

CHAPTER 2

OBTAINING A LICENSE

2.A. Requirements

2.A.1. No person or entity shall operate a nursing facility without a license from the Department in force, authorizing such operation. (Title 22, Section 1811)

2.A.2. The person or entity applying for the license shall be responsible for complying with Maine Statutes and all rules and regulations adopted pursuant thereto. (Title 22, Section 1811)

2.A.3. Reimbursement shall not be accepted, by any person, for rendering nursing facility care for even one person not a relative within the third degree of kinship, without such person having first secured a license in force, authorizing such operation in accordance with these regulations.

2.B. Appointment of Administrator

Each licensee shall appoint an administrator for each facility. The licensee and the administrator may be one and the same person.

2.C. First Church of Christ, Scientist Homes

Nursing facilities conducted in accordance with the practice and principle of the body known as the Church of Christ, Scientist, shall be subject to the provisions for licensure by the Department. Approval shall be based upon conditions of public safety and sanitation. Certification shall be required by the First Church of Christ, Scientist, Boston, Massachusetts, that the home is operated in accordance with the practice and principle of that body, and the public shall be informed through the name of the home and any publicity thereon that such home is operated in accordance with the practice and principle of the Church body as indicated above. Nothing in these rules and regulations shall be construed to authorize any medical supervision, regulation or control of the remedial care and treatment of residents in certified Christian Science facilities.

2.D. Application Procedure

2.D.1. Filing of Application

Any person, partnership, association or corporation, including state, county or local governmental units desiring a license to operate a nursing facility shall, prior to the commencement of such operation, file with the Department a verified application containing the information required in this section. Application on behalf of a corporation or association shall be made by any two officers thereof or by its managing agent. All applicants shall submit satisfactory evidence of their ability to comply with the minimum standards of Title 22, and all rules and regulations adopted thereunder, and whether the applicant(s) are at least 18 years of age. (Title 22, Section 1814) Such application shall be on a form approved by the Department.

2.D.2. Statement by Commissioner of the Department of Public Safety

Each applicant shall provide to the Department a written statement signed by an authorized representative of the Department of Public Safety or the proper municipal official designated in

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Title 25, Chapters 311 to 321, M.R.S.A., Maine, 1964, to make fire safety inspections that the facility and premises comply with said Chapters 311 to 321 relating to fire safety.

2.D.3. Policies

Each applicant for a skilled nursing facility or nursing facility shall provide the Department with a signed statement from the professional group of advisors indicating approval of the policies.

2.D.4. Fees

Each application, submitted on or after July 1, 2003, for a license to operate a skilled nursing facility or nursing facility shall be accompanied by a fee of twenty-six (26) dollars for each bed contained within the facility. No such fee shall be refunded. All licenses issued shall be renewed annually upon payment of a like fee and compliance with Maine Statutes and any rules and regulations issued thereunder. No license granted is assignable or transferable. (Title 22, Section 1815 and 1815A)

2.D.5. Additional Information

Each applicant shall provide to the Department such information as the Department may require, in order to determine the suitability of the applicant for licensure, in conformity with the provisions of the Statutes of Maine and rules and regulations promulgated thereunder.

2.E. Initial Licensing

In addition to the requirements in Sections A, B, C, and D of this Chapter, each applicant for initial licensing shall provide:

2.E.1. Floor Plans

A set of plans and specifications of the facility drawn to scale showing the name or number of each resident bedroom, service area, etc., and including the source of utilities, water and methods of waste disposal. If there is a distinct part, this part must be identified.

2.E.2. Certificate of Need Approval

There must be an approved written Certificate of Need, signed by the Commissioner, Department of Human Services, or a written determination from the Department of Human Services that a Certificate of Need is not required.

2.E.3. Statement by Bureau of Health

A written statement signed by an authorized representative of the Bureau of Health of the Department indicating compliance of the facility with all applicable State Statutes and appropriate rules and regulations promulgated thereunder relating to plumbing, water supply and sewage disposal.

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2.E.4. Policies

A copy of the policies governing the services the facility provides to be available to representatives of the Department and submitted to the Department only if specifically requested in writing. The Department will notify the facility in writing of any policies which are not approved, as being contrary to the provisions of Title 22 M.R.S.A. or rules promulgated thereunder.

2.E.5. Transfer Agreement

Each applicant for a skilled nursing facility or nursing facility license shall provide a copy of all transfer agreements with licensed hospitals, upon request of the Department.

2.E.6. Copy of the Lease

When a building or buildings is or are leased to the person or persons to operate as a licensed facility, a copy of the lease, showing clearly in its context which party to the agreement is to be held responsible for the maintenance and upkeep of the property, shall be filed with the application for a license. The Department shall be notified within seventy-two (72) hours, if there is any change in the lease agreements that may in any way affect the responsibility for maintenance and upkeep of this property.

2.E.7. Compliance with Local Laws

A letter from the appropriate municipal official having jurisdiction over the premises where the facility is to be located indicating compliance with all local laws or codes relative to the type of facility for which licensure is requested.

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2.E.8. Default License for New Nursing Facilities

When a new applicant has filed a completed application and has a building ready for inspection, but has not been provided the necessary notifications, inspections or services from the Division of Licensing and Certification and the Department of Public Safety within ninety (90) days, a provisional license will be issued. All required application materials must be submitted for the application to be considered complete. The Division shall notify a new applicant within two (2) weeks of filing of the application on whether the application is complete. The Division and the Department of Public Safety shall provide necessary services and inspections within ninety (90) days of filing of the complete application. If initial services and inspections are satisfactorily completed within the ninety (90) day time period, an initial license will be issued and no default licensing will occur.

2.F. Issuance of License

2.F.1. Specifications of License

For nursing facilities, each license issued by the Department shall specify:

- a. The name of the facility;
- b. The location of the facility;
- c. The name of the administrator;
- d. The maximum number of licensed beds, whether Skilled Nursing, Nursing or Dual;
- e. The effective dates of the license.

2.F.2. Multilevel Facility License

For multilevel facilities, a single license will be issued by the Department, identifying each level of service.

2.F.3. Facilities Located in Two Structures on the Same Grounds

When one owner, organization or corporation has separate facilities located in physically separated structures on the same grounds, separate licenses shall not be required.

2.F.4. Facilities Operated by Same Management on Different Premises

Facilities operated by the same management on different grounds shall be required to have in effect a separate license for each facility.

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2.G. New Construction or Additions

No new construction or additions or alterations shall commence without the applicant having first referred the plans to the Office of Planning, Research and Development for their recommendations, and without having prior written approval by the Department. The provisions of these rules and regulations do not prohibit the use of equivalent alternate space utilizations, new concepts of facility plan design and new finish materials.

2.G.1. An application for approval of new construction or additions or alterations shall be submitted on forms to be furnished by the Department.

2.G.2. Commencement of construction shall not occur until a certificate of approval has been issued by the Department.

2.G.3. Unless construction is commenced within one year from date of written approval of final working drawings and specifications, the application and the drawings shall be resubmitted for renewal of review and approval.

2.G.4. Minor alterations which do not affect the structural integrity of the building, which do not affect fire safety, which do not change primary functional operation, or which do not change the number of beds for which the facility is licensed, need not be submitted.

2.G.5. Routine maintenance and repairs do not require prior approval by the Department.

2.H. Changes

2.H.1. Changes in Number of Beds

All requests for any increase or decrease in the number of beds shall be made in writing to the Department, at least forty five (45) days prior to the effective date. No changes in the number and/or location of beds, or the distinct part, shall be made without prior written approval of the Department.

2.H.2. Changes in a Licensed Facility

No change shall be made in a licensed facility's operation, program or services without prior written approval of the Department.

2.H.3. Proposed Changes in Physical Plant

No changes in the physical plant or its utilities shall be made until approved in writing by the Department.

2.H.4. Utilization of Additions and Renovations

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No new resident rooms or new areas to be used by residents shall be occupied or utilized by residents without prior written approval of the Department.

2.H.5. Change in Ownership of Facility

a. No license shall be assigned or transferred.

b. An application for a change of ownership must be submitted in accordance with the Certificate of Need requirements.

c. Each application for a license from a new owner shall be accompanied by a copy of the approved Certificate of Need and a statement from the previous owner or his/her duly authorized representative concerning the change of ownership, or a copy of the deed or other validating document.

d. When the ownership of an occupied facility changes, upon receipt of a completed application and fee, the Department may issue a temporary license for a period not to exceed ninety (90) days. During this period of time, the Department may elect to conduct on-site visits to determine compliance of the new owner with the requirements for initial licensure, unless cause is found for refusal to issue a license which cannot reasonably be expected to change during such ninety (90) day period. If the new owner is in full compliance with the requirements, a license will be issued for the remaining period of time of the current license.

2.H.6. Change of Administrator

A change of administrator shall be reported, in writing, to the Department no later than seventy-two (72) hours prior to the change taking effect. The name and administrator license number of the individual who is to become administrator is to be submitted at that time. The license to operate the facility shall also be returned to the Department to be voided, and a new license issued bearing the name of the new administrator.

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2.I. Waiver Provisions

Where structural changes in an existing facility are necessary for such facility to comply with the provisions of these regulations and the change would result in an unreasonable hardship to the owners or operators, the Department may grant a waiver of one or more of the specific provisions of these regulations to an operator or owner, in accordance with the following requirements:

2.I.1. Prior to the issuance or renewal of any license, the facility must make written application requesting a waiver to the Department. Such application shall contain a written justification for the request and shall state the specific provisions of these regulations for which a waiver is being requested, and shall document what steps the facility is taking or will take to bring such facility into compliance with those provisions of these regulations, for which a waiver is requested.

2.I.2. The Department may request additional information before making a decision as to granting or denying an application for a waiver.

2.I.3. No waiver shall extend beyond the term of the license and a new waiver shall be required when the license of the facility is renewed. Failure of a facility to implement reasonable steps in order to bring the facility into conformance with these regulations shall be grounds for the denial of a waiver.

2.I.4. No waiver or waivers shall be granted if there would be an adverse effect to the health or safety of the residents of a facility.

2.I.5. The facility will be notified in writing when a waiver is granted, and the specific area for which a waiver has been granted shall be noted on the license.

2.J. Posting of License

The license shall be conspicuously posted in an area highly visible to residents and the public.

2.K. Availability of Survey Results

Facilities will have the results of State and Federal surveys, which include the plan of correction, in a place readily accessible to residents, resident representatives and the general public and must post a notice of their availability. Copies of these may be provided by the facility upon reasonable request.