the implementation of those rights;

2. the staff's obligation to provide all residents who have similar needs with comparable services, as required by state licensing standards.

D. Any violations of the residents' rights set forth in R.S. 40:2010.6 et seq. shall constitute grounds for appropriate action by the Department of Health and Hospitals.

1. Residents shall have a private right of action to enforce these rights, as set forth in R.S. 40:2010.9. The state courts shall have jurisdiction to enjoin a violation of resident's rights and to assess fines for violations, not to exceed \$100 per individual violation.

2. In order to determine whether a home is adequately protecting residents' rights, inspection of the home by the Department of Health and Hospitals shall include private, informal conversations with a sample of residents to discuss residents' experiences within the home with respect to the rights specified in R.S. 40:2010.6 et seq., and with respect to compliance with departmental standards.

E. Any person who submits or reports a complaint concerning a suspected violation of residents' rights or concerning services or conditions in a home or health care facility or who testifies in any administrative or judicial proceedings arising from such complaint shall have

immunity from any criminal or civil liability therefor, unless that person has acted in bad faith with malicious purpose, or if the court finds that there was an absence of a justiciable issue of either law or fact raised by the complaining party.

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 24:50 (January 1998).

§9734. Resident Personal Fund Account

A. A nursing facility resident, with a personal fund account managed by the nursing facility, may sign an account agreement acknowledging that any funds deposited into the personal fund account by, or on the resident's behalf, are jointly owned by the resident and his legal representative or next of kin. The account agreement must state that the:

1. funds in the account shall be jointly owned with the right of survivorship;

2. funds in the account shall be used by, for, or on behalf of the resident;

3. resident or the joint owner may deposit funds into the account; and

4. resident or joint owner may endorse any check, draft or other instrument to the order of any joint owner, for deposit into the account.

B. If a valid account agreement has been executed by the resident, upon the resident's death, the nursing facility shall transfer the funds in the resident's personal fund account to the joint owner within 30 days of the resident's death. This provision only applies to personal fund accounts not in excess of \$2,000.

C. If a valid account agreement has not been executed, upon the resident's death, the nursing facility shall comply with the federal and state laws and regulations regarding the disbursement of funds in the account and the properties of the deceased.

D. The provisions of this Section shall have no effect on federal or state tax obligations or liabilities of the deceased resident's estate. If there are other laws or regulations which conflict with these provisions, those laws or regulations will govern over and supersede the conflicting provisions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:254 and Title XIX of the Social Security Act.

HISTORICAL NOTE: Promulgated by the Department of Health and Hospitals, Office of the Secretary, Bureau of Health Services Financing, LR 33:1350 (July 2007), amended LR 34:880 (May 2008).

Subchapter D. Sanctions and Appeal Procedures

§9735. Authority and Scope

A. Any person or entity found to be in violation of any provision of R.S. 40:2009.1 through 40:2009.11 may be sanctioned by revocation of license, nonrenewal of license, or by civil fines as mandated by state law.

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 24:52 (January 1998).

§9737. Considerations

The secretary shall impose the sanction(s) which will bring the nursing home into compliance in the most efficient and effective manner, with the care and well-being of the residents being the paramount consideration. The secretary's decision shall be based on an assessment of some or all of the following factors:

1. whether the violations pose an immediate threat to the health or safety of the residents;
2. the duration of the violations;
3. whether the violation (or one that is substantially similar) has previously occurred during the last three consecutive surveys.

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 24:52 (January 1998).

§9739. Repeat Violations

The Department of Health and Hospitals shall have the authority to determine whether a violation is a repeat violation and shall inform the facility in its notice of that determination. Violations may be considered repeat violations by the Department of Health and Hospitals if the one or more of the following conditions are found to exist.

1. Where the Department of Health and Hospitals has established the existence of a violation as of a particular date, and the violation is one that may be reasonably expected to continue until corrective action is taken, the department may elect to treat said continuing violation as a repeat violation subject to appropriate fines for each day following the date on which the initial violation is established, until such time as there is evidence establishing a date by which the violation was corrected.

2. Where the Department of Health and Hospitals has established the existence of a violation, and another violation which is the same or substantially similar to the previous violation occurs within 18 months, the subsequent violation and all other violations thereafter shall be considered repeat violations subject to fines and other sanctions appropriate for repeat violations.

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 24:53 (January 1998).

§9741. Notice and Appeal Procedure

A. Unless otherwise indicated, any sanction may be administratively appealed in the manner described in the nursing home law in Section 2009.11.

B. Notice to Facility of Violation. When the Department of Health and Hospitals has reasonable cause to believe, through an on-site survey, a complaint investigation, or other means that there exists or has existed a threat to the health, safety, welfare, or rights of a nursing facility resident, the department shall give notice of the violation(s) in the following manner.

1. The head of the survey team shall conduct an exit conference and give the facility administrator or his designee the preliminary finding of fact and the possible violations before leaving the facility.

2. The department shall follow the discussion with confirmed written notice, given by certified mail or hand delivery, to the facility administrator.

3. The department's written notice of deficiencies shall be consistent with the findings delineated at the conference and shall:

- a. specify the violation(s);
- b. cite the legal authority which established such violation(s);
- c. cite any sanctions assessed for each violation;
- d. inform the administrator that the facility has 10 days from receipt of notice, sent by certified mail or hand delivery, within which to request a reconsideration of the proposed agency action;
- e. inform the administrator of the facility that the consequences of failing to timely request an administrative appeal will be that the departmental determination will be considered final, and that no further administrative or judicial review will be had;
- f. inform the administrator of the facility if the department has elected to regard the violation(s) as repeat violation(s) or as continuing violation(s) and the manner in which sanctions will be imposed.

C. The facility may request administrative reconsideration of the department's findings. This request must be made, in writing, within 10 days after receipt of the initial notice from the state survey agency. This reconsideration of findings shall be conducted by designated employees of the department who did not participate in the initial decision to cite the deficiencies. Reconsideration shall be made on the basis of documents before the designated employees and shall include the survey report and statement of deficiencies and all documentation the facility submits to the department at the time of its request for reconsideration. Correction of a deficiency shall not be a basis for reconsideration. Oral presentations can be made by department spokesmen and facility spokesmen. This process is not in lieu of the appeals process. The designated employees shall have authority only to affirm the survey findings; revoke some or all of the cited deficiencies; or request additional information from either the department or the facility. The department shall notify the facility of its

decision within three working days after the oral presentation and receipt of all requested documentation. Participation in the reconsideration does not delay the imposition of recommended remedies.

D. If the facility requests an administrative appeal, such request shall:

1. state which violation(s) the facility contests and the specific reasons for disagreement;

2. be submitted to the Department of Health and Hospitals within 30 days of receipt of the secretary's decision on the final agency action by certified mail or hand delivery;

E. The administrative hearing shall be limited to those issues specifically contested and shall not include any claim or argument that the violation(s) have been corrected. Any violations not specifically contested shall become final, and sanctions shall be enforced at the expiration of the time for appeal. All violations/sanctions not contested shall become final at the expiration of the appeal request time period.

F. If the facility does not request an administrative appeal in a timely manner or does not submit satisfactory evidence to rebut the department's findings of a violation, the decision to impose sanctions will be final and the secretary shall have the authority to enforce sanctions, as provided in these regulations.

G. The department may institute all necessary civil court action to collect fines imposed and not timely appealed. No nursing facility may claim fines as reimbursable costs, nor increase charges to residents as a result of such fines. Interest shall begin to accrue at the current judicial rate on the day following the date on which any fines become due and payable.

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 24:53 (January 1998).

§9743. Civil Money Penalties (Fines)

A. The following listed civil fines pertaining to classified violations may be assessed by the secretary against nursing homes. In the case of class "A" violations, the following civil fines shall be assessed. In the cases of class "B," "C," "D," or "E" violations, the secretary, in his discretion, may elect to assess the following civil fines or may allow a specified period of time for correction of said violation. For class "D" and "E" violations, the facility will be given notice of the fine at the time of the first violation and may be given an opportunity to demonstrate compliance before the fine becomes final.

1. If compliance is demonstrated on the follow-up visit, payment of the fine may be waived. In all instances the violation is counted and recorded.

2. If compliance is not demonstrated at the next visit, the penalty for a repeat violation will be assessed. No facility shall be penalized because of a physician's or consultant's

nonperformance beyond the facility's control or if the violation is beyond the facility's control, if the situation and the efforts to correct it are clearly documented.

3. It is not the intent that every violation found on a survey, inspection, or related visit should be accompanied by an administrative penalty.

B. Class "A" violations are subject to a civil fine which shall not exceed \$2,500 for the first violation. A second class "A" violation occurring within an 18-month period from the first violation shall not exceed \$5,000 per day.

C. Class "B" violations are subject to a civil fine which shall not exceed \$1,500 for the first violation. A second Class "B" violation occurring within an 18-month period from the first violation shall not exceed \$3,000 per day.

D. Class "C" violations are subject to a civil fine which shall not exceed \$1,000 for the first violation. A second Class "C" violation occurring within an 18-month period from the first violation shall not exceed \$2,000 per day.

E. Class "D" violations are subject to a civil fine which shall not exceed \$100 for the first violation. Each subsequent Class "D" violation within an 18-month period from the first violation shall not exceed \$250 per day.

F. Class "E" violations are subject to a civil fine which shall not exceed \$50 for the first violation. Each subsequent Class "E" violation occurring within an 18-month period from the first violation shall not exceed \$100 per day.

G. The total amount of fines assessed for violations determined in any one month shall not exceed \$5,000, except that the aggregate fines assessed for Class "A" or "B" violations shall not exceed \$10,000 in any one month.

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 24:54 (January 1998).

§9745. Classes of Violations Defined

A. *Class "A" Violations*—those violations which create a condition or occurrence relating to the operation and maintenance of a nursing home which result in death or serious harm to a resident.

B. *Class "B" Violations*—those violations which create a condition or occurrence relating to the operation and maintenance of a nursing home which create a substantial probability that death or serious physical harm to a resident will result from the violation.

C. *Class "C" Violations*—conduct, acts, or omissions which do not result in death or serious physical harm to a resident or the substantial probability thereof but create a condition or occurrence relating to the operation and maintenance of a nursing home that create a potential for harm by directly threatening the health, safety, rights or welfare of a resident are Class "C" violations.

D. *Class "D" Violations*—those violations which are related to administrative and reporting requirements that do not directly threaten the health, safety, rights, or welfare of a resident.

E. *Class "E" Violations*—Class "E" violations are defined as the failure of any nursing home to submit a statistical or financial report in a timely manner as required by regulations. The failure to timely submit a statistical or financial report shall be considered a separate Class "E" violation during any month or part thereof in noncompliance.

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 24:54 (January 1998).

§9747. Collection of Civil Fines Assessed

A. Civil fines assessed shall be final if:

1. no timely or proper appeal was requested;
 2. the facility admits the violations and agrees to pay;
- and
3. the administrative hearing is concluded with findings of violations and time for seeking judicial review has expired.

B. When civil fines become final, they shall be paid in full within 10 days of their commencement unless the department allows a payment schedule in light of a documented financial hardship. Such documentation shall be submitted within the 10-day period.

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 24:54 (January 1998).

§9749. Revocation of License

A. The secretary of the Department of Health and Hospitals may deny an application for a license or refuse to renew a license or may revoke an outstanding license when an investigation reveals that the applicant or licensee is in nonconformance with or in violation of the provisions of R.S. 40:2009.6, provided that in all such cases, the secretary shall furnish the applicant or licensee 30 calendar days written notice specifying reasons for the action.

B. The secretary, in a written notice of denial, nonrenewal, or revocation of a license, shall notify the applicant or licensee of his right to file a suspensive appeal with the Office of the Secretary within 30 calendar days from the date the notice, as described in this Subchapter, is received by him. This appeal or request for a hearing shall specify, in detail, reasons why the appeal is lodged and why the appellant feels aggrieved by the action of the secretary.

C. When any appeal, as described in this Subchapter, is received by the secretary, if timely filed, he shall appoint an impartial three-member board to conduct a hearing on the

appeal, at such time and place as such members deem proper, and after such hearing, to render a written opinion on the issues presented at the hearing. The written decision or opinion of a majority of the members conducting the hearing shall constitute final administrative action on the appeal.

D. Any member of said board or the secretary shall have power to administer oaths and to subpoena witnesses on behalf of the board or any party in interest and compel the production of books and papers pertinent to any investigation or hearing authorized by this Subchapter, provided that in all cases witness fees and transportation and similar hearing costs shall be paid by the appellant or by the Department of Health and Hospitals if the appellant is found innocent of charges. Any person, having been served with a subpoena, who shall fail to appear in response to the subpoena or fail or refuse to answer any question or fail to produce any books or papers pertinent to any investigation or hearing or who shall knowingly give false testimony therein shall be guilty of a misdemeanor and shall, upon conviction, be punished by a fine of not less than \$100, nor more than \$500, or by imprisonment of not less than one month nor more than six months, or by both such fine and imprisonment.

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 24:54 (January 1998).